IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BAYLOR HEALTH CARE SYSTEM, BAYLOR UNIVERSITY MEDICAL CENTER, and THE HEART HOSPITAL BAYLOR PLANO,	§	
Plaintiffs,	§	
v.	§	Civil Action No. **3:11-CV-3023-L-BK**
EQUITABLE PLAN SERVICES, INC,	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

This action was filed on November 3, 2011, by Plaintiffs Baylor Health Care System, Baylor University Medical Center, and the Heart Hospital Baylor Plano (collectively "Plaintiffs" or "Baylor") to vacate an arbitration award entered in favor of third-party health care claims administrator Defendant Equitable Plan Services, Inc. ("Defendant" or "EPS"). The case was referred to Magistrate Judge Renee Harris Toliver, who entered Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report") on February 27, 2012, recommending that Plaintiff's Application to Vacate Arbitration Award (Doc. 2) be denied and that Defendant's Cross-Application to Confirm Arbitration Award (Doc. 15) be granted. Baylor filed objections to the Report on March 12, 2012. Also before the court is Defendant's Motion to Unseal the Record (Doc. 14), filed December 19, 2011.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct, and

accepts them as those of the court, except to the extent **modified** in this memorandum opinion and order. Accordingly, Baylor's objections are **overruled** and Plaintiff's Motion to Vacate Arbitration Award (Doc. 2) is **denied**; and Defendant's Cross-Application to Confirm Arbitration Award (Doc. 15) is **granted**. The court also **denies as moot** Defendant's Motion to Unseal the Record (Doc. 14); however, the court sees no reason why this decision and the Report should be under seal.

I. Background

Baylor is a health care provider in North Texas. Many of Baylor's patients are members of health plans that gain access to Baylor's services at discounted rates through contracts with insurance companies and preferred provider organizations ("PPOs") such as HealthSmart Preferred Care. On July 1, 2002, Baylor Health Care System, as "Hospital," entered a Hospital Services Agreement-PPO ("HSA" or "Hospital Agreement") with North Texas Healthcare Network, as "PPO." A May 1, 2004 Amendment to the HSA reflects the merger of North Texas Healthcare Network with HealthSmart Preferred Care ("HealthSmart").

EPS is a third-party claim administrator ("TPA") located in Oklahoma. EPS provides third-party administration services to employers in the region, who hire companies like EPS to process and decide claims for benefits under company plans. EPS makes the preliminary decision whether to pay or deny a claim. EPS does not pay the claims with its own money. Employer and employee contributions, that are held in trust, are used to pay claims. If claims are determined to be payable, they are paid from plan assets, not from EPS's assets. In its role as a TPA, EPS acts as a trustee and plan fiduciary, and is compensated monthly by employers. EPS contracts with PPOs, which in turn contract with health care providers to provide services to PPO members at fixed rates. On August 1, 2002, after HealthSmart entered the HSA with Baylor, EPS entered a Third Party Administrator

Service Agreement for Provider Network and Utilization Management Services ("TPA Agreement") with HealthSmart. Pursuant to the TPA Agreement, EPS agreed to join HealthSmart's PPO Network. On March 1, 2007, HealthSmart and EPS executed an amendment to the TPA Agreement, in which the parties acknowledged that HealthSmart's provider contracts contain specific time payment parameters.

Baylor initiated the underlying arbitration on December 19, 2011, pursuant to the arbitration provision in the HSA, contending that EPS breached section 4 of the HSA that deals with payment of claims. According to Baylor, because EPS did not pay eight claims within forty-five days from receipt as required by section 4 of the HSA, the claims were not eligible for the discounted rates. Baylor therefore contended it was entitled to $64,829.41 for Baylor's Normal Billed Charges, less the discounted amounts paid by EPS. EPS countered that it had never seen the HSA before the dispute arose and was not aware of the alleged claim payment deadline. EPS therefore contended its payments were timely. EPS further disputed whether it was subject to the HSA, or the arbitration provision in the HSA, since it was not a party to the contract, and the TPA contained an arbitration provision that differed in scope from the HSA arbitration provision. EPS nevertheless agreed to proceed with a "self-administer[ed]" arbitration, which according to EPS, was not subject to either the arbitration provision in the HSA or the TPA.

After a one-day arbitration hearing in which three witnesses testified and other evidence was admitted, the arbitrator entered an award in favor of EPS on August 16, 2001, concluding that EPS did not breach the HSA. The arbitrator further concluded that EPS mistakenly caused two plan participants to make overpayments of $52,339.23 to Baylor and EPS was entitled to repayment on behalf of the plan participants. In addition, the arbitrator determined that EPS was entitled to

$55,811 in attorney's fees, $8,149.49 in costs, and prejudgment interest at the maximum allowable rate.

II. Standard of Review

The magistrate judge determined that the Texas Arbitration Act ("TAA") applies to these proceedings because the arbitration provision in the HSA states that any arbitration of any claim must be settled in accordance with the Texas General Arbitration Act.[1] Texas law favors arbitration. *Brazoria v. Knutson*, 176 S.W.2d 740 (1944). An arbitration award has "the same effect as the judgment of a court of last resort," and the reviewing court may not substitute its judgment for the arbitrator's merely because it would have reached a different decision. *City of San Antonio v. McKenzie Constr. Co.*, 150 S.W.2d 989, 996 (1941). Rather, "[a]ll reasonable presumptions are indulged in favor of the award, and none against it." *Id.*

"Sections 10 and 11 of the FAA specify grounds for vacating, modifying, or correcting an arbitration award that are similar to the TAA's, and like the TAA, section 9 of the FAA mandates confirmation absent such grounds." *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 91 (Tex.), *cert. denied*, 132 S.Ct. 455 (2011). One such ground for vacating an arbitration award is that "the arbitrators . . . exceeded their powers." Tex. Civ. Prac. & Rem. Code § 171.088(a)(3)(A). "In arbitration conducted by agreement of the parties, the rule is well established that '[a]n arbitrator derives his power from the parties' agreement to submit to arbitration.'" *Id.* (quoting *City of Pasadena v. Smith*, 292 S.W.3d 14, 20 (Tex. 2009)). "Whether enforcing an agreement to arbitrate or construing an arbitration clause, courts and arbitrators must give effect to the contractual rights

[1] EPS previously contended that both the TAA and Federal Arbitration Act ("FAA") apply but did not assert any objections to the Report.

and expectations of the parties. In this endeavor, as with any other contract, the parties' intentions control." *Stolt–Nielsen S.A. v. AnimalFeeds Int'l* Corp., —— U.S. ——, 130 S. Ct. 1758, 1773-1774 (2010) (citations and internal quotation marks omitted).

In *Nafta Traders,* the Texas Supreme Court held that the TAA, unlike the FAA, "permits parties to agree to expanded review, or to a corresponding limit on the arbitrator's authority . . . but it does not impose such review on every arbitration agreement." *Id.* at 98. For expanded or limited review, the parties are not required:

> to choose not to be governed by the FAA, since even if it applies . . . it does not preempt the parties' agreement for expanded judicial review. The matter is left to the agreement of the parties. But absent clear agreement, the default under the TAA, and the only course permitted by the FAA, is restricted judicial review.

Id.; *compare Hall Street Assocs., L.L.C. v. Mattel, Inc*., 522 U.S. 576, 585-90 (2008) (holding that sections 10 and 11 of the FAA provide exclusive grounds for the review under the statute and regardless of the parties' agreement to the contrary, district courts must review an arbitrator's findings of fact and conclusions of law under the highly deferential standard set forth in 9 U.S.C. § 10(a)).

The arbitration provision at issue here states that in rendering a decision or award, arbitrators appointed to resolve disputes "shall not add to, subtract from or otherwise modify the provisions of this [Hospital Services] Agreement or any agreement entered into pursuant hereto." Pl.'s App. 19. Based on the reasoning in *Nafta Traders*, the court concludes that there is no reason to exclude such limitation from the general rule that the parties' agreement determines arbitral authority, and that this is a valid ground for seeking to vacate the award.[2] *See id.* The parties' agreement in this regard,

[2] Although EPS previously argued that it was not a party to the HSA and not subject to the arbitration provision and agreement in that regard between Baylor and HealthSmart, the court concludes that EPS

however, does not affect the deferential standard by which the court reviews an arbitration award under the TAA. *Id.* at 102. Moreover, to review an arbitration award, the court "must have a sufficient record of the arbitral proceedings, and complaints must have been preserved, all as if the award were a court judgment on appeal." *Id.* at 101. The non-prevailing party seeking to vacate an arbitration award bears the burden of coming forward with a complete record that establishes its basis for vacating the award. *Statewide Remodeling, Inc. v. Williams*, 244 S.W.3d 564, 568 (Tex. App.– Dallas 2008, no pet.). When there is no transcript of the arbitration hearing, "the decision under review is presumed correct on matters where the record is silent." *Nafta Traders, Inc.*, 339 S.W.3d at 102 n.81 (quoting *Cable Connection, Inc. v. DIRECTV, Inc.*, 190 P.3d 586, 605 (Cal. 2008)); *Statewide Remodeling, Inc.*, 244 S.W.3d at 568.

III. Baylor's Objections to the Report

The magistrate judge concluded that (1) the TAA applies; (2) Baylor had the burden as the non-prevailing party to submit a complete arbitration record and appellate review of the arbitrator's decision is not feasible because Baylor failed to submit a complete record of the arbitration; (3) EPS's motion to confirm the award must be granted in the absence of grounds to vacate, modify, or correct the arbitration award; (4) EPS is not entitled to additional attorney's fees and costs otherwise denied by the arbitrator; (5) EPS is not entitled to additional fees and costs under 28 U.S.C. § 1927; and (6) EPS is entitled to postjudgment interest on the arbitration award from the date of the entry of the final judgment under 28 U.S.C. § 1916.

---

waived this issue, since it seeks confirmation of the arbitration award that determined its rights and duties as a Payor under the HSA.

EPS did not assert any objections to the Report. Baylor objected only to the magistrate judge's determination that review of the arbitrator's decision cannot be done without a complete record. Baylor contends that the agreements at issue are unambiguous and that the record it provided is sufficient for the court to determine whether the arbitrator exceeded his powers by subtracting from or otherwise modifying the agreements in violation of section 7.5 of the HSA.

The court disagrees with the magistrate judge's conclusion that review of the arbitrator's decision could not be done without a complete record, and the court has undertaken a review of the arbitrator's decision to the extent there is sufficient information in the record. In any event, this conclusion by the magistrate judge does not change the final result with respect to Plaintiff's Application to Vacate the Arbitration Award.

Baylor's Application to Vacate the Arbitration Award takes issue with Findings of Fact Nos. 5-14, 24, 25, 27, 28, 29, and Conclusion of Law Nos. 1 and 7 in the arbitration award but does not otherwise state why the arbitrator exceeded his authority in reaching making these factual findings and legal conclusions. Baylor contends that the arbitrator exceeded his authority because these factual findings and legal conclusions violate Section 7.5 of the HSA that states: [i]n rendering such decision and award, the arbitrators shall not add to, subtract from or otherwise modify the provisions of this Agreement or any agreement entered into pursuant hereto." Pl.'s App. 19. Baylor, however, provided no explanation in its motion or application why it believes these factual findings and legal conclusions by the arbitrator subtract from or modify the HSA.

For the first time in its reply brief, Baylor maintained that these findings and conclusions by the arbitrator "materially supplement[], disregard[], and/or modif[y] multiple sections of the Hospital Agreement, the TPA Agreement, and the Amendment thereto." Pl.'s Reply 5. Baylor further

asserted that these modifications "drastically alter the relative duties and obligations of Baylor, EPS, and HealthSmart." *Id.* Baylor listed four reasons why it believes the arbitrator's findings and conclusions subtracts from or otherwise modifies these agreements in violation of section 7.5. While these four specific arguments asserted by Baylor were not raised in its Application to Vacate the Arbitration Award, they are limited to Findings of Fact Nos. 5-14, 24, 25, 27, 28, 29, and Conclusion of Law Nos. 1 and 7 and the ground for vacateur asserted in Baylor's Application. Thus, the court considers each of the four arguments asserted for the first time in Baylor's reply brief, but only if doing so will not prejudice EPS, who did not have the opportunity to respond to these specific arguments. *See Weber v. Merrill Lynch Pierce Fenner & Smith, Inc*., 455 F. Supp. 2d 545, 550-51 (N.D. Tex. 2006).

A. Agency Relationship Between HealthSmart and EPS

Baylor contends that the arbitrator's Conclusion of Law No. 7, disclaiming the agency relationship between HealthSmart and EPS, is contrary to section 7.5 of the HSA. Baylor contends that section 7.5 precludes only agency relationships made by virtue of its own terms. Pl.'s Reply 5.

As previously acknowledged by Baylor, section 7.5 deals with the arbitration award and the arbitrator's authority. It says nothing about the parties' respective agency relationships. Moreover, Conclusion of Law No. 7 is based on a direct quote from section 6.3 of the HSA. Thus, while the court determines that the record is sufficient to review the arbitrator's decision in this regard, it disagrees that the arbitrator exceeded his authority in reaching this conclusion. The court therefore **overrules** Baylor's objection regarding this conclusion by the arbitrator.

B. Requirement that Baylor Send Claims Directly to EPS

Baylor contends that the arbitrator's Conclusion of Law No. 1 and Findings of Fact Nos. 6-14, 19 and 27-29 "[r]equiring Baylor to send health care claims directly to EPS to trigger 'receipt' for purposes of starting the 45-day payment timeframe, [conflicts with] Section 4.4(b) of the Hospital Agreement [which] defines 'receipt' as when Baylor sends claims to EPS or HealthSmart." Pl.'s Reply 6.

The arbitrator's Conclusion No. 1 states that "[u]nder Section 4.4(a) of the Hospital Services Agreement, Baylor is required to send each 'Clean Claim' of a 'Covered Service' to Equitable." Pl.'s App. 70. Section 4.4(a) states: "Payor (or its designee) shall correctly and accurately pay all Clean Claims for Covered Services within forty-five (45) calendar days of receipt of a Clean Claim from Hospital in accordance with the applicable reimbursement rates attached on Schedule 1." *Id.* Thus, section 4.4(a) conflicts with section 4.4(b) to the extent it requires Baylor to submit claims to EPS, whereas section 4.4(b) permits Baylor to submit claims to EPS or HealthSmart.

The court therefore concludes that the HSA is ambiguous and the arbitrator did not exceed his authority in interpreting the contract in accordance with section 4.4(a). Additionally, it is unclear from the record before the court whether the arbitrator considered any parole evidence or testimony in deciding this issue. As a result, appellate review of the arbitrator's decision in this regard is not feasible. Additionally, Findings of Fact Nos. 6 and 27 include findings regarding the parties' conduct, but evidence in this regard is not before the court. The court therefore o**verrules** Baylor's objection as to the arbitrator's Conclusion of Law No. 1 and related Findings of Fact Nos. 6, 19, and 27.

The court further concludes that the record is insufficient for it to make a determination as to the remaining findings by the arbitrator, because they all are based on facts and evidence that are not in the record submitted by Baylor. For example, Findings of Fact Nos. 7-14 all deal with whether EPS breached the HSA with regard to specific claims submitted and paid on certain dates. Additionally, Findings of Fact Nos. 28-29 are based EPS's mistaken overpayments to Baylor for specific claims and amounts. Pl.'s App. 69. The court therefore **overrules** Baylor's objection as to the arbitrator's Finding Nos. 7-14, and 28-29.

C. Requirement that Baylor Advise EPS of Payment Deadlines

Baylor contends that the arbitrator's Findings of Fact Nos. 24 and 25 "[s]uperimpos[e] a requirement on Baylor to advise EPS of payment deadlines, despite the fact that this is contrary to the terms of the Amendment to TPA Agreement ('Amendment') and found nowhere in the Hospital Agreement." Pl.'s Reply 6.

Findings of Fact No. 24 states: "Baylor's Agreement with HealthSmart requires Baylor to notify Equitable of any relevant time-frames." Pl.'s App. 69. Findings of Fact No. 25 states: "Baylor failed to notify Equitable of the time-frames in its agreement with HealthSmart which Baylor was required to do." It is not entirely clear from the record before the court, but these findings by the arbitrator appear to have been made based on his interpretation of the parties' obligations under section 4 of the HSA, which the court already concluded is ambiguous. Moreover, because EPS did not have the opportunity to respond to this specific argument by Baylor, it would be unfair to EPS for the court to address it even if the record were sufficiently complete. The court therefore declines to address this issue that was raised for the first time in Baylor's reply. *See Weber*,

455 F. Supp. 2d at 550-51. For both of these reasons, the court **overrules** Baylor's objection as to these findings by the arbitrator.[3]

D. Rewriting the Definitions for "Covered Services" and "Normal Billed Charge"

Baylor contends that the arbitrator's Findings of Fact No. 5 results in "[r]ewriting the definitions of 'Covered Services' and 'Normal Billed Charge,' despite their clear enunciation in Article I of the Hospital Agreement." Pl.'s Reply 6. Findings of Fact No. 5 states: "[c]laims of payment for medical services in excess of Baylor's Normal Billing Rates are not 'Covered Services' under Baylor's Hospital Services Agreement." Pl.'s App. 67. Article I of the HSA defines "Covered Services" as "care, treatment, services and supplies for which a benefit is payable under the applicable Health Plan." Pl.'s App. 1.

It is not entirely clear from the record, but it appears that the arbitrator concluded that medical services in excess of Baylor's Normal Billing Rates do not constitute a benefit that is payable and therefore do not qualify as Covered Services. Alternatively, it appears that the arbitrator agreed with EPS's argument that even if the section 4.4(a) deadlines were triggered, and even if EPS missed the 45-day payment deadline, the surcharges sought by Baylor are not permitted under the Plans at issue. Def.'s App. 385. EPS's argument in this regard is based on evidence and testimony that were not before the court. Moreover, Baylor fails to provide any explanation why it believes this finding by the arbitrator subtracts from or modifies the HSA. Without more information, the court cannot conclude that the arbitrator exceeded his authority. The court therefore **overrules** Baylor's objections regarding this finding by the arbitrator.

---

[3] The court also notes that the issue of whether Baylor was required to advise EPS of payment deadlines does not affect the outcome in light of the arbitrator's Findings of Fact No. 5 with regard to covered services and the court's ruling on Baylor's objection to this finding.

Having overruled Baylor's objections to the Report, the court concludes that Plaintiff's Application to Vacate Arbitration Award should be and is hereby **denied**, and confirmation of the award is appropriate. Accordingly, Defendant's Cross-Application to Confirm Arbitration Award is **granted.**

IV. EPS's Motion to Unseal the Record

In its Motion to Unseal the Record, EPS contends that the court's November 4, 2011 order granting Baylor's Motion to Seal the Case was entered before it had an opportunity to respond. In addition, EPS asserts that sealing the case is not warranted because the limited amount of sensitive information, such as HIPPA records, can be easily redacted. EPS further contends that it is not a party to the confidentiality agreement relied on by Baylor.

Baylor's Motion to Seal the Case indicated that EPS's counsel was not opposed to the motion. After the court entered its order on November 4, 2011, granting Baylor's motion, EPS did not advise the court of its opposition and waited 45 days to file its motion. In any event, the court determines that EPS's motion is moot in light of the court's determination regarding the parties' other motions and accordingly **denies** the motion **as moot**. The court, however, sees no reason why this decision and the Report should be under seal.

V. Conclusion

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that while the record presented by Baylor was sufficient for purposes of the court reviewing certain limited aspects of the arbitrator's award, Baylor's Application to Vacate the Arbitration Award still fails for the reasons explained. Accordingly, the court determines that the findings and conclusions are correct, and **accepts** them as those of the

court, except to the extent **modified** in this memorandum opinion and order. Accordingly, Baylor's objections are **overruled,** and Plaintiff's Motion to Vacate Arbitration Award (Doc. 2) is **denied**; and Defendant's Cross-Application to Confirm Arbitration Award (Doc. 15) is **granted**. The court also **denies as moot** Defendant's Motion to Unseal the Record (Doc. 14).

In light of the court's determination that the arbitration award should be confirmed, EPS need not file a response to Baylor's objections to the magistrate judge's Report. The court, however, desires briefing regarding the rate of prejudgment interest, the date from which it accrues, and the total amount of interest due and owing as of March 24, 2012. The briefing is to be specific and supported by relevant authority. Accordingly, Defendant EPS shall file a supplemental brief **not to exceed 5 pages by March 23, 2012.** Likewise, Plaintiff Baylor may file a brief stating whether Defendant EPS is entitled to prejudgment interest and its applicability to this case. Such brief shall **not exceed 5 pages and must be filed by March 23, 2012.** Once the court has reviewed the supplemental briefs, it will enter a judgment in favor of Defendant EPS by separate document pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The court **directs** the clerk of the court to **unseal** the Findings, Conclusions and Recommendation of the United States Magistrate Judge, filed February 27, 2012. The court further **directs** the clerk **not to seal** this memorandum opinion and order or the judgment that will be subsequently issued. All other portions of the record **will remain sealed**.

It is so ordered this 15th day of March, 2012.

Sam A. Lindsay
United States District Judge