ADVANCE SHEET HEADNOTE
May 16, 2022

2022 CO 20

No. 20SC565, *French v. Centura Health*—Contracts—Incorporation by Reference—Amount of Compensation and Value of Services.

In this case, the supreme court considers whether a hospital's chargemaster, a database that lists rates for specific medical services and supplies, was incorporated by reference into hospital services agreements that a patient had signed.

The court now concludes that because the patient neither had knowledge of nor assented to the chargemaster, which was not referenced in the hospital services agreements or disclosed to her, the chargemaster was not incorporated by reference into the hospital services agreements. Accordingly, the hospital services agreements left the price term open, and therefore, the jury appropriately determined that term.

The court thus reverses the judgment of the division below.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 20

Supreme Court Case No. 20SC565
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA23

Petitioner:

Lisa Melody French,

v.

Respondents:

Centura Health Corporation and Catholic Health Initiatives Colorado, d/b/a St. Anthony North Health Campus.

Judgment Reversed
en banc
May 16, 2022

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 Petitioner Lisa Melody French went to respondents Centura Health Corporation and Catholic Health Initiatives Colorado d/b/a St. Anthony North Health Campus (collectively, "Centura") for spinal fusion surgery. Upon reviewing French's insurance information prior to her surgery, Centura advised her that she would personally be responsible for $1,336.90 of the amounts to be billed. After the surgery, however, Centura determined that it had misread French's insurance card and that she was, in fact, an out-of-network patient. Centura then billed French $229,112.13 and ultimately sued her to collect.

¶2 We granted certiorari to decide (1) whether, on the facts presented here, Centura's chargemaster, a database used by Centura that lists rates for specific medical services and supplies, was incorporated by reference into hospital services agreements ("HSAs") that French had signed; and (2) if so, whether the price term in the HSAs was sufficiently unambiguous to render the HSAs enforceable.[1]

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[1] Specifically, we granted certiorari to review the following issues:

1. Whether the court of appeals erred in holding a standardized hospital admission form requiring a patient to pay "all charges of the hospital" incorporated the hospital's unreferenced, undisclosed "chargemaster."

¶3 We now conclude that because French neither had knowledge of nor assented to the chargemaster, which was not referenced in the HSA or disclosed to her, the chargemaster was not incorporated by reference into the HSA. Accordingly, the HSA left its price term open, and therefore, the jury appropriately determined that term.

¶4 For these reasons, we reverse the judgment of the division below, and we need not decide whether the price that French was to pay was unambiguous, even if the HSA incorporated the chargemaster.

I. Facts and Procedural History

¶5 After an automobile accident, French elected to undergo spinal fusion surgery, which involved surgical procedures on two consecutive days. At the time, she had health care benefits through her employer's self-funded plan administered by Professional Benefit Administrators, Inc. and ELAP Services, LLC.

¶6 French's doctor advised her that the St. Anthony North Health Campus was the hospital at which she would have the procedures performed, and French

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2. Whether the court of appeals erred in holding that the price to be paid is unambiguous, even if a standardized hospital admission form incorporates the hospital's "chargemaster."

provided Centura with her insurance information. Based on its understanding of the information that French had provided, Centura estimated that her surgeries would cost $57,601.77 and that after French's insurance payment, she would personally be responsible for $1,336.90 of that amount.

¶7 In addition, on three separate occasions prior to the surgeries, French signed two-page HSAs, stating, in pertinent part, "I acknowledge full financial responsibility for, and agree to pay, all charges of the Hospital and of physicians rendering services not otherwise paid by my health insurance or other payor." French also signed three two-page Patient Bill of Rights forms, which stated, in pertinent part, that she had the right to "[r]equest and receive, prior to the initiation of non-emergent care or treatment, the charges (or estimate of charges) for routine, usual, and customary services and any co-payment, deductible, or non-covered charges, as well as the facility's general billing procedures including receipt and explanation of an itemized bill." In signing these Patient Bill of Rights forms, French acknowledged that she had the responsibility to "[u]nderstand and honor financial obligations related to [her] care, including understanding [her] own insurance coverage." Neither the HSAs nor the Patient Bill of Rights forms mention the chargemaster or include an express price term.

¶8 French was subsequently admitted to the St. Anthony North Health Campus for the surgeries. She tolerated the procedures well, and the discharge

note in her medical record indicated that she had had no complications and that her hospital course was "uneventful." She did, however, spend one additional day in the hospital than was initially planned.

¶9 Thereafter, and notwithstanding the fact that Centura had told French that her surgeries would cost $57,601.77 and that she would personally be responsible for $1,336.90 of that amount, Centura billed French $229,112.13, reflecting its full chargemaster rates. Centura did so because it determined that it had misread French's insurance card and that she was, in fact, an out-of-network patient. Centura calculated the amount due after subtracting from the total charges the payment from French's insurer of $73,597.35 and French's payment of $1,000.00 (thus, the total amount that Centura charged was over $300,000.00, notwithstanding its pre-procedure estimate that the surgeries would cost $57,601.77).

¶10 When Centura's attempts to obtain payment from French proved unsuccessful, it sued French for breach of contract, alleging that under the HSAs that she had signed, she had agreed to pay Centura's chargemaster rates and therefore owed Centura the full balance of $229,112.13.

¶11 The case proceeded, and during discovery, French requested that Centura produce the chargemaster that applied on the dates of service for the medical care

provided. Centura, however, objected to producing its chargemaster, stating that the chargemaster was "voluminous, proprietary and a trade secret."

¶12 In addition, prior to trial, Centura filed a Motion for Declaratory Judgment or for Determination of Questions of Law, seeking a declaration that (1) the HSAs that French had signed incorporated the chargemaster rates; (2) French's promise to pay "all charges of the Hospital" was not an indefinite or open price term and unambiguously referred to Centura's chargemaster; and (3) the HSAs and Patient Bill of Rights forms that French had signed required her to pay the outstanding charges. The trial court, however, denied this motion, concluding:

> The court cannot find that the hospital-patient forms incorporate or refer to the chargemaster as a matter of law. . . . According to [Centura], the plain meaning of "all charges" unambiguously refers to rates generated from the chargemaster. The court disagrees and finds that the term is ambiguous. The document signed by [French] is devoid of any reference to the Hospital's chargemaster and does not define the meaning of "all charges." At the very least, the hospital-patient forms are reasonably susceptible to more than one meaning. Therefore, the definition of "all charges" is a question of fact appropriately decided by the jury at trial.

¶13 The matter ultimately went to trial, and at trial, Centura witnesses conceded that they had provided French, at least over the phone, with an estimate indicating that her surgeries would cost $57,601.77 and that French would owe $1,336.90. They testified, however, that Centura staff had misread French's insurance card and thus calculated the estimate based on their incorrect determination that French was in network for her surgeries, when she was not.

¶14 Centura witnesses further testified about the chargemaster, describing it as a database of about 50,000 codes that is integrated into Centura's electronic medical record system, with the codes representing the services and supplies that Centura provides and for which it charges patients. These witnesses explained that when a patient is discharged and all of the charges have been posted to the patient's account, a bill is generated out of the system using the chargemaster rates, and that bill is sent to the payor. The Centura witnesses further observed that patients cannot directly access the chargemaster and that before French's surgeries, Centura did not provide to her and she could not have looked at the chargemaster. And a Centura representative stated that the chargemaster rates were not incorporated into the estimate provided to French because Centura believed that French had benefits for hospital services and therefore generated the estimate by using the contractual reimbursement rates for the benefits that Centura mistakenly thought French had (insurance companies and governmental programs like Medicare and Medicaid negotiate discounted rates with hospitals like those owned by Centura, and Centura generated its estimate in accordance with the discounted rates that it believed applied, based on its erroneous reading of French's insurance card).

¶15 For her part, French testified that (1) someone from Centura had told her that she needed to pay $1,000.00 before her surgeries; (2) she believed that her

insurance would pay the remainder of her bill; and (3) no one told her that she might owe more than that. In addition, an expert witness for French testified that he had estimated the actual cost of the medical services provided to French to be $70,500.00 and that Centura's charges for the goods and services at issue greatly exceeded their reasonable value and were thus unreasonable. This witness further opined that the amount that French and her insurer had paid (i.e., approximately $74,000.00) was close to the reasonable value of the services that French had received and that the sums paid provided Centura with a profit margin of about 5.5 percent.

¶16 At the conclusion of the evidence, Centura renewed its request for a declaratory judgment regarding the language of the HSAs and asked for a judicial determination that the phrase "all charges of the Hospital" meant the chargemaster rates. The trial court again denied Centura's motion, concluding that the parties' understanding of the meaning of the term "all charges of the Hospital" was sufficiently disputed so that the matter should be left to the jury to decide.

¶17 In light of this ruling, the court subsequently provided the jury with a special verdict form, requiring the jurors to decide, among other things, whether the term "all charges of the Hospital" meant the chargemaster rates or the reasonable value of the goods and services provided to French. The court further

provided the jury with an interrogatory, requiring the jurors to decide whether Centura's chargemaster for the goods and services provided to French was reasonable.

¶18 The jury ultimately found that the term "all charges of the Hospital" meant the "reasonable value of the goods and services provided to [French]" (and not the chargemaster rates) and that the chargemaster rates billed to French were not reasonable. The jury then determined that French owed Centura $766.74 in damages, apparently reflecting the balance due above the amounts already paid by French and her insurer.

¶19 Centura then appealed, arguing that the trial court had erred in concluding that the term "all charges" in the HSAs was ambiguous and thus allowing the jury to decide what that term meant and the "reasonable value" of the services that French had received. In Centura's view, the HSAs were unambiguous and French's agreement to pay "all charges" "could only mean" the predetermined rates set by Centura's chargemaster.

¶20 In a unanimous, published opinion, a division of the court of appeals agreed with Centura and reversed the trial court's judgment. *Centura Health Corp. v. French*, 2020 COA 85, ¶¶ 2, 36, 490 P.3d 780, 781, 789. In so concluding, the division opined that most jurisdictions that had considered the question had interpreted hospital contracts requiring a patient to pay "all charges" as unambiguously

incorporating the hospital's chargemaster rates. *Id.* at ¶¶ 21–22, 490 P.3d at 784–85. The division deemed this view persuasive for four reasons. *Id.* at ¶¶ 21–29, 490 P.3d at 784–88. First, according to the division, hospitals cannot always accurately predict what services a patient will ultimately need, and thus hospitals cannot accurately predict their charges. *Id.* at ¶ 25, 490 P.3d at 786. Accordingly, the division could not conclude that an HSA must contain a precise price term in order to unambiguously incorporate a hospital chargemaster. *Id.* Second, the division stated that although the HSAs did not expressly reference the chargemaster rates, the term "all charges" in the HSAs was still sufficiently definite because the chargemaster rates were predetermined. *Id.* at ¶ 26, 490 P.3d at 786. Third, the division believed that what it deemed the "majority approach" properly recognized that it would be impractical for courts "to attempt to resolve the complexity of the health care system by imposing a reasonableness requirement for an express, written contract with a sufficiently definite price term." *Id.* at ¶ 27, 490 P.3d at 787. Finally, the division concluded that Colorado law provides "*some* public transparency for the Hospital's chargemaster rate." *Id.* at ¶ 28, 490 P.3d at 787.

¶21 In so concluding, the division "set aside [its] misgivings that the HSA may have lacked mutual assent" in favor of policy considerations like those noted above. *Id.* at ¶ 31, 490 P.3d at 788. In particular, in the division's view, imposing

a reasonableness requirement on the HSAs' price term here "would require hospitals to litigate the reasonableness of their charges in order to obtain recovery, thereby ignoring the reality of our health care system, which allows insurers to negotiate lower contract prices with hospitals." *Id.* at ¶ 30, 490 P.3d at 788.

¶22 French then petitioned this court for certiorari review, and we granted her petition.

II. Analysis

¶23 We begin by setting forth the applicable standard of review. Next, we discuss the pertinent principles of contract law, including those relating to the concept of incorporation by reference. We then apply these principles to the facts before us and conclude that Centura's chargemaster was not incorporated by reference into the HSAs.

A. Standard of Review

¶24 The interpretation of a contract is a question of law that we review de novo. *Fed. Deposit Ins. Corp. v. Fisher*, 2013 CO 5, ¶ 9, 292 P.3d 934, 937. Whether contract terms have been incorporated by reference into a contract is also a question of law subject to de novo review. *Northrop Grumman Info. Tech., Inc. v. United States*, 535 F.3d 1339, 1343 (Fed. Cir. 2008). We, however, defer to the trial court's factual findings unless they are clearly erroneous. *Maphis v. City of Boulder*, 2022 CO 10, ¶ 14, 504 P.3d 287, 291.

B. Applicable Contract Principles

¶25 In interpreting a contract, our primary goal is to give effect to the parties' intent. *Ad Two, Inc. v. City & Cnty. of Denver ex rel. Manager of Aviation*, 9 P.3d 373, 376 (Colo. 2000). The parties' intent is primarily determined from the language of the instrument itself. *Id.* To make this determination, we must first establish whether the provisions of the parties' agreement are ambiguous. *See id.* We decide whether provisions of an agreement are ambiguous by examining the instrument's language and construing that language in harmony with the plain and generally accepted meaning of the words employed. *Id.* When a written contract is complete and free from ambiguity, we will deem it to express the parties' intent and enforce it according to its terms. *Id.* When contract terms are susceptible of more than one reasonable interpretation, however, then the terms are ambiguous, and evidence beyond the four corners of the contract is admissible to establish the parties' intent. *Id.* at 376–77. The mere fact that the parties disagree as to the proper interpretation of a contract does not itself establish an ambiguity in the contract. *Id.* at 377.

¶26 To be enforceable, a contract requires mutual assent to an exchange between competent parties for legal consideration. *Fisher*, ¶ 11 n.2, 292 P.3d at 937 n.2; *Winter v. Indus. Claim Appeals Off.*, 2013 COA 126, ¶ 23, 321 P.3d 609, 614.

¶27 Regarding mutual assent, in general, "when parties to a contract ascribe different meanings to a material term of a contract, the parties have not manifested

mutual assent, no meeting of the minds has occurred, and there is no valid contract." *Sunshine v. M.R. Mansfield Realty, Inc.*, 575 P.2d 847, 849 (Colo. 1978). The requisite meeting of the minds is established by the parties' acts, conduct, and words, along with the attendant circumstances, and not by any subjective, unexpressed intent by either party. *Avemco Ins. Co. v. N. Colo. Air Charter, Inc.*, 38 P.3d 555, 559 (Colo. 2002).

¶28 With respect to consideration, when parties have entered into a contract for the performance of services but the contract lacks an express or definitive price, "it is a general rule that the court is required to determine the price on the basis of the reasonable value of [the services to be provided]. Under general principles of contract, the 'reasonable value rule' is universally applied where no contract price can be determined." *Allred v. Lininger*, 398 P.2d 967, 969 (Colo. 1965) (citations omitted).

¶29 And, as pertinent here, it has long been settled that contracting parties may incorporate contract terms by reference to another document. *See Taubman Cherry Creek Shopping Ctr., LLC v. Neiman-Marcus Grp., Inc.*, 251 P.3d 1091, 1094–95 (Colo. App. 2010). In Colorado, for an incorporation by reference to be effective, "it must be clear that the parties to the agreement had knowledge of and assented to the incorporated terms." *Id.* at 1095 (quoting 11 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 30.25, at 234 (4th ed. 1999)); *see also id.* (noting

that the parties must "*clearly and knowingly* assent to terms incorporated by reference").

¶30 Accordingly, for contract terms outside the four corners of a contract to be incorporated by reference into the contract, the terms to be incorporated generally must be clearly and expressly identified. *See, e.g.*, *Britt v. Univ. of Louisville*, 628 S.W.3d 1, 7–8 (Ky. 2021) (concluding that express references in an employment contract to a university's governance document were sufficient to incorporate the governance document by reference); *RTS Shearing, LLC v. BNI Coal, Ltd.*, 965 N.W.2d 40, 46 (N.D. 2021) (concluding that a service purchaser's "Standard Terms and Conditions" were incorporated by reference into the parties' agreement when those "Standard Terms and Conditions" were referenced expressly, by name and in boldface type, in the one-page purchase orders exchanged by the parties); *Evans v. Bayles*, 787 S.E.2d 540, 544 (W. Va. 2016) (concluding that an arbitration clause in a brokerage agreement was incorporated by reference into an IRA application when the application made "multiple, clear references" to the brokerage agreement, leaving no doubt as to its identity, and when the arbitration clause was specifically called to the applicant's attention and the brokerage agreement was provided to the applicant).

¶31 General or oblique references to a document to be incorporated, in contrast, are usually insufficient to support a finding that the document was incorporated

by reference. *See, e.g.*, *Town of Cheswold v. Cent. Del. Bus. Park*, 188 A.3d 810, 818–19 (Del. 2018) (concluding that certain stipulated court orders between a town and a property owner did not incorporate by reference a proposed amendment to a city ordinance, even though the orders referred to the proposed amendment, because the orders did not refer to or incorporate the substance of the amendment and a mere reference to the amendment, without more, was insufficient to incorporate its substance); *Walker v. BuildDirect.Com Techs., Inc.*, 349 P.3d 549, 554 (Okla. 2015) (concluding that a reference in a contract to the seller's "Terms of Sale" was insufficient to incorporate the terms of sale contained on the seller's website because merely placing quotation marks around the phrase "Terms of Sale," without more, was insufficient to convey to the buyers that the seller was referring to anything other than the sales terms expressly enumerated within the four corners of the parties' contract); *State ex rel. U-Haul Co. of W. Va. v. Zakaib*, 752 S.E.2d 586, 598 (W. Va. 2013) (concluding that a brief mention of an addendum in preprinted and electronic rental contracts was insufficient to incorporate the addendum by reference when renters were not given copies of the addendum prior to signing the rental contracts); *see also Zakaib*, 752 S.E.2d at 595 ("An oblique reference to a separate, non-contemporaneous document is insufficient to incorporate the document into the parties' final contract.").

C. Application

¶32 With the foregoing principles in mind, we turn to the question of whether the chargemaster was incorporated by reference into the HSAs signed by French prior to her surgeries at Centura. For several reasons, we conclude that it was not.

¶33 First, no evidence in the record indicates that French even knew of the chargemaster's existence. The chargemaster was not referenced in any way—even obliquely—in any of the HSAs (or in the Patient Bill of Rights forms) that French signed. Nor did French have any knowledge of the chargemaster's terms or rates. Indeed, Centura representatives testified that the chargemaster was not provided to patients, and in this very litigation, Centura refused to produce its chargemaster to French, contending that it was proprietary and a trade secret.

¶34 Second, no evidence in the record shows that French ever assented to the chargemaster's terms, much less clearly and knowingly assented to such terms. *See Taubman*, 251 P.3d at 1095. She assuredly could not assent to terms about which she had no knowledge and which were never disclosed to her.

¶35 Accordingly, we conclude that Centura's chargemaster was not incorporated by reference into the HSAs that French signed. As a result, and as the trial court concluded, the price term of the parties' agreement was left open, and the trial court properly allowed the jury to determine the reasonable value of Centura's services here. *See Doe v. HCA Health Servs. of Tenn., Inc.*, 46 S.W.3d 191,

197 (Tenn. 2001) (concluding that a hospital's chargemaster did not provide a sufficient means to allow a patient to determine the hospital charges for which she was responsible under a contract requiring her to pay "charges" not covered by insurance because the contract contained no reference to the chargemaster or to any other document, transaction, or extrinsic facts from which the meaning of "charges" would have been made clear).

¶36 In reaching this conclusion, we are not persuaded by Centura's arguments to the contrary.

¶37 Specifically, Centura's reliance on our decision in *Portercare Adventist Health System v. Lego*, 2012 CO 58, 286 P.3d 525, is misplaced. The question before us in *Portercare* was whether the contract claim at issue involved a liquidated debt, such that the six-year statute of limitations, rather than the general three-year statute for contract claims, applied. *Id.* at ¶ 1, 286 P.3d at 526. We concluded that the debt was liquidated because it could be ascertained by simple computation using extrinsic evidence of the predetermined costs of the medical services that had been provided. *Id.* at ¶¶ 18, 20, 286 P.3d at 529. No party in *Portercare* raised, nor did we consider, whether the chargemaster was incorporated by reference. And we did not hold that the chargemaster was incorporated by reference, notwithstanding Centura's assertion to the contrary.

¶38 Nor are we persuaded by the authorities on which Centura relies that addressed the phrase "all charges" in patient-hospital contracts. Although Centura asserts that these cases established a majority rule that the phrase "all charges" unambiguously incorporates hospital chargemaster rates, we view these authorities as distinguishable or unconvincing. Many of the authorities cited by Centura rely heavily on *DiCarlo v. St. Mary Hospital*, 530 F.3d 255 (3d Cir. 2008), a class action filed by an uninsured patient. In *DiCarlo*, the appellate court adopted in full the opinion of the district court, which had concluded that the term "all charges" in a form signed by the plaintiff referred to the hospital's chargemaster. *Id*. at 258, 264. In support of this determination, the district court had determined that referring to "all charges" in a hospital-patient contract was the "only practical way" in which the patient's obligations could be set forth. *Id*. at 264. Moreover, the court had noted that the case arose out of the "anomalies" in our health care system and that a court "could not possibly determine what a 'reasonable charge' for hospital services would be without wading into the entire structure of providing hospital care and the means of dealing with hospital solvency." *Id*. The court recited these principles with little citation to any applicable authority. And although many of the cases on which Centura relies reflexively cited to *DiCarlo* and followed its reasoning, we are unpersuaded by its limited analysis.

¶39 Specifically, notwithstanding the *DiCarlo* court's assertion to the contrary, principles of contract law can certainly be applied to hospital-patient contracts, and if a charge for hospital services is not included in a hospital-patient contract, then we believe that a jury is fully capable of determining the reasonable value of the services provided. The fact that a contract may be complicated or may require the involvement of a factfinder to address missing terms does not, in our view, support a conclusion that settled principles of contract law are inapplicable to that contract or that the contracting parties mutually assented to undisclosed terms. Nor do we find any persuasive support in the law for treating contracts for medical services differently from all other types of contracts.

¶40 We likewise are unpersuaded by Centura's argument that the HSAs' reference to "all charges of the Hospital" necessarily referred to the chargemaster because hospitals cannot accurately predict the services that a patient will ultimately require. Certainly, emergencies occur, and situations arise in which medical care beyond what was initially planned is needed. In this case, however, Centura knew the procedures that would be performed on French, French's course of treatment did not deviate substantially from the expected course, and nothing prevented Centura from providing, at very least, the chargemaster rates for the anticipated procedures (or a correct estimate based on those rates). Moreover, as courts and commentators have observed, hospital chargemasters have become

increasingly arbitrary and, over time, have lost any direct connection to hospitals' actual costs, reflecting, instead, inflated rates set to produce a targeted amount of profit for the hospitals after factoring in discounts negotiated with private and governmental insurers. *See In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 132 (Tex. 2018) (collecting authorities); *see also Doe*, 46 S.W.3d at 194 (noting that chargemaster rates are marked up to produce a targeted amount of profit for the hospital). This, too, weighs against concluding that "all charges of the Hospital" necessarily referred to the chargemaster.

¶41 Finally, we are not convinced by Centura's argument that French did not avail herself of the resources afforded by the Colorado statutes addressing transparency of hospital pricing. Centura offers no explanation as to how French's relying on those statutes would have resulted in the incorporation by reference of Centura's chargemaster. Moreover, notwithstanding Centura's suggestion to the contrary, these statutes do not place a burden on patients, but rather generally require hospitals and other health care entities to disclose to patients (or to state agencies or professional associations) certain facility charges and the right of the patients to receive such information. *See, e.g.*, §§ 6-20-101, C.R.S. (2021); 10-16-134(1), C.R.S. (2021); 25-3-705(2), C.R.S. (2021).

¶42 Even if these statutes gave rise to some sort of obligation on French's part, however, Centura has conceded that she would not have been able to understand

or interpret the chargemaster's over 50,000 codes, and thus, access to the chargemaster would not have established mutual assent to any of the rates contained therein. And Centura does not explain how French's reliance on the foregoing statutes would have altered its position throughout this litigation that its chargemaster was proprietary and a trade secret and would not have been provided to French.

¶43 For all of these reasons, we conclude that the division below erred in determining that the HSAs that French signed incorporated Centura's chargemaster by reference. We thus agree with the trial court that the price term of the HSAs was left open and that it was for the jury to decide the reasonable value of Centura's goods and services, as it ultimately did.

¶44 In light of our foregoing disposition, we need not decide whether the price that French was to pay under the chargemaster was unambiguous, even if the chargemaster were incorporated by reference into the HSAs.

III. Conclusion

¶45 Because French had no knowledge of and did not clearly and knowingly assent to the terms of Centura's chargemaster, we conclude, under long-settled principles of contract law, that the chargemaster was not incorporated by reference into the HSAs that French signed. As a result, the price term of the HSAs was left

open, and the trial court properly tasked the jury with determining the reasonable value of the goods and services that Centura provided to French.

¶46 We thus reverse the judgment of the division below and remand this case for further proceedings consistent with this opinion.