DISTRICT COURT, LAS ANIMAS COUNTY, COLORADO 200 E. 1st Street, Room 304 Trinidad, Colorado 81082	DATE FILED: November 23, 2022 4:55 PM CASE NUMBER: 2021CV30053
Plaintiff: TRINIDAD AREA HEALTH ASSOCIATION d/b/a MT. SAN RAFAEL HOSPITAL, a Colorado nonprofit corporation, v. **Defendant:** TRINIDAD AMBULANCE DISTRICT, a Colorado special district.	**▲COURT USE ONLY▲** Case No. 2021CV030053 Division: D
FINDINGS AND ORDER	

This matter came before the court for a bench trial on July 26 and 27, 2022. Jamie Steiner and Tessa Carberry appeared for Plaintiff, Trinidad Area Health Association, doing business as Mount San Rafael Hospital. Les Downs appeared for Defendant, Trinidad Ambulance District. The Court has considered the witness testimony, admitted exhibits, and arguments of counsel and finds and concludes as follows:

1. The Service Plan obligates Trinidad Ambulance District to provide 24-hour coverage for the completion of both 911 emergency calls and interfacility transfers.
2. The Service Plan obligates Trinidad Ambulance District to contract with Trinidad Area Health Association regarding interfacility-transfer procedures.
3. The restrictions TAD placed on interfacility transfers amount to a reduction of services and a material modification of the Service Plan, and TAD did not obtain approval from the Las Animas Board of County Commissioners before implementing those restrictions. The court enters judgment in favor of Plaintiff and against Defendant on Plaintiff's claim for a declaratory judgment.

4. But it is not practicable for Trinidad Ambulance District to conform with unrestricted provision of IFTs, as required by the Service Plan, due to changed circumstances resulting in safety concerns for patients, crew, and Las Animas County citizens; therefore the court cannot compel such conformance, and Plaintiff's request for an injunction is DENIED.
5. Nonetheless, TAD must conform its performance of IFTs to the Service Plan, as far as practicable, and may only restrict its services based on bona fide safety issues resulting from an increased number of IFTs to more distant hospitals and only to the extent that those limitations are required to reduce those safety concerns.

PROCEDURAL HISTORY

Plaintiff is seeking a declaratory judgment per C.R.C.P. 57 that Defendant has materially modified its Service Plan without the requisite board of county commissioner approval in violation of C.R.S. 32-1-207(2)(a), warranting injunctive relief under C.R.S. § 32-1-207(3)(a). Plaintiff filed its Motion for Preliminary Injunction on November 18, 2021, and after several continuances of the injunction hearing, the Court consolidated the hearing with a trial on the merits per C.R.C.P. 65(2).

FINDINGS OF FACT

Parties and Background

Trinidad Area Health Association (TAHA) operates Mount San Rafael Hospital (MSRH). John Tucker served as the CEO of Mt. San Rafael Hospital (MSRH) from August of 2015 until July of 2022 and initiated this lawsuit against Trinidad Ambulance District (TAD). MSRH's emergency department serves approximately 800 patients per month, and all of its physicians are board certified in Emergency Medicine.

In 1989 the Las Animas County Board of County Commissioners approved the Service Plan at issue in this case, and the District Court approved the petition for creation of the Trinidad Ambulance District pursuant to the Special District Act. TAD is the only ambulance service in Las Animas County, and the Service Plan defines the services it is to provide the district.

TAD responds to 911 emergency calls within the district and transports those patients to MSRH. TAD also transports patients from MSRH to other hospitals when they need a higher level of care or medical testing that can't be completed at MSRH. These transports are referred to as interfacility transfers (IFTs). TAD has always completed IFTs for MSRH and continues to do so.

At the heart of this case is TAD's obligation, if any, to conduct IFTs for MSRH and whether recent restrictions that TAD has placed on IFTs amount to a material modification of the Service Plan allowing the Court to issue an injunction against TAD. Neither party disputes the validity of the Service Plan, but each side has competing interpretations of what it requires of TAD with respect to completing IFTs.

Interfacility Transfer Process

At issue in this case are IFTs for patients requiring a higher level of care than MSRH can provide. When a physician or other medical provider makes that determination, MSRH contacts other hospitals to see if they can accept the patient. The MSRH physician or medical provider will communicate with a physician at the receiving hospital who agrees to accept the patient and to transport by ambulance. MSRH then contacts 911 and informs the dispatcher that there is a patient needing a transfer. The 911 dispatcher notifies TAD who reports to the hospital to conduct the transport via ambulance.

The MSRH physician or provider must complete a Physician Certification Statement (PCS form) attesting that a transfer by ambulance is "medically necessary" based on their evaluation of the patient. Medical necessity is established when a patient's condition is such that any other form of transportation would be inadvisable. The elements of the PCS form come from the centers for Medicare and Medicaid services, and are not created by TAD or MSRH.

TAD provides most of MSRH's IFTs, but MSRH uses other ambulance providers when TAD is unavailable. This occurs a handful of times per month. The two nearest ambulance services are at least a one-hour drive away and are not required or guaranteed to respond to MSRH.

TAD Operations

TAD operates two ambulances with six crews. Two of those crews are on shift 24 hours a day with a third crew on call. This way there is always a backup crew if a second call comes in while

another crew is responding to an emergency call or making a interfacility transfer. There are typically over 2000 requests for service from 911 calls per year. TAD also completes over 400 IFTs per year. TAD believes that as the only ambulance provider in the area it makes sense for it to complete IFTs for MSRH.

TAD's annual revenue is approximately $2 million which includes taxpayer funds. TAD does not make money from IFT's. At some point after 2015, TAD's tax revenue decreased making recovery of its fee for completing IFTs more important to TAD's funding. One of the responsibilities of TAD's Executive Director is to ensure that TAD is getting reimbursed for the IFTs that it completes. In 2021, TAD suffered a staffing shortage in which it did not have enough paramedics for regular operations.

Service Plan

The pertinent language of TAD's Service Plan, incorporated by reference, is as follows:

> Purpose: To provide for the treatment and transporta[t]ion of the sick, injured, or otherwise incapacitated or helpless. The district will not discriminate against those in need of ambulance service due to race, religion, national origin or the ability to pay for said services. The general location of the facility will be maintained within the boundaries of the district. The district will provide 24 hour coverage. Employees of the district will meet the minimum requirements for ambulance personnel as set by the State of Colorado. The district will adhere to the minimum essential equipment list, or greater, as required by the State of Colorado.
>
> Contract with Trinidad Health Association: Trinidad Ambulance District will enter into contract with TAHA for transportation of Medicare patients under the rules of the Federal Medicare Act and DRG. See Attachment.

The Service Plan's projected budget for TAD does not include any income from MSRH or any subsidizing of TAD's services by MSRH. Additionally, there is no other language in the Service Plan that contemplates MSRH subsidizing IFTs for TAD. No contract between TAHA and TAD was attached to the Service Plan because the parties never contracted until 2021.

TAD's Performance of IFTs

Until February of 2019, TAD operated a van service for the transport of dialysis patients from MSRH to the hospital in Walsenburg, CO for dialysis treatment as MSRH had discontinued

dialysis treatment. This service was able to generate some income for TAD, but eventually all but one of the patients passed away and TAD discontinued the service as it was no longer financially viable.

TAD has always provided IFT service for Las Animas County; however, prior to 2018, it was not placing any restrictions on those transfers. TAD always accepted the patients for IFTs and transported them regardless of destination or hour of the day. Prior to 2018, ninety to ninety five percent of IFTs went to Pueblo, Colorado, the nearest hospital to MSRH, but by 2019 that was no longer the case. It became more difficult for MSRH to get patients admitted to a hospital in Pueblo which resulted in longer transfers to other hospitals farther north. IFT's beyond Pueblo can keep the crew on shift additional hours. Crews work 24-hours shifts and an IFT to Colorado Springs or Denver near a scheduled shift change would significantly extend the crew's shift and the hours that they are awake beyond 24 hours. This creates a safety risk. The Court takes judicial notice of the following facts: the distance between Trinidad, CO and Pueblo, CO is 85 miles; the distance between Trinidad, CO and Colorado Springs, CO is 128 miles; and the distance between Trinidad, CO and Denver, CO is 198 miles.

In July of 2019, TAD advised MSRH that it would no longer be transporting patients to Denver due to the recent increase in transfers to Denver and TAD's prioritization of crew availability for local 911 emergency response. This decision was based on a situation in which three 911 calls came in within minutes of each other which required all three of TAD's crews to respond. Then a fourth call came in for an injured firefighter, and response time to that call was delayed because all of the crews were on other calls. TAD's concern was that if a crew had been out of town on an IFT, there would have been a significant delay in its response to the fourth call.

In August of 2019, TAD implemented an IFT schedule limiting the times and destinations for IFTs as follows: IFTs to Pueblo, CO occurring between 5 a.m. and 8 a.m. would be held for the next shift; IFTs to Colorado Springs, CO between 3 a.m. and 8 a.m. would be held for the next shift; and ITFs to Denver occurring between 12 a.m. and 8 a.m. would require approval of TAD management and will be held for the next shift. But TAD agreed to make exceptions to this schedule in life-threatening situations. The implementation of this schedule was based on TAD's prioritization of crew availability for local 911 calls, and a concern for crew and patient safety where an IFT near shift change could keep the crew on shift and awake well beyond 24 hours.

Additionally, TAD sometimes declines an IFT to a location not directly off I-25 due to weather conditions as travel would be on two-lane roads.

As the number of IFTs to Colorado Springs and Denver increased, TAD began to push back and question the medical necessity of certain IFTs; however, MSRH concedes that TAD never refused to complete and IFT based on a disagreement regarding medical necessity. While the Court heard testimony about an incident in which TAD refused to give a patient a ride home from MSRH based on a medical-necessity dispute, the requested transport was not an IFT because the patient had already been discharged, and the transport destination was the patient's residence and not another medical facility.

There has never been a disruption in TAD's IFT service, but TAD's questioning of medical necessity or refusal to transport patients can cause delay which can lead to deterioration of a patient's condition. It has also increased the burden on MRSH staff by diverting additional man hours to trying to find transport for patients. Additionally, this can create a patient backlog in the emergency department because patients who are awaiting transport are taking up beds that another patient could be seen in.

Communications and Negotiations

In July of 2019, TAD informed MSRH that it would no longer be transporting patients to hospitals in the Denver area due to the sharp rise in those transfers. The parties engaged in communications regarding TAD's request to contract with TAHA for MSRH to be the payor of last resort in instances where Medicare/Medicaid denies payment to TAD because the patient does not meet medical necessity for the ambulance transport despite MSRH's PCS form attesting to medical necessity. TAD's terms were not acceptable to MSRH because it denies that it ever requests IFTs via ambulance for patients that do not meet medically necessity. Nor does MSRH believe that it is their responsibility to pay TAD.

At some point in 2019, TAD informed MSRH that it would stop IFTs all together beginning in 2020 because it thought that would spur negotiation on the issue. Because of this, MSRH engaged in discussions with AMR, an alternate ambulance provider, regarding AMR taking over most of the IFTs in the event that TAD discontinued those transfers. AMR's proposed contract price was $800,000 And contained a provision requiring that MSRH agree to be the payor of last

resort. MSRH did not contract with AMR. TAD subsequently rescinded its decision to cease IFTs but continued to push for a contract with TAHA.

In 2021, due to staffing issues at TAD that affected TAD's ability to conduct IFTs, the parties entered in a temporary agreement in whereby the hospital paid an additional $50/hour stipend for paramedics to work on their days off to incentivize additional coverage. The agreement expired on October 21, 2021, and TAD never sought to have it renewed. This was the only written agreement between the parties. The agreement was successful in helping the staffing shortage, but it had the unintended consequence of adding additional costs to TAD that included paying the paramedics an overtime rate and an increased CORA match.

Defense counsel then sent a letter to MSRH proposing that the stipend be increased to $125/hour and re-raising the medical-necessity issue. When no response was received from MSRH. Defense counsel sent a second letter stating that TAD would begin implementing the $125/hour billing scheme.

Payment for IFTs

In order to obtain payment for IFTs, TAD must bill Medicare, Medicaid, or the patient's private insurance. It is the physician or medical provider's certification on the PCS form that the patient's transport by ambulance is "medically necessary" that allows TAD to bill the patient's insurer for the transport.

An ambulance company cannot bill Medicare/Medicaid for a transport if the patient can be transported by any other means without risking harm to the patient, whether or not such means are available. If the patient could be transported by alternative means but is nonetheless transported by TAD, then TAD can't get paid for that transport. If the PCS form doesn't accurately reflect the patient's condition then TAD's bill for service could be denied.

When a healthcare provider becomes a Medicare and Medicaid provider, it enters into an agreement regarding what it will be paid for certain services and what it will bill for a service, and it agrees to accept the Medicare/Medicaid reimbursement as payment in full for the service provided. Balance billing is an unauthorized practice in which a medical provider attempts to bill the patient or other party for the difference between the insurance reimbursement and the total

bill. Plaintiff contends that by billing MSRH for IFTs TAD wasn't fully reimbursed on, TAD is engaging in balance billing.

In the past, the only service TAD would bill the hospital for was the transportation of patients for testing at another facility when a machine was down at MSRH, which the hospital pays because it agrees that those IFTs are not medically necessary. TAD now will send the hospital bills on a patient by patient basis, for non-medically necessary patients.

On occasion, a PCS forms does not match the patient's condition at the time of transport, and Medicare sometimes rejects bills after finding that the transport was not medically necessary despite the fact that the PCS form says it was. When Medicare rejects TAD's bill under these circumstances, TAD feels that the hospital should pay TAD for those bills.

LEGAL AUTHORITY

Special Districts

Title 32, Article 1, of the Colorado Revised Statutes governs the organization and operation of Special Districts in our state. The general assembly has declared that "organization of special districts providing the services and having the purposes, powers, and authority provided in this article will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the State of Colorado." C.R.S. 32-1-102(1). Special districts are political subdivisions of the state that possess proprietary powers. *Indian Mountain Corp. v Indian Mountain Dist*., 412 P.3d 881, 892 (Colo. App. 2016). But they possess only those powers expressly conferred on them. *Id*. An "ambulance district" is a "special district which provides emergency medical services and the transportation of sick, disabled, or injured persons by motor vehicle, aircraft, or other form of transportation to and from facilities providing medical services." C.R.S. 32-1-103(1).

A proposed special district must submit a service plan, which contains a description of a district's services, to the local board of county commissioners for approval. C.R.S. 32-1-203. After the court approves the organization of a special district, its services shall conform as far as practicable to the approved service plan. C.R.S. 32-1-207(1). Thereafter, any "material modifications of the service plan as originally approved may be made by the governing body of

such special district only by petition to and approval by the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district. . . .” C.R.S. 32-1-207(2)(a). This statute goes on to explain that the type of modifications requiring the above approval are

> changes of a basic or essential nature, including but not limited to the following: Any addition to the types of services provided by the special district; a decrease in the level of services; a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area.

Id.

Any material departure from the service plan which constitutes a material modification thereof “may be enjoined by the court approving the organization of such special district upon its own motion, upon the motion of the board of county commissioners or governing body of a municipality from which a resolution of approval is required by this part 2, or upon the motion of any interested party as defined in section 32-1-204(1).” C.R.S. 32-1-207(3)(a).

In sum, A court can compel special districts to comply with mandatory terms of their services plans as far as it is practicable for them to do so. *Plains v Ken-Caryl*, 250. P.3d 697, 700 (Colo. App. 2010). “And where the material departure from a service plan involves inexcusable action, such relief may take the form of a mandatory injunction.” *Id.*

Interpretation of a Service Plan

In interpreting a service plan, courts look to the language of the plan and give effect to its plain and ordinary meaning. *Indian Mountain Corp. v Indian Mountain Dist*., 412 P.3d 881 (Colo. App. 2016). This is the same approach taken in contract interpretation. Under Colorado law, “the primary goal of contract interpretation is to determine and effectuate the intent and reasonable expectations of the parties.” *Copper Mountain, Inc. v. Industrials Sys., Inc*., 208 P.3d 692, 697 (Colo. 2009). “To determine the intent of the parties, the court should give effect to the plain and generally accepted meaning of the contractual language.” Id. “The court should interpret a contract ‘in its entirety with the end in view of seeking to harmonize and to give effect to all provisions so that none will be rendered meaningless.”’ *Id*. (quoting *Pepcol Mfg. Co. v. Denver*

Union Corp., 687 P.2d 1310, 1313 (Colo. 1984)). "The court should ascertain the meaning of the contract by examining 'the entire instrument and not by viewing clauses or phrases in isolation."' Id. (quoting U.S. Fidelity & Guar. Co. v. Budget Rent-A-Car Sys., Inc., 842 P.2d 208, 213 (Colo. 1992)).

When a document is unambiguous, it cannot be varied by extrinsic evidence; on other hand, written documents containing ambiguities or unclear language must be construed in accordance with the intent of parties, and relevant extraneous evidence may be considered to resolve factual question of parties' intent. *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911-912 (Colo. 1996). A contract is ambiguous when it can reasonably have more than one meaning. *Cheyenne Mountain School District #12 v. Thompson*, 861 P.2d 711 (Colo. 1993). The extrinsic evidence a trial court considers may include "any pertinent circumstances attendant upon the transaction, including the conduct of the parties under the agreement." *ADT Security v Premier Home Pro*., 181 P.3d 288, 296 (Colo. App. 2007) quoting *Pepcol Mfg. Co. v Denver Union Corp.* 687 P.2d 1310, 1314 (Colo. 1984).

Declaratory Judgment

Declaratory judgments are governed by C.R.C.P. 57 and C.R.S. 13-51-101 *et seq.* The purpose of declaratory judgments is to "settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." C.R.S. §13-51-102.
A declaratory judgment action properly resolves an existing question or legal controversy. *Farmers Ins. Exchange v. District Court*, 862 P.2d 944, 947 (Colo. 1993).

The Court has discretion in determining whether to afford declaratory relief. *Zab, Inc. v. Berenergy Corp.*, 136 P.3d 252, 261 (Colo. 2006). The Court should exercise its discretion to enter a declaratory judgment when "(1) 'the judgment will serve a useful purpose in clarifying and settling the legal relations in issue' and (2) 'when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." ' *Id.* (*quoting People ex rel. Inter-Church Temperance Movement of Colo. v. Baker*, 297 P.2d 273, 277 (Colo. 1956)).

ARGUMENTS OF THE PARTIES

Plaintiff contends that TAD's actions constitute a material modification of the Service Plan because TAD has decreased the level of services required by the Service Plan and because billing MSRH demonstrates a decrease in TAD's financial ability to discharge its existing or proposed indebtedness.

Plaintiff reads the language defining TAD's purpose to obligate TAD to complete both emergency transports to MSRH and to complete any IFTs 24-hours a day. As such, Plaintiff submits that any limitation TAD places on the times it will conduct IFTs or on the locations to which it will travel for IFTs constitutes decrease in its level of services and is therefore a material modification of the Service Plan or the historic "status quo" per C.R.S. 32-1-207(2)(a). Additionally, Plaintiff argues that TAD's billing of MSRH for IFTs is a material modification because it demonstrates a decrease in TAD's financial ability to discharge its existing or proposed indebtedness by attempting to obtain income from MSRH for the required level of services.

As to the Service Plan language requiring TAD to contract with TAHA for the transportation of Medicare patients, Plaintiff maintains that there exists no extrinsic evidence as to what this provision refers to, and there is no evidence that any such contract is a precondition of TAD completing ITFs under the Service Plan.

TAD argues that the Service Plan does not obligate it to complete IFTs, but it does them anyway because TAD is the ambulance provider for the district and it believes that it has a moral obligation to complete IFTs. It argues that the Service Plan's "purpose" language refers only to emergency 911 transports to MSRH. Its only obligation as to IFTs, it argues, is to contract with TAHA for completion of IFTs, and absent a contract it contends, it has no obligation to complete IFTs. TAD believes that it could discontinue IFTs if it chose but it states that it intends to continue to complete IFTs for MSRH. It argues that it had to place restrictions on them due to patient and crew safety. TAD argues that threatening to discontinue IFTs does not amount to a material modification where it continues to do them.

CONCLUSIONS OF LAW

Special District and Interpretation of the Service Plan

TAD is a Special District created pursuant to the Special District Act. TAHA is an interested party under C.R.S. 32-1-204(1) and has standing to move for the requested injunction and declaratory judgment. TAD's Service Plan obligates TAD to provide 24-hour coverage for the purpose of completing 911 transports and IFTs and requires TAD to contract with TAHA regarding IFTs as explained below.

The Service Plan is ambiguous because it can reasonably have more than one meaning as to TAD's transportation obligations. In stating the purpose of TAD is "[t]o provide for the "treatment and transportation of the sick . . . ." the Service Plan does not define what type of transportation it is referring to, and it is not plainly ascertainable from the document itself what type of transportation is being referenced or what originating and destination locations are contemplated by that transportation. The purpose language does not differentiate between 911 calls and IFTs.

The document can be read to obligate TAD to complete 911 transports to MSRH and IFTs for MSRH unconditionally, as argued by Plaintiff, or to obligate TAD to transport only 911 patients to MSRH with a requirement only to contract with TAHA for IFTs, as argued by Defendant. It could also be read to obligate TAD to both types of transports with a requirement to contract with TAHA as to the procedures surrounding IFTs. As such, the court may consider extrinsic evidence of the drafter's intent in order to ascertain the meaning of the document. In doing so, the court can also look to the parties' conduct.

The definition of "ambulance district" was added to the Special District Act in 1983, was in place in 1989 when the Service Plan was drafted, and remains a part of the Act today. Furthermore, the definitional language has not changed. The court takes judicial notice of 32-1-103(1), C.R.S. 1989 and looks to that language as extrinsic evidence of the Service-Plan drafter's intent. The court concludes that the drafter intended TAD's purpose and operations to align with, and not contradict, the "ambulance district" definition contained in the Special District Act under which TAD was formed, there being no evidence to the contrary.

Under C.R.S. 32-1-103(1), an ambulance district provides two services- "emergency medical services" and "the transportation of the sick . . . ." The statute then defines the scope of that transportation. It states that the transportation will be "*to and from* facilities providing medical services." *Id*. emphasis added. IFTs are contemplated by the statutory definition because an IFT is a transport of a sick patient *from* one facility providing medical services *to* another facility providing medical services. By including "from," as opposed to just "to," the statue requires more from an ambulance district than simply transporting sick patients to the hospital after a 911 call; it requires interfacility transfers as well.

The court concludes that the Service Plan's "purpose" language, which includes the ". . . transportation of the sick . . .," refers to transportation "to *and from* facilities providing medical services" because the court does not assume that the drafter intended to create an ambulance district that could provide fewer services (only 911 transports) than those contemplated in the Special District Act's statutory definition of "ambulance district" based on the nonoccurrence of a condition requiring a contract with TAHA, without indicating that intent in the Service Plan. Because the Service Plan contemplates that TAD was to be the only ambulance district in the area, any reading of the Service Plan to mean that TAD was only conditionally required to complete IFTs does not make sense because, absent the fulfillment of the condition (contracting with TAHA) MSRH would be left with no local ambulance service to handle such transfers if TAD chose to stop IFTs as it has threatened to do. Such a situation would not serve to promote the health, safety, prosperity, security, and general welfare of the inhabitants of the ambulance district.

As for the provision requiring TAD to contract with TAHA for the transportation of Medicare patients, the court concludes that it can only refer to either 911 calls or IFTs because an ambulance district, by definition, only completes these two types of transports. It does not make sense that this provision refers to emergency calls because at no time during a 911 response does TAD inquire as to as to a patient's insurance status or differentiate a patient transport by any known insurance affiliation; the determination of a patient's insurance status only occurs after they are transported to the hospital. As such, this provision must refer to IFTs. But it would not make sense that TAD would require a separate contract for only Medicare-patient IFTs, and there is no evidence, extrinsic or otherwise, that would explain such an interpretation. As such,

the court concludes that the "contract" provision refers to all IFTs regardless of insurance provider and requires TAD to contract with MSRH regarding IFTs.

The court's interpretation of the "contract" provision to require a contract regarding IFTs is not incongruent with the court's finding that the TAD's purpose language already obligates it to complete IFTs where the point of the contract requirement is not to create an obligation with respect to IFTs, as TAD argues, but to define any procedures surrounding the IFT process; the two provisions can be read in harmony this way without rendering the "contract" provision meaningless.

Further, the parties' conduct is consistent with an interpretation of the service plan that obligates TAD to complete IFTs. For 30 years TAD has completed emergency transports to MSRH and IFTs for MSRH consistent with the definition of an "ambulance district," and it only recently posits that it was never obligated to complete them. And TAD's recent attempts to contract with MSRH, and the parties' temporary contract addressing TAD's new limited ability to complete IFTs are consistent with the court's interpretation of the Service Plan's contract provision.

Plaintiff argues that TAD is estopped from enforcing the Service Plan's contract requirement, but the evidence does not support such a finding. The evidence is insufficient to establish that prior to this dispute TAD knew that MSRH's interpretation of the Service Plan differed from its own with respect to IFTs, that MSRH was ignorant of TAD's interpretation, and that TAD delayed challenging MSRH's interpretation.

Material Modification

1. Reduction in Services

In applying the facts to the law on this issue, the court focuses on restrictions that TAD actually imposed on IFTs and ignores mere threats to limit or discontinue IFTs because mere threats do not reduce services. In doing so, the court concludes that TAD's restriction of IFTs near shift change and to destinations in Denver amount to a reduction of services, which is a material modification of the Service Plan per C.R.S. C.R.S. 32-1-207(2)(a). For 30 years TAD has completed IFTs under the Plan without restriction and with 24-hour coverage, and its new restrictions have reduced services because it does not perform at the level it once did- at the level

required by Service Plan. TAD acknowledges that its restrictions amount to a change to the "status quo" and are a departure from "business as usual," but it maintains that the status quo is not synonymous with the service plan. The court disagrees in this case. The "status quo" as to IFTs is consistent with the Service Plan requirements of 24-hour coverage without limitation.

TAD's van service does not fall within the scope of IFTs because those transports were patient-initiated rides that do not involve an ambulance transfer and are unrelated to higher-level-of-care needs; therefore, TAD's discontinuation of that service does not amount to a reduction in services under the Service Plan.

2. Practicability of Conformance

Despite finding that TAD's actions constituted a material modification of the Service Plan, the evidence established to the court's satisfaction that conformance to the service plan at the required level is no longer practicable due to a change in circumstances not attributable to TAD. The extent to which a special district must conform to the service plan is "so far as practicable." *Plains* at 700. "Thus, unless for some reason it is not practicable to do so, special districts must conform to their service plans." *Id.* Practicable is defined as "reasonably capable of being accomplished; feasible in a particular situation." *People v Chavez-Barragan*, 365 P.3d 981, 985 (Colo. 2016) citing Black's Law Dictionary (10th ed. 2014). What is 'practicable' in any given situation depends on the circumstances. *People v Barrera*, 517 P.3d 61, 66 (Colo. 2022).

The significant increase in the number of IFTs to Colorado Springs and Denver have created legitimate safety concerns for IFT patients, ambulance crews, and the citizens of Las Animas County. Completing longer-distance IFTs near the end of a shift is not practicable because doing so under circumstances that would keep the crew, including the driver, awake well beyond their 24-hour shift disregards the safety risks to the patient, the crew, and the public traveling on the IFT route. Under such circumstances, IFTs are not reasonably capable of being accomplished. Also, the sharp increase in longer distance IFTs have resulted in reduced 911 emergency-response capability for the citizens of Las Animas County for longer durations than in the past when 95% of IFTs went to Pueblo CO. It is not practicable to complete IFTs to Denver at a higher than historic levels at the expense of the safety of the Las Animas County citizens.

TAD has conformed to the Service Plan as far as is practicable under the circumstances. It continues to complete IFTs for MSRH, but TAD's conformance to the Service Plan at the level outlined therein is no longer practicable. As such, the court cannot compel such conformance. However, TAD is required to perform IFTs as far as practicable to the Service Plan and may only limit its services based on bona fide safety issues resulting from increased IFTs to more distant hospitals and only to the extent that those limitations are required to reduce those safety concerns.

The court recognizes that delaying IFTs and limiting transport distances can affect the health of MSRH patients, but the evidence established that compelled conformance to the Service Plan under the changed circumstances could create a greater risk to a greater number of individuals.

3. Decrease in Ability to Discharge Indebtedness

TAD's reduction in funding and subsequent attempts to offset that reduction by billing MSRH for IFT-related balances not covered by Medicare/Medicaid do not establish a material modification to the Service Plan because Plaintiff has not demonstrated TAD has a decreased financial ability to discharge an existing or proposed indebtedness.

Special districts have the power to borrow money and incur indebtedness by the issuance of bonds, to levy taxes and collect revenues whenever indebtedness has been incurred, and to create a fund for meeting the obligations of the district for bond repayment and interest. *Marin Metropolitan District v Landmark Towers*, 412 P.3d 620, 623 (Colo. App. 2014) citing C.R.S. 32-1-1001 and 32-1-1101. A service plan "must include a financial plan that shows 'how the proposed services are to be financed' and must display '[a]ll proposed indebtedness . . . together with a schedule indicating the year or years in which the debt is scheduled to be issued.'" *Todd Creek v Valley Bank*, 325 P.3d 591 (Colo. App. 2013).

Here, the service plan identifies how it is to be financed for the year 1990 and does not contemplate any income or subsidies from MSRH. But the Service Plan is silent as to any indebtedness, and there was no evidence presented that TAD has incurred indebtedness or intends to. The mere fact that TAD has suffered from reduced revenue and is attempting to mitigate that loss by billing MSRH does not establish a material modification. Without evidence that TAD has incurred indebtedness, evidence as to its past ability to discharge any debt from

which to measure any reduced ability, or evidence that that billing MSRH equates to a reduced ability to discharge any debt and is not merely a means to recoup payment for services rendered, the court cannot find a material modification.

4. Billing

The court heard much testimony about TAD's IFT-related billing of MSRH, its justification for doing so, and about MSRH's justification for refusing to pay those bills. But it appears that Plaintiff only raised the billing issue in support of its argument that TAD's billing of MSRH demonstrates a reduced ability to discharge indebtedness, and the court has already ruled on that. Plaintiff has not argued, nor does the court find, that these billing practices amount to a material modification of the Service Plan. Therefore, any ruling on whether, or under what circumstances, TAD is permitted to bill MSRH or any ruling on an obligation on MSRH's part to pay those bills is beyond the scope of this order, and the court does not address these issues.

DECLARATORY JUDGMENT

The court exercises its discretion to enter a declaratory judgment in this case because doing so resolves the existing legal controversy regarding the interpretation of the Service Plan in this case and will remove the uncertainty surrounding TAD's obligations under the Service Plan, allowing the parties to move forward. The court enters a declaratory judgment that the Service Plan obligates Trinidad Ambulance District to complete both 911 emergency calls and interfacility transfers, that the Service Plan obligates Trinidad Ambulance District to contract with Trinidad Area Health Association regarding interfacility-transfer procedures, and that the restrictions TAD placed on interfacility transfers amount to a reduction of services and a material modification of the Service Plan without approval from the Las Animas Board of County Commissioners.

CONCLUSION

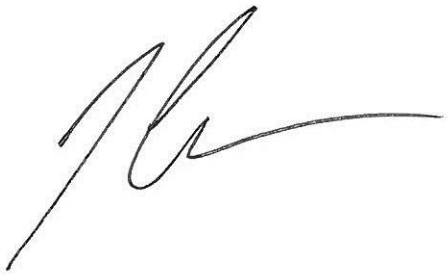
The affect of the court's narrow ruling in this case obligates TAD to complete both 911 emergency calls as well as IFTs per the Service Plan. But because legitimate safety concerns make unrestricted conformance with the Plan impracticable, the court cannot compel such

conformance. However, the Service Plan requires TAD to contract with TAHA to reach a workable format for the safe transport of MSRH patients to other hospitals.

This order in no way limits TAD from seeking amendment of the Service Plan through the approval of the Las Animas Board of County Commissioners. Until it is amended, TAD must conform its services to the Plan requirements as interpreted by this court, and it will be up to the parties to address the remaining issues surrounding IFTs via contract.

Order

1. The court enters judgment in favor of Plaintiff and against Defendant on Plaintiff's claim for a declaratory judgment.
2. Plaintiff's motion for injunction pursuant to C.R.S. 32-1-207(3) is DENIED.
3. TAD must conform its performance of IFTs to the Service Plan, as far as practicable, and may only restrict its services based on bona fide safety issues resulting from an increased number of IFTs to more distant hospitals and only to the extent that those restrictions are necessary to reduce those safety concerns.



J. Clay McKisson
District Court Judge

Dated: November 23, 2022