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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

IDAHO DEPARTMENT OF CORRECTION'S AMICUS CURIAE 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

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I. STATEMENT OF THE CASE

A. Nature of the Case

This case is before the Court as a certified question of law from the United States District Court for the District of Idaho. Specifically, as presented below, the question involves the interpretation of Idaho Code § 20-237B and whether Respondent, Corizon LLC (“Corizon”), is entitled to pay the Idaho Medicaid reimbursement rate to medical providers who provide off-site medical treatment for prisoners committed to the custody of the Idaho Department of Correction (“IDOC”).

B. Statement of Facts

The Idaho Department of Correction (“IDOC”), appearing as *amicus curiae*, hereby adopts by reference the Statement of Facts set forth in Corizon’s brief. *Respondent’s Brief*, pp. 1-4; *See* I.A.R. 35(h).

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. ARGUMENT

As recognized by this Court, *amicus curiae* status is appropriate when that party cannot otherwise “effectively protect [its] interests absent involvement in [the] appeal.” *Mendenhall v. Caine*, 101 Idaho 628, 629-30, 619 P.2d 146, 147-48 (1980). Although IDOC agrees that Corizon stands in the shoes of it and the Idaho Board of Correction¹ for purposes of accessing the Idaho Medicaid reimbursement rate under Idaho Code § 20-237B, as a state agency its interests in the issue before the Court are different. Therefore, IDOC will attempt to limit its arguments to its own interests in the resolution of this matter.² Those interests include that IDOC made the determination that Corizon could access the Medicaid reimbursement rate identified in Idaho Code § 20-237B and directed Corizon to implement that decision. By doing so, IDOC intended for Corizon to step into its shoes for purposes of processing payment to off-site medical providers such as PMC.

A. An introduction to the IDOC and its statutory and constitutional authority and responsibility for the medical care of inmates committed to its custody.

IDOC is responsible for housing approximately 8,000 inmates in ten prisons and four community re-entry centers throughout Idaho. <https://www.idoc.idaho.gov/content/prisons>; R.

¹ As used throughout this brief, the term IDOC includes the Idaho Board of Correction, unless specifically stated otherwise.

Vol. ___, p. 441; IDOC has an annual budget of approximately \$220 million and employs nearly 2,000 correctional professionals. https://www.idoc.idaho.gov/content/directors_office.

The Idaho Board of Correction derives its authority from Article X, §5 of the Idaho Constitution, which provides that the “board shall have the control, direction and management of the penitentiaries of the state, their employees and properties, and of adult probation and parole, with such compensation, powers, and duties as may be prescribed by law.” Pursuant to this section, the Idaho Legislature enacted various statutes establishing the Board’s authority. Those statutes include Idaho Code § 20-209(1), which provides: “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.” Idaho Code § 20-209(1) (emphasis added); *see also* R. Vol. ___, p. 441.

Likewise, Idaho Code § 20-101 states: “[t]here shall be continually maintained for the care and custody of prisoners in Idaho, correctional facilities, and state rehabilitation centers, for use by the state board of correction....” Idaho Code § 20-101 (emphasis added). As recently recognized by this Court, “[t]he constitutional and statutory grants of authority afford IDOC and the Board wide-ranging authority over the management and operation of Idaho's prisons.” *Searcy v. Idaho State Board of Correction*, 160 Idaho 546, 553, 376 P.3d 750, 757 (2016). In addition to these state constitutional and statutory directives, the Eighth Amendment to the

United States Constitution directs the State of Idaho to provide constitutionally adequate medical care to its prisoners. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

IDOC has a responsibility to provide constitutionally adequate medical treatment to inmates. With that responsibility, however, IDOC has broad discretion in how it exercises its authority. That authority includes the ability for IDOC to delegate the provision of inmate medical treatment to contractors such as Corizon.

B. For purposes of the dispute in this lawsuit, Corizon was directed by IDOC to reimburse off-site medical providers at the Idaho Medicaid rate, as limited by Idaho Code § 20-237B.

It is undisputed that IDOC, through the Division of Purchasing, has the authority to delegate its responsibility for providing medical care to inmates, by contracting with entities such as Corizon. *See* Idaho Code §§ 67-9202, 67-9205. Accordingly, IDOC and Corizon entered into the current contract, effective January 1, 2014 through December 31, 2018. R. Vol. 1, p. 65. Appellant, Pocatello Hospital LLC d/b/a Portneuf Medical Center (“PMC”), does not challenge the validity of the IDOC/Corizon contract. In fact, PMC claims to be a third party beneficiary of the contract. R. Vol. 1, p. 27, ¶ 49.

Through both the Request for Proposal process and contract amendment process, IDOC has been concerned with reducing the financial impact of inmate medical care on the State of Idaho without compromising the quality of that care. For that reason, the contract, which incorporated Amendment 4 into the Request for Proposal, clearly contemplated the possibility of “IDOC pursuing a program that would allow the Contractor to realize reduced costs for

Offenders hospitalized over twenty-four (24) hours.” R. Vol. ____, p. 641. This program was based on Idaho Code § 20-237B, which provides:

(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 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.

After Corizon was awarded the contract, IDOC implemented the program outlined in Amendment 4 to the Request for Proposal. R. Vol. 1, p. 66. On June 6, 2014, IDOC formally

advised Corizon through a letter from the Chief of IDOC's Management Services Division of its decision to implement the program contemplated in Amendment 4 and directed Corizon to begin reimbursing off-site providers at the Medicaid reimbursement rate beginning July 1, 2014. R. Vol. 2, p. 422. That letter specifically "notifie[d] Corizon to charge the Per Diem (with Medicaid Rates) as set forth in Corizon's Cost Proposal...effective July 1, 2014." *Id.* Implementation of this program benefitted IDOC by reducing the Per Diem cost per offender, per day that it was required to pay Corizon. In turn, those cost savings "reduce the burden to the Idaho taxpayer." *Id.* Those savings equated to approximately \$1,675,000 per year. R. Vol. 3, p. 657.

After IDOC notified Corizon that it was implementing the program to access Medicaid rates, as authorized by Idaho Code § 20-237B, it subsequently advised PMC of this decision on May 8, 2015. R. Vol. 3, p. 657. That letter, again from the Chief of IDOC's Division of Management Services informed PMC:

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. PMC does not dispute that it received this letter from IDOC. Nor is there anything in the record showing that PMC responded to this letter or disagreed with IDOC's interpretation and application of Idaho Code § 20-237B. Instead, PMC claims "the IDOC Contract was made

expressly for the benefit of PMC.” R. Vol. 1, ¶ 49. IDOC disagrees. The Contract with Corizon, as clearly outlined above, was made for the benefit of IDOC’s inmate population and in order for IDOC to meet its constitutional obligations in the provision of inmate medical care.

As set forth in Corizon’s brief, the law of agency allows it to step into IDOC’s shoes for purposes of reimbursing off-site medical providers at the Idaho Medicaid rate.³ *Respondent’s Brief*, pp. 9-12. As stated above, Idaho law allows IDOC to contract with Corizon for purposes of providing medical care to prisoners in IDOC’s custody. That authority necessarily implies that Corizon stands in IDOC’s shoes in satisfying its statutory responsibilities related thereto. Essentially, Corizon would not have a duty to provide medical care to inmates absent IDOC’s direction to do so. Therefore, based on IDOC’s decision to implement the program contemplated in the contract, PMC was provided notice and advised that “IDOC implemented its program to allow Corizon to access the Medicaid rates as provided in I.C. § 20-237B.” R. Vol. 3, p. 657. Accordingly, for purposes of the dispute in this lawsuit, PMC was on notice that Corizon was acting as IDOC’s agent “to administer the processing of the hospitalization claims incurred by the IDOC under its healthcare contract.” *Id.*

C. Corizon’s interpretation of Idaho Code § 20-237B is consistent with IDOC’s position and the statutory purpose.

Corizon and PMC have extensively briefed the certified question of law and the application of Idaho Code § 20-237B for purposes of the dispute in this lawsuit. Therefore,

³ IDOC incorporates Corizon’s argument and authority from those sections of its brief. I.A.R. 35(h).

rather than burden the Court with duplicative arguments, IDOC adopts Corizon's interpretation that it was acting as IDOC's agent pursuant to its contract and therefore stood in IDOC's shoes for purposes of accessing the Medicaid reimbursement rate under § 20-237B. *Respondent's Brief*, pp. 9-14. In its reply brief, PMC contends that whether Corizon was acting as IDOC's agent is irrelevant because PMC's medical services were not "billed directly to the department of correction." Idaho Code § 20-237B(2); *Appellant's Brief*, p. 9. However, it is relevant because PMC's medical services would be billed directly to IDOC absent IDOC contracting with Corizon due to its "ability and technology to administer the processing of the hospitalization claims incurred by the IDOC under its healthcare contract." R. Vol. 3, p. 657. Because of this it was unnecessary for PMC to bill IDOC directly because Corizon was paying PMC on IDOC's behalf. To require PMC to bill IDOC directly, for IDOC to send to Corizon for processing, would be unnecessary, inefficient, and would artificially elevate form over substance.

More importantly, PMC's position is contrary to the purpose and intent of Idaho Code § 20-237B, which provides:

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 intent of Idaho Code § 20-237B is to limit IDOC's financial cost for inmate medical care by providing parity with the Medicaid rate applicable to indigent patients. *See* Idaho Code § 31-3501 (declaring the

policy of the State of Idaho to provide healthcare for indigent residents at a reduced rate). PMC's insistence that IDOC is not the billed entity ignores IDOC's authority to delegate responsibilities to provide certain services.

Adopting PMC's interpretation of the statute will result in the elimination of potentially \$15 million in savings to Idaho taxpayers over the duration of the IDOC's contract with Corizon. *See R. Vol. 3, p. 657.* The detrimental effect of such negated cost savings is self-evident. The state of Idaho, through IDOC, stands to incur a substantial increase in inmate medical care expenses. *See R. Vol. 3, p. 455.* Because IDOC is duty bound to provide constitutionally adequate medical care, the burden of that increase falls squarely on Idaho's taxpayers, which is the underlying harm that the legislature intended to avoid.

IV. CONCLUSION

For purposes of the dispute in this lawsuit, IDOC directed Corizon to implement the program outlined in Amendment 4 to the Request for Proposal, which limits reimbursement to off-site medical providers to the Medicaid reimbursement rate. That program was implemented based on IDOC's determination that Corizon had the ability and technology to process claims for off-site hospitalization claims. Based on that determination, IDOC intended for Corizon to step into its shoes for purposes of processing such payments, rather than inserting an artificial requirement of having PMC send invoices to IDOC. IDOC advised PMC of its intended course of action, without objection from PMC. Accordingly, IDOC respectfully requests that the Court answer the certified question of law by concluding that for purposes of the dispute in this lawsuit, the terms

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“state board of correction” as used in Idaho Code § 20-237B(1) and “department of correction” as used in Idaho Code § 20-237B(2), includes Corizon acting on IDOC’s behalf.

DATED this 30th day of November, 2017.

By 
Mark A. Kubinski
Lead Deputy Attorney General
Counsel for *Amicus Curiae* IDOC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November, 2017, I caused two true and correct copies of the foregoing **IDAHO DEPARTMENT OF CORRECTION’S AMICUS CURIAE BRIEF** to be served by the method indicated below, and addressed to the following:

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