

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

FILED IN OFFICE
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2013 FEB 27 PM 3:15

RICHARD ALEXANDER, CLERK

NORTH FULTON MEDICAL CENTER,)
INC. d/b/a NORTH FULTON REGIONAL)
HOSPITAL; TENET HEALTHSYSTEM GB,)
INC. d/b/a ATLANTA MEDICAL CENTER;)
TENET HEALTHSYSTEM SGH, INC. d/b/a)
SYLVAN GROVE HOSPITAL; TENET)
HEALTHSYSTEM SPALDING, INC. d/b/a)
SPALDING REGIONAL MEDICAL)
CENTER; TENET SOUTH FULTON, INC.)
d/b/a SOUTH FULTON MEDICAL)
CENTER,)

Plaintiffs,)

v.)

KAISER FOUNDATION HEALTH PLAN)
OF GEORGIA, INC.,)

Defendant.)

13A 01702 6
CIVIL ACTION NO. _____

COMPLAINT

Plaintiffs North Fulton Medical Center, Inc. d/b/a North Fulton Regional Hospital ("North Fulton"); Tenet HealthSystem GB, Inc. d/b/a Atlanta Medical Center ("AMC"); Tenet HealthSystem SGH, Inc. d/b/a Sylvan Grove Hospital ("Sylvan"); Tenet HealthSystem Spalding, Inc. d/b/a Spalding Regional Medical Center ("Spalding"); and Tenet South Fulton, Inc. d/b/a South Fulton Medical Center ("South Fulton") (collectively, the "Hospitals"), by and through their undersigned counsel, respectfully file this Complaint against Defendant Kaiser Foundation Health Plan of Georgia, Inc. ("Kaiser"), alleging as follows:

Parties, Jurisdiction and Venue

1. North Fulton is a corporation organized and existing under the laws of the State of Georgia and maintains its principal place of business at 3000 Hospital Blvd., Roswell, Georgia 30076.

2. AMC is a corporation organized and existing under the laws of the State of Georgia and maintains its principal place of business at 303 Parkway Drive NE, Atlanta, Georgia 30312.

3. Sylvan is a corporation organized and existing under the laws of the State of Georgia and maintains its principal place of business at 1050 McDonough Road, Jackson, Georgia 30233.

4. Spalding is a corporation organized and existing under the laws of the State of Georgia and maintains its principal place of business at 601 South 8th Street, Griffin, Georgia 30224.

5. South Fulton is a corporation organized and existing under the laws of the State of Georgia and maintains its principal place of business at 1170 Cleveland Avenue, East Point, Georgia 30344.

6. Kaiser is a corporation organized and existing under the laws of the State of Georgia and maintains its principal place of business at One Kaiser Plaza, Oakland, California 94612. Service of process may be perfected upon Kaiser by delivering a copy of the summons and complaint to its registered agent, Corporation Service Company, at 40 Technology Parkway South, #300, Norcross, Georgia 30092.

7. This Court has jurisdiction over the parties and the subject matter of this action, and venue is proper in Gwinnett County because Kaiser maintains its registered office in Gwinnett County.

Factual Allegations

8. Kaiser is a health maintenance organization that provides healthcare benefits to thousands of Georgia residents enrolled in Kaiser's healthcare plans.

9. Kaiser offers healthcare benefits to its members through the use of provider networks or other contractual arrangements with providers that Kaiser establishes by entering into service agreements with hospitals, outpatient clinics, physicians groups, and other medical providers.

10. When a provider enters into a contract with Kaiser, it must agree to charge a discounted rate for its services in exchange for Kaiser's agreement to steer its members to that provider.

11. Kaiser uses financial incentives to encourage its members to seek treatment from in-network providers that are under contract with Kaiser.

12. Kaiser's members can also seek treatment from providers who are not part of Kaiser's network.

13. Because they have not entered into service agreements with Kaiser, out-of-network providers are not required to charge discounted rates for their services, and Kaiser is not required to encourage its members to utilize those providers.

14. Because out-of-network providers charge more for their services than in-network providers, Kaiser uses financial disincentives to discourage its members from being treated by out-of-network providers.

15. Despite these financial disincentives, Kaiser members occasionally find themselves in circumstances where they have no choice but to use out-of-network providers.

16. For example, due to the proximity of out-of-network providers or for other practical reasons, Kaiser members may use out-of-network providers when they suffer medical conditions requiring emergency care.

17. The Hospitals were part of Kaiser's provider network until the parties decided several years ago to terminate their in-network relationship.

18. Since that time, the Hospitals have been treating Kaiser's members on an out-of-network basis except that AMC is still in network with Kaiser for the limited purpose of providing surgical oncology services and North Fulton is still in network with Kaiser for the limited purpose of providing acute rehabilitation services.

19. Because out-of-network providers charge more than in-network providers, Kaiser asked the Hospitals to enter into prompt-pay agreements on certain individual patient accounts in order to offset a portion of the increase in charges that Kaiser experienced after the parties ended their in-network relationship.

20. Under these prompt-pay agreements, the Hospitals would promise to give Kaiser a discount for their services in exchange for Kaiser's promise to pay the Hospitals' charges within a short period of time.

21. When the parties found that they were executing prompt-pay agreements on a routine basis, they decided to formalize their practice with a single prompt-pay agreement that applied to the Hospitals' out-of-network treatment of any Kaiser member.

22. This single prompt-pay agreement, which became effective on August 15, 2008, was signed by Kaiser on August 27, 2008 and countersigned by the Hospitals on

August 28, 2008 (hereinafter, the "Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit A.

23. The Agreement states that the Hospitals shall "apply a three percent (3%) across the board discount" to their "Total Covered/Billed Charges," and "[i]n return, Kaiser...agrees to process all eligible benefits within a ten (10) day payment period after receipt of the claims."

24. The Agreement also states that "[t]he patient will not be held responsible for this discounted amount."

25. Under the terms of the Agreement, if Kaiser fails to pay the Hospitals within the ten-day period, Kaiser may not claim the three-percent discount and must instead pay the Hospitals their total billed charges.

26. For more than a year after the parties executed the Agreement, Kaiser reimbursed the Hospitals at a rate equal to 97% of their total billed charges if the claims were paid within ten days or 100% of their total billed charges if the claims were not paid within ten days.

27. Kaiser changed its payment practices in 2010, however, when it began withholding reimbursements, in whole or in part, from the Hospitals for the medically necessary services that they provided to certain Kaiser's members.

28. Rather than comply with the terms of the Agreement, Kaiser unilaterally decided to reimburse the Hospitals at rates and amounts significantly below those required by the Agreement.

29. To justify its wrongful payment decisions, Kaiser hired The Assist Group, Inc. and other third-party auditors to manufacture billing disputes that Kaiser then used as pretext to deny or underpay the Hospitals' claims for reimbursement.

30. Upon information and belief, Kaiser reimbursed the third-party auditors for their services by paying them a percentage of the amounts that Kaiser withheld from the Hospitals.

31. Kaiser compounded the Hospitals' injury and further breached the Agreement by applying the three-percent discount to patient accounts where Kaiser had already underpaid the Hospitals for their services.

32. Kaiser also applied the three-percent discount to patient accounts where Kaiser paid the Hospitals more than ten days after receiving their claims for reimbursement.

33. Although the Hospitals have communicated with Kaiser on multiple occasions in a good faith effort to resolve this dispute, Kaiser has refused to pay the Hospitals the full amount they are entitled to receive under the Agreement.

34. The Hospitals have fully performed their obligations under the Agreement, and all conditions precedent to the institution of this action have been satisfied, waived, or rendered futile.

Count I – Breach of Contract

35. Paragraphs 1 to 34 are incorporated by reference as if expressly stated herein.

36. Kaiser's failure to reimburse the Hospitals for their services in accordance with the terms of the Agreement constitutes a material breach of contract.

37. As a direct and proximate result of Kaiser' breach of contract, the Hospitals have suffered damages in an amount to be proven at trial, which amount shall continue to

grow on an ongoing basis as Kaiser continues to violate its contractual obligations to the Hospitals.

38. Because it has been stubbornly litigious, has acted in bad faith, and has caused the Hospitals unnecessary trouble and expense, Kaiser is required under O.C.G.A. § 13-6-11 to pay the attorneys' fees and litigation expenses that the Hospitals have incurred, and will continue to incur, in bringing this lawsuit.

39. The Hospitals also seek an award of interest pursuant to O.C.G.A. § 33-24-59.5(c) or as may be otherwise allowed under Georgia law.

Count II – Declaratory Judgment

40. Paragraphs 1 to 34 are incorporated by reference as if expressly stated herein.

41. There is an actual and justiciable controversy between the parties regarding the proper interpretation and construction of the Agreement and the amounts that the Hospitals are entitled to receive under the Agreement for future services provided to Kaiser's members.

42. In light of this controversy, the Hospitals seek the following declaration of the parties' rights and obligations during the term of the Agreement: (a) Kaiser is required under the Agreement to reimburse the Hospitals at a rate equal to 97% of their total billed charges if Kaiser pays the Hospitals' claims within ten days of receiving them; (b) Kaiser is required under the Agreement to reimburse the Hospitals at a rate equal to 100% of their total billed charges if Kaiser pays the Hospitals' claims more than ten days after receiving them; and (c) Kaiser may not deny or underpay the Hospitals' claims based on alleged terms or obligations that are not part of the Agreement.

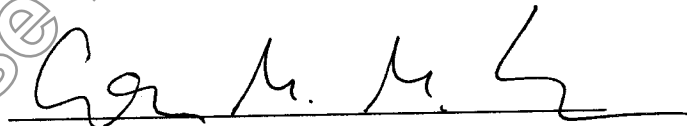
43. Declaratory relief is appropriate in this case as it will remove any uncertainty the parties have in continuing to perform their obligations under the Agreement.

WHEREFORE, the Hospitals respectfully ask the Court to enter judgment against Kaiser and award the Hospitals the following relief:

- a. Damages in an amount to be proven at trial to compensate the Hospitals for all amounts due and owing under the Agreement;
- b. A declaration of rights as described herein;
- c. Prejudgment and post-judgment interest;
- d. All attorneys' fees and litigation expenses that the Hospitals have incurred, and will continue to incur, in bringing this lawsuit; and
- e. Such other and further relief at law or in equity that the Court deems just and proper.

Dated this 26th day of February, 2013.

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