

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHILDREN'S HOSPITAL AND RESEARCH CENTER AT OAKLAND,)	No. 07-6069 SC
)	
Plaintiff,)	MEMORANDUM OF
)	DECISION, FINDINGS OF
v.)	FACT, AND CONCLUSIONS
)	<u>OF LAW</u>
HEALTH PLAN OF NEVADA, INC.; and DOES 1 THROUGH 25, INCLUSIVE,)	
)	
Defendants.)	
)	
_____)	

I. INTRODUCTION

The Children's Hospital and Research Center at Oakland ("CHO") brought this suit in the Alameda County Superior Court in October 2007, alleging that Defendant Health Plan of Nevada ("HPN") failed to pay the contractually required sum for medical services provided to one of HPN's members. Notice of Removal, Docket No. 1, Ex. A ("Compl."). HPN removed the action from the Superior Court on November 30, 2007. Notice of Removal. HPN filed its Answer on December 5, 2007. Docket No. 3. With leave of the Court, Docket No. 34, HPN filed an Amended Answer and Counterclaim ("Counterclaim"), asserting that it overpaid for medical services CHO provided to two of HPN's members, Docket No. 35. The Court denied HPN's Motion for Partial Summary Judgment

1 ("March 23, 2009, Order"). Docket No. 73. The Court held a trial
2 on April 20, 2009.

3 After Plaintiff rested, Defendant moved for judgment on
4 partial findings. RT at 130:3-22.¹ The Court took the motion
5 under submission. Id. at 131:15-16. Having now considered all of
6 the evidence and testimony offered at trial and the arguments of
7 counsel, the Court DENIES the motion for judgment on partial
8 findings as moot. On April 24, 2009, Defendant submitted an
9 administrative motion to file damage calculations under seal.
10 Docket No. 99. The Court GRANTS the administrative motion. The
11 Court by this memorandum of decision issues its findings of fact
12 and conclusions of law pursuant to Rule 52(a) of the Federal Rules
13 of Civil Procedure. For the reasons set forth below, the Court
14 concludes HPN did not underpay CHO for medical services provided
15 to one of HPN's members. HPN overpaid CHO for medical services
16 provided to two of HPN's members. HPN is entitled to recover the
17 overpayments.

18
19 **II. FINDINGS OF FACT**

20 A. The Parties

21 1. The Children's Hospital and Research Center at
22 Oakland ("CHO") is a California corporation.

23 2. Health Plan of Nevada ("HPN") is a Nevada
24 corporation.

25
26 _____
27 ¹ "RT" refers to the amended Transcript of Record from the
28 trial held on April 20, 2009. Docket No. 96.

1 B. Patient A

2 3. Between May 1, 2006, and September 1, 2006, CHO
3 rendered medically necessary care, including bone marrow
4 transplants, to a cancer patient enrolled in HPN's Medicaid
5 Managed Care Program ("Patient A").

6 4. On May 16, 2006, the Parties entered into a Letter
7 of Agreement, according to which HPN was to pay CHO as follows:

8 For Medically Necessary Covered Services
9 rendered by PROVIDER [i.e. CHO] in association
10 with the above reference number, COMPANY [i.e.
11 HPN] shall reimburse PROVIDER one-hundred
12 percent (100%) of the California Medi-Cal
Contracted Maximum Allowable Reimbursement
rate less applicable copayments, coinsurance,
and/or deductibles.

13 Ex. P-4 ("LoA1") § 2.

14 5. The letter states that "PROVIDER agrees to reimburse
15 COMPANY within thirty (30) days of written notification from
16 COMPANY for any overpayment to PROVIDER made by COMPANY." Id.
17 § 7.

18 6. Shaun Schoener ("Schoener"), a HPN employee,
19 drafted LoA1.

20 7. On May 18, 2006, Debbie Nielsen ("Nielsen"), a CHO
21 employee, entered a note on her computer stating "LOA with Health
22 Plan of Nevada to pay us for this admission at the Medi-Cal
23 interim rate (50% of billed)." Ex. P-16.

24 8. On July 20, 2006, Nielsen faxed Schoener the most
25 recent Hospital Interim Rate Report published by the State of
26 California, and she included the comment that "[t]his is the basis
27 that we utilize for payment expectations with out-of-state

1 Medicaid plans and out-of-state Medicaid managed care plans." Ex.
2 P-5 ("July 20, 2006, Fax").

3 9. CHO billed HPN \$2,008,550.40 for services provided
4 to Patient A between her admission and her death on September 1,
5 2006.

6 10. CHO refused to provide HPN with the contract rate
7 between Medi-Cal and CHO, claiming that the rate was confidential.

8 11. In October 2006, HPN paid the Hospital \$341,325.00,
9 based on a per diem rate of \$2,775.00 for the 123 days Patient A
10 was admitted to the Hospital.

11 C. Patient B

12 12. Between May 17, 2006, and May 22, 2006, CHO
13 provided care to another HPN member ("Patient B").

14 13. On May 17, 2006, the Parties entered into a
15 virtually identical Letter of Agreement for Patient B, which
16 provides:

17 For Medically Necessary Covered Services
18 rendered by PROVIDER, COMPANY shall reimburse
19 PROVIDER one-hundred percent (100%) of the
20 California Medi-Cal Contracted Maximum
Allowable Reimbursement rate less applicable
copayments, coinsurance, and/or deductibles.

21 Ex. P-5 ("LoA2") § 2.

22 14. The letter states that "PROVIDER agrees to
23 reimburse COMPANY within thirty (30) days of written notification
24 from COMPANY for any overpayment to PROVIDER made by COMPANY."

25 Id. § 7.

26 15. Schoener drafted LoA2.

27 16. On May 18, 2006, Nielsen entered a note on her
28

1 computer stating "LOA with Health Plan of Nevada to pay us for
2 this admission at the Medi-Cal interim rate (50% of billed)." Ex.
3 P-21.

4 17. CHO billed HPN \$101,832.53 for services provided to
5 Patient B.

6 18. CHO refused to provide HPN with the contract rate
7 between Medi-Cal and CHO.

8 19. In July 2006, HPN paid the Hospital \$44,745.09 for
9 services provided to Patient B.

10 D. The Medi-Cal Contract Rate

11 20. The contract for hospital inpatient services
12 between the State of California and CHO provides that, prior to
13 May 12, 2006, the rate of reimbursement was \$1,927 per day. P-31
14 ("Medi-Cal Contract") Amendment 10 § 4.1(a), Amendment 11 §
15 4.1(a).

16 21. The contract provides that, commencing May 12,
17 2006, Medi-Cal would reimburse CHO at a rate of \$2,000 per day.
18 Id. Amendment 11, § 4.1(b).

19 22. The contract provides that, prior to May 12, 2006,
20 bone marrow transplant cases were reimbursed at a rate of \$2,450
21 per day for the first 35 days of transplant, and commencing May
22 12, 2006, bone marrow transplant cases were paid at \$2,500 per day
23 for the first 35 days of transplant. Id. Amendment 11, §§
24 4.1(e)(1), 4.1(e)(2).

25 23. The contract provides that for ECMO (Extracorporeal
26 Membrane Oxygenation) services, Medi-Cal pays an all-inclusive
27 rate of \$5,000 per day not to exceed a total of 14 days. Id. §
28

1 4.1(e)(3).

2 24. If HPN had reimbursed CHO for services provided to
3 Patient A based on the rates in the Medi-Cal Contract, CHO states
4 it would have been reimbursed according to the following rates:

5 Prior to May 12, 2006, CHO's inpatient Medi-
6 Cal general acute care per diem rate was \$1927
7 per day. As of May 12, 2006, CHO's inpatient
8 Medi-Cal general acute care per diem rate was
9 \$2000 per day, and bone marrow transplant
10 cases were paid at \$2450 per day for the first
11 35 days of transplant. Medi-Cal also pays an
12 ECMO (Extracorporeal Membrane Oxygenation)
13 rate of \$5000 per day for up to 14 days
14 instead of the general acute per diem . . .
15 CHO is a "Disproportionate Share" hospital and
16 is entitled, in addition to the above
17 referenced per diem rates, to receive an
18 additional \$500 per day per Medi-Cal patient.

19 Ex. D-584 ("Pl.'s Supplemental Resp. to Def.'s First Set of
20 Interrogs"), Resp. to Interrog No. 7.

21 **III. CONCLUSIONS OF LAW**

22 A. Contract Interpretation

23 The language of a contract is to govern its interpretation,
24 if the language is clear and explicit, and does not involve an
25 absurdity. Cal. Civ. Code § 1638; Doe 1 v. AOL LLC, 552 F.3d
26 1077, 1081 (9th Cir. 2009); AIU Ins. Co. v. Super. Ct., 51 Cal. 3d
27 807, 818 (1990). The words of a contract are to be understood in
28 their ordinary and popular sense. Cal. Civ. Code § 1644. If the
contract language is not ambiguous, then the Court's inquiry
should end there, because parol evidence is only admissible if a
contract is ambiguous. See e.g., Consol. World Invs., Inc. v.
Lido Preferred, Ltd., 11 Cal. Rptr. 2d 524, 526-27 (Ct. App. 1992)

1 ("One exception to the parol evidence rule is that extrinsic
2 evidence may be introduced to explain the meaning of ambiguous
3 contractual language.").

4 However, under California law, parties may introduce evidence
5 to prove a latent ambiguity in the terms of a contract. "The test
6 of admissibility of extrinsic evidence to explain the meaning of a
7 written instrument is not whether it appears to the court to be
8 plain and unambiguous on its face, but whether the offered
9 evidence is relevant to prove a meaning to which the language of
10 the instrument is reasonably susceptible." Pac. Gas & Elec. Co.
11 v. G. W. Thomas Drayage & Rigging Co., 69 Cal. 2d 33, 37 (1968).

12 Here, the phrase in dispute is "one-hundred percent (100%) of
13 the California Medi-Cal Contracted Maximum Allowable Reimbursement
14 rate." See LoA1; LoA2. CHO contends the phrase refers to the
15 interim rate. HPN contends the phrase refers to the per diem
16 rates stated in the Medi-Cal Contract. When the Court ruled on
17 HPN's motion for partial summary judgment, the Court did not have
18 a copy of the Medi-Cal Contract. See March 23, 2009, Order at 5
19 n.3. Without this evidence, the Court determined that the
20 disputed phrase was reasonably susceptible to being interpreted as
21 the interim rate or a per diem rate. Id. at 6.

22 During trial, however, portions of the Medi-Cal Contract
23 between the State of California and CHO were submitted into
24 evidence. See P-31. This evidence shows that the rates set in
25 the Medi-Cal Contract are per diem rates, not the interim rate.
26 See id. Based on this evidence, and the testimony offered at
27 trial, the Court concludes that the disputed phrase refers to the

1 per diem rates stated in the Medi-Cal Contract.

2 The letters of agreement were signed by Schoener on behalf of
3 HPN. See LoA1; LoA2. Schoener custom drafted the phrase "one-
4 hundred percent (100%) of the California Medi-Cal Contracted
5 Maximum Allowable Reimbursement rate." RT at 106:17-23.

6 Schoener's intent in drafting that language was that HPN would
7 reimburse CHO according to the rate CHO would receive under its
8 Medi-Cal Contract. Id. at 107:13-16. Schoener did not intend for
9 the language to refer to the interim rate. Id. at 107:17-19.

10 Schoener understood that if there was no agreement in place
11 between HPN and CHO, then HPN would be required to pay the interim
12 rate. Id. at 114:18-20. Schoener testified that if he entered
13 into a contract based on the interim rate, he would be leaving HPN
14 open to having to pay a percentage of whatever CHO wanted to bill.
15 Id. at 116:8-117:3.

16 The two letters of agreement were signed by Douglas T. Myers
17 ("Meyers") on behalf of CHO. See LoA1; LoA2. Myers is the Chief
18 Operating Officer and Chief Financial Officer of CHO. RT at
19 142:12-13. At his deposition, Myers testified that he understood
20 the word "contracted" in the disputed phrase to refer to a
21 contract with the State of California, and he also understood that
22 the contracted rate was a per diem rate. Id. at 144:18-145:19.

23 Nielsen is the Director of Managed Care Contracting at CHO.
24 Id. at 4:16-19. Nielsen negotiated the two letters of agreement
25 with Schoener. Id. at 34:25-35:2, 43:18-20. Nielsen understood
26 the disputed phrase in the letters of agreement to refer to the
27 interim rate. Id. at 36:15-18, 44:8-13, 46:22-47:1. However,

28

1 Nielsen did not sign the letters of agreement on behalf of CHO.
2 Myers signed them, and Myers understood the disputed phrase to
3 refer to a contracted, per diem rate. See id. at 144:18-145:19.

4 The State of California calculates the interim rate. Id. at
5 133:1-10. The interim rate is a temporary rate of reimbursement
6 calculated for every hospital in California. Id. at 133:17-20,
7 139:2-4. Typically, California hospitals that have Medi-Cal
8 contracts are not reimbursed based on the interim rate. Id. at
9 136:14-137:4. However, even contract hospitals can be reimbursed
10 using the interim rate for non-contract services they provide to
11 Medi-Cal patients. Id. at 139:2-21.

12 Here, the letters of agreement do not contain the words
13 "interim rate." Id. at 60:10-14. They clearly and unambiguously
14 refer to the contracted rate. See LoA1; LoA2. After receiving
15 the unexecuted letters of agreement from HPN, Nielsen did not
16 request that changes be made to the documents, and she did not
17 have CHO's attorneys review the language in the letters of
18 agreement. RT at 59:19-24, 63:8-16. Nielsen testified to a
19 discussion with Schoener about the difference between the interim
20 rate and a per diem rate, but she could not recall if the
21 discussion occurred before or after the letters of agreement were
22 executed and sent back to HPN. Id. at 65:24-66:6.

23 Corrine Spaeth ("Spaeth") is HPN's Director of Claims. Id.
24 at 146:25-147:1. In her deposition, she testified that when there
25 is no letter of agreement, HPN's usual custom and practice is to
26 pay the interim rate. Id. at 150:8-15. In this case, however,
27 there are letters of agreement, and Spaeth testified that HPN's
28

1 usual practice is to pay a hospital according to the terms of the
2 letter of agreement. Id. at 149:6-12. She also testified that
3 she understood the disputed phrase to mean whatever the State of
4 California would pay CHO for the services provided. Id. at
5 148:19-149:5.

6 Based on the language in the two letters of agreement which
7 clearly and unambiguous refer to a contract rate, based on the
8 evidence that rates in the Medi-Cal Contract are per diem rates,
9 and based on the testimony and arguments presented at trial, the
10 Court can come to only one conclusion: that the phrase "one-
11 hundred percent (100%) of the California Medi-Cal Contracted
12 Maximum Allowable Reimbursement rate" is a per diem rate to be
13 calculated in accordance with the terms set out in the Medi-Cal
14 contract between the State of California and CHO.

15 B. Calculation of HPN's Overpayments

16 HPN paid \$341,325.00 for the services and supplies provided
17 by CHO to Patient A. Based on the rates set forth in the Medi-Cal
18 Contract, HPN should have paid \$262,697.00. This calculation is
19 based on 35 days of treatment at the \$2,500 rate for a bone marrow
20 transplant, eleven (11) days of treatment at the \$1,927 rate that
21 applied prior to May 12, 2006, and seventy-seven (77) days of
22 treatment at the \$2,000 rate that applied commencing May 12, 2006.
23 CHO claims to be entitled to an extra payment of \$500 per day
24 because it is a disproportionate share hospital. See Ex. D-584.
25 However, Nielsen testified that disproportionate share payments do
26 not apply to patients from outside California. RT at 16:15-17:5.
27 Also, supplemental fund payments to CHO are lump sum payments.

1 See Ex. P-31. The Court finds that CHO is not entitled to an
2 extra payment of \$500 per day for Patient A. Therefore, HPN made
3 an overpayment of \$78,628.00. Section 7 of the letter of
4 agreement for Patient A entitles HPN to recovery of the
5 overpayment.

6 HPN paid \$44,745.09 for the services provided by CHO to
7 Patient B. Based on the rates set forth in the Medi-Cal Contract,
8 HPN should have paid \$12,000. This calculation is based on six
9 (6) days of treatment at the \$2,000 rate that commenced May 12,
10 2006. For the same reasons as explained in the previous
11 paragraph, CHO is not entitled to an extra payment of \$500 per day
12 for services provided to Patient B. Therefore, HPN made an
13 overpayment of \$32,745.09. Section 7 of the letters of agreement
14 for Patient B entitles HPN to recovery of the overpayment.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

The Court concludes that HPN did not fail to pay the contractually required sum for the medical services CHO provided to Patient A, and CHO takes nothing by way of its Complaint. With regard to HPN's Counterclaim, the Court concludes that HPN overpaid CHO for the services provided to Patient A in the amount of \$78,628.00. The Court concludes that HPN overpaid CHO for the services provided to Patient B in the amount of \$32,745.09. HPN is entitled to a refund of \$111,373.09.

IT IS SO ORDERED.

Dated: April 30, 2009



UNITED STATES DISTRICT JUDGE