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IN THE SUPREME COURT OF THE STATE OF IDAHO

POCATELLO HOSPITAL LLC d/b/a
PORTNEUF MEDICAL CENTER,

Appellant,

vs.

CORIZON LLC,

Respondent.

Supreme Court Docket No. 45187-2017

USDC Case No. 4:16-CV-32-REB

RESPONDENT'S BRIEF

ON ORDER CERTIFYING QUESTION TO THE IDAHO SUPREME COURT
FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF IDAHO
Honorable Chief U.S. Magistrate Judge Ronald E. Bush, presiding

Scott J. Smith, ISB #6014
RACINE OLSON NYE & BUDGE,
CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391

Attorneys for Appellant

John J. Burke, ISB #4619
Joseph F. Southers, ISB #9568
ELAM & BURKE, P.A.
P.O. Box 1539
Boise, ID 83701

Attorneys for Respondent

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I. STATEMENT OF THE CASE

A. Nature of the Case

The issue in this case, which is before the Idaho Supreme Court as a certified question of law, is whether Respondent Corizon, LLC (“Corizon”) is subject to the Idaho Medicaid rate in Idaho Code § 20-237B and therefore must pay non-contracted off-site medical providers who provide medical care to prisoners at the Medicaid rate. This Court has yet to address the application of Idaho Code § 20-237B.

B. Statement of Facts

On January 1, 2011, Correctional Medical Services, Inc. (a predecessor company of Corizon) and Appellant Pocatello Hospital LLC d/b/a Portneuf Medical Center (“PMC”) entered into a Hospital Services Agreement (“HSA”). (R. Vol. 1, p. 22, Amended Complaint and Demand For Jury Trial.) As part of the agreement, Corizon engaged PMC to provide hospitalization, inpatient, and outpatient services to IDOC inmates. (*Id.*) Pursuant to the HSA, PMC was to provide hospitalization and other inpatient and outpatient medical services to IDOC inmates. (R. Vol. 3, p. 664, Decision and Order on Certification.) PMC also agreed to a discounted reimbursement rate for those medical services. (*Id.*) PMC submitted all claims to Corizon. (*Id.*) Corizon reimbursed PMC for the medical services that it provided to IDOC inmates as provided in the HSA. (*Id.*)

On July 30, 2013, the State of Idaho issued a Healthcare Services Request for Proposal (“RFP”), by which the State sought a privatized healthcare provider to provide healthcare, mental health, dental, vision, specialty care, and pharmaceutical services to prisoners

incarcerated within the State of Idaho's correctional system. (R. Vol. 1, p. 64, Memorandum in Support of Joint Motion to Certify Question of Law to the Idaho Supreme Court.) Prior to issuing the RFP, the IDOC evaluated Idaho Code § 20-237B to determine the process and/or program necessary to access the Idaho Medicaid rates as provided in the statute. (R. Vol. 3, p. 657, Letter from IDOC to Portneuf Medical Center.) The State of Idaho amended the RFP to include a provision for proposers to include an alternate per diem rate in the event that this process and/or program was developed. (*Id.*) This amendment, Amendment 4, identified the alternate per diem rates as follows: (1) Per Diem cost per Offender, per day as Per Diem One with Medicaid Rates; and (2) Per Diem cost per Offender, per day as Per Diem Two with Medicaid Rates. (R. Vol. 3, p. 641.)

The State of Idaho accepted Corizon's proposal, and a contract was executed ("IDOC Contract"). (R. Vol. 1, p. 65.) The term of the IDOC Contract is from January 1, 2014 through December 31, 2018, with the option for two additional two-year extensions. (R. Vol. 2, p. 431.)

After the IDOC Contract was executed, the IDOC determined that Corizon had the ability and technology to process¹ hospitalization claims incurred by the IDOC under the IDOC Contract, which means that Corizon now performs these tasks on behalf of the IDOC. (R. Vol. 3, p. 657; see also R. Vol. 2, p. 422, letter from Pat Donaldson to Corizon.) As such, the IDOC directed Corizon to proceed with the program, through which it would stand in the shoes of the

¹ The processing of hospitalization claims is the process/program identified in Amendment 4 to the IDOC Contract.

IDOC under Idaho Code § 20-237B and revise its per diem rate per offender per day to its alternate per diem with Medicaid rates, effective July 1, 2014. (*Id.*) This revision decreased the per diem rate by \$0.65 per offender per day, an annual savings of approximately \$1,675,000.00 and a total savings of over \$15 million for Idaho taxpayers over the life of the contract with Corizon, if all potential renewals are exercised. (*Id.*; see also R. Vol. 2, p. 421, Letter from Corizon to Idaho Department of Purchasing, dated March 18, 2014.)

In May 2014, Corizon sent PMC notice that as of July 1, 2014, any contract rate within the HSA would be superseded by the statutory reimbursement rate set forth in Idaho Code § 20-237B. (R. Vol. 1, p. 67.) Similarly, on May 8, 2015, Pat Donaldson, IDOC Chief of Management Services, sent PMC a letter stating, “Corizon Health was the successful proposer and after the [IDOC] contract was executed, the IDOC implemented its program to allow Corizon to access the Medicaid rates as provided in I.C. § 20-237B As such, the IDOC directed Corizon Health to proceed with the program and to revise the per diem rate per offender per day to their alternate per diem with Medicaid rates, effective July 1, 2014.” (R. Vol. 3, p. 657) (underline added.) Pursuant to the IDOC’s instruction, Corizon began reimbursing PMC for the medical services that it provided to IDOC inmates at Idaho Medicaid rates on July 1, 2014. (R. Vol. 1, p. 67.) On September 29, 2015, Corizon provided written notice to PMC that it was exercising its option to terminate the HSA without cause. (R. Vol. 1, p. 68.) Pursuant to the notice, the HSA terminated on December 31, 2015. (*Id.*)

From January 1, 2016 until present, no express contract has existed between Corizon and PMC regarding the rate at which Corizon will reimburse PMC for medical services rendered to

IDOC inmates. (*Id.*) Corizon's position is that the applicable reimbursement rate, is the Idaho Medicaid rate, which is consistent with the IDOC's prior instruction. PMC's position is that Corizon is required to pay PMC's full billed amount for medical services rendered from January 1, 2016 to present.

C. Course of Proceedings

On January 20, 2016, PMC filed a complaint against Corizon in the United States District Court for the District of Idaho as Case No. 4:16-CV-32-REB. (R. Vol. 1, pp. 1-6.) On August 28, 2016, PMC filed an amended complaint. (R. Vol. 1, pp. 19-33.) On September 8, 2016, Corizon filed its answer to the amended complaint. (R. Vol. 1, pp. 34-56.) PMC contends that Corizon has improperly reimbursed PMC for medical services rendered to prisoners at an amount equal to the Idaho Medicaid reimbursement rate. (R. Vol. 1, p. 68.) In support of this contention, PMC's amended complaint asserted three causes of action. (R. Vol. 1, p. 68.) The first cause of action was for breach of a contract between Corizon and PMC, which terminated on December 31, 2015. (R. Vol. 1, p. 68.) The first cause of action sought damages associated with medical bills incurred on and before December 31, 2015. (R. Vol. 1, p. 68.) Ultimately, however, the parties entered a stipulation whereby the breach of contract claim was dismissed. (R. Vol. 1, p. 69.) The second and third causes of action are for breach of contract, through which PMC claims that it is a third-party beneficiary of the IDOC Contract, and breach of implied contract. (*Id.*) Both causes seek damages associated with medical bills incurred from January 1, 2016, to the present time. (*Id.*)

II. ISSUE PRESENTED ON APPEAL

This Court accepted the following certified question of law from the United States District Court for the District of Idaho:

1. Whether, for purposes of the dispute in this lawsuit, the terms “state board of correction” as used in Idaho Code § 20-237B(1) and “department of correction” as used in Idaho Code § 20-237B(2), include privatized correctional medical providers under contract with the Idaho Department of Correction?

III. STANDARD OF REVIEW

“Courts of the United States may certify a controlling question of law in a pending action to the Idaho Supreme Court for determination where there is no controlling precedent in the decisions of the Idaho Supreme Court and the determination would materially advance the orderly resolution of the litigation in the United States court.” *In re Certified Question of Law*, 156 Idaho 77, 80, 320 P.3d 1236, 1239 (2014) (citations omitted). This Court’s role “is limited to answering the certified question” when the question presented is narrow. *Doe v. Boy Scouts of Am.*, 159 Idaho 103, 105, 356 P.3d 1049, 1051 (2015) (citing *Peone v. Regulus Stud Mills, Inc.*, 113 Idaho 374, 375, 744 P.2d 102, 103 (1987) (noting that “to now decide [extraneous matters] would result in an advisory opinion on a question not certified”). This Court exercises free review over questions of law. *Id.*

IV. ARGUMENT

The certified question before this Court is whether “for purposes of the dispute in this lawsuit” Idaho Code § 20-237B caps the amount that Corizon may reimburse PMC for medical services rendered to Idaho prisoners. This express limitation—“for purposes of the dispute in this

lawsuit”— is critical because the particular facts at issue here matter and admit no other conclusion. Yet, PMC ignores this and instead begins by asking the wrong question and then attempts to interpret Idaho Code § 20-237B in a vacuum.

The question before the Court is not, as PMC argues, whether, when the legislature wrote “state board of correction” and “department of correction,” those phrases also meant “privatized correctional medical providers.” Instead, the question is whether, in this particular dispute, Corizon was acting as the IDOC, such that the statutory reimbursement rate cap in Idaho Code § 20-237B applies. The answer to this question turns on whether Corizon was acting as the agent of the IDOC in this particular dispute. The answer is “yes,” and one cannot seriously argue otherwise. The IDOC is charged by statute with the care and maintenance of Idaho’s prisoners. *See* Idaho Code § 20-209(1). Also by statute, the IDOC has the authority to contract with private entities, like Corizon, to perform these statutorily-mandated duties. *See generally id.* § 20-241A. Those private contractors who fulfill such duties necessarily do so as agents of the IDOC. *See generally Vreeken v. Lockwood Engineering*, 148 Idaho 89, 109, 218 P.3d 1150, 1170 (2009); *Bailey v. Ness*, 109 Idaho 495, 497, 708 P.2d 900, 902 (1985); *Hieb v. Minnesota Farmers Union*, 105 Idaho 694, 697, 672 P.2d 572, 575 (1983); *Weatherby v. Weatherby Lumber Co.*, 94 Idaho 504, 507, 492 P.2d 43, 46 (1972).

There is no disputing that Corizon served as the agent of the IDOC “for purposes of the dispute in this lawsuit” in processing hospitalization claims incurred by the IDOC for inmates treated at PMC. Under its contract with the IDOC, Corizon sent State prisoners to PMC to receive medical treatment. In so doing, Corizon stood in the shoes of the IDOC. Corizon

therefore was limited by Section 20-237B to reimbursing PMC for the services that it rendered at the Medicaid rates. The IDOC itself, and not Corizon, was the first to reach this conclusion. (*See* R. Vol. 3, p. 657.) As a result, the IDOC instructed Corizon to limit its reimbursements to the Idaho Medicaid rate.

The IDOC's decision is entitled to deference under the four-factor standard adopted by this Court in *J.R. Simplot Co., Inc. v. Idaho State Tax Commission*, 120 Idaho 849, 820 P.2d 1206 (1991). Each of these factors supports deferring to the IDOC's decision. The IDOC is charged with administering Idaho Code § 20-237B as it relates to a statutory duty of the IDOC (*i.e.*, the health care of Idaho prisoners), and the IDOC has statutory authority to establish rules in fulfilling those obligations. *See* Idaho Code § 20-212. Exercising its judgment, the IDOC determined that Corizon had the ability and technology to fulfill some of the IDOC's statutory obligations on the IDOC's behalf. Allowing Corizon to stand in the IDOC's shoes and to reimburse other contractors at Medicaid rates both saves Idaho taxpayers money and is entirely consistent with Idaho Code § 20-237B.

A. Idaho Law Requires the State of Idaho to Care for its Prisoners, but It Allows the State to Delegate this Responsibility to a Private Contractor, Who Becomes an Agent of the State of Idaho.

Idaho's legislature has charged the IDOC with responsibility for the State's prisoners. At the same time, it granted the IDOC the ability to delegate some of those responsibilities to private contractors, like Corizon. In performing those responsibilities, the contractors act as agents of the IDOC.

Idaho Code § 20-209(1) requires the IDOC to provide for the care and maintenance of its prisoners:

The state board of correction shall have the control, direction and management of such correctional facilities as may be acquired for use by the state board of correction and all property owned or used in connection therewith, and shall provide for the care, maintenance and employment of all prisoners now or hereinafter committed to its custody.

Id. Under Idaho Code § 20-241A, the IDOC also has the power to hire private contractors to provide for the care and subsistence of its prisoners:

The state board of correction shall have the power and it shall be its duty:

(1) To determine the availability of state facilities suitable for the detention and confinement of prisoners held under authority of state law. If the state board of correction determines that suitable state facilities are not available, it may enter into an agreement with the proper authorities of the United States, another state, a political subdivision of this state or another state, or a private prison contractor, to provide for the safekeeping, care, subsistence, proper government, discipline, and to provide programs for the reformation, rehabilitation and treatment of prisoners. Facilities made available to the state board of correction by agreement may be in this state, or in any other state, territory or possession of the United States. The state board of correction shall not enter into an agreement with an authority unable to provide the degree or kind of safekeeping, care and subsistence required by state or federal laws, the constitution of the state of Idaho, the United States constitution, and the rules adopted by the state board of correction. All contracts or agreements entered into by the state board of correction and a private prison contractor shall be subject to the provisions of this section and section 20-209, Idaho Code.

I.C. § 20-241A(1)²; *see also* I.C. § 20-237B. Such a contractor acts solely as an agent of the State:

(a) An authority or private prison contractor, receiving physical custody for the purpose of incarceration of a person sentenced by a court under the terms of an agreement made under this section, **shall be considered as acting solely as an agent of this state**. This state retains jurisdiction over a person incarcerated in an institution of another state, the United States, a political subdivision of this state or another state, or of a private institution;

I.C. § 20-241A(1)(a) (emphasis added).

B. The Law of Agency Provides that Corizon Can Step into the Shoes of the State of Idaho and Act for and in its Place for Purposes of Reimbursing Off-Site Medical Providers.

As agent of the IDOC, Corizon steps into the shoes of the Department under the law of agency. “The law of agency is based on the legal notion that a principal is considered to have done himself or herself what he or she does by acting through another person.” 2A C.J.S. Agency § 1; *Weatherby*, 94 Idaho at 507, 492 P.2d at 46 (“Persons dealing with an agent of a disclosed principal must act toward the agent the same as though the principal himself were personally involved.”). “A principal-agent relationship is based upon delegation of authority from the principal to the agent so that the agent is said to be representing the principal while alter egos are seen in the law as being the same entity.” 2A C.J.S. Agency § 1. “[A]n agency relationship exists when one person is authorized to represent and act for another in dealings with third parties. It is one of the characteristics of the relationship that the agent steps into the shoes of the principal

² The Statement of Purpose for Idaho Code § 20-241A, which was enacted in 1997, “[p]rovides for the conditions under which a private prison contractor may provide for the housing, care and control of state inmates.” 1997 Idaho Laws Ch. 223 (H.B. 137).

and acts for the principal pursuant to the grant of authority vested in him or her by the principal.” *Id.* Stated another way, “[p]ursuant to the grant of authority by the principal, the agent is the representative of the principal and acts for, in the place of, and instead of, the principal.” 3 Am. Jur.2d Agency § 1.

A “settled rule of agency [is] that an agent ‘stands in the shoes’ of his principal.” *Monsanto Co. v. Benton Farm*, 813 So. 2d 867, 874 (Ala. 2001). “Thus, an agent who has incurred liability for his principal by acting in the line and scope of his employment also ‘stands in the shoes’ of his principal with respect to the principal’s rights in the transaction.” *Id.* (emphasis added); *see also Vreeken*, 148 Idaho at 109, 218 P.3d at 1170 (noting that the agent binds the principal when the agent acts within the scope of authority); *In re Estate of Capuzzi*, 470 Mich. 399 (Mich. 2004) (“It is a longstanding legal principle that a duly authorized agent has the power to act and bind the principal to the same extent as if the principal acted. A power of attorney provides the agent with all the rights and responsibilities of the principal as outlined in the agreement. In effect, the agent stands in the shoes of the principal.”) (citations omitted); *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 404 (Ga. 2006) (“An agent, although innocent, may be liable, because he stands in the shoes of his principal.”); *State v. Campbell*, 756 N.W.2d 263, 271 (Minn. Ct. App. 2008) (“Furthermore, a person acting as an attorney-in-fact under a POA ‘is an agent, one who stands in the shoes of a principal.’”); *Bailey*, 109 Idaho at 497, 708 P.2d at 902 (noting that the agent binds the principal when the agent acts within the scope of authority).

Additionally, “[w]hen a duly constituted agent acts in accordance with his instructions. . . he has power to affect the legal relations of the principal to the same extent as if the

principal had so acted.” *Am. Home Assur. Co. v. Hapag Lloyd Container Linie, GmbH*, 446 F.3d 313 (2d. Cir. 2006)(emphasis added); *see Vreeken*, 148 Idaho at 89, 218 P.3d at 1170; *Bailey*, 109 Idaho at 497, 708 P.2d at 902; *see also* 2A C.J.S. Agency § 140 (“When a duly constituted agent acts in accordance with its instructions the agent has power to affect the legal relations of the principal to the same extent as if the principal had so acted since, in effect, the agent stands in the shoes of the principal.”).

Under these principles, Corizon is subject to the same statutory requirements and restrictions as the IDOC with respect to those duties that the company contracted to perform³. By contracting with the IDOC to provide health care to its prisoners and, in this instance, to process hospitalization claims incurred by the IDOC for inmates treated at PMC, Corizon has stepped into the shoes of the IDOC in relation to these functions. It is the agent of the IDOC in relation to these functions. *See* Idaho Code § 20-241A(1); *see also* *Druffel v. State Dep't of Transp.*, 136 Idaho 853, 856, 41 P.3d 739, 742 (2002) (stating that the Idaho Supreme Court assumes that the Legislature was aware of all other statutes and legal precedence at the time the statute was passed). As the IDOC's agent with respect to the processing of medical claims, it

³ Since 2005, when Idaho Code § 20-237B was enacted, the IDOC has contracted with privatized health care companies to provide health care to inmates in accordance with the Eighth Amendment. *See Allison v. Prison Health Servs., Inc.*, No. 1:05-CV-510-EJL, 2009 WL 205228, at *7 (D. Idaho Jan. 28, 2009) (stating Prison Health Services, Inc., also a predecessor of Corizon, ceased providing medical services to IDOC inmates on July 11, 2005); *see also* *Noak v. Idaho Dep't of Correction*, 152 Idaho 305, 307, 271 P.3d 703, 705 (2012) (noting that PHS was under contract with the IDOC on January 30, 2004); *Monson v. Corizon*, No. 1:11-CV-00468-MHW, 2013 WL 3756440, at *1 (D. Idaho July 11, 2013) (Corizon under contract with the IDOC as of October 2011).

necessarily follows that Corizon cannot exceed any limits set by the Idaho legislature on the IDOC's authority. *Hieb*, 105 Idaho at 697, 672 P.2d at 575 (an agent cannot bind the principal when an agent exceeds the authority given by the principal).

C. As an Agent of the IDOC in the Provision of Health Care, Corizon Is Bound to Comply with the Medicaid Rate of Reimbursement in Idaho Code § 20-237B.

As the agent for the IDOC, Corizon acts for, in the place of, and instead of the IDOC in processing hospitalization claims arising from treatment provided to Idaho prisoners. This makes Corizon subject to all of the rules limiting the IDOC's authority in paying for such health care services, including the Medicaid rate reimbursement cap in Idaho Code § 20-237B. The contract between the IDOC and Corizon specifically contemplated that this cap might apply to Corizon. (*See* Amendment 4, R. Vol. 3, p. 641.) Then, after the IDOC determined that Corizon could process the IDOC's hospitalization claims, the IDOC instructed Corizon to revise its rates to the Medicaid reimbursement rate. (*See* Letter from P. Donaldson to PMC, R. Vol. 3, p. 657.)

Pat Donaldson, IDOC Chief of Management Services, confirmed this instruction in his May 8, 2015 letter to PMC, stating:

It was determined that Corizon Health had the ability and technology to administer the processing of the hospitalization claims incurred by the IDOC under its healthcare contract. As such, the IDOC directed Corizon Health to proceed with the program and to revise the per diem rate per offender per day to their alternate per diem Medicaid rates, effective on July 1, 2014. This decreased the per diem rate by \$0.65 per offender per day, or an annual savings of approximately \$1,675,000. This reduction equates to a savings of over \$15 million for the taxpayers of Idaho over the life of the contract with Corizon Health, if all potential renewals are exercised.

(*Id.*) This instruction reflects the stated purpose of Idaho Code § 20-237B, which is to ensure maximum cost-efficiency to the IDOC in negotiating its contractual agreements with privatized correctional health care companies. In order to ameliorate the risk of uncontrollable financial risk to the IDOC, the Idaho Legislature limited how much outside off-site medical providers would be reimbursed for off-site medical care services they provided to prisoners. Limiting these off-site providers to the Idaho Medicaid reimbursement rate for medical services provided off-site ensures that any contract with a privatized health care company will be more predictable and cost-efficient for the IDOC.

Such an outcome is consistent with how statutes in Idaho are to be construed: “[a] statute should be construed so that effect is given to all its provisions, so that no part will be rendered superfluous or insignificant. Further, we do not presume that the legislature performed an idle act by enacting a meaningless provision.” *Brown v. Caldwell School Dist.*, 127 Idaho 112, 117 898 P.2d 43, 48 (1995). Subsection (2)(a) of Idaho Code § 20-237B recognizes that the IDOC may contract its obligation to provide health care to its prisoners to a privatized health care provider, such as Corizon. Indeed, it is even more telling that the contracted health care model was in existence at the time of the statute’s enactment and the Statement of Purpose specifically noted that the then current contract was set to expire September 30, 2005, and that the Department would then issue a new contract, to begin October 1, 2005. Interpreting the statute to exclude Corizon renders the statute meaningless from the outset in light of the contemplated contractual health care model. Further, a contrary interpretation creates the exact situation the legislature intended to avoid—increased costs to the IDOC and thus the taxpayers due to an unpredictable

variable determined unilaterally by the respective health care providers. Thus, interpreting the statute to exclude Corizon renders the statute meaningless and ultimately creates the very risk it intended to mitigate, which is the current situation where PMC contends that Corizon must pay the full invoiced amount⁴ for medical services that PMC provided to IDOC inmates after January 1, 2016:

To ameliorate the risk, the current legislation is intended to limit the Department's exposure to the same level of risk assumed by the State of Idaho providing health care to indigent citizens via Medicaid. Without this legislation, the Department's risk will be an unpredictable variable determined unilaterally by the respective health care providers.

I.C. § 20-237B, Statement of Purpose, Idaho Session Laws 157, S.B. 1036.

The IDOC delegated to Corizon its duty to process medical claims for services provided to inmates, and Corizon, in assuming that duty, stepped into the shoes of the IDOC. As a result, under Idaho Code § 20-237B, the maximum that Corizon was permitted to pay a non-contracted medical provider, such as PMC, was the Idaho Medicaid reimbursement rate. Moreover, Corizon did not reach this conclusion unilaterally. Instead, the IDOC ultimately made this determination. In so doing, it both ensured that its agent, Corizon, did not exceed the IDOC's own authority and that instead the IDOC's responsibility under Idaho Code § 20-237B was fulfilled.

⁴ PMC contends that the full billed amount represents its usual and customary fees. (R. Vol. 1, p. 24, Amended Complaint and Demand For Jury Trial.)

D. This Court Should Defer to the IDOC's Determination that Corizon Must Adhere to the Medicaid Rate of Reimbursement in Idaho Code § 20-237B.

The four-factor test adopted by this Court in *J.R. Simplot* for determining when courts should defer to an agency's construction of a statute supports the IDOC's construction of Idaho Code § 20-237B (and Corizon's position) in this case. Under this standard, the Court considers whether:

1. the agency is entrusted to administer the statute at issue;
2. the agency's interpretation of the statute is reasonable;
3. the statutory language does not expressly treat the precise question at issue; and
4. any of the rationales underlying deference to an agency are present.

820 P.2d at 1219. Each of these four factors supports deference to the IDOC in this case.

There is little question that the first factor is satisfied here. As detailed above, the Idaho legislature has given the IDOC responsibility to care for inmates and the power to contract with private entities. *See, e.g.*, Idaho Code §§ 20-209 and 20-241A. Section 20-212(1) expressly directs the IDOC to "make all necessary rules to carry out the provisions of this chapter not inconsistent with express statutes or the state constitution[.]"⁵ Thus, the legislature has entrusted the IDOC to administer Idaho Code § 20-237B and the other laws that comprise Title 20,

⁵ "[R]ule" is defined broadly in Idaho Code § 20-212(2) as "the whole or a part of the board of correction or department of correction's statement of general applicability that has been promulgated in compliance with the provisions of this section and that implements, interprets or prescribes: (a) Law or policy[.]"

Chapter 2 of the Idaho Code⁶. *Cf. Pearl v. Bd. of Prof'l Discipline of Idaho State Bd. of Med.*, 137 Idaho 107, 113, 44 P.3d 1162, 1168 (2001) (“It is clear that the Board may ‘establish pursuant to the administrative procedures act rules and regulations for the administration of this chapter” (quoting Idaho Code § 54-1806(2)).

The second and third factors – whether the agency’s construction is reasonable and whether the statutory language expressly treats the matter – also weigh in favor of deferring to the IDOC. There is nothing in Idaho Code § 20-237B that expressly answers whether an agent, like Corizon, that processes medical claims can be subject to the Medicaid reimbursement cap:

20-237B. MEDICAL COSTS OF STATE PRISONERS HOUSED IN CORRECTIONAL FACILITIES.

(1) The state board of correction shall pay to a provider of a medical service for any and all prisoners, committed to the custody of the department of correction, confined in a correctional facility, as defined in section 18-101A(1), Idaho Code, an amount no greater than the reimbursement rate applicable based on the Idaho medicaid reimbursement rate. This limitation applies to all medical care services provided outside the facility, including hospitalizations, professional services, durable and nondurable goods, prescription drugs and medications provided to any and all prisoners confined in a correctional facility, as defined in section 18-101A(1), Idaho Code. For required services that are not included in the Idaho medicaid reimbursement schedule, the state board of correction shall pay the reasonable value of such service.

(2) For the purposes of subsection (1) of this section, the term “provider of a medical service” shall include only companies, professional associations and

⁶ “From its enactment to the present, IDAPA has exempted the Board [of Corrections], along with the state militia from its coverage.” *Searcy v. Idaho State Bd. of Correction*, 160 Idaho 546, 555, 376 P.3d 750, 759 (2016). “The constitutional and statutory grants of authority afford IDOC and the Board wide-ranging authority over the management and operation of Idaho’s prisons.” *Id.*, 160 Idaho at 553, 376 P.3d at 757.

other health care service entities whose services are billed directly to the department of correction. The term “provider of a medical service” shall exclude:

(a) Privatized correctional medical providers under contract with the department of correction to provide health care to prison inmates;

(b) Private prison companies;

(c) Out-of-state correctional facilities contracting with the department of correction to house prisoners;

(d) County jails; and

(e) Companies, professional associations and other health care service entities whose services are provided within the terms of agreements with privatized correctional medical providers under contract with the department of correction, private prison companies and county jails.

Id. So, the statute does not address, let alone prohibit, the IDOC from determining that a contractor acting on its behalf is subject to the Medicaid reimbursement rate. This silence alone indicates that the IDOC’s construction of the statute is reasonable.

The reasonableness of the IDOC’s reading is further supported by the statutory exemption from the cap that is found in Section 20-237B(2)(e). PMC wrongly contends that the reference to “privatized correctional medical providers” in this exemption confirms that Corizon is not subject to the statutory cap. (Br. at 17-19.) Instead, the opposite is true. The statutory exemption reveals that the legislature envisioned instances in which the Medicaid reimbursement cap could apply to a contractor, like Corizon. Indeed, the legislature prescribed only one instance in which that cap would *not* apply to a privatized correctional medical provider—when there was a contract between the provider and the health care service entity issuing the bills. It is

undisputed that there was no such contract between Corizon and PMC for the time period at issue.⁷

Moreover, if, as PMC contends, the statutory cap truly applies only to medical services provided directly to the IDOC, why would the legislature include an exception for fees incurred when a health service entity provided services pursuant to contract with a company like Corizon? PMC's interpretation of the statute would render this exemption a nullity, a cardinal violation of statutory construction. This Court has held that it "will not construe a statute in a way which makes mere surplusage of provisions included therein." *Bradbury v. Idaho Judicial Council*, 149 Idaho 107, 116, 233 P.3d 38, 47 (2009) (quoting *Sweitzer v. Dean*, 118 Idaho 568, 571–72, 798 P.2d 27, 30–31 (1990)); *see also Twin Lakes Canal Co. v. Choules*, 151 Idaho 214, 218, 254 P.3d 1210, 1214 (2011) (holding that courts may not interpret a statute in a manner that would "render it a nullity"). As a result, the exemption relied upon by PMC instead supports the statute's application here.

The final factor also supports deferring to the IDOC. This Court has described five rationales underlying the rule of deference:

- that a practical interpretation of the rule exists;

⁷ PMC places much import on the fact that it sends bills for services rendered to Corizon rather than to the IDOC. Two points merit mention here. First, PMC sends bills to Corizon for the obvious reason that Corizon is standing in the shoes of the IDOC with respect to its obligation to process claims for medical services rendered to prisoners of the State. And, second, this issue easily could be remedied by the IDOC and Corizon instructing PMC to send the bills to the IDOC and then by the IDOC, in turn, sending the bills to Corizon. This reality serves to highlight the misplaced import that PMC places on this provision.

- the presumption of legislative acquiescence;
- reliance on the agency's expertise in interpretation of the rule;
- the rationale of repose; and
- the requirement of contemporaneous agency interpretation.

Canty v. Idaho State Tax Commission, 138 Idaho 178, 184, 59 P.3d 983, 989 (2002). All five of these rationales need not be satisfied in order to justify deference to the agency. Rather, “[i]f one or more of the rationales underlying the rule are present, and no ‘cogent reason’ exists for denying the agency some deference, the court should afford ‘considerable weight’ to the agency’s statutory interpretation.” *J.R. Simplot*, 820 P.2d at 1219.

Three of the five rationales are present here. The IDOC’s decision that Corizon is subject to the statutory cap with respect to PMC is practical. Indeed, it makes sense that, absent an exemption such as that contained in Section 20-237B(2)(e), the same statutory restriction that applies to IDOC for payment of claims should also similarly limit the agent that stands in its shoes when processing those same claims.

There also exists a fair presumption that the legislature has acquiesced in the IDOC’s reading. In the more than three years since the IDOC instructed Corizon to charge the Medicaid reimbursement rate, the legislature has not sought to amend the statute to undo the IDOC’s decision. In enacting § 20-237B, the Idaho legislature sought to limit State expenditures on health care for prisoners. Under the IDOC’s interpretation of the statute, it will succeed in doing so. Millions of taxpayer dollars will be saved over the life of the IDOC’s contract with Corizon.

Finally, there is good reason to defer to the IDOC's expertise in determining whether Corizon is acting as its agent for purposes of Section 20-237B. As detailed above, the IDOC is charged with the welfare of State prisoners and has authority to issue rules in fulfillment of those responsibilities. In this case, the IDOC utilized its expertise and discretion in finding that Corizon could process the IDOC's hospitalization claims. After making this finding, the IDOC instructed Corizon to revise its rates to the Medicaid reimbursement rate mandated by the statute.

There also is no "cogent reason" for refusing to defer to the IDOC for purposes of the dispute in this lawsuit. The IDOC's construction of Section 20-237B saves taxpayer dollars and limits the department's financial exposure. Likewise, there is no basis to distinguish between services provided to prisoners brought to the PMC by Corizon versus the IDOC when there is no contract that limits the payor's exposure. Indeed, should this Court rule otherwise, the savings both the legislature and the IDOC sought to achieve will, unfortunately, evaporate.

V. CONCLUSION

For all of the aforesaid reasons, the Court should find for purposes of the dispute in this lawsuit that "state board of correction" as used in Idaho Code § 20-237B(1) and "department of correction" as used in Idaho Code § 20-237B(2), include Corizon. Corizon is an agent of the State in all regards for the purposes of providing healthcare to IDOC inmates. As an agent of the State in the provision of health care, Corizon steps into the shoes of the State and is thereby subject to the Medicaid rate of reimbursement in Idaho Code § 20-237B. The IDOC's decision that Corizon is subject to this statutory cap is entitled to deference.

DATED this 6th day of October, 2017.

ELAM & BURKE, P.A.

By Joseph F. Southers
John J. Burke - Of the Firm
Joseph F. Southers - Of the Firm
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of October, 2017, I caused two true and correct copies of the foregoing **RESPONDENT'S BRIEF** to be served by the method indicated below, and addressed to the following:

Scott J. Smith
RACINE OLSON NYE & BUDGE,
CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391
Attorneys for Appellant

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Email

Joseph F. Southers
Joseph F. Southers