

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO  
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CENTRO RADIOLOGICO ROLÓN, INC.,  
MAITE ROLÓN, and CESAR DEL  
VALLE,

Plaintiffs,

v.

UNITED STATES OF AMERICA;  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES;  
ROSA EMILIA RODRIGUEZ-VELEZ;  
HONORABLE KATHLEEN SEBELIUS;  
HONORABLE ERIC HOLDER, and  
FIRST COAST SERVICES OPTIONS,  
INC.,

Defendants.

Civil No. 12-2051 (JAF)

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6 **OPINION AND ORDER**

7 Plaintiffs Centro Radiológico Rolón, Inc. (“CRR”), and its owners Maite Rolón  
8 and César del Valle, filed suit against defendants the United States of America; the  
9 United States Department of Health and Human Services (“HHS”); the United States  
10 Attorney for the District of Puerto Rico, Rosa Emilia Rodríguez-Vélez; the Secretary of  
11 HHS, Honorable Kathleen Sebelius; the Attorney General of the United States,  
12 Honorable Eric Holder; and a Center for Medicare and Medicaid Services (“CMS”)  
13 contract carrier called First Coast Services Options, Inc. (“First Coast”). The plaintiffs  
14 claim that the defendants violated their rights when they revoked CRR’s enrollment  
15 billing privileges under the Medicare program, and plaintiffs ask for a writ of mandamus,  
16 a declaratory judgment, and a temporary restraining order or preliminary injunction.

1 (Docket No. 1.) The defendants filed a motion to dismiss for lack of jurisdiction.  
2 (Docket No. 13.) We grant the defendants' motion to dismiss.

3 **I.**

4 **Background**

5 The essential facts of this case are not in dispute. CMS is a component of the  
6 HHS. CMS is responsible for the administration of the Medicare program, and contracts  
7 with private entities known as Medicare administrative contractors ("MACs") to assist it  
8 in administering the program. MACs review each Medicare provider or supplier to  
9 ensure compliance with regulatory requirements of the Medicare program, and MACs  
10 conduct a first-level appeal with respect to any denial or revocation of Medicare  
11 enrollment and billing privileges. (Docket No. 14 at 3.) See 42 U.S.C. § 1395kk-1(a)(4).  
12 In this case, First Coast was the MAC that oversaw credentialing standards in Puerto  
13 Rico, where CRR, a provider and supplier enrolled in Medicare, is based. (Docket  
14 No. 14 at 1.)

15 In a letter dated July 12, 2011, First Coast notified CRR that, consistent with 42  
16 C.F.R. § 424.515, it was requiring CRR to submit a completed enrollment application  
17 within sixty days. (Docket No. 14 at 7.) In a September 19, 2011, letter, First Coast  
18 revoked CRR's Medicare billing privileges effective October 19, 2011, as a result of  
19 CRR's failure to submit the application by the deadline. (Docket No. 14 at 7.) On  
20 December 15, 2011, First Coast issued a reconsidered determination affirming its  
21 decision to revoke CRR's Medicare billing privileges. (Docket No. 14 at 7.)

1 CRR appealed First Coast's reconsidered determination to an Administrative Law  
2 Judge ("ALJ"). (Docket No. 14 at 7.) But, on March 27, 2012, CMS and CRR submitted  
3 a joint motion for remand, which stated that CMS would direct First Coast to reverse  
4 CRR's revocation and afford CRR another opportunity to submit an enrollment in the  
5 Medicare program, with the possibility that the enrollment may be denied once the  
6 completed application was reviewed. (Docket No. 14 at 7.)

7 On June 29, 2012, First Coast postmarked a letter notifying CRR that, pursuant to  
8 the joint order, it had removed the revocation and reinstated CRR's Medicare billing  
9 privileges, effective November 18, 2012. (Docket No. 14 at 7.) Then, in a letter dated  
10 July 27, 2012, First Coast informed CRR that its Medicare billing privileges would be  
11 revoked effective August 26, 2012. (Docket No 14 at 8.) First Coast stated that CRR did  
12 not meet all the credentialing standards for an Independent Diagnostic Testing Facility  
13 ("IDTF"), such as evidence of the required proficiency and qualifications for its  
14 supervising physicians and technicians. (Docket No. 14 at 2.)

15 On December 27, 2012, CRR filed the instant complaint in federal court. (Docket  
16 No. 1.) CRR also requested reconsideration from First Coast and, on January 15, 2013,  
17 First Coast issued a reconsidered determination affirming the revocation on the same  
18 grounds. (Docket No. 14 at 8.) On March 8, 2013, CRR appealed First Coast's  
19 reconsidered determination to an ALJ. (Docket No. 14 at 8.) At the time of the filings in  
20 this proceeding, CRR's appeal before the ALJ was still pending. (Docket No. 14 at 8.)  
21 On July 1, 2013, the defendants filed a joint motion to dismiss the case in our court.  
22 (Docket Nos. 13, 14.) On September 12, 2013, CRR responded in opposition to the

1 motion to dismiss. (Docket No. 20.) The court has not been notified of an outcome in  
2 the ALJ proceeding.

## 3 II.

### 4 Legal Analysis

5 A plaintiff's complaint will survive a motion to dismiss if it alleges sufficient facts  
6 to establish a plausible claim for relief. See Fed. R. Civ. P. 12(b)(6); Ashcroft v. Iqbal,  
7 556 U.S. 662, 677 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).  
8 In assessing a claim's plausibility, the court must construe the complaint in the plaintiff's  
9 favor, accept all non-conclusory allegations as true, and draw any reasonable inferences  
10 in favor of the plaintiff. Rodriguez-Ramos v. Hernández-Gregorat, 685 F.3d 34, 39-40  
11 (1<sup>st</sup> Cir. 2010) (citation omitted).

12 Medicare is governed by Title XVIII of the Social Security Act, 42 U.S.C.  
13 §§ 1395-1395ggg (the "Medicare Act"). In order to enroll in the Medicare program, an  
14 IDTF must certify in its enrollment application that it meets certain credentialing  
15 standards. 42 C.F.R. § 410.33(g). To retain billing privileges, a supplier must resubmit  
16 and recertify the accuracy of its enrollment information every five years. 42 C.F.R.  
17 § 424.515. Pursuant to the Medicare Act, CMS may revoke a supplier's enrollment and  
18 billing privileges in the Medicare program at any time if it cannot demonstrate that it is in  
19 compliance with requirements. 42 C.F.R. § 424.535(a)(1); 42 C.F.R. § 410.33(h).

20 Among the credentialing requirements are that an IDTF have at least one  
21 supervising physician who can prove proficiency in the performance and interpretation of  
22 each type of diagnostic procedure performed by the IDTF. This proficiency must be

1 documented by certification in specific medical subspecialties or by criteria established  
2 by the Medicare contractor for the IDTF service area. 42 C.F.R. § 410.33(b)(2). Another  
3 requirement of the program is that non-physician employees of an IDTF must  
4 demonstrate basic qualifications and evidence training and proficiency. 42 C.F.R.  
5 §§ 410.33(c), 410.33(g)(12).

6 According to the Medicare Act, a supplier who is dissatisfied with a reconsidered  
7 determination may request a hearing before an ALJ and, subsequently, review by the  
8 Departmental Appeals Board (“DAB”). 42 C.F.R. § 498.5(l). It is only after a “final  
9 decision” by the DAB that a supplier can seek federal judicial review. 42 C.F.R.  
10 § 498.5(l)(3); 42 U.S.C. § 1395ff(b). Therefore, we lack jurisdiction at this time. See  
11 Puerto Rican Assoc. of Physical Med. And Rehab., Inc. v. United States, 521 F.3d 46, 48  
12 (1<sup>st</sup> Cir. 2009).

13 CRR claims other bases of jurisdiction, but they fail as well. CRR cannot sue  
14 under 28 U.S.C. § 1331, because section 405(g), “to the exclusion of 28 U.S.C. § 1331, is  
15 the sole avenue for judicial review for all ‘claims arising under’ the Medicare Act.”  
16 Heckler v. Ringer, 466 U.S. 602, 614-15 (1984) (citations omitted). As for the All Writs  
17 Act, 28 U.S.C. § 1651, does not provide an independent basis for jurisdiction, but merely  
18 aids in cases where the court already has jurisdiction. Syngenta Crop Protection, Inc. v.  
19 Henson, 537 U.S. 28, 31 (2002). The Declaratory Judgment Act, 28 U.S.C. § 2201, also  
20 does not provide an independent ground for jurisdiction. See Vargas v. Chardon, 405  
21 F.Supp. 1348 (D.P.R. 1975); Moro v. Telemundo Incorporado, 387 F. Supp. 920 (D.P.R.  
22 1974); Longo-Puerto Rico, Inc. v. U.S.E.P.A., 575 F. Supp. 990 (D.P.R. 1983). Finally,

1 jurisdiction is not available pursuant to 28 U.S.C. § 1343, because government entities  
2 retain sovereign immunity under that statute. Many other circuits have stated as much.  
3 See Affiliated Prof'l Home Health Care Agency, 164 F.3d 282, 286 (5<sup>th</sup> Cir. 1999)  
4 (stating that “suits against the United States brought under the civil rights statutes are  
5 barred by sovereign immunity”); Salazar v. Heckler, 787 F.2d 527 (10<sup>th</sup> Cir. 1986);  
6 Jachetta v. U.S., 653 F.3d 898, 907-08 (9<sup>th</sup> Cir. 2011) (“we hold that 28 U.S.C.  
7 § 1343(a)(3) does not waive sovereign immunity”).

8 **III.**

9 **Conclusion**

10 Defendants’ motion to dismiss (Docket No. 13) is **GRANTED**. Judgment will  
11 enter dismissing the complaint.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 13th day of February, 2014.

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S/José Antonio Fusté  
JOSE ANTONIO FUSTE  
U. S. DISTRICT JUDGE