DICEROS | DISPATCH

Court: Hospital Cannot Incorporate 'Chargemaster' Rates Into Patient Payment Agreement

The Colorado Supreme Court reversed a lower court's ruling and held that a hospital cannot incorporate by reference its secret pricing list, or "chargemaster," into a hospital service agreement (HSA) that the patient signed because, at the time of the signing, there was no evidence that the patient had any knowledge of the chargemaster, which would have been required for incorporation by reference under state law.

Following an automobile accident, the patient elected to undergo spinal infusion surgery, which involved surgical procedures on two separate days. When the patient provided the hospital with her health insurance information, the hospital estimated that, as an "in-network" patient, her surgeries would cost $57,601. Prior to the surgeries, the patient signed two HSAs stating that she agreed to pay "all charges of the hospital" not covered by her health plan. The HSAs, however,

© 2021 – 2022 DICEROS LAW PLLC. All Rights Reserved.

made no mention of the chargemaster, which contained the hospital's full, non-discounted prices for over 50,000 medical procedures.

Thereafter, and notwithstanding the fact that the hospital told the patient that her surgeries would cost $57,601, the hospital billed the patient $229,112, reflecting its full chargemaster rates. The hospital did so after determining that it had misread the patient's health insurance card and, as a result, she was actually an "out-of-network" patient.

When the hospital's attempts to obtain payment from the patient proved unsuccessful, the hospital sued the patient for breach of contract alleging that, under the HSAs she signed, she had agreed to pay the hospital's chargemaster rates. A trial court found that the term "all charges of the hospital" did not include the chargemaster rates, but instead included charges for the "reasonable value of the goods and services provided to the patient." The court further found that the "all charges" language in the HSAs was ambiguous.

On appeal, the hospital argued that the language in the HSAs was unambiguous, and the patient's agreement to pay "all charges" could only mean the predetermined rates set by the hospital's chargemaster. The appeals court agreed and reversed the trial court's ruling, reasoning 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.

On appeal to the Colorado Supreme Court, the court noted that it has long been settled that contracting parties may incorporate contract terms by reference to another document. In Colorado, however, for an incorporation to be effective, "it must be clear that the parties to the agreement had knowledge of, and assented to, the incorporated term." Here, the state's high court found that there was no evidence in the record to indicate that the patient knew of the chargemaster's existence. The chargemaster was not referenced in any way – even obliquely – in either of the HSAs that the patient signed. Nor did the patient have any knowledge of the chargemaster's terms or rates. Indeed, hospital representatives testified that the chargemaster was not provided to patients and, in this very litigation, the hospital refused to produce the chargemaster for the patient, contending that it was proprietary and a trade secret.

—
© 2021 – 2022 DICEROS LAW PLLC. All Rights Reserved.

For these reasons, the Supreme Court of Colorado reversed the appeals court decision and held that the hospital's chargemaster was not incorporated by reference into the HSAs that the patient signed.

Full text of decision in French v. Centura Health Corporation, No. 20SC565 (Colo. May 16, 2022)

This article is for informational purposes only and does not constitute legal advice. For additional assistance, please contact us at info@diceros.law.

—
© 2021 – 2022 DICEROS LAW PLLC. All Rights Reserved.