IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

BRANDON GRUNWALD, et al.,
Plaintiffs/Appellants,

v.

SCOTTSDALE HEALTHCARE HOSPITALS, et al.,
Defendants/Appellees.

No. 1 CA-CV 20-0188
FILED 4-29-2021

Appeal from the Superior Court in Maricopa County
No. CV2018-012029, CV2019-002270
(Consolidated)
The Honorable Daniel J. Kiley, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Chief Judge Peter B. Swann joined.

T H U M M A, Judge:

¶1 This case involves the validity of statutory healthcare provider liens recorded by the defendant hospitals for the cost of care and treatment provided to the patient plaintiffs not paid for by their medical insurance. Under Arizona Revised Statutes (A.R.S.) § 20-1072(F) (2021),[1] a hospital cannot charge an enrollee of a "health care services organization" more than the amount the hospital agreed to charge under its contract with the health care service provider. The superior court rejected plaintiffs' claims that their medical insurance providers are health care service organizations, meaning the liens were not void, and entered summary judgment for defendants. Because plaintiffs have shown no error, summary judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Plaintiffs were injured in car accidents.[2] At the time of their injuries, plaintiffs were enrolled in health insurance plans administered and underwritten by Aetna Life Insurance Company, UnitedHealthcare Insurance Company or UnitedHealthcare Services, Inc. Plaintiffs were treated for their injuries at defendant hospitals. After receiving payment from the insurers for some of the costs of care and treatment, the defendant hospitals recorded health care provider liens. *See* A.R.S. § 33-931. The liens are for the difference between the hospitals' charges for care and the contractual amounts collectively paid by the insurers and plaintiffs (through copays or the like). Plaintiffs call this difference "balance billing." Although not enforceable against plaintiffs, the liens may be enforced against third parties who are liable for plaintiffs' damages. *See Blankenbaker*

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[1] Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

[2] Plaintiff Jacquelyn Frison, whose claims are stayed given her bankruptcy, and plaintiff Steven Banuelos, whose claims were dismissed, are not part of this appeal.

v. Jonovich, 205 Ariz. 383, 387 ¶ 17 (2003); *Maricopa Cnty. v. Barfield*, 206 Ariz. 109, 110 ¶ 1 (App. 2003).

¶3 In this suit, plaintiffs allege that "[p]rivate health plans" (the insurers) and medical providers (the defendant hospitals) agreed to "managed care contracts," where the medical providers would accept specified fees for services as payment in full. The defendant hospitals, plaintiffs claim, are using the liens to improperly recover more than the payments they agreed to accept from the insurers in violation of A.R.S. § 20-1072(F). The parties cross-moved for summary judgment on whether plaintiffs are enrollees of "health care services organizations." After briefing and oral argument, the court ruled for defendants. The court determined that the statutory phrase "health care services organization" was synonymous with "health maintenance organization" (HMO). Because plaintiffs were not enrolled in HMOs, the court determined plaintiffs were not protected by Section 1072(F) and rejected plaintiffs' claim that the liens were invalid.

¶4 After entry of partial final judgment, *see* Ariz. R. Civ. P. 54(b), plaintiffs timely appealed. This court has appellate jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1).

DISCUSSION

¶5 This court reviews the grant of summary judgment de novo, *Andrews v. Blake*, 205 Ariz. 236, 240 ¶ 12 (2003), to determine "whether any genuine issues of material fact exist," *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, 55 ¶ 8 (App. 2007). The grant of summary judgment will be affirmed if it is correct for any reason. *Hawkins v. State*, 183 Ariz. 100, 103 (App. 1995).

¶6 Interpretation of statutes and rules is reviewed de novo. *Haag v. Steinle*, 227 Ariz. 212, 214 ¶ 9 (App. 2011). When statutory language is unambiguous, the court applies it as written. *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co. Inc.*, 177 Ariz. 526, 529 (1994). When statutory language is ambiguous as applied to the facts presented, the court looks to secondary rules of construction, including "the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose." *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268 (1994).

I. Plaintiffs' Argument that the Liens Are Void.

¶7 The portion of statute on which the liens are based provides that an entity (here, the defendant hospitals)

> that maintains and operates a health care institution or provides health care services in this state and that has been duly licensed by this state, . . . is entitled to a lien for the care and treatment . . . of an injured person. The lien shall be for the claimant's customary charges for care and treatment . . . of an injured person. A lien pursuant to this section extends to all claims of liability or indemnity, except health insurance and underinsured and uninsured motorist coverage as defined in § 20-259.01, for damages accruing to the person to whom the services are rendered, or to that person's legal representative, on account of the injuries that gave rise to the claims and that required the services.

A.R.S. § 33-931(A). Here, such liens apply "to all customary charges by hospitals." A.R.S. § 33-931(C). When perfected by a hospital, such liens have priority over similar liens. A.R.S. § 33-931(D).

¶8 Although the liens were perfected under A.R.S. Title 33 ("Property"), plaintiffs claim a limitation in A.R.S. Title 20 ("Insurance") makes the liens void. Title 20 contains 29 chapters addressing insurance, ranging from timely payment of claims, continuing education, information and privacy protection, types of insurance and insurers, and even the insurance contract itself. *See* A.R.S. §§ 20-101 to -3558. Chapter 4 of Title 20 specifies 15 "types of insurers." *See* A.R.S. §§ 20-701 to -1099.02. One of those types of insurers is a "Health Care Service Organization," or "HCSO."

¶9 Article 9 of Chapter 4, Title 20, governs HCSOs and contains the statutory basis for plaintiffs' claims that the liens are void. *See* A.R.S. §§ 20-1051 to -1079. Plaintiffs rely on the following statutory restriction: "No provider or hospital may charge an enrollee of a health care services organization more than the amount the provider or hospital contracted to charge the enrollee pursuant to the provider's contract or hospital's contract with the health care services organization." A.R.S. § 20-1072(F). Under this provision, no hospital may charge an enrollee of an HCSO more than the

amount the hospital contracted to charge the enrollee pursuant to the hospital's contract with the HCSO. As applicable here, the issue is whether the insurers are HCSOs.

¶10 None of the insurers involved here are licensed as HCSOs:

- Plaintiffs Brandon Grunwald and Christopher Langley had insurance issued and underwritten by UnitedHealthcare Insurance Company, licensed by the Arizona Department of Insurance as a disability insurer. *See* A.R.S. §§ 20-1341 to -1384 ("Disability Insurance").

- Plaintiff Cory Overholt had insurance self-funded by United Services Automobile Association and administered by Aetna Life Insurance Company; Aetna is licensed as a life and disability insurer, which authorized Aetna to function as an administrator under A.R.S. § 20-485(A)(1)(c).

- Plaintiffs Michael Toms and Robert Yosowitz had insurance self-funded by their employer, the State of Arizona. Their self-funded insurance plan was administered by United HealthCare Services Inc., licensed at the relevant time as an administrator.

Each insurer agreed to pay the hospitals a contract rate for care provided to plaintiffs. Each contract includes language authorizing the hospitals to enforce liens like those here after being paid the contract rate. Plaintiffs assert that Section 20-1072(F) overrides that contractual language and limits the hospitals to the contract rate. The applicability of Section 20-1072(F), however, turns on whether plaintiffs' insurance coverage here meant that they were enrollees of HCSOs. That narrow question broadly implicates Arizona insurance law.

II. The Ambiguous Definitions of "Health Care Plan" and "HCSO."

¶11 The relevant statutory text addressing HCSOs is not a model of clarity. It begins with a listing of definitions, including:

- HCSO "means any person that undertakes to conduct one or more health care plans." A.R.S. § 20-1051(6).

- "'Health care plan' means any contractual arrangement whereby any [HCSO] undertakes to provide directly or to arrange for all or a portion of contractually covered health care services and to pay or make reimbursement for any remaining portion of the health care services on a prepaid basis through insurance or otherwise." A.R.S. § 20-1051(4).[3]

- "'Person' means any natural or artificial person including individuals, partnerships, associations, providers of health care, trusts, insurers, hospitals or medical services corporations or other corporations, prepaid group practice plans, foundations for medical care and health maintenance organizations." A.R.S. § 20-1051(9).

¶12 Although perhaps useful in other contexts, in this case, these definitions are overlapping and circular and do not distinctly define HCSO or health care plan. For example, an HCSO is a "person" that "undertakes to conduct" a health care plan, while a health care plan is a contract "undertake[n]" by an HCSO. A.R.S. § 20-1051(4), (6). These definitions do, however, show that an insurer cannot be an HCSO unless it conducts a health care plan, and a health care plan is only undertaken by an HCSO. As a result, for plaintiffs to be enrollees of an HCSO, the insurers involved must conduct a health care plan. Put differently, plaintiffs are not protected by Section 20-1072(F) unless their insurers conduct a health care plan.

[3] This definition includes a second sentence that is not instructive here: "A health care plan shall include those health care services required in this article or in any rule adopted pursuant to this article." A.R.S. § 20-1051(4).

¶13 "An ambiguity in a statute is 'not simply that arising from the meaning of particular words, but includes such as may arise in respect to the general scope and meaning of a statute when all its provisions are examined.'" *State v. Sweet*, 143 Ariz. 266, 269 (1985) (quoting 73 Am. Jur. 2d, Statutes § 195). "An ambiguity may also be found to exist where there is uncertainty as to the meaning of the terms of a statute." *Id.* Under this standard, the definitions of HCSO and health care plan are ambiguous.

¶14 The first ambiguity is the meaning of the phrase "arrange for health care services." Plaintiffs argue that this phrase means to make a network of providers available, even if in a passive manner. The superior court, however, noted that "arrange for" could signify the exercise of control of a process, or accepting responsibility for an outcome. Another ambiguity was how a health care plan could reimburse health care services (a backward-looking function) on a "prepaid basis" (a forward-looking endeavor). But that is precisely what the statute requires. *See* A.R.S. § 20-1051(4). Given these issues, the definition of health care plan is ambiguous, meaning the definition of HCSO (which relies on the definition of health care plan) also is ambiguous. Thus, resort to secondary statutory construction principles is appropriate.

III. Under Arizona Law, HCSOs Are Synonymous with "Health Maintenance Organizations."

¶15 This statutory construction effort involves looking at statutory changes enacted nearly 50 years ago. In Arizona, before 1973 "disability insurers" and "service corporations" were the only licensed entities issuing health insurance. Such entities were and are licensed and regulated under Title 20. *See* A.R.S. §§ 20-253 ("disability insurance"); 20-821 to -848 ("service corporations"). Third party "insurance administrators" are licensed and authorized to administer insurance underwritten by others. *See* A.R.S. § 20-485 to -485.12.

¶16 In 1973, the Legislature created a third type of health insurance entity — the "HCSO" — when it amended A.R.S. Title 20. *See* A.R.S. §§ 20-1051 to -1079. The HCSO statutes are different from, but parallel to, the statutes that regulate disability insurers and service corporations. In authorizing HCSOs in 1973, the Legislature sought to implement a Health Maintenance Organization (HMO) Model Act promulgated by the National Association of Insurance Commissioners (NAIC). *Compare* A.R.S. §§ 20-1051 to -1079 *with* Nat'l Assoc. Inc. Comm'rs Model Laws, Regulations and Guidelines, 430-1 (2020); *accord Samsel v. Allstate Ins. Co.*, 204 Ariz. 1, 8-9 ¶¶ 25–26 (2002) (noting portions of A.R.S. §

20-1072 not applicable here "are substantially similar to" NAIC's HMO Model Act updated as a result of a "1988 NAIC advisory report on HMO regulation and insolvency issues"). For reasons lost to time, however, the Legislature did so with a twist: in all but one section, the Legislature replaced "HMO" as used in the NAIC Model Act with "HCSO."[4]

¶17 Because plaintiffs are not enrolled in HMOs, if HMOs and HCSOs are synonymous under Arizona law, plaintiffs would not be entitled to the protection of Section 1072(F), which requires that they be an "enrollee" of such an entity. When, as here, statutory language is ambiguous, secondary rules of construction authorize the court to look at how the text has been construed in other contexts. *Bills v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 194 Ariz. 488, 491 ¶ 6 (App. 1999) (citing *Mail Boxes, Etc., U.S.A. v. Indus. Comm'n*, 181 Ariz. 119, 121 (1995)).

¶18 Statements by Arizona's Legislative, Judicial and Executive branches consistently show that all three have treated HCSOs and HMOs interchangeably since 1973. When proposing the original bill that was enacted in 1973, the Legislature explained that the purpose of the bill was to authorize the creation of HMOs. *Minutes of Comm. on Agric., Com. & Lab.*, S. 1st. Sess., at 1 (Ariz. Apr. 12, 1973) (explaining that the purpose of the bill was to authorize the creation of HMO's). The Legislature consistently took this approach in the decades that followed. *See, e.g.*, S.B. 1134, 45th Leg., 2d Reg. Sess. (Ariz. 2002) (prescribing uniform accounting system for insurers, with House Bill Summary referring to HCSOs and HMOs interchangeably); H.B. 2117, 45th Leg., 1st Reg. Sess. (Ariz. 2002) (Senate Fact Sheet stating, "HCSOs, commonly referred to as HMOs"); *Ariz. State Senate, Final Revised Fact Sheet for S.B. 1330* 1 (May 2, 2000) ("a health care services organization (HCSO, commonly known as a[n HMO])"); H.B. 2213, 39th Leg., 2d Reg. Sess. (Ariz. 1990) (Department of Insurance representative testified in the House and the Senate that an HCSO bill provided protection "for enrollees in an HMO"); *Minutes of Comm. on Banking & Ins.*, H.R. 2d Sess., at 1 (Ariz. Jan. 20, 1988) (hearing on H.B. 2052, known as "HMO Reform," where Department of Insurance representative discussed how reform would "strengthen the [HCSOs] and improve coverage for the enrollees"); *Senate Staff, Revised Fact Sheet for H.B. 2082* (Ariz. Apr. 2, 1986) (Senate Fact Sheet noting that HCSOs "are more commonly known as health maintenance organizations"); *Ariz. Legis. Council, Rsch. Div. Summary Analysis of Chapter*

[4] That one exception is A.R.S. § 20-1066. That heading of that section refers to "Rehabilitation, liquidation or conservation of health maintenance organization," but the blackletter refers to "rehabilitation, liquidation, or conservation of a health care services organization." A.R.S. § 20-1066(A).

187 (S.B. 1165), S. 1st. Sess., at 1 (Ariz. May 23, 1974) (referring to HCSOs as HMOs). No exception to this Legislative history treating HMOs and HCSOs as the same has been cited.

¶19 Although Arizona courts have not expressly ruled that an HMO and an HCSO are the same, several opinions have said so in passing. *See, e.g.*, *Haisch v. Allstate Ins. Co.*, 197 Ariz. 606, 607 ¶ 2 (App. 2000) (stating plaintiff was a member of "a Health Care Service Organization, or 'HMO'"); *Samsel v. Allstate Ins. Co.*, 199 Ariz. 480, 481 ¶ 1 (App. 2001) (noting most of plaintiff's medical "expenses were covered by her health care services organization (HMO)"), *vacated on other grounds in* 204 Ariz. 1, 9 ¶ 27 (2002) ("In light of all of the foregoing and the text of A.R.S. § 20-1072(A) to (C) [which reference HCSO, not HMO], we believe the proper interpretation of the statute is that the enrollee is immunized from actions by the provider for recovery of charges for services provided and covered by the enrollee's agreement with the HMO."); *In re Family Health Servs., Inc.*, 101 B.R. 628, 630 n.1 & 633 (C.D. Cal. Bankr. 1989) ("Arizona statutes designate [HMOs] as . . . HCSOs. In order to achieve consistency between this and other opinions, the organizations will be referred to throughout as HMOs;" adding the Arizona Attorney General opined "HCSOs, the Arizona equivalent of HMOs, are not insurance companies under Arizona law") (citing Ariz. Att'y Gen. Op. 179-20 (1979) ("HCSOs are generally not considered to be insurers under" Arizona insurance law)).

¶20 Arizona's Executive branch, through the Arizona Department of Insurance (ADOI), consistently treats HCSOs and HMOs the same. Along with the testimony referenced above, when Arizona enacted the original HCSO statutes in 1973, the ADOI noted its understanding that the purpose was to regulate "HMO type prepaid plan[s]." ADOI, Activity Report Ending Mar. 30, 1973 (noting "Legislative Council meeting . . . concerning an amendment to House Bill 2043 setting up a separate article in Title 20 for the regulation of Hospital Maintenance Organizations to be known as" HCSOs). ADOI regulations have defined HMO to "mean a health care services organization as defined in A.R.S. § 20-1051([6])."[5] Ariz. Admin. Code R20-6-1101(B)(1)(c). More recently, in discussing amendments to the statutory HCSO regulatory scheme, ADOI recognized that HCSOs are HMOs. ADOI, Regulatory Bulletin 2018-02, July 12, 2018, 4 ("Includes health care service organizations (HCSO's, a.k.a. HMO's) as member insurers" for a guarantee fund). The most recent ADOI Annual Report confirms that HCSOs and HMOs are synonymous. This Annual

[5] The numbering of A.R.S. § 20-1051 was modified effective August 25, 2020. The statutory text, however, remains the same.

Report also states the entities providing plaintiffs' insurance here are "Life and Disability Insurers," not HCSOs. Plaintiffs' argument conflicts with these consistent positions, taken over decades, by all three of Arizona's branches of government.

¶21 The court is also persuaded that plaintiffs' view of the statute would result in various portions of Title 20 being superfluous, duplicative and absurd. As noted by defendants, various examples prove the point. For example, prescription eyedrops are covered under A.R.S § 20-1057.16 (HCSOs), § 20-1376.08 (disability insurers) and § 20-841.11 (service corporations). As another example, telemedicine is governed by A.R.S. § 20-1057.13 (HCSOs), § 20-1376.05 (disability insurers) and § 20-841.09 (service corporations). Accepting plaintiffs' arguments (that HCSOs include these other entities) impermissibly would make these parallel statutes unnecessary, redundant and absurd. *See In re Estate of Zaritsky*, 198 Ariz. 599, 603 (App. 2000) (noting courts interpret statutes to avoid rendering language "surplusage, . . . void, inert, redundant, or trivial," or causing "an absurd result") (citations omitted).

¶22 These parallel statutes make it even more significant that the Legislature did not enact a statute parallel to A.R.S. § 20-1072 in the statutes governing service corporations or disability insurers. This legislative silence indicates the Legislature limited § 20-1072 to HMO plans offered by licensed HCSOs. Had the Legislature wanted provisions like those in § 20-1072 to apply to health insurance issued by non-HCSOs, it would have enacted parallel provisions in the statutes governing disability insurers and service corporations. The Legislature has not done so.

¶23 Along with the consistent approaches treating HCSOs as HMOs, Arizona's Legislature has not differentiated HCSOs and HMOs. Instead, the Legislature has taken positions consistent with the proposition that HCSOs and HMOs are the same. Plaintiffs have offered no basis, under Section 1072(F), to treat HMOs and HCSOs differently here. Thus, the court adopts this consistent view that HMOs and HCSOs are to be treated the same.[6]

[6] Given this conclusion, the court need not address defendants' argument that a conclusion to the contrary would force a finding that the entire health insurance industry is out of compliance with Arizona law.

¶24 As applied, because plaintiffs are not members of an HMO, they also are not members of an HCSO. As a result, they are not "enrollee[s] of a health care services organization" under Section 1072(F). Accordingly, plaintiffs' claim that defendants are barred from filing a lien for unpaid costs under A.R.S. § 20-1072 fails.

CONCLUSION

¶25 The partial final judgment is affirmed. Plaintiffs' requests for attorneys' fees under A.R.S. § 33-934, and taxable costs on appeal, are denied. Defendants are awarded their taxable costs incurred on appeal contingent upon their compliance with ARCAP 21.

AMY M. WOOD • Clerk of the Court
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