UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PROVIDENCE HEALTH & SERVICES - OREGON, Plaintiff, v. BOULDER ADMINISTRATION SERVICES INC, Defendant.	C16-745 TSZ ORDER

THIS MATTER comes before the Court on defendant's motion to dismiss, or, as an alternative, to compel arbitration, docket no. 15. Having reviewed the papers filed by the parties, the Court DENIES defendant's motion to dismiss, ORDERS arbitration, and STAYS this case pending arbitration.

Background

Boulder Administration Services (BAS), a health administrative services provider, entered into a contract with First Choice Health Network, to access lower provider rates for BAS's clients. Access Agreement, docket no. 15-1 at pgs. 2-65 (hereinafter "Access Agreement"). First Choice[1] had a separate contract with Providence Health & Services –

[1] Providence entered into this contract with Healthcare Direct, and First Choice is the successor in interest. *See* Compl., docket no. 6-1 at 3 ¶ 7; docket no. 15 at 4, fn. 2.

Oregon (hereinafter "Providence") (to include Providence Medford Medical Center), which negotiated lower health care rates for "payors" of health care services. Provider Agreement, docket no. 15-1 at pgs. 67-139, Mar. 21, 2003 (hereinafter "Provider Agreement").[2] Both contracts had arbitration clauses. *Id.* at pg. 71 ¶ 9.1; Access Agreement, docket no. 15-1 at pg. 11 ¶¶ 13.1-13.4.[3]

Providence alleges that it submitted a timely claim under the Access Agreement for a patient who received services at Providence Medford Medical Center, but instead of paying the patient's bill in full, BAS only remitted a partial payment. Compl., docket no. 6-1 at pgs. 4-5 ¶¶ 13-16. Providence received an assignment of claims from First Choice in order to enforce the Access Agreement, and filed a complaint against BAS for breach of contract. Assignment of Claims, docket no. 15-1 at pgs. 141-43; Compl., docket no. 6-1. BAS brings the present motion to dismiss the complaint on the basis that no privity exists between the parties, and in the alternative to compel arbitration. Mot., docket no. 15.

Standard of review

In ruling on a motion to dismiss, the Court must assume the truth of the plaintiff's allegations and draw all reasonable inferences in the plaintiff's favor. *Usher v. City of*

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[2] BAS is not a "payor" of health care services, but coordinates such payment between its payor clients and health care facilities. Access Agreement, docket no. 15-1 at pg. 2 ¶ 1.4. While the Access Agreement did not include a copy of the Provider Agreement between Providence and First Choice, it did include a "sample" provider agreement, which was similar in material terms. *Compare* Access Agreement, Ex. H, docket no. 15-1 at pgs. 24-51 *with* Provider Agreement, docket no. 15-1 at pgs. 67-73.

[3] Section 13 of the Access Agreement reads: "If the parties hereto cannot settle grievances or disputes between themselves, both parties agree, upon the motion of either of them, to submit all grievances or disputes to arbitration by the American Arbitration Association (AAA) in accordance with its rules." Access Agreement, docket no. 15-1 at pg. 11, ¶ 13.2.

Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987). A pleading need only contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

If the Court considers matters outside the complaint, it must convert the motion into one for summary judgment. Fed. R. Civ. P. 12(d). The court may consider documents which are incorporated by reference into the complaint, even if the document is not physically attached. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). When the complaint and the incorporated documents conflict, the court is "not required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice." *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010).[4] The court may consider the Provider Agreement, the Access Agreement, and the Assignment of Claims without converting this motion to a motion for summary judgment. Even though the complaint did not attach these documents, the complaint goes beyond mentioning that these documents exist, and uses their contents to support the facts underlying the causes of action. *See Eisenberg*, 593 F.3d at 1038.[5] To the extent that any information in the complaint conflicts with the information in these documents, the documents will prevail. *See Daniels-Hall*, 629 F.3d 992 at 998.

Rule 12(b)(3) allows the court to dismiss a claim based on lack of venue. Fed. R. Civ. P. 12(b)(3). The Supreme Court has held that an arbitration clause is a specialized

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[4] Washington law is in accord. *Clark v.* Cross, 51 Wash. 231 (1908).

[5] The Assignment of Claims is the only document that is not explicitly referred to in the Complaint. However, Providence relies on this document as evidenced by the following statement: "Providence is the assignee of those rights held by First Choice Health Network, Inc." Compl., docket no. 6-1 at pg. 2 ¶ 3. Therefore, the Assignment of Claims may be incorporated by reference. *See Eisenberg*, 593 F.3d at 1038.

type of forum selection clause, which dictates the procedure used to resolve the dispute. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974). Generally, forum selection clauses are to be enforced unless "that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).

Privity

Generally, a contract is only enforceable against those who are parties to it. *State v. Antoine*, 82 Wn.2d 440, 444, 511 P.2d 1351 (1973), *rev'd on other grounds*, 420 U.S. 194 (1975). It is well established in Washington state that "an assignee stands in the shoes of his assignor," so if a party assigns his rights to another, the assignee may enforce the contract rights allowed by that assignment. *Paullus v. Fowler*, 59 Wn.2d 204, 212, 367 P.2d 130 (1961). Providence has pleaded sufficient facts in the complaint to show that it is the assignee of rights held by First Choice for the purpose of upholding the Access Agreement. Compl., docket no. 6-1 at pg. 2 ¶ 3. Because First Choice is in privity with BAS, and First Choice assigned its rights under the Access Agreement to Providence, Providence has privity with BAS. Therefore, Providence steps into the "shoes" of First Choice, and assumes any rights that First Choice would have under the Access Agreement. *See Fowler*, 59 Wn.2d at 212; Assignment of Claims, docket no. 15-1 at pgs. 141-43.

Breach of contract

A breach of contract is actionable if "the contract imposes a duty, the duty is breached, and the breach proximately causes damage to the claimant." *Nw. Indep. Forest*

Mfrs. v. Dep't of Labor & Indus., 78 Wn. App. 707, 712, 899 P.2d 6 (1995) (citing *Larson v. Union Inv. & Loan Co.*, 168 Wash. 5, 10 P.2d 557, 559 (1932)). When interpreting the intent of the parties, Washington applies the objective manifestation approach, which looks to the actual words of the writing rather than "unexpressed subjective intent." *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503–04, 115 P.3d 262 (2005). Providence asserts in its complaint that it properly submitted a clean claim, and BAS failed to pay Providence the amount for which it contracted. Compl., docket no. 6-1 at pgs. 4-5 ¶¶ 13-15. Providence has pleaded sufficient facts to overcome a motion to dismiss.

Requirement to Arbitrate

If a contract requires arbitration, such a requirement is "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." Federal Arbitration Act, 9 U.S.C. § 2 (1947). Arbitration clauses are favored federally, and within Washington state. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 301, 103 P.3d 753 (2004). If Providence is the assignee of rights under the Access Agreement, then Providence should be bound by the arbitration clause. Providence argues the wording of the contract suggests that either party may move for arbitration, which makes this an optional clause that BAS has failed to utilize. Pl.'s Resp., docket no. 16 at pgs. 13-14, July 1, 2016. However, the Ninth Circuit has refused to extend this logic to similarly worded arbitration clauses. *See Collins v. Burlington N. R. Co.*, 867 F.2d 542, 543-44 (9th Cir. 1989) (finding that arbitration was mandatory where the

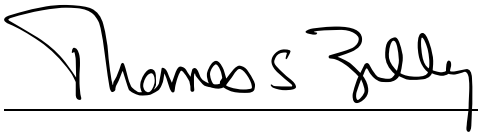
contract read: "within 20 days after the dispute arises it may be referred by either party to an arbitration committee"). Furthermore, the FAA does not dictate *when* arbitration must take place, and does not state that the parties must arbitrate first before filing suit. The FAA accommodates such a circumstance by allowing the court to stay the motion. *See* 9 U.S.C. § 3.

In sum, BAS has shown that privity exists between BAS and Providence for the purposes of upholding the Access Agreement, and because there is privity, Providence has agreed to arbitrate.

Conclusion

1. Defendant's motion to dismiss is DENIED;
2. Pursuant to the terms of the Access Agreement between the Plaintiff and Defendant, the alternative motion to compel arbitration is GRANTED, and the proceedings in this matter are STAYED.
3. The parties are DIRECTED to file a Joint Status Report within fourteen (14) days after completion of arbitration or by March 1, 2017, whichever occurs earlier.

Dated this 11th day of October, 2016.



Thomas S. Zilly
United States District Judge