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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

GLACIER COUNTY,

Plaintiff,

vs.

UNITED STATES OF AMERICA, by and
through the INDIAN HEALTH
SERVICE, and BRYCE REDGRAVE,
DIRECTOR OF THE BILLINGS AREA
INDIAN HEALTH SERVICE, in his
official capacity,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
JUDGMENT AND RELATED RELIEF**

For its complaint, Plaintiff Glacier County (the “County”), by and through its undersigned County Attorney, avers and states as follows:

PARTIES

1. The County is a political subdivision of the State of Montana, and is authorized to bring this action pursuant to Mont. Code Ann. §7-1-2103(1).
2. Defendant United States of America, acting by and through the Indian Health Service (“IHS”), is charged by law with the duties and obligations of a fiduciary in the management and administration of the Indian Health Service.
3. Defendant Bryce Redgrave is the Director of the Billings Area IHS, and is sued in that capacity.

VENUE AND JURISDICTION

4. The Court has jurisdiction over this action under 28 U.S.C. § 1331 because the action arises under the laws of the United States.
5. The Court has supplemental jurisdiction of the claim for breach of contract stated herein (Count III) pursuant to 28 U.S.C. § 1367.
6. The Court has authority to grant the relief sought in this action pursuant to 28 U.S.C. § 2201 (Declaratory Judgment Act) and 28 U.S.C. § 1361 (mandamus against officer of the United States).
7. Venue is proper in this district under 28 U.S.C. §§ 1391(e)(1)(b).
8. An actual case or controversy has arisen between the parties concerning the interpretation of regulations pursuant to which the County provides emergency medical services (“EMS”) to IHS under a contract between the County and IHS. IHS has refused to pay for EMS services in reliance on its interpretation of applicable regulations. The County believes that IHS’s interpretation is incorrect, and seeks to require IHS to pay for services provided by the County’s EMS under the contract.

GENERAL ALLEGATIONS

9. The IHS operates the Blackfeet Community Hospital as part of the Blackfeet Service Unit of the Billings Area IHS.
10. For a number of years, the Blackfeet Service Unit has contracted with the County EMS to provide contract health services to IHS.
11. The services County EMS has provided to IHS at all times material to this action consist in transporting patients from IHS facilities in the Blackfeet Service Unit by ambulance to non-IHS facilities, and providing care in transport.

12. The current contract (the “Contract”) between County EMS and IHS sets out the agreed rate for services provided by EMS, and provides that IHS will apply these rates “to obtain services [from EMS] not available at the IHS Service Units.” The current Contract describes the same payment procedure, discussed below, as past contracts between IHS and EMS for provision of contract services.
13. 42 U.S.C. § 2001 authorizes the Secretary of DHHS to supervise and direct the operation of IHS hospital and health facilities. 42 U.S.C. § 2003 authorizes the Secretary to make regulations to carry out the provisions of 42 U.S.C. §§ 2001 et seq.
14. Regulations promulgated under authority of 42 U.S.C. § 2003 are found in Title 42 of the Code of Federal Regulations (“CFR”), Section 136. The Contract incorporates these regulations (the “Regulations”) by reference.
15. Subpart C of the Regulations addresses contract health services like those the County EMS provides to IHS in the Blackfeet Service Unit. Subpart C defines “contract health services” as “health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service.” 42 CFR § 136.21(e).
16. The dispute between the County and the Defendants concerns 42 CFR § 136.24, which is titled “Authorization for contract health services” and prescribes procedures for payment of providers of contract health services. This regulation provides in pertinent part as follows:
 - (a) No payment will be made for medical care and services obtained from non-Service providers or in non-Service facilities unless the applicable requirements of paragraphs (b) and (c) of this section have been met *and a purchase order for the care and services has been issued by the appropriate ordering official to the medical care provider.*
 - ***
 - (c) In emergency cases, a sick or disabled Indian, or an individual or agency acting on behalf of the Indian, or the medical care provider shall within 72 hours after the beginning of treatment for the condition or after admission to a health care facility notify the appropriate ordering official of the fact of the admission or treatment, *together with*

information necessary to determine the relative medical need for the services and the eligibility of the Indian for the services.

(Emphasis added.)

17. The term “appropriate ordering official” is defined as “the ordering official for the contract health service delivery area in which the individual requesting contract health services or on whose behalf the services are requested, resides.” 42 CFR § 136.21(e). The “medical care provider” for purposes of this regulation is EMS.
18. The determination whether an individual is eligible for IHS services is made pursuant to criteria in 42 CFR § 136.12(a). Subsection (b)(1) provides that “[i]n case of doubt as to whether an individual applying for care is within the scope of the program, the medical officer in charge shall obtain from the appropriate BIA [Bureau of Indian Affairs] officials in the jurisdiction information that is pertinent to his/her determination of the individual’s continuing relationship to the Indian population group served by the local program.” The “medical officer in charge” to which this regulation refers is an IHS official.
19. In 2018, IHS stated it was to withhold payment to EMS on grounds that County EMS had not provided notice to “the appropriate ordering official of the fact of the admission or treatment, together with information necessary to determine the relative medical need for the services and the eligibility of the Indian for the services,” citing 42 CFR § 136.24(c). IHS informed EMS that, “in order to make payment on the individual EMS [ambulance] runs . . . the agency requires actual documentation such as purchase orders (or purchase order numbers) and CMS claim forms.” IHS stated that its “staff continue to work to locate such supporting evidence.” *See* email from Gary Fahlstedt, Assistant Regional Counsel, DHHS, Sept. 30, 2019, to County Attorney Terryl Matt (the “IHS Email”), a copy of which is attached to this Complaint as Exhibit 1.

20. As described below, IHS is responsible for issuance of purchase orders. EMS cannot submit CMS claim forms without information it requires from IHS as reported on the purchase orders.
21. The Contract provides a payment procedure whereby the “IHS Purchased Referred Care (PRC) offices will request the services and obligate the funds on the IHS-T-843-1A, Purchase-Delivery Order for Health Services.” A copy of the Contract is attached to this Complaint as Exhibit 2. A copy of Form IHS-T-843-1A is attached to this Complaint as Exhibit 3. This is the form of purchase order to which the IHS Email refers (the “Purchase Order”).
22. Instructions for the Purchase Order state that “[d]ata items 1 through 28 are normally completed by the IHS facility placing the order.” The Instructions explain that the Purchase Order must state “[t]he amount of funds obligated by the IHS facility when it issued the order for services” (Item 8), certain “fiscal information for internal IHS use” (Items 9 and 10), the dates on which the contract provider is authorized to perform the services (Item 11), the services authorized (Item 12), the “diagnosis or reason why the patient is being referred to the provider” (Item 12), and “[t]he name of the IHS physician or dentist in the IHS ordering facility who referred the patient for the authorized services” (Items 14 and 15). It must identify the contract with the contract provider, and include the “[t]itle and signature of the IHS official authorizing the services” (Items 15, 20 and 21).
23. These Instructions make clear that the referring facility is responsible for determining eligibility of the patient and referring the patient for contract services, and for issuing the Purchase Order. Nevertheless, IHS has disclaimed responsibility for issuing Purchase Orders to EMS on grounds that “IHS health care staff in the Emergency Department, or staff

providing health care services in any other component of the IHS facility . . . have no purchasing or contracting authority.” IHS claims that none of these individuals is “the appropriate ordering official under” 42 CFR § 136.24(c).

24. While it may be true that a doctor or other IHS staff member is not “the appropriate ordering official,” the Contract provides that the “IHS Purchased Referred Care (PRC) offices *will request the services and obligate the funds on the IHS-T-843-1A, Purchase-Delivery Order for Health Services.*” (Emphasis added.)
25. EMS acknowledges that it must provide notification of a claim to the appropriate ordering official under 42 CFR § 136.24(c), including information as to the patient’s eligibility for services, in order to obtain payment. However, EMS is unable to do so without a Purchase Order.
26. 42 CFR § 136.201 provides that “[n]otification of a claim means, for the purposes of part 136, . . . the submission of a claim that meets the requirements of 42 CFR 136.24.” This regulation requires that the claim “[v]erify *prior authorization by the IHS* for services provided (*e.g.*, IHS purchase order number or medical referral form) or exemption from prior authorization.” (Emphasis added.) This prior authorization from IHS incorporates its determination that the patient was eligible for IHS medical care.
27. The notification of claim required by 42 CFR § 136.201 “must be in a format that complies with the format required for submission of claims under title XVIII of the Social Security Act . . . or recognized under section 1175 of such Act.” These are the CMS claims to which the IHS Email refers. There is a difference between the Purchase Order, pursuant to which IHS authorizes the provision of services to individuals it has determined to be eligible for care, and the notification of claim required of EMS.

28. The Purchase Order further clarifies the intended procedures. Only Items 26 through 29 of the Purchase Order provide for completion by the provider—in this case, EMS. The provider is responsible for providing information *in its possession*, such as the agreed rate, if IHS did not specify it in Item 18 (Item 28), the provider’s name and address, and certification that the “authorized services” have been provided (Item 29). The provider then submits the Purchase Order *that it is supposed to have received from IHS* with the CMS forms 1450-1500. A sample Form 1500 is attached to this Complaint as Exhibit 4.
29. The purported inability of IHS to make payment to County EMS because it does not have “actual documentation such as purchase orders (or purchase order numbers) and CMS claim forms” is the fault of IHS, not EMS. Unless and until IHS provides the Purchase Orders, EMS cannot comply with the requirements for notification of claim.
30. It is not clear why IHS does not have ready access to purchase orders that it was required to generate pursuant to the Contract and the Regulations. On information and belief, IHS does not have ready access to purchase orders because they failed to generate them at the time they requested contract services from County EMS.
31. Thus, as stated in the IHS Email, IHS is attempting to locate documentation to enable it to pay the claims EMS has submitted to it as best EMS was able to do, without the necessary purchase orders. While the IHS Email seeks to attribute the absence of necessary documentation to County EMS, in fact it is IHS which has failed in its responsibilities to its contract provider under the Contract and the Regulations.
32. In addition to attributing the absence of necessary documentation to EMS, Mr. Fahlstedt warned the County in the IHS Email that any legal action against IHS would delay payment further because “IHS staff currently working toward resolution of the second list [of

payments due EMS] will necessarily have a substantial amount of their time and effort diverted to the task of providing necessary data and materials to the AUSA who would be assigned to the case.” He concluded that, “[w]hile I understand that waiting for completion of the review process requires significant patience, it is still the fastest route to a full and fair resolution of the County’s payment request.”

33. In August 2019, before Mr. Fahlstedt sent the IHS Email in which he represented that IHS staff was hard at work to resolve the problems [caused by IHS], IHS had informed the County that it intended to hire four additional staff members to work on documentation. On information and belief, IHS retained one additional person, who worked for only one or two months on this project and applied for a janitorial position at the Indian Health Service.
34. This dispute between the County and the Defendants has resulted in nonpayment of more than \$1.8 million in services provided by County EMS between 2014 and 2018.
35. As a result of the nonpayment of EMS claims, EMS faces financial crisis. The County has determined that, absent prompt payment sufficient to cover necessary expenses, including payroll, it must lay off 11 County employees who work for EMS, and run County EMS with volunteer staff.

CLAIMS FOR RELIEF

COUNT I: Declaratory Judgment

36. The County incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.
37. An actual, present and justiciable controversy has arisen between the County and the Defendants concerning payment by IHS of services provided by the County EMS.

38. The County seeks judgment from this Court, pursuant to 28 U.S.C. § 2201, declaring that the County's interpretation of 42 CFR § 136.24 is correct, and that IHS is required to submit Purchase Orders to EMS to enable EMS to provide notification of claim as required by the Regulations.
39. The County seeks further relief based on such declaratory judgment, pursuant to 28 U.S.C. § 2202, requiring IHS to provide Purchase Orders to EMS forthwith for all patients referred to EMS from the Blackfeet Service Unit under the Contract, or any predecessor contract, for the period 2014 through 2018.

COUNT II: Mandamus

40. The County incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.

The County seeks judgment from this Court, pursuant to 28 U.S.C. § 1361, requiring the named Defendants, in their official capacities, to make immediate payment of all CMS Forms submitted to IHS by EMS with Purchase Orders respecting all patients referred to EMS from the Blackfeet Service Unit under the Contract, or any predecessor contract, for the period 2014 through 2018.

COUNT III: Breach of Contract

41. The County incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.
42. IHS has failed to honor its obligation under the Contract, and any predecessor contract, for the period [date range] by failing to submit Purchase Orders as required therein.
43. The County has suffered damages as a result of IHS's breach of its promise to EMS.
44. The County is entitled to recover all damages occasioned by such breach, together with interest at the applicable legal rate, from date of breach through date of payment.

COUNT IV: Injunctive Relief

45. The County incorporates by reference the allegations set forth in the preceding paragraphs of this Complaint.
46. The County has no control over the promptness with which IHS will provide Purchase Orders that will enable EMS to submit notification of claims. In the meantime, the refusal and failure of IHS to have honored its obligations under the Regulations and the Contract threatens to cause irreparable injury to the County, EMS, and the County residents served by EMS, many of whom also are Native Americans.
47. Neither the eventual payment of claims purchase to Purchase Orders and notifications of claims, nor money damages for breach of contract, are sufficient to compensate the County for the threatened injury.
48. Balancing the hardship between IHS, the equities favor granting injunctive relief to the County pending resolution of this action. The IHS has not claimed inability to pay because of lack of available funds, but rather because of lack of documentation. Meanwhile, due to IHS's failure to comply with its own responsibility for documentation, the County can no longer afford to maintain EMS services.
49. Specifically, the County seeks a mandatory injunction requiring IHS to make immediate payment to EMS in an amount no less than \$1,800,000, to enable EMS to continue to provide necessary services pending resolution of this action. The County will undertake to offset this payment against payments due EMS as and when IHS has provided Purchase Orders, and EMS has submitted notification of claims, equaling that amount.
50. The injunctive relief sought by the County is in the public interest, given the harm likely to result from the inability of the County to provide reliable, professionally staffed emergency services to its residents.

51. The County intends to file a motion pursuant to Fed.R.Civ.P. 65 seeking the preliminary relief outlined above.
52. The County also seeks permanent injunctive relief, requiring IHS to submit timely Purchase Orders to EMS and to make timely payment on notifications of claims submitted by EMS with such Purchase Orders.

PRAYERS FOR RELIEF

WHEREFORE, the County prays that this Court:

1. Upon the County's filing of a motion for preliminary injunctive relief, conduct a hearing on such motion and issue a mandatory preliminary injunction requiring lump-sum payment by the IHS pending resolution of this action;
2. Enter judgment against the Defendants as to Count I, declaring that 42 CFR § 136.24 requires IHS to provide Purchase Orders to County EMS to enable EMS to issue notification of claims as required by the Regulations, and requiring Defendants to provide Purchase Orders to EMS forthwith for all patients referred to EMS from the Blackfeet Service Unit under the Contract, or any predecessor contract, for the period 2014 through 2018;
3. Enter judgment against the Defendants as to Count II, requiring the named Defendants, in their official capacities, to make immediate payment of all CMS Forms submitted to IHS by EMS with Purchase Orders respecting all patients referred to EMS from the Blackfeet Service Unit under the Contract, or any predecessor contract, for the period 2014 through 2018;
4. Enter judgment against the Defendants as to Count III for breach of contract;

5. Award the County all damages occasioned by such breach, together with interest at the applicable legal rate, from date of breach through date of payment.
6. Enter judgment against Defendants as to Count IV in the form of a permanent injunction requiring IHS to submit timely Purchase Orders to EMS and to make timely payment on notifications of claims submitted by EMS with such Purchase Orders following entry of judgment.
7. Award the County its costs of suit; and
8. Grant such other and further relief as may appear just and equitable.

Dated: December 17th, 2019

/s/ Terryl Matt
Terryl Matt
Glacier County Attorney