AFFIRMATIVE DEFENSE

Equitable Estoppel

At all relevant times, Defendant was an eligible Florida Medicaid Recipient. At all relevant times, Plaintiff had actual or constructive knowledge of Defendant's status as a Florida Medicaid Recipient. Upon information and belief, Plaintiff has a contract with the Florida Agency for Healthcare Administration (AHCA) which requires it to accept Medicaid reimbursement for covered services rendered and prohibits Plaintiff from seeking additional payment directly from a Florida Medicaid Recipient in the event Plaintiff fails to bill, or improperly bills, Medicaid for such services.

Plaintiff voluntarily agreed to treat Defendant or otherwise provide him services with the knowledge and understanding that Plaintiff could only bill Medicaid for all such services or treatments rendered to Defendant. Plaintiff failed to inform Defendant of any services which would not be covered by Florida Medicaid. Defendant justifiably relied on Plaintiff's conduct, words, and acts in agreeing to allow Plaintiff to provide services or treatment as a Florida Medicaid Recipient. Defendant had the belief and understanding that Plaintiff would properly bill Medicaid for any services rendered and that all such services were covered services.

However, Plaintiff failed to bill, or improperly billed, Medicaid for the services it rendered to Defendant. Defendant has been harmed by his reliance on Plaintiff's conduct, words, and actions because Plaintiff now seeks to recover those sums directly from Defendant. It would be inequitable and unjust to allow Plaintiff to directly bill a Florida Medicaid Recipient for covered services which were never billed, or improperly billed, to Medicaid.

Statute of Limitations

Plaintiff's claims are barred as a result of the expiration of the four-year statute of limitations applicable to both an account stated and unjust enrichment cause of action. The last element of the Plaintiff's causes of action, if any, accrued more than four years prior to the filing of this Complaint on DATE.

WHEREFORE, Defendant, PATIENT, respectfully requests that this Court deem Defendant's Affirmative Defenses sufficient, deny the relief requested in Plaintiff's Complaint with prejudice, enter judgment in favor of Defendant, award Defendant his costs and attorneys' to the extent permitted by Florida law, and grant any other relief this Court deems just and proper.

Failure to Mitigate

Plaintiff's claims are barred in whole or in part due to its failure to mitigate damages. Plaintiff at all relevant times could have billed Medicaid for any services allegedly rendered to Defendant. Plaintiff would have been paid in full by Medicaid at the rate it agreed to receive for such services. Despite the foregoing, Plaintiff failed to bill Medicaid to receive payment.

Violation of F.S. 614.3154

At all relevant times, Defendant was an eligible subscriber under a health maintenance organization ("HMO"), INSURANCE COMPANY Medicaid managed medical assistance plan. At all relevant times, Plaintiff had actual or constructive knowledge of Defendant's status as an HMO subscriber. Upon information and belief, Plaintiff had a contract with the HMO and the hospital providing the relevant services and facilities which requires it to accept HMO reimbursement for covered services rendered and prohibits Plaintiff from seeking additional payment directly from a subscriber in the event Plaintiff fails to bill, or improperly bills, the HMO for such services.

As such, Plaintiff's claims are barred in whole or in part because Plaintiff's attempts at collecting the balance of its bill from Defendant is prohibited under §641.3154, Florida Statutes, where Defendant was a subscriber of an HMO, and such HMO was liable for payment of the services Plaintiff claims it rendered. Further, Plaintiff knew or reasonably should have known that such HMO was liable for payment of the claimed rendered services, and that Plaintiff was prohibited from collecting or seeking to collect such sums from Defendant as alleged herein.

COUNTERCLAIM

Declaratory Relief

1. This is an action for declaratory relief pursuant to Florida Statutes Chapter 86.

2. This request for a declaration concerns the rights between the Parties to bill, or be billed, for medical services or treatment allegedly rendered by the Plaintiff to Defendant.

3. Defendant/Counter-Plaintiff contends that he is a qualified Florida Medicaid Recipient and that all services rendered by Plaintiff/Counter-Defendant were "Covered Services" as defined by AHCA, Florida Medicaid, and Plaintiff/Counter-Defendant's provider agreement with AHCA.

4. Defendant/Counter-Plaintiff further contends that Plaintiff/Counter-Defendant is prohibited from seeking direct reimbursement from him of the sums claimed due in this action for any such Covered Services.

5. Defendant/Counter-Plaintiff is in doubt as to his rights, obligations, and legal and equitable status under, at a minimum, 42 U.S.C. §1396a(a)(25)(c), 42 C.F.R. §447.15, Fla. Stat. §409.907(3)(j), Rule 59G-1.050, Florida Administrative Code, and Plaintiff/Counter-Defendant's provider agreement with AHCA.

6. Defendant/Counter-Plaintiff hereby requests that this Court declare the rights, status, or other equitable or legal relations between the Parties under the aforementioned laws, rules, statutes, or agreements.

WHEREFORE, Defendant/Counter-Plaintiff, PATIENT, respectfully requests that the Court issue a declaratory judgment in his/her favor and against Plaintiff/Counter-Defendant, PROVIDER, declaring that Plaintiff/Counter-Defendant is prohibited from seeking direct reimbursement from PATIENT of the sums claimed due in this action, awarding Defendant/Counter-Plaintiff costs and attorneys' fees to the extent permitted by Florida law, and granting any other relief this Court deems just and proper.