BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

HOUSTON HEALTHCARE D/B/A, HOUSTON MEDICAL CENTER, Petitioner,	*	Docket No.:
v.	*	OSAH-CMO-P-DEN-1325889-76-Schroer
PEACH STATE HEALTH PLAN, Respondent.	*	

FINAL DECISION

I. INTRODUCTION

Petitioner Houston Healthcare d/b/a Houston Medical Center ("Houston") appealed a decision by Respondent Peach State Health Plan ("Peach State") to recoup an alleged overpayment for medical services. The parties presented sworn testimony at an administrative hearing held on June 13, 2013. Petitioner was represented by Douglas T. Gibson, Esq. Respondent was represented by Martin M. Wilson, Esq. The record remained open until June 28, 2013 in order for the parties to file post-hearing briefs.

For the reasons indicated below, Peach State's decision is **AFFIRMED**.

II. FINDINGS OF FACTS

A. General Background

1.

The Georgia Department of Community Health ("DCH") is the state agency that oversees the Medicaid program in Georgia. In 2006, DCH implemented Georgia Families, a managed care program that delivers health care services to Medicaid members through private Care

Management Organizations ("CMO"). Peach State is a CMO that has entered into a contract with DCH to provide health care services to Medicaid members in Georgia.[1] O.C.G.A. §§ 49-4-142, 33-21A-2(1). (Testimony of Flowers; Ex. R-1)

2.

Under Peach State's contract with DCH, Peach State is responsible for developing a network of health care providers, including hospitals, to provide covered services to Medicaid members. Among other things, Peach State's contract with DCH requires Peach State to negotiate payment rates with individual providers and specify the negotiated rates in Peach State's contracts with such providers.[2] (Testimony of Flowers; Ex. R-1)

3.

On or about May 31, 2006, Peach State entered into a Hospital Provider Agreement with Houston, whereby Houston agreed to provide medical services to Peach State's members (the "Agreement"). Under the Agreement, Houston is obligated to comply with Peach State's Participating Health Care Provider Manual ("Provider Manual"), which is incorporated by reference in the Agreement.[3] Houston is also obligated to comply with the terms of the contract between Peach State and DCH, as well as applicable federal and State laws, including DCH's

---

[1] A CMO in Georgia must also be a health maintenance organization ("HMO") with a certificate of authority issued by the Commissioner of Insurance. O.C.G.A. §§ 33-21A-2(1). In the record, Peach State is referred to as both an HMO and a CMO.

[2] "[T]he Contractor shall negotiate rates with Providers and such rates shall be specified in the Provider Contract." (Exhibit R-1 at p. 115).

[3] Under the Agreement, if there is a conflict between the Agreement and the Provider Manual, then the Agreement controls. However, if there is a conflict between the Agreement and either an Attachment to the Agreement or an applicable HMO Coverage Plan, the Attachment or the HMO Coverage Plan is controlling. (Ex. R-2, p. 17)

Part II Policies and Procedures for Hospital Services Manual ("DCH Policy Manual"). (Testimony of Flowers; Exs. R-1, R-2 at p. 9, R-3A, R-4)

B. Reimbursement Rates under the Agreement

4.

Under Section 5.1 of the Agreement, Houston agreed to accept "the amounts specified in the applicable Exhibit . . . as payment in full for Covered Services provided to Covered Persons . . . ." Exhibit 2 to the Agreement, entitled "Compensation Schedule," establishes the payments rates that Peach State will pay to Houston for providing both inpatient and outpatient hospital services to Peach State members.[4] With respect to outpatient services, Exhibit 2 provides that Peach State will pay Houston the rates listed in Table 2 of the exhibit. Table 2, in turn, sets forth the "Negotiated Payment"[5] for various outpatient services, such as lab services, emergency care services, and injectable drugs. For all other outpatient services, the Negotiated Payment, according to Table 2, is "103% of the Hospital's Allowable Charges multiplied by the

---

[4] Exhibit 2 contains a general provision, applicable to both inpatient and outpatient hospital services, which provides that "[p]ayment under this Exhibit is subject to the requirements set forth in the Agreement regarding timely submission of a Clean Claim and compliance with applicable policies and procedures in the [DCH Policy Manual]." (Ex. R-2, at Ex. 2, pp. 1-2) Similarly, under Attachment A to the Agreement, Houston agrees that it will provide services in accordance with the DCH Policy Manual and will ask Peach State for guidance if it is unclear about its duties under the Agreement. (Ex. R-2, Attachment A, p. 21) Finally, the Peach State Provider Manual informs providers that they should refer to current DCH Policy Manual for information on "limitations and exclusions" to covered services. (Ex. R-4 at p. 57) Under these provisions and others, the parties agreed that their performance under the contract must comply with the provisions of the DCH Policy Manual.

[5] In Article I (Definitions) of the Agreement, the parties defined "Negotiated Payments" to mean "the amount designated as the maximum amount payable by HMO to Hospital for any particular Covered Service provided to any particular Covered Person pursuant to this Agreement or its Attachments." (Ex. R-2 at p. 3)

Hospital-specific cost to charge ("CCR") ratio."[6] (Testimony of Flowers; Ex. R-2, at Ex. 2, pp. 2-3)

5.

Exhibit 2 also contains a section of Notes, which are applicable to Table 2. According to Note 4, Houston "shall be reimbursed the Negotiated Payment at the level of care authorized by HMO in accordance with state reimbursement methodology or as outlined in this agreement." The "state reimbursement methodology" is established in the DCH Policy Manual. In particular, in Section 1001 of the DCH Policy Manual, entitled "Reimbursement Methodology," DCH provides that "[d]istinct methods of reimbursement have been established . . . for outpatient services provided by Georgia hospitals." More specifically, in Section 1001.3 of the DCH Policy Manual, DCH provides that payments to hospitals for outpatients services cannot exceed the "Medicaid maximum allowable payment," which is defines as "the hospital-specific DRG [diagnostic related groups] base rate including the capital and GME [graduate medical education] add on multiplied by eighty five point six percent." (Ex. R-2, at Ex. 2, p. 4; Ex. R-3(A), at X-3(C))

6.

The Medicaid maximum allowable payment for outpatient services is sometimes referred to as an "outpatient maximum" or "cap." As explained by Dwayne Flowers, the Director of Contracting for Peach State, and Donna Bazile, Vice President of Compliance for Peach State, the purpose of such a cap is to ensure that rates associated with outpatient services do not exceed

---

[6] Immediately following Table 2, the parties specified that Houston "will be reimbursed at 42.43% of billed charges for services rendered at the Houston Medical Center (CCR 41.19%) location." (Ex. R-2, at Ex. 2 p. 3)

the inpatient rates for such services.[7] Accordingly, under state reimbursement methodology, the amount payable to hospital providers for outpatient services is subject to the Medicaid maximum cap. (Testimony of Flowers, Bazile; Ex. R-4)

C. Overpayments by Peach State for Outpatient Services

7.

Since 2006, with a few exceptions, Peach State has applied the Medicaid maximum cap to payments to Georgia hospitals for outpatient services. The first time Peach State deviated from the Medicaid maximum in connection with payments to Houston was in or around September 2006, soon after the Agreement was executed. At that time, Peach State inadvertently paid Houston in excess of the Medicaid maximum cap for certain outpatient claims. When it discovered its error, Peach State sought a refund from Houston, and Houston refunded the overpayments. Peach State again failed to apply the outpatient cap in 2012 as a result of "human error" by an employee. (Testimony of Flowers, Bazile)

8.

Specifically, from February to July 2012, a Peach State employee made errors when manually processing outpatient claims filed by Houston and other hospitals providers in Georgia. The employee failed to apply the Medicaid maximum cap to certain outpatient claims submitted by these hospitals. Rather, the employee processed payments to the hospitals, including Houston, based on the full Negotiated Payment rate, without applying the cap. This error

---

[7] According to Flowers, if the rates for outpatient services exceed the rates for the same services delivered on an inpatient basis, the patient should be admitted to the hospital. This is the rationale for limiting payments on outpatient services to a percentage of the allowable payment for inpatient services.

resulted in a total overpayment to Houston of $24,391.85 during the twelve-month period of 2012.[8] (Testimony of Flowers, Bazile; Ex. P-5).

D. Recoupment under the Agreement

9.

The Agreement provides for recoupment of overpayments as follows:

> Except as may otherwise be specifically provided in this Agreement, HMO shall have the right to immediately recoup any and all amounts owed by Hospital to HMO against amounts owed by HMO to Hospital. This right shall include HMO's right to recoup the following amounts owed to HMO by Hospital: (i) amounts owed by Hospital *due to overpayments or payments made in error by HMO*. . . .

(Ex. R-2 at p. 10; Testimony of Flowers, Bazile) (emphasis added)

10.

On November 1, 2012, Peach State notified Houston of its intent to recoup payments on the 2012 outpatient claims that were in excess of the Medicaid maximum cap. On November 28, 2012, Houston wrote to Peach State to contest the recoupment. Houston argued that reimbursement of outpatient services must be calculated according to the Negotiated Payment rate and not the Medicaid maximum cap. Peach State affirmed the recoupment after an internal appeal, and Houston sought an administrative hearing before OSAH. (Exs, P-5, P-6, P-7)

---

[8] Peach State calculated the difference between (i) the amount Peach State paid Houston based on the Negotiated Rate and (ii) the amount due on such claims when the cap is applied. Houston does not contest that $24,391.85 is the correct amount based on this calculation. However, Houston argues that the cap should not apply to its outpatient claims under the Agreement and that Peach State's initial payment of the claims based on the Negotiated Payment rate was correct.

III. CONCLUSIONS OF LAW

Based on the above findings of fact, the Court makes the following conclusions of law:

1.

This matter concerns Respondent's attempt to recoup payments made to Petitioner; therefore, Respondent bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21.

2.

The Agreement is a contract between Houston and Peach State, and the principles of contract construction apply. O.C.G.A. § 13-2-2. The cardinal rule of construction is to ascertain the intention of the parties. If that intention is clear and it contravenes no rule of law, the contract will be enforced according to its terms. O.C.G.A. § 13-2-3; Budd Land Co. v. K & R Realty Co., 159 Ga. App. 448, 449 (1981) (citing *Lee v. Lee*, 191 Ga. 728 (1941)). Furthermore, where the terms of a written contract are clear and unambiguous, the court will look to the contract alone to find the intention of the parties. Duffet v. E & W Properties, Inc., 208 Ga. App. 484, 486 (1993) (citing Howell Mill-Collier Assoc. v. Pennypacker's, 194 Ga. App. 169, 173 (1990)); Dep't of Cmty. Health v. Pruitt Corp., 295 Ga. App. 629, 632 (2009).

3.

Although the Agreement is somewhat cumbersome, incorporating various attachments, manuals, and other contracts, it is not ambiguous. "'When a writing refers to another document, that other document, or as much of it as is referred to, is to be interpreted as part of the writing.' 4 Williston on Contracts, 3d Ed. 901, § 628." Consolidated Freightways Corp. of Delaware v. Syncroflo, Inc., 164 Ga. App. 275, 277 (1982)). See also L&B Constr. Co. v. Ragan Enters., 267 Ga. 809, 812 (1997) (recognizing legitimacy of contractual provisions that impose on a

subcontractor some or all of the contractor's obligations to the owner, commonly referred to as "flow down clauses").

> As a matter of contract law, incorporation by reference is generally effective to accomplish its intended purpose where, as here, the provision to which reference is made has a reasonably clear and ascertainable meaning. [Cits.]

Id. (quoting Binswanger & Co. v. Beers & Co., 141 Ga. App. 715, 717 (1977)).

4.

As set forth above, the Agreement references the exhibits to determine compensation rates. Within Exhibit 2 to the Agreement, the pertinent language regarding compensation for outpatient services is contained in the notes to Table 2. According to Note 4, Houston "shall be reimbursed the Negotiated Payment . . . in accordance with state reimbursement methodology or as outlined in this agreement." Under the plain language of Note 4, Peach State has agreed to reimburse Houston the Negotiated Payment either (i) "in accordance with the state reimbursement methodology" or (ii) "as outlined in this agreement." The Court concludes that the "state reimbursement methodology" clearly references the methodology for payment set forth in the DCH Policy Manual, which was incorporated by reference into the Agreement and which requires a Medicaid maximum cap for outpatient services. Accordingly, the Medicaid maximum cap has been effectively incorporated into the terms of the Agreement between Peach State and Houston.

5.

Moreover, Note 4 plainly presents two alternative methods of performance by Peach State, who, as the promisor, may elect between the two alternative methods.[9] Fidelity Fed. Sav.

---

[9] *Reynolds v. Wingate*, 164 Ga. 317 (1927) ("[The] words ["or" and "and"] are in no sense interchangeable terms, but on the contrary they are used for purposes entirely dissimilar, and the substitution of one of these words for the other should never be resorted to except for strong

& Loan Ass'n v. Pioneer Nat'l Title Ins. Co., 428 F. Supp. 1382, 1386 (S.D. Ill. 1977) ("Unless the right of election between alternative modes of performance of a contract is otherwise expressly restricted by the provisions of the contract itself, a promise to perform in one of alternative ways creates a right in the promisor to elect the alternative which he will pursue."). See also Sampson v. McRae, 29 Ga. App. 690 (1923).[10] Therefore, in the absence of limiting language, Peach State is free to use either the Negotiated Payment rate or the Medicaid maximum cap to reimburse Houston for covered outpatient services.

6.

The evidence in the record is unrefuted that Peach State's use of the Negotiated Payment rate in 2012 was a result of a mistake by an employee. Under the common law in Georgia, "money voluntarily paid may not ordinarily be recovered," but money paid under a mistake of fact may be recovered "if the circumstances are such that the party receiving ought not in equity and good conscience to retain it." Wallis v. B & A Construction Co., 273 Ga. App. 68, 73, 614 S.E.2d 193 (2005); Pine Belt Lumber Co. v. Morrison & Harvey, 13 Ga. App. 453, 455 (1913) (holding the defendant could recoup funds that were mistakenly sent to the plaintiff instead of the bank). Moreover, under Georgia statutory law, recoupment is allowed "for overpayments by the defendant or for payments by *fraud, accident, or mistake*." O.C.G.A. § 13-7-12 (emphasis

---

reasons.") (quoted by *Fennell v. State*, 218 Ga. 418, 421-22 (1962)). *See also City of Buford v. Gwinnett County*, 262 Ga. App. 248, 249 (2003) ("The natural meaning of the word "or," where used as a connective is to mark an alternative and present choice, implying an election to do one of two things.") (*citing Ga. Paper Stock Co. v. State Tax Bd. of Ga.,* 174 Ga. 816, 819 (1932)).

[10] The Georgia Court of Appeals in *Sampson v. McRae* held that "[a] provision in a contract which provides for its performance in the alternative does not render the contract ambiguous, and therefore the rule that an ambiguous provision shall be construed most strongly against the draftsman does not apply. A provision in a contract that one of the parties may buy or act as sales agent in selling certain real estate belonging to the other contracting party is not ambiguous, but provides for the performance of the contract by one of the parties at his election, either by buying the property from the other, or by selling the property as agent for the other." *Id.*

added). See Park v. Fortune Partners, Inc., 279 Ga. App. 268, 273 (2006) (holding the defendants could not recoup because they made the payments voluntarily and presented no evidence to support the payment was made by accident or mistake). Most importantly, the terms of the Agreement itself allow Peach State to recoup "amounts owed by Hospital due to overpayments or payments made in error by HMO. . . ." (Exhibit R-2, ¶ 5.4).

7.

Accordingly, based on the evidence in the record, the Court concludes that Peach State's use of the Negotiated Payment rate without applying the Medicaid maximum cap was a mistake, which resulted in an overpayment to Houston of $24,391.85. Under the terms of the Agreement and Georgia law, Peach State is entitled to recoup the overpayment.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the determination that Peach State is entitled to use the Medicaid Maximum cap and may recoup the overpayments from Houston in the amount of $24,391.85 is **AFFIRMED**.

SO ORDERED this 29th day of July, 2013.

KIMBERLY W. SCHROER
Administrative Law Judge