IN THE SUPREME COURT OF IOWA

ROBERT F. COLWELL, JR., D.D.S.,	)	SUPREME CT. NO. 20-0545
Plaintiff-Appellee,	)	
v.	)	
MCNA INSURANCE COMPANY and MANAGED CARE OF NORTH AMERICA, INC., D/B/A MCNA DENTAL AND MCNA DENTAL PLANS,	)	
Defendants-Appellants	)	

APPEAL FROM THE DISTRICT COURT
FOR POTTAWATTAMIE COUNTY, IOWA
HON. JAMES HECKERMAN, Judge

APPELLANTS' FINAL BRIEF

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TABLE OF CONTENTS

Table of Authorities 4

Statement of the Issues Presented for Review 7

Routing Statement 11

Statement of the Case 11

Statement of the Facts 15

Argument 20

I. The District Court erred in applying the federal family planning "Any Willing Provider" Rule to a dentist. 21

Error Preservation Statement 21
Scope and Standard of Appellate Review 21
Argument 22

II. The District Court erred in broadly construing Iowa Code 249N.6(1), Iowa's "Any Willing Provider" (AWP) rule, without regard for companion limiting authority. 25

Error Preservation Statement 26
Scope and Standard of Appellate Review 26
Argument 26

III. MCNA's network of general dentist in Colwell's area meets sufficiency standards, thereby permitting removal of Colwell from the network. 34

Error Preservation Statement 34
Scope and Standard of Appellate Review 34
Argument 34

IV. The contract between the State of Iowa and MCNA permits nonrenewal of Colwell's Provider Contract 41

Error Preservation Statement 41
Scope and Standard of Appellate Review 41
Argument 42

V. The Provider Contract permits MCNA to elect not to renew Colwell's contract at the conclusion of the term.. 50

Error Preservation Statement 50
Scope and Standard of Appellate Review 50
Argument 50

VI. MCNA's notice of nonrenewal of Colwell's Provider Contract was valid, and not a breach of the Provider Agreement 57

Error Preservation Statement 57
Scope and Standard of Appellate Review 57
Argument 58

Conclusion 62

Request for Oral Argument 64

Certificate of Cost 64

Certificate of Compliance 65

Certificate of Service and Filing 65

TABLE OF AUTHORITIES

Cases

Albaugh v. The Reserve, 930 N.W.2d 676, 686 (Iowa 2019) 10, 62

Beal v. I.G.F. Insurance Co., 662 N.W.2d 373 (Iowa App. 2003) 10, 51

Carroll Airport Commission v. Danne, 927 N.W.2d 635, 643 (Iowa 2019) 7, 10, 21, 50

Casey's General Stores, Inc. v. Blackford, 661 N.W.2d 515, 519 (Iowa 2003)..... 9, 43

Clarke County Reservoir Commn. v. Abbott, 862 N.W.2d 166, 171 (Iowa 2015)..... 8, 26

Pavone v. Kirke, 801 N.W.2d 477 (2011)..... 10, 51

Phipps v. IASD Health Services Corp., 558 N.W.2d 198, (Iowa 1997) 9, 49

Pillsbury Co., Inc. v. Wells Dairy, Inc., 752 N.W.2d 430, 435-36 (Iowa 2008) 10, 11, 50, 57

Planned Parenthood v. Betlach, 727 F.3d 960 (9th Cir. 2013) 7, 24

Planned Parenthood v. Gulf Coast, Inc., 862 F.3d 445 (5th Cir. 2017)..... 7, 24

Planned Parenthood of Kansas v. Andersen, 882 F.3d 1205 (10th Cir. 2018)..... 7, 24

Service Employees International Union, Local 199 v. Iowa Board of Regents, 928 N.W.2d 69 (Iowa 2019)..... 8, 26

Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 686 (Iowa 1990). 9, 46

State v. Lambert, 612 N.W.2d 810, 813 (Iowa 2000)..... ..... 9, 34, 41

Western Outdoor Advertising Co. v. Board of Review of Mills County, 364 N.W.2d 256 (Iowa 1985)..... 8, 30

Statutes and Ordinances

42 USC § 1396a(a)(23)..... 7, 22, 23, 24, 25

Iowa Code 249N 8, 10, 20, 33, 58

Iowa Code 249N.2 ..... 8, 28, 29

Iowa Code 249N.2(4) 8, 28

Iowa Code 249N.3(1)(d) 10, 55, 61

Iowa Code 249N.6 .....8, 9, 11, 12, 14, 26, 27, 29, 49, 63

Iowa Code 249N.6(1) 8-10, 25-28, 33, 35, 55

Iowa R. App. P. 6.1101 11

Iowa R. App. P. 6.903(1)(g)(1)..... 65

Iowa R. App. P. 6.903(1)(g)(2)..... 65

Iowa R. App. P. 6.904(3)(a) 9, 10, 42, 58

Iowa R. App. P. 6.904(3)(n) 10, 54

Iowa R. App. P. 6.907 ..... 7-9, 22, 26, 34, 41

Other

42 CFR § 431.51(a)(4)..... 7, 23

42 CFR § 431.51(b)(1)..... 7, 23

42 CFR § 431.51(b)(2)..... 7, 23, 31

42 CFR § 438.12(b) 10, 61

42 CFR § 438.12(b)(1)..... 7, 23

42 CFR § 438.12(b)(3)..... 7, 23

441 IAC, Chapter 73, “Managed Care”, Preamble 8, 32

441 IAC 73.8(2) (Choice of providers)..... 8, 31

441 IAC 74.12(1)(b) 8, 30

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE FEDERAL FREE CHOICE RULE FOR A FAMILY PLANNING PROVIDER APPLIES TO A DENTAL PROVIDER.

42 CFR § 431.51(a)(4)

42 CFR § 431.51(b)(1)

42 CFR § 431.51(b)(2)

42 CFR § 438.12(b)(1)

42 CFR § 438.12(b)(3)

42 USC § 1396a(a)(23)

Carroll Airport Commission v. Danne, 927 N.W.2d 635 (Iowa 2019)

Iowa R. App. P. 6.907

Planned Parenthood v. Betlach, 727 F.3d 960 (9th Cir. 2013)

Planned Parenthood v. Gulf Coast, Inc., 862 F.3d 445 (5th Cir. 2017)

Planned Parenthood of Kansas v. Andersen, 882 F.3d 1205 (10th Cir. 2018)

II. WHETHER THE DISTRICT COURT ERRED IN BROADLY CONSTRUING IOWA CODE 249N.6(1), IOWA'S "ANY WILLING PROVIDER" LAW.

441 IAC, Chapter 73, "Managed Care", Preamble

441 IAC 73.8(2) (Choice of providers)

441 IAC 74.12(1)(b)

Iowa Code 249N

Iowa Code 249N.2

Iowa Code 249N.2(4)

Iowa Code 249N.2(13)

Iowa Code 249N.6

Iowa Code 249N.6(1)

Iowa R. App. P. 6.907

Clarke County Reservoir Commn. v. Abbott, 862 N.W.2d 166, 171 (Iowa 2015)

Service Employees International Union, Local 199 v. Iowa Board of Regents, 928 N.W.2d 69 (Iowa 2019)

Western Outdoor Advertising Co. v. Board of Review of Mills County, 364 N.W.2d 256 (Iowa 1985)

III. WHETHER MCNA's NETWORK OF GENERAL DENTISTS WAS ADEQUATE, THEREBY PERMITTING NONRENEWAL OF COLWELL'S PROVIDER AGREEMENT.

Iowa Code 249N.6(1)

Iowa R. App. P. 6.907

State v. Lambert, 612 N.W.2d 810 (Iowa 2000)

IV. WHETHER MCNA's CONTRACT WITH THE STATE OF IOWA MANDATES PERPETUAL RENEWAL OF COLWELL'S PROVIDER CONTRACT.

Iowa Code 249N.6

Iowa R. App. P. 6.904(3)(a)

Iowa R. App. P. 6.907

Casey's General Stores, Inc. v. Blackford, 661 N.W.2d 515 (Iowa 2003)

Phipps v. IASD Health Services Corp., 558 N.W.2d 198 (Iowa 1997)

Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682 (Iowa 1990)

State v. Lambert, 612 N.W.2d 810 (Iowa 2000)

V. WHETHER THE PROVIDER CONTRACT BETWEEN MCNA AND COLWELL MANDATES PERPETUAL RENEWAL.

Beal v. I.G.F. Insurance Co., 662 N.W.2d 373 (Iowa App. 2003)

Carroll Airport Commission v. Danne, 927 N.W.2d 635 (Iowa 2019)

Iowa Code 249N.3(1)(d)

Iowa Code 249N.6(1)

Iowa R. App. P. 6.904(3)(n)

Pavone v. Kirke, 801 N.W.2d 477 (2011)

Pillsbury Co., Inc. v. Wells Dairy, Inc., 752 N.W.2d 430 (Iowa 2008)

VI. WHETHER THE NOTICE OF NONRENEWAL GIVEN BY MCNA TO COLWELL WAS A BREACH OF THE PROVIDER CONTRACT.

42 CFR § 438.12(b)

Albaugh v. The Reserve, 930 N.W.2d 676 (Iowa 2019)

Iowa Code 249N

Iowa Code 249N.3(1)(d)

Iowa R. App. P. 6.904(3)(a)

Pillsbury Co., Inc. v. Wells Dairy, Inc., 752 N.W.2d 430 (Iowa 2008)

ROUTING STATEMENT

Based on the factors enunciated in Iowa R. App. P. 6.1101, the Supreme Court should retain this case. This appeal presents substantial issues of first impression, issues that have broad public importance requiring ultimate determination by the Supreme Court, and raises substantial questions of enunciating legal principles related to Iowa Code 249N.6, the "Any Willing Provider" Rule.

STATEMENT OF THE CASE

Nature of the Case: This is an appeal by MCNA Insurance Company and Managed Care of North America, Inc. ("MCNA"), from an Order entered on March 17, 2020, by the District Court of Pottawattamie County, Iowa. Generally, this appeal challenges the District Court's findings that MCNA was required to renew Plaintiff-

Appellee Robert F. Colwell, Jr. DDS' ("Colwell") contract. The nature of this case principally involves the determination of the scope and application of Iowa Code 249N.6, the State's "Any Willing Provider" Rule, as applied to a dental Medicaid provider.

Course of Proceedings: On July 23, 2019, Colwell filed a Verified Petition at Law in the District Court of Pottawattamie County, Iowa, alleging that MCNA breached the parties' contract, breached the covenant of good faith and fair dealing, and intentionally interfered with his business relationships. Appendix v. I, pp. 17-20. Colwell generally alleged that MCNA breached the contract between the parties by not renewing his Provider Contract beyond the then-current term. He also sought a temporary and permanent injunction to prevent MCNA from not renewing the parties' contract. Appendix v. I, pp. 20-21. The same day, Colwell moved for temporary injunctive relief to stay the nonrenewal of his Provider Contract. Appendix v. I, p. 213.

On July 29, 2019, the Court granted Plaintiff's Motion for Injunctive Relief and scheduled a bench trial. Appendix v. I, p. 219. On August 12, 2019, Defendants filed an Answer and Affirmative Defenses denying Plaintiff's causes of action and affirmatively alleging, generally, that Defendants did not terminate Colwell's contract and that nonrenewing the parties' agreement was permitted under federal and state law. Appendix v. I, pp. 225-230.

On September 4, 2019, trial was held before the Hon. James S. Heckerman, and after several status hearings, the Court ordered the parties to submit proposed orders to the Court by February 7, 2020. [Order, December 20, 2019].

Disposition in District Court: On February 17, 2020, the Court adopted and entered the proposed Findings of Fact and Conclusions of Law submitted by Colwell. Appendix v. I, pp. 231-260. The Order found that MCNA breached Colwell's Provider Contract when it failed to renew it for another annual term. The Order first found

that Iowa Code 249N.6, Iowa's Any Willing Provider statute, required MCNA to renew Colwell's provider agreement. Appendix v. I, pp. 242-246. The Court also found that a federal "family planning" provider law applied to Colwell, a dental provider, thereby preventing nonrenewal. Appendix v. I, pp. 246-250. Additionally, the Order found that neither the Provider Contract between MCNA and Colwell, nor the Provider Manual incorporated therein, permitted nonrenewal of the contract. Appendix v. I, pp. 237-241, 255-257.

The District Court ruled that the notice actually constituted a "termination", was a breach of the parties' contract and that MCNA was required to renew Colwell's contract year-over-year. Appendix v. I, p. 258. Based on the temporary injunction previously entered, the Court found that Count III (Intentional Interference with Existing and Potential Business Relationships) was moot. Appendix v. I, p. 259.

On February 28, 2020, MCNA timely moved the District Court to reconsider and amend this Order

(Appendix v. I, pp. 261-263), but on March 16, 2020, the Court denied this motion in its entirety, making no change to its prior disposition. [Order, March 16, 2020]. Defendants timely appealed this decision. Appendix v. I, p. 267.

STATEMENT OF FACTS

MCNA provides managed care dental services to states, including Iowa, for Medicaid beneficiaries. Appendix v. I, p. 8 ¶2, p. 9 ¶10; p. 224 ¶¶ 2, 10. MCNA is a licensed health insurer, providing Medicaid services to over seven million beneficiaries in several states. Appendix v. I, p. 325 (Tr. 137:14-19). MCNA provides this service in Iowa through a contract with the State of Iowa (the "State Contract"). Appendix v. II, pp. 194-375. Under the State Contract, MCNA performs manifold functions related to the delivery of dental Medicaid services, including the development and maintenance of a network of dental providers to provide direct treatment to Medicaid

enrollees/beneficiaries. Appendix v. II, pp. 221-227 (Section E "Providers and Provider Network").

Pursuant to this Section, MCNA is required to "maintain and monitor a network of appropriate providers that is sufficient to provide adequate access to all services covered under this [State] Contract for all enrollees, including those with limited English proficiency or physical or mental disabilities." Appendix v. II, p. 222. Further, MCNA is also required to "ensure that enrollees have adequate access to dentists", meaning within 30 miles/30 minutes for urban areas or within 60 miles/60 minutes for rural area. Appendix v. II, p. 222. MCNA, not the State, maintains its provider network. Appendix v. I, p. 381 (Tr. 221:5-15).

In order to be part of MCNA's network, dentists are first required to be a provider with State Medicaid. Appendix v. I, p. 276 (Tr. 8:2-8). MCNA is required to generate its network of both general and specialist providers through mandatory written contracts. Appendix v. II, p. 222. MCNA's network provides dental treatment

to adult Medicaid beneficiaries. Appendix v. I, pp. 327-328 (Tr. 141:16-142:2). The State of Iowa reviewed and approved the contract used by MCNA, including Colwell's contract. Appendix v. I, p. 402 (Tr. 247:5-9).

In generating its provider network, the State requires MCNA to "offer to contract with all federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) located in Iowa." Appendix v. II, p. 222. However, this same provision does not require MCNA to offer to contract with all other types of providers. In fact, the State Contract makes it clear that MCNA is not required "to contract with more providers than necessary to meet the needs of its enrollees." Appendix v. II, p. 233.

At all relevant times, Colwell was a dentist licensed by the State of Iowa, and was a provider in MCNA's network. Appendix v. I, p. 8 ¶1, p. 10 ¶11-13; p. 224 ¶¶1, 11-13. At the time of trial, he had practiced dentistry for twenty years (Appendix v. I, 9. 274 (Tr. 6:1-2)), and had no disciplinary action taken against his license. Appendix v. I, p. 274 (Tr. 6:13-15).

In 2016, Colwell entered into a Master Dental Provider Agreement (the "Provider Contract") with MCNA. Appendix v. I, p. 280 (Tr. 13:8-11); Appendix v. II, pp. 8-24, 25-189. This Provider Contract has a one-year term, with a type of "evergreen provision". Appendix v. II, p. 19. Colwell was classified as a general dentist in the MCNA network, having no board-certified specialty. Appendix v. I, pp. 317-318 (Tr. 115:3-116:14). Colwell practices in Council Bluffs, Pottawattamie County. Appendix v. I, p. 273 (Tr. 5:15-17); Appendix v. III, p. 11. MCNA's network in Pottawattamie and the surrounding area is comprised of numerous general dentists, all licensed the same as Colwell. Appendix v. II, p. 564 (showing 103 search results); Appendix v. III, pp. 11-12, 14.

During his time as a provider in MCNA's network, Colwell utilized an "inordinate amount of [MCNA] staff time" to address ongoing problems. Appendix v. I, p. 355 (Tr. 190:2-4). His offices routinely struggled to provide supporting documentation for preauthorization requests and payment claim requested. Appendix v. I, pp. 355 (Tr.

190:5-7), 357 (Tr. 192:12-20). Further, Colwell or his staff were abusive to MCNA employees, to the degree that it caused some MCNA staff to break into tears. Appendix v. I, pp. 355 (Tr. 190:13-24), 356 (Tr. 191: 18-20), 363-364 (Tr. 200:21-201:3). Colwell's problems persisted over the course of years, without any improvement, even after MCNA provided education on these topics to Colwell. Appendix v. I, pp. 357 (Tr. 192:20-23), 368 (Tr. 205:3-8). Colwell himself admitted that his office has struggled with many issues. Appendix v. I, p. 303 (Tr. 56:7-11).

Prior to Colwell's Provider Contract renewal date, MCNA examined other available general providers in the same region as Colwell. Appendix v. I, pp. 397 (Tr. 242:11-18), 399 (Tr. 244:3-11); Appendix v. III, pp. 11-12, 13-14. After determining that its network would remain adequate after his removal, Colwell was notified by MCNA on April 24, 2019, that his Provider Contract would not be renewed for another successive one-year term. Appendix v. I, pp. 329-330 (Tr. 143:16-144:4); Appendix v. II, p. 191.

On July 23, 2019, Colwell initiated the present action, as summarized above in the "Course of Proceedings" section. The present appeal followed the District Court decision, as summarized in the "Disposition in District Court" section.

ARGUMENT

The District Court erred in concluding that MCNA was required to renew Colwell's Provider Contract, year after year, in perpetuity. In so holding, the District Court erroneously found that a federal "Any Willing Family Planning Provider" Rule applied to a dentist. It also incorrectly construed Iowa Code 249N broadly, without considering limiting definitions within the statute, the applicable Iowa Administrative Code or the companion agreements. When properly applied and construed, these statutes do not mandate renewal of Colwell's agreement with MCNA.

MCNA's ability to not renew Colwell's contract is exemplified in the agreement between the State of Iowa

and MCNA. It is likewise contemplated and permitted by the Provider Contract itself between MCNA and Colwell. Because the network of general dentists in Colwell's area meets sufficiency standards, even after his removal from the network, MCNA's notice of nonrenewal of Colwell's Provider Contract was valid and effective.

I. The District Court erred in applying a federal family planning "Any Willing Provider" Rule to a dentist.

Issue Preservation: The applicability of the federal free choice of family planning provider rule was decided by the District Court in its Findings of Fact and Conclusions of Law, dated February 17, 2020. Appendix v. I, pp. 246-250. This issue was raised in MCNA's Motion to Reconsider and Amend. Appendix v. I, p. 262.

Scope and Standard of Appellate Review: This Court "review[s] the district court's legal conclusions [relating to federal law] for correction of errors at law." Carroll Airport Commission v. Danne, 927 N.W.2d 635,

643 (Iowa 2019) (internal citations omitted); see also Iowa R. App. P. 6.907.

Appellant's Contentions and Arguments: The district court erred in applying the federal AWP Rule broadly into the uncharted waters of a State's Medicaid dental provider. There is no federal statute, regulation or case that applies the federal "free-choice-of-provider" rule to a dentist, and to do so contradicts the rule's language. Therefore, this Court should reverse that portion of the District Court's Order which applies 42 USC § 1396a(a)(23) to the present dispute.

> A State plan for medical assistance must…provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1396n(b)(1) of this title), a Medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under

> section 1396d(a)(4)(C) of this title **[for family planning services]**….

42 USC § 1396a(a)(23) (emphasis added).

As further stated in the federal regulations, "a beneficiary enrolled in a primary care case management system or Medicaid managed care organization (MCO) may not be denied freedom of choice of qualified providers **of family planning services**." 42 CFR § 431.51(a)(4) (emphasis added). And while 42 CFR § 431.51(b)(1) requires a State-run Medicaid plan to include any provider that is "qualified" and "willing", 42 CFR § 431.51(b)(2) does not impose this mandate on managed care entities, except in the context of "family planning services." A managed care entity is not required to include more providers in its network "beyond the number necessary to meet the needs of its enrollees", and it is free to implement "measures that are designed to…control costs and are consistent with its responsibilities to enrollees." 42 CFR § 438.12(b)(1) and (3).

The cases cited in the Order apply this rule only in the family planning context. See Planned Parenthood of Kansas v. Andersen, 882 F.3d 1205 (10th Cir. 2018) (finding that federal Medicaid rules exempt "family planning services from limits that may otherwise apply under approved state Medicaid plans"); Planned Parenthood v. Gulf Coast, Inc., 862 F.3d 445 (5th Cir. 2017) (finding the federal free-choice-of-provider provision requires patients to "choose among the family planning medical practitioners they could use were they paying out of their own pockets"); Planned Parenthood v. Betlach, 727 F.3d 960 (9th Cir. 2013) ("Even if a state otherwise exercises its option to implement a managed-care system, § 1396a(a)(23)(B) makes clear that as to family planning services, state Medicaid plans must afford recipients the full range of free choice of provider").

MCNA is a managed care entity, providing Medicaid dental services to the State of Iowa. Appendix v. I, p. 8 ¶2, p. 9 ¶10, p. 224 ¶¶2, 10, p. 325 (Tr. 137:14-19); Appendix v. II, pp. 194-375. Therefore, under federal law, it is

permitted to limit the number of providers with which it contracts, and it can utilize cost control measures.

Colwell is an Iowa-licensed dentist, who has practiced for about twenty years. Appendix v. I, p.8 ¶1, p. 10 ¶11-13, p. 224 ¶¶1, 11-13, p. 274 (Tr. 6:1-2). Because he is a dentist, and not a family planning provider, the federal "choice-of-provider" rule does not apply to him. This rule does not compel MCNA to contract with Colwell. By applying this rule to a dental provider, the District Court ruling transforms what is clearly a rule of limited application into one that is unbounded in its application. This ruling applies the federal rule to all providers of any type. This is erroneous, and this Court should reverse the District Court Order and hold, consistent with federal jurisprudence, that the federal "choice-of-provider" rule in 42 USC § 1396a(a)(23), does not apply in the current context.

II. The District Court erred in broadly construing Iowa Code 249N.6(1), Iowa's "Any

Willing Provider" (AWP) rule, without regard for companion limiting authority.

Issue Preservation: In its Findings of Fact and Conclusions of Law, the District Court construed Iowa Code 249N.6(1) beyond its plainly applicable terms. Appendix v. I, pp. 242-246. This issue was raised in MCNA's Motion to Reconsider and Amend. Appendix v. I, p. 262.

Scope and Standard of Appellate Review: Under Iowa R. App. P. 6.907, this Court will "review the district court's interpretation of a statute for correction of errors at law." Clarke County Reservoir Commn. v. Abbott, 862 N.W.2d 166, 171 (Iowa 2015). Further, this Court reviews administrative rules "for corrections of error at law and [is] free to substitute [its] *de novo* interpretation of the statute." Service Employees International Union, Local 199 v. Iowa Board of Regents, 928 N.W.2d 69 (Iowa 2019).

Appellant's Contentions and Arguments: The district court erred in construing Iowa Code 249N.6, Iowa's "Any Willing Provider" (AWP) Rule. The District Court

construed the AWP Rule broadly and beyond its terms. This "categorical" construction of 249N.6(1) fails to recognize the limitations imposed by the applicable statutory definitions and the Iowa Administrative Code. A more "limited" AWP Rule is the proper construction of the statute. In failing to construe the proper limits, the Court misapplies the broad, categorical AWP Rule in the present context, without properly defining it to consider MCNA's network adequacy. This Court should reverse the District Court's construction, and construe Iowa Code 249N.6 as requiring a managed care entity to accept "any willing provider" only if such provider is required to meet network adequacy sufficient to deliver services to its Medicaid beneficiaries. Once adequacy is reached, the managed care company is no longer required to accept any willing provider.

"The Iowa health and wellness plan provider network shall include all providers enrolled in the medical assistance program and all participating accountable care organizations. Reimbursement under this chapter shall

only be made to such Iowa health and wellness plan providers for covered benefits." Iowa Code 249N.6(1). The statutory definitions clarify that the broad AWP Rule only applies to the State-run Medicaid provider network. "'*Iowa health and wellness plan provider network*' means the health care delivery network approved **by the department** for Iowa health and wellness plan members." Iowa Code 249N.2(13) (emphasis added). "'*Department*' means the department of human services." Iowa Code 249N.2(4).

The Order stated that "MCNA did not challenge the clear meaning of Iowa Code section 249N.6(1)", [Order, p. 13], which is clearly wrong. MCNA has consistently argued that the analysis cannot start and stop with this code section, and that these definitions narrow the application of the categorical Iowa AWP Rule to the Department. Appendix v. I, p. 386 (Tr. 226:3-9). The Department operates an agency-maintained dental provider network, and MCNA is responsible for a separate network of dental providers who treat adults exclusively. Appendix v. II, pp. 221-222; Appendix v. I, pp. 276 (Tr. 8:2-

8), 327-328 (Tr. 141:16-142:2), 381 (Tr. 221:5-15), 384-385 (Tr. 224:20-225:12). The State-run Medicaid dental network serves all children, plus certain adults who are not served under the MCNA-administered Dental Wellness Plan. Appendix v. I, pp. 384-385 (Tr. 224:20-225:4). As a point of clarity, Delta Dental, the other managed care dental company, likewise maintains its own network with different providers. Appendix v. I, p. 277 (Tr. 9:10-11); Tr. 127:17-22.

The definitions in 249N.2 clearly apply a categorical AWP Rule to the Department, *i.e.* the State-run network serving children and certain adults. But the definition does not encompass a provider network maintained by MCNA. The analysis cannot, as the District Court did, start and stop with a simple reading of Iowa Code 249N.6. This code section is not self-defining in its scope or application, and the Informational Letter from the State does not provide any additional guidance on its scope. Appendix v. II, p. 190.

Per the limitations in the statute's definition, a limited AWP Rule must apply to MCNA as further clarified in the applicable regulations. Sweeping language was removed from the Iowa Administrative Code, specifically removing the application of the AWP Rule from a dental provider. Prior to 2016, 441 IAC 74.12(1)(b) mandated that the "Iowa wellness plan provider network shall include all providers enrolled in the medical assistance program, including all participating accountable care organizations." Appendix v. II, p. 837.

But effective January 1, 2016, this rule was stricken in total and was not part of 441 IAC in April 2019. Appendix v. II, p. 887 (showing absence of this language). As with changes to the Iowa Code, the elimination of this *per se* rule should be viewed as accomplishing a purpose, and not simply futile exercise of rule-making authority. See e.g. Western Outdoor Advertising Co. v. Board of Review of Mills County, 364 N.W.2d 256 (Iowa 1985) ("[W]e assume the amendment [to the Iowa Code] sought to accomplish some purpose and was not simply a futile

exercise of legislative power"). The purpose of this revision was to eliminate the application of the AWP Rule to a managed care entity, thereby giving it flexibility to control its network and manage costs.

Further, while the IAC mandates that all willing family planning providers be made available to beneficiaries, it stops short of applying this rule to other providers.

> An enrollee shall use the managed care organization's provider network unless the managed care organization has authorized a referral to a nonparticipating provider for provision of a service or treatment plan or as specified for provision of emergency services set forth in rule 441—73.7(249A). In accordance with federal funding requirements, including 42 CFR 431.51(b)(2) as amended to October 16, 2015, **the managed care organization shall allow enrollees freedom of choice of providers of any department-enrolled family planning service provider including those providers who are not in the managed care organization's network.**

441 IAC 73.8(2) (emphasis added). Just as the federal rule was limited, the Iowa rule has no application beyond family planning. In fact, the managed care chapter of the

IAC contemplates that the contract between MCNA and the State will generally define the relationship.

> This chapter provides that most Iowa medical assistance program benefits will be provided through managed care. Notwithstanding any provisions of 441-Chapters 74 through 91, program benefits shall be provided through managed care as provided in this chapter. The program benefits provided through managed care will be paid for by managed care organizations participating in the program pursuant to this chapter, subject to the conditions, procedures, and payment rates or methodologies established by the managed care organization, **consistent with this chapter and with the contract between the department and the managed care organization.**

441 IAC, Chapter 73, "Managed Care", Preamble (emphasis added).

This is reflected in the terms found in the contract between MCNA and the State. The State Contract specifically requires MCNA to include all federally qualified health centers. Appendix v. I, pp. 381-382 (Tr. 221:16-222:7); Appendix v. II, p. 222. However, there is no comparable requirement to include "any willing provider." In fact, 1.3(E.3.07) of the State Contract specifically rejects

the broad AWP Rule, stating that MCNA is not obligated to contract with more providers than necessary. Appendix v. II, p. 223. Further, section 1.3(E.3.09) allows MCNA to establish measures that are designed to control costs. Appendix v. II, p. 223.

In finding a universal application of the AWP Rule, the District Court's analysis started and ended with Iowa Code 249N.6(1). It does not address the limitations of the definitions, and it incorrectly ignores the Iowa Administrative Code. This Court should construe the statute and administrative code together, in a consistent manner, to hold that a managed care entity is not subject to the categorical AWP Rule in Iowa Code 249N. Rather, 249N and the relevant IAC require managed care to include providers in its network only to the extent that such provider is necessary to maintain adequate network sufficiency to meet the needs of enrollees. Once met, a managed care entity is not required to contract with additional providers, with the clear exception for family planning providers.

III. MCNA's network of general dentists in Colwell's area meets sufficiency standards, thereby permitting removal of Colwell from the network.

Issue Preservation: In its Findings of Fact and Conclusions of Law, the District Court erroneously found that MCNA needed general dentists in its network in or around Pottawattamie County, Iowa. Appendix v. I, pp. 252-255. This issue was preserved in MCNA's Motion to Reconsider and Amend. Appendix v. I, p. 262.

Scope and Standard of Appellate Review: The scope of review relating to the sufficiency of evidence is a review for correction of errors at law. State v. Lambert, 612 N.W.2d 810, 813 (Iowa 2000). Findings of fact in a jury-waived case shall have the effect of a special verdict. Iowa R. App. P. 6.907.

Appellant's Contentions and Arguments: The District Court found that MCNA was undertaking efforts to augment its provider network, and that, consequently, MCNA was required to renew Colwell as a network

provider. Because the evidence for the relevant region overwhelmingly established a sufficient network of general dentists, both with and without Colwell's participation, this finding is erroneous. Consequently, this Court should reverse, and find that MCNA's network of general providers in and around Pottawattamie County is sufficient.

As established above, pursuant to Iowa Code 249N.6(1) and the relevant sections of 441 IAC, the AWP Rule requires MCNA to admit and maintain any willing provider in its network to deliver services sufficient to meet the needs of its enrollees. However, as a managed care entity, once MCNA's network is sufficient to meet these needs, it is not required to continue to contract with any willing provider.

Colwell is a general dentist, holding no special license or classification within MCNA's network. Appendix v. I, pp. 305-306 (Tr. 68:24-69:1), 391 (Tr. 231:10-24). His practice is located in Council Bluffs, Pottawattamie County, Iowa. Appendix v. I, p. 273 (Tr. 5:15-17); Appendix v. III, p. 11. Exclusive of Colwell, MCNA's network in Pottawattamie

and surrounding counties is comprised of over one hundred general dentist options. Appendix v. II, p. 564; Appendix v. III, pp. 11-12, 14; Appendix v. II, pp. 398-403, 516, 533-534. MCNA's network is adequate, and that adequacy will not be affected by the inclusion or exclusion of Colwell. Appendix v. I, pp. 353 (Tr. 178:24-25), 365 (Tr. 202:4-7), 382 (Tr. 222:16-20), 383-384 (Tr. 223:25-224:13). The competent evidence overwhelmingly establishes that MCNA's general provider network is adequate in and around Pottawattamie County.

Colwell presented no contradictory evidence that was on point, pertaining either directly to general dentists or to the region in which he practices. At best, the evidence showed attempts to recruit specialist dentists, which Colwell is not, or in rural areas of the State, where he is not. Appendix v. I, pp. 320 (Tr. 132:15-16), 340 (Tr. 165:1-5); 353-354 (Tr. 178:21-179:3), 387 (Tr. 227:1-8), 386-387 (Tr. 226:25-227:8); Appendix v. III, pp. 11-12; Appendix v. II, pp. 388-392, 399, 433.

This lack of direct specificity, whether type of provider or region, is also true for the beneficiary grievances reported to DHS. The Exhibits presented by Colwell did not indicate if the grievance related to a general versus specialist dentist, and did not indicate in what part of the State the beneficiary resided. Appendix v. I, pp. 346-349 (Tr. 171:9-174:22); Appendix v. II, pp. 608-622. Anecdotal incidents, which do not indicate either the type of provider discussed or region of the state, are immaterial to MCNA's network adequacy. Exhibit 29, p. 1.

The MCNA provider search function results offered by Colwell were equally irrelevant. MCNA provides a search function through its website that can be used to locate providers. Appendix v. I, p. 311 (Tr. 88:8-12). Colwell presented documentation showing what he purported to be search results from MCNA's website, showing a lack of network dentists. Appendix v. II, pp. 564-607; Exhibits 35-44. However, when these searches were performed, he entered a "city" and a "distance from zip", which are incompatible entries. Appendix v. I, pp.

391-393 (Tr. 231:25-233:18); Appendix v. II, pp. 590-607. This mistake renders these search results irrelevant.

When the search is performed properly, using zip code and distance, it is clear that MCNA's network has plenty of choices for beneficiaries. For example, Colwell's exhibit showed no general dentists within 60 miles of Atlantic, Iowa. Appendix v. II, p. 590. But when the search is properly performed, the search yields over one hundred general dental providers. Appendix v. I, pp. 391-392 (Tr. 231:25-232:17); Appendix v. II, pp. 890-894. MCNA's statewide network of general dentists is within 60 miles/60 minutes of 99.4% of beneficiaries enrolled in Medicaid. Appendix v. II, p. 407. The External Quality Report found that MCNA enrollees had "relatively short travel distances and travel times to general dentists." Appendix v. II, p. 534. Colwell attempted to make a mountain out of a molehill, but the evidence simply falls short.

The Order erroneously concludes that because of efforts to augment MCNA's specialist and rural provider

network, Colwell's participation must be necessary. Appendix v. I, pp. 254-255. The evidence belies this conclusion. The 2018 audit concluded that MCNA's network met 92% for its provider network score, and 100% for assurance of adequate capacity and services. Appendix v. II, p. 522. It fared better than Delta Dental, the other managed care entity, as far as ratio of general dentists to beneficiaries. Appendix v. I, pp. 390-391 (Tr. 230:24-231:15); Appendix v. II, pp. 516, 533. It concluded that "MCNA members had short travel distances and travel times to general dentists." Appendix v. II, p. 534. It also found that "the results suggest that MCNA's provider network has the capacity to meet the needs of respective Medicaid member populations for general dentists…." Appendix v. II, p. 534.

The plan to augment MCNA's already sufficient network was a negotiation initiated by MCNA to minimize the clawback of Medicaid funds based on the "medical loss ratio". Appendix v. I, pp. 386-387 (Tr. 226:12-227:18); Appendix v. II, p. 387. The plan was statewide, but the

goal was to increase specialists and the network in very rural areas. Appendix v. I, p. 387 (Tr. 227:5-11); Appendix v. II, p. 388. This MLR has nothing to do with network adequacy. Appendix v. I, pp. 387-389 (Tr. 227:22-229:7).

Notably, Iowa has never indicated to MCNA that it needed to address any network deficiency, whether it be regarding specialist or general dentist. Appendix v. I, pp. 388-389 (Tr. 228:17-229:2). To the extent that MCNA has network obligations to meet with the State, they are for the State to enforce if it believes there is a violation. Appendix v. II, p. 432 (IME's duty to ensure that the healthcare provided is meeting beneficiary needs, and to review network adequacy reports).

While MCNA presented evidence of the type and location of providers, Colwell presented no contradictory evidence that addressed any particular type of provider or location. In short, there is no relevant evidence that MCNA has any deficiency in general dentists in or around Pottawattamie County. The evidence clearly shows that MCNA's network is sufficient to meet beneficiary needs,

regardless of Colwell's participation. This Court should therefore reverse and rule that MCNA's network of general dentists in and around Pottawattamie County, Iowa, is sufficient, with or without Colwell.

IV. The contract between the State of Iowa and MCNA permits nonrenewal of Colwell's Provider Contract.

Issue Preservation: The District Court erroneously found that certain provisions of the State Contract precluded nonrenewal of Colwell's Provider Agreement. Appendix v. I, pp. 250-252. This issue was preserved in MCNA's Motion to Reconsider and Amend. Appendix v. I, p. 262.

Scope and Standard of Appellate Review: The scope of review relating to the sufficiency of evidence is a review for correction of errors at law. State v. Lambert, 612 N.W.2d 810, 813 (Iowa 2000). Application of the law to those facts is reviewed for the correction of errors at law. Iowa R. App. P. 6.907. Findings of fact are binding if

supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

Appellant's Contentions and Arguments: The District Court erroneously found that MCNA was precluded from not renewing Colwell's contract because of certain provisions of the State Contract. The Court's Order lumped certain terms of the State Contract together to conclude that the terms prevented nonrenewal. Because there is virtually no evidence, let alone substantial evidence, to support the Order's findings, this Court should reverse.

The Order first erred by finding that MCNA had discriminated against Colwell because he held a license to be a general dentist in the State of Iowa. This is clearly wrong.

> **E.2 Discrimination**
> E.2.01 Contractor shall not discriminate against any provider (limiting their participation, reimbursement or indemnification) who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification. See the additional

> obligations set forth in Section 4 § 438.12(a)(1).10.

[Exhibit 6, p. 30].

Colwell has not identified any instance that MCNA "discriminated" against him because of his license. In order to prove discrimination, Colwell would have to present evidence that somehow connects the nonrenewal of his contract to his dental license. See *e.g.* Casey's General Stores, Inc. v. Blackford, 661 N.W.2d 515, 519 (Iowa 2003) (stating elements of disability discrimination in employment).

Colwell is a general dentist, holding no specialized certification. Appendix v. I, pp. 317-318 (Tr. 115:3-116:14). Therefore, under E.2.01, MCNA is not permitted to discriminate against Colwell for practicing within the scope of his general dental license, nor has any discrimination occurred. There are literally hundreds of other general dentists in MCNA's network. Appendix v. I, pp. 314-315 (Tr. 95:21-96:12); Appendix v. II, p. 563. Each of these 376 general dentists holds the same license

as Colwell, and any of them can provide services that Colwell provides. Appendix v. I, pp. 318 (Tr. 116:15-25), 343-344 (Tr. 168:22-169:11); Appendix v. II, p. 388. To argue that MCNA is discriminating against him due to licensing, while hundreds of other dentists hold the same license, strains credulity.

In order to prove discrimination, Colwell would first have to present a unique licensing that he obtained, other than his general dentist license shared by hundreds of others. Next, he would have to present evidence that MCNA acted adversely toward him because of that unique license. He has also not provided any evidence connecting the nonrenewal of his Provider Contract to his general dental license.

The Court's Order also erroneously found E.3.05 applied to prevent nonrenewal of Colwell's contract.

> **E.3 Provider Selection**
> E.3.05 Contractor's selection policies and procedures shall not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment. See the additional

> obligations as set forth in Section 4 § 438.12(a)(2) and Section 4 § 438.214(c).

Appendix v. II, p. 223.

Colwell testified that he served high-risk populations and/or specialized in conditions that require costly treatment. Appendix v. I, pp. 295-296 (Tr. 45:14-46:3). Other than this generalized statement, there is no supporting evidence. First, he presented no evidence indicating which patient or patients constitute a high-risk, or which patients cost more to treat. Colwell did not know if other dental offices serve patients that are equally high risk or costly. Appendix v. I, p. 307 (Tr. 74:13-15).

Next, Colwell likewise presented no evidence as to which specific procedure or procedures, patient, date, etc. he believed ultimately led to nonrenewal of his contract with MCNA. General testimony alone, absent evidence of dates, patient(s) that pose a high-risk, comparative costs, etc., does not establish that Colwell satisfied even the first requirement: that he served a high-risk population in the first place. Further undermining this argument is the fact

that it is less costly for a patient to be treated by Colwell, and more expensive to have a beneficiary referred to a federally qualified health center. Appendix v. I, pp. 403-404 (Tr. 248:10-249:18).

Not only did Colwell fail to present evidence as to the higher-risk patients treated by him, he presented no evidence that his nonrenewal was causally related to his treatment of these unknown patients. He certainly presented no evidence that his treatment of these patients was a "determinative factor" of nonrenewal. Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 686 (Iowa 1990). This argument ignores the logical reality that these alleged high-risk patients will remain in MCNA's network, and will have to be treated by another MCNA provider even after his contract ends. Therefore, MCNA has no reason to remove Colwell due to the treatment required by his patients. Regardless, Colwell failed to present competent evidence to establish, first, the high-risk/high cost patients he treats and, two, that this treatment was connected to his nonrenewal.

Finally, the evidence failed to show that Colwell's request for an expedited resolution for his patients and/or his support of a patient's appeal was connected to the nonrenewal notice.

> **E.4 Anti-gag**
> E.4.05 Contractor shall take no punitive action against a provider who either requests an expedited resolution or supports an enrollee's appeal. See the additional obligations as set forth in Section 4 § 438.410(b).

Appendix v. II, p. 224.

Colwell presented no evidence to support the Order's finding that MCNA nonrenew his contract because of this provision. There is no evidence establishing the patient for whom he sought an expedited resolution/appeal, the date of such alleged request/appeal or, generally, any evidence that he actually engaged in any of these identified activities. He merely states that he did so "[q]uite a few times." Appendix v. I, p. 289 (Tr. 39:11-14). Without any real evidence as to which patient, the issue appealed, whether the request was approved, etc., self-serving testimony is insufficient to establish that Colwell actually

was engaged in such activity. The evidence shows contrarily that Colwell does not seek that many appeals, in relation to other providers. Appendix v. III, pp. 8-10; Appendix v. I, pp. 375 (Tr. 212:8-20), 394 (Tr. 239:5-20). In fact, MCNA encourages its providers to advocate for patients. Appendix v. I, p. 331 (Tr. 150:4-8).

Colwell then shifts gears away from advocacy, and claims that he was retaliated against for seeking payment. He alleges that he first requested payment for unpaid claims sometime before February 2019. Appendix v. I, pp. 289-290 (Tr. 39:15-40:18). However, there is no evidence when exactly Colwell engaged in this "activity". There is likewise no evidence whether or not Colwell's request for payment was valid or frivolous. Nothing in the evidence shows that a frivolous demand for payment is "protected activity."

The notice of nonrenewal was sent on April 24, 2019. Appendix v. II, p. 191. Giving Colwell the benefit of the doubt, as a matter of law, the temporal proximity between his activity of seeking payment and the nonrenewal is too

remote in the absence of other evidence. Phipps v. IASD Health Services Corp., 558 N.W.2d 198, (Iowa 1997) (finding no causation between protected activity and termination one month later); (8th Cir. 2010) (holding no causation between EEOC filing and adverse employment approximately one month later). Assuming that nonrenewal of a contract "for a term" could constitute retaliation, chronological order alone without any additional evidence fails to establish a causal connection.

By any stretch of the imagination, Colwell has not presented sufficient evidence to find that he falls within the terms asserted under the State Contract. In fact, Colwell failed to present *any* evidence to support a finding of causal connection between his nonrenewal, and any of the asserted shot-gunned grounds on which he argues. These terms are immaterial to the issues raised in the litigation: whether MCNA is obligated to continue Colwell's provider agreement pursuant to Iowa Code 249N.6. This Court should reverse that portion of the District Court

Order that finds sections E.2, E.3 and/or E.4 of the State Contract preclude Colwell's nonrenewal.

V. The Provider Contract permits MCNA to elect not to renew Colwell's contract at the conclusion of the term.

Issue Preservation: The District Court found that the terms of the Provider Contract between MCNA and Colwell prevented its nonrenewal. Appendix v. I, pp. 237-241. The issue was raised in MCNA's Motion to Reconsider and Amend. Appendix v. I, p. 261.

Scope and Standard of Appellate Review: Contract construction is a legal issue, reviewed for errors at law. Pillsbury Co., Inc. v. Wells Dairy, Inc., 752 N.W.2d 430, 435-36 (Iowa 2008). The Court reviews legal conclusions for "correction of errors at law." Carroll Airport Commission v. Danne, 927 N.W.2d 635, 643 (Iowa 2019) (internal citations omitted).

Appellant's Contentions and Arguments: The District Court erroneously held that the Provider Contract did not allow nonrenewal at the conclusion of its term, and

therefore, the August 24, 2019, nonrenewal constituted an impermissible "termination." Appendix v. I, p. 241. Based on this finding of a "termination", the Court also found that this violated the implied duty of fair dealing and good faith. Appendix v. I, p. 259. This Court should reverse because this ruling results in an unreasonable reading of the Provider Contract, and renders certain terms meaningless and superfluous.

"An interpretation which gives a reasonable, effective meaning to all terms is preferred to an interpretation which leaves a part of the contract unreasonable or meaningless." Pavone v. Kirke, 801 N.W.2d 477 (2011). Generally, notice of nonrenewal ends that agreement at the conclusion of its stated term; termination ends a contract upon the occurrence of a stated event at any time during the term of an agreement. See *e.g.* Beal v. I.G.F. Insurance Co., 662 N.W.2d 373 (Iowa App. 2003) (acknowledging distinction between immediate termination of a contract and nonrenewal at the conclusion of a contract term).

The applicable term in the Provider Contract between MCNA and Colwell is Article X, Term and Termination.

1. **Term.** This Agreement shall have an initial term of one (1) year commencing on the Effective Date. Thereafter, this Agreement shall automatically renew for terms of one (1) year each. Notwithstanding the foregoing, this Agreement may terminate in accordance with the Termination sections below.
2. **Termination of Agreement.** This Agreement may be terminated under any of the following circumstances:
    A. By either party upon ninety (90) days prior written notice;
    B. By either party upon thirty (30) days prior written notice if the other party is in material breach of this Agreement, except that such termination shall not take place if the breach is cured within the thirty (30) days following the written notice;
    C. Immediately upon written notice by MCNA if there is imminent harm to patient health, or fraud or malfeasance is suspected;
    D. Immediately upon written notice by either party if the other party becomes insolvent or has bankruptcy proceedings initiated against it;
    E. Immediately upon written notice by Provider if MCNA loses, relinquishes, or has materially affected its certificate of authority to operate as an administrative services organization; or
    F. Immediately upon written notice by MCNA if Provider fails to adhere to MCNA's credentialing criteria, including, but not limited to, if Provider (1) loses, relinquishes, or has materially affected its license to provide Covered Services in the State, (2) fails

> to comply with the requirements set forth in this Agreement; or (3) is convicted of a criminal offense related to involvement in any Medicare, Medicaid or other government sponsored program or has been terminated, suspended, barred, voluntarily withdrawn as part of a settlement agreement, or otherwise excluded from any Medicare, Medicaid or other government sponsored program.

Appendix v. II, pp. 19-20. Nonrenewal is not prohibited simply because the Provider Contract does not provide a step-by-step process for MCNA to follow, as was found in the District Court order. This is an unreasonable construction of the agreement, and renders subparagraph (1) meaningless.

First, construction of Article X, with subparagraphs, highlights the distinction made by the parties between contract nonrenewal and contract termination. The Article's heading is entitled "TERM **AND** TERMINATION". Appendix v. II, p. 19 (emphasis added). The term of the agreement is distinguished from the potential termination. Two different concepts were contemplated under one heading: (1) a contract for a specific duration and (2) enumerated events authorizing termination at any point of

the contract term. Based on what the Provider Contract says, these are two separate issues. See Iowa R. App. P. 6.904(3)(n).

Second, nowhere in the Provider Contract or Manual (Appendix v. II, pp. 8-24, 25-189) does it prohibit MCNA from electing not to renew. Appendix v. I, p. 319 (Tr. 131:8-11). As the Order found, the Provider Manual does not address nonrenewal. Appendix v. I, p. 257.

Third, eliminating the ability to not renew the Provider Contract at the term conclusion undermines the very purpose of Article X(1) in the first place. Although the parties intended to create a contract for a term, it will effectively have no limit, and Article X(1) would become surplusage language with no meaning. MCNA's only means to end the Provider Contract, under this reading, would be upon an event of "termination." Appendix v. II, pp. 19-20. This construction transforms the one year Provider Contract into an agreement for an infinite duration, contrary to its language.

A construction that permits nonrenewal also acknowledges that MCNA is authorized by the State to limit the number of providers once the network is adequate, as well as maintain quality of services and control costs. Iowa Code 249N.6(1); Appendix v. II, p. 329. If MCNA is required to maintain all providers in perpetuity, it would be handcuffed to duplicative providers and potentially incur unnecessary costs. MCNA has a legitimate interest in minimizing its operational expenses while administering the State's dental Medicaid program. See Iowa Code 249N.3(1)(d) (promoting "cost containment and minimization of administrative costs"). Ultimately, it is in the public interest that MCNA have discretion to minimize costs, duplicative services and excess.

In order to give effect to each term of the Provider Contract and uphold the goal of managed care, this Court should rule that the Provider Contract automatically renews for successive one-year terms, unless a party elects to not renew for another term under Article X(1). Separately, if an event of termination occurs, the Provider

Contract can be terminated under Article X(2). Therefore, reading the entirety of Article X, MCNA may elect to not renew the agreement under Article X(1) upon term expiration, or it may terminate the agreement under Article X(2) if a "termination" event happens.

The District Court erroneously found that MCNA was referring to the "termination" provision in X(2), rather than the nonrenewal in X(1). Appendix v. I, p. 237. MCNA was clear that it did not invoke any of the enumerated termination grounds from Article X(2). Appendix v. I, pp. 370 (Tr. 207:11-18), 372 (Tr. 209:10-12), 379-380 (Tr. 219:23-220:4). Rather, MCNA decided to not renew the agreement with Colwell under Article X(1). Appendix v. II, p. 191; Appendix v. I, pp. 371 (Tr. 208:7-15), 379 (Tr. 219:15-22). Nonrenewal is inherent for a contract with a specific term, here a one-year term. Appendix v. II, p. 19.

The District Court turned a one-year agreement into a perpetual agreement, contrary to both legal principals and the language of the agreement itself. This renders Article X(1) meaningless, and this Court should reverse.

Based on the foregoing, this Court should instead find that all of the language in the Provider Contract has meaning, and that MCNA can elect not to renew the Provider Contract after the one-year term. This is the only reasonable reading of the agreement that gives meaning to all of the relevant terms, construed as a whole, and upholds the goal of managed care.

VI. MCNA's notice of nonrenewal of Colwell's Provider Contract was valid, and not a breach of the Provider Agreement.

Issue Preservation: The District Court found that notice of nonrenewal did not specify that Colwell was unnecessary to meet network adequacy, and constituted a breach of the Provider Contract. Appendix v. I, pp. 252-255. This issue was preserved in the Motion to Reconsider and Amend. Appendix v. I, pp. 261-262.

Scope and Standard of Appellate Review: The construction of a contract is a legal issue, reviewed for errors at law. Pillsbury Co., Inc. v. Wells Dairy, Inc., 752 N.W.2d 430, 435-36 (Iowa 2008). Findings of fact are

binding if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a).

Appellant's Contentions and Arguments: The District Court erred in finding that the notice of nonrenewal was a breach of the Provider Contract. It incorrectly found that the notice was required to state that Colwell's participation was unnecessary to meet network adequacy. This is a requirement that simply does not exist. The Court concluded that the notice was a "termination" and that it constituted a breach of the Provider Contract. Because MCNA was permitted to elect not to renew Colwell's contract, this Court should reverse.

Iowa Code 249N requires MCNA to include providers in its network only to the extent that such provider is necessary to maintain adequate network sufficiency to meet the needs of enrollees. Once network adequacy is reached in the applicable region, MCNA is not required to contract with providers as long as that adequacy is maintained. See Section III, above.

The Order inferred inconsistency in MCNA's reason for nonrenewal, but this is clearly incorrect. Appendix v. I, p. 249, fn. 8. In providing the nonrenewal notice, MCNA considered the location in which Colwell practiced. Appendix v. I, p. 384 (Tr. 224:14-19); Appendix v. III, pp. 11-12, 13-14. The duplication of general dentists in this region was also considered. Appendix v. I, pp. 397 (Tr. 242:8-18), 398 (Tr. 243:12-30); Appendix v. III, pp. 11-12, 13-14, 16.

MCNA decided to not renew Colwell's agreement after years of struggles. Appendix v. I, pp. 303 (Tr. 56:7-11), 355 (Tr. 190:5-7), 357 (Tr. 192:12-20). Colwell's struggles caused his practice to monopolize an "inordinate amount of [MCNA] staff time" to address ongoing problems. Appendix v. I, p. 355 (Tr. 190:2-4). Abusive behavior from Colwell's employees drove an MCNA employee to tears. Appendix v. I, pp. 355 (Tr. 190:13-24), 356 (Tr. 191:18-20), 363-364 (Tr. 200:21-201:3). Education of Colwell's office did not help these deficiencies. Appendix v. I, pp. 357 (Tr. 192:20-23), 368 (Tr. 205:3-8). Nonrenewal of Colwell's

contract was not based on any litigation or retaliation. Appendix v. I, p. 404 (Tr. 249:19-23). It is clear that the added cost Colwell's practice imposed, as a difficult duplicative practice, is the common theme. Appendix v. II, p. 629.

The Court found that MCNA terminated Colwell's agreement because the notice referenced Article X, but this is incorrect. Appendix v. I, pp. 240-241. This ignores the face of the notice that states that MCNA "is providing notice of non-renewal of [the Provider Contract]." Appendix v. II, p. 191. The notice must reference Article X because X(1) provides for the limited one-year term and the renewal thereof, and it was that very renewal that MCNA was addressing. Appendix v. II, p. 19. Reference to Article X is necessary for nonrenewal, not determinative that it is a "termination."

The notice was not deficient simply because it incorporated a process for the continuity of patient care through nonrenewal. The Provider Contract does not prohibit MCNA from using the same or a similar process

for nonrenewal and termination. Appendix v. I, p. 380 (Tr. 220:5-16). References to Colwell's obligations through the end of his contract simply ensure that Colwell will continue to provide services to any patients and to facilitate the transition of services. Appendix v. I, pp. 281 (Tr. 31:1-22), 372 (Tr. 209:4-9). In short, MCNA provided this process to Colwell to facilitate transition of any patients that he may treat.

None of the alleged defects with the nonrenewal notice address network adequacy, the duplication of Colwell's practice or the requirement of MCNA to maintain Colwell as a provider. In fact, the evidence overwhelmingly shows that MCNA has and maintains an adequate network of general dentists in and around Pottawattamie County, and that Colwell is not necessary to meet that network standard.

There is no federal or state law that prevents nonrenewal of Colwell's Provider Contract. MCNA is authorized to contain costs and limit its provider network. 42 CFR § 438.12(b); Iowa Code 249N.3(1)(d); Exhibit 6, p.

30]. Under Article X(1) of the Provider Contract, nonrenewal is authorized to arrest the year-after-year renewal. Because nonrenewal was authorized, the Court should find that MCNA provided a valid notice of nonrenewal on April 24, 2019. Such nonrenewal did not constitute a "termination" of the Provider Contract, and was not a breach of Article X or of any implied duty of fair dealing and good faith. Albaugh v. The Reserve, 930 N.W.2d 676, 686 (Iowa 2019) (implied terms "do[] not give rise to new substantive terms that do not otherwise exist in the contract"). This Court should overturn the Order, and find that the notice issued on April 24, 2019, constituted a valid notice of nonrenewal.

CONCLUSION

This Court should reverse the February 17, 2020, order, and rule that MCNA validly provided Colwell with nonrenewal of his Provider Contract. The District Court's rulings that the federal "choice of provider" law, designed for family planning providers, applies to Colwell, a dentist,

is clearly incorrect. There are no cases or authority cited that apply a federal AWP Rule to a dentist or any other provider outside of a "family planning" context.

The scope of Iowa's AWP Rule, Iowa Code 249N.6, appears to be a case of first impression, and this Court should reverse the District Court's overly-broad construction. The definitions in the statute and applicable Iowa Administrative Code provisions make it clear that the broad AWP Rule that applies to the State, does not apply to a managed care entity such as MCNA. Rather, MCNA is obligated to maintain a sufficient network of providers, but has the ability to refuse to contract with duplicative providers, such as Colwell.

This Court should reverse the District Court and find that, based on the competent evidence of general providers in Colwell's region, MCNA's network is more than adequate. MCNA's network is and will remain adequate after nonrenewal of Colwell's contract. Because of this, the AWP Rule does not mandate the categorical inclusion of Colwell in MCNA's network.

The Court should also conclude that the Provider Contract contemplates and permits nonrenewal. This finding gives meaning to all the terms of the contract, and does not render Article X(1) meaningless. MCNA provided a valid notice of nonrenewal to Colwell, and the reasons offered by it constitute valid reasons. The insinuation of a discriminatory or retaliatory reason for the nonrenewal has no supporting evidence. Across the board, Colwell presented no evidence about the specific "protected" act in which he alleged to engage, and he likewise presented no evidence of a causal connection to the nonrenewal.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard orally upon submission of this appeal.

ATTORNEY'S COST CERTIFICATE

I certify that the true cost of producing the necessary copies of the foregoing Final Brief only was $0.00, due to electronic filing, and that amount is to be charged to the Defendants-Appellants.

/s/ Rodney C. Dahlquist, Jr.
Rodney C. Dahlquist, Jr., *pro hac vice*
Anne M. Breitkreutz, AT0001103

CERTIFICATE OF COMPLIANCE

Appellants' Final Brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because:

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/s/ Rodney C. Dahlquist, Jr.
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CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that on August 27, 2020, I electronically filed the foregoing with the Clerk of the Supreme Court by using the EDMS system, which will provide notice of this filing to the attorneys of record.

/s/ Rodney C. Dahlquist, Jr.