UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JANNIE WATTS, *et al.*,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 04 C 4062
	)	
ADVOCATE HEALTH CARE NETWORK, *et al.*,	)	Judge Joan B. Gottschall
	)	
	)	
Defendants.	)	

ORDER

Plaintiffs sue Advocate Health Care Network and Advocate Health and Hospitals Corporation ("Advocate") for failing to conduct itself as the charitable, non-profit entity it purports to be and based on which it "receives millions of dollars each year in Federal, State and local tax exemptions." Plaintiffs assert a contract theory of liability: that to receive its tax exemptions, Advocate promised to operate as a charitable, not-for-profit entity. Plaintiffs and the putative class allege that they are "third party beneficiaries of the contractual promises made to Federal, State and local governmental bodies to provide charitable care to the uninsured poor." The class also includes, it is alleged, "all uninsured patients who, regardless of their financial status, were charged unreasonable and excessive rates for medical care." Plaintiffs' federal claims are: (1) Third Party Breach of Contract, arising under 26 U.S.C. § 501(c)(3), based upon Advocate's alleged express and/or implied agreement with the United States Government, in order to be eligible for § 501(c)(3) tax exempt status, "to operate exclusively for charitable purposes; provide emergency room medical care to the Plaintiffs and the Class without regard to their ability to pay for such medical care; provide mutually affordable medical care to the Plaintiffs and the Class; not to pursue outstanding medical debt from the Plaintiffs and the Class by engaging in aggressive, abusive, and humiliating collection practices; and not provide financial inurement to individuals or entities" and (2) Violations

of the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. §1395dd. Because neither theory is legally tenable, the court dismisses Counts I and VI and declines to exercise jurisdiction over the remaining state law claims.

I. PLAINTIFFS FAIL TO STATE A CLAIM BASED ON THE BREACH OF ADVOCATE'S ALLEGED OBLIGATIONS UNDER 26 U.S.C. § 501(c)(3)

Plaintiffs' theory on Count I depends on one of two premises being viable: either that plaintiffs injured by a § 501(c)(3) charity's uncharitable behavior have a private right of action to enforce the entity's § 501(c)(3) obligations or that § 501(c)(3) gives rise to an implied contract (plaintiffs have suggested nothing that could be construed as an express contract) of which members of the public are third party beneficiaries. Neither theory has merit.

Under Seventh Circuit law, there is a strong presumption against implied private rights of action, and to overcome it, the court must find something in a statute's language, structure or history to indicate Congressional intent to authorize private enforcement. *Mallet v. Wis. Div. Of Vocational Rehab.,* 130 F.3d 1245, 1249 (7th Cir. 1997). There is nothing plaintiffs have cited, and nothing the court can find in the Internal Revenue Code or in any reported case, that remotely suggests that private parties are authorized to act as private attorneys general to enforce the charitable obligations of entities enjoying § 501(c)(3) status. Indeed, 26 U.S.C. § 7801 states with pellucid clarity: "Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury."[1] Not only does this language, coupled with plaintiffs' failure to cite anything that would meet its requirement of an express provision for private enforcement, doom this theory, but whatever public good might

[1] Congress has provided a detailed procedure for the resolution of controversies concerning an entity's tax-exempt status, limiting jurisdiction to the United States Tax Court, the United States Court of Federal Claims, or the district court for the District of Columbia. 26 U.S.C. § 7428.

conceivably flow from allowing this suit to go forward, the potential negatives that would result from private enforcement are easy to imagine: charitable entities being hailed into court by anyone disappointed by the extent of their charitable activities and courts being forced to analyze the entire range of such entities' activities to determine whether or not they satisfy § 510(c)(3)'s broad requirements.

Plaintiffs' third party beneficiary theory is no more viable. In *American Hospital Assoc. v. Schweiker,* 721 F.2d 170 (7th Cir. 1983), the Seventh Circuit addressed the American Hospital Associations ("AHA's") challenge to federal regulations promulgated to define standards for compliance with requirements of the Hill-Burton Act, 42 U.S.C. § 291, *et seq.,* for community service and uncompensated care by hospitals receiving federal funds under the Act. AHA claimed that the regulations, by arguably expanding participating hospitals' obligations in the community service and uncompensated care areas, "impermissibly impair[ed] the assisted hospitals' contractual rights by adding conditions to which the hospitals did not assent at the time they entered into their agreements with the government . . . ." 721 F.2d at 182. The Seventh Circuit rejected the contract theory, noting that unlike a contract, which is a voluntary agreement negotiated between two parties, a grant-in-aid program like the Hill-Burton Act "is an exercise by the federal government of its authority under the spending power to bring about certain public policy goals." *Id.* At 183. In such a situation, the Seventh Circuit observed, the conditions are not negotiated but provided by statute, and the relevant intent is not the intent of the two parties but the intent of Congress in enacting the governing legislation. The disanalogy between § 501(c)(3) and a contract is even more striking, since the "consideration" given Advocate was merely an exemption from taxes otherwise due (or an exemption for its donors), not even a grant as is involved in the Hill-Burton program. *See generally National R. Passenger Corp. v. A. T. & S. F. R. Co.,* 470 U.S. 451, 465 (1985) ("For many decades,

this Court has maintained that absent some clear indication that the legislature intends to bind itself contractually, the presumption is that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.' . . . This well-established presumption is grounded in the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state. . . [T]he party asserting the creation of a contract must overcome this well-founded presumption.")(citations omitted).

The contract analogy is flawed in another way: there are an infinite number of ways in which a tax-exempt organization can satisfy its § 501(c)(3) obligations, rendering its obligations far too open-ended and flexible to give rise to a claim for breach. In *American Hospital, supra,* the Seventh Circuit found that the "open-endedness" of a party's Hill-Burton obligations made those obligations suitable for discretionary administrative definition, even if the party's obligations were thereby expanded, to achieve appropriate public policy goals. Similarly, the many, varied ways in which an entity can justify its tax-exempt status make § 501(c)(3) obligations particularly unsuitable for private enforcement. Plaintiffs have standing only to complain of ways in which they were injured by defendants' conduct, but a given plaintiff may be denied the charity he or she desires by an institution which is serving the permissible purposes of a § 501(c)(3) exemption in other significant ways. It is for the Secretary of the Treasury to make the flexible, discretionary judgments necessary to carry out the purposes of the charitable tax-exemption statute.

The court has set forth some of its major objections to plaintiffs' theory, but it need not reinvent the wheel. Plaintiffs' third party beneficiary and private right of action theories have been repeatedly rejected by the courts which have considered them. The court agrees with the analyses of the courts in the following small but representative sample of cases: *Lorens v. Catholic Health*

Care Partners, No. 1:04 CV 1151, --- F. Supp. 2d ---, 2005 WL 407719 (N. D. Ohio Jan. 13, 2005); *Peterson v. Fairview Health Services,* No. Civ.A04-2973, 2005 WL 226168 (D. Minn. Feb. 1, 2005); *Shriner v. Promedica Health System, Inc.,* No. 3:04 CV 7435, 2005 WL 139128 (N.D. Ohio Jan. 21, 2005).

The motion to dismiss Count I is granted. To the extent plaintiffs elsewhere in their Amended Complaint seek to allege federal question jurisdiction based on the alleged violation of obligations arising under 26 U.S.C. § 501(c)(3), the court rejects the contention that plaintiffs have rights under this section which give rise to a private, federal cause of action.

II. PLAINTIFFS FAIL TO STATE AN EMTALA CLAIM

The Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. §1395dd, "places obligations of screening and stabilization upon hospitals and emergency rooms that receive patients suffering from an 'emergency medical condition.'" *Roberts v. Galen of Virginia, Inc.,* 525 U.S. 249 (1999). Plaintiffs claim that Advocate, before admitting any patient including uninsured patients, and including emergency room admissions, requires the patient to sign a form contract promising to pay Advocate in full for any charges for any services performed by Advocate.

Plaintiffs allege that plaintiff Jannie Watts was an uninsured but employed public housing resident when her 16-year old son was wounded by gunfire and was hospitalized at Advocate's Christ Hospital, where she was required to sign a guaranty of payment. The charges for Watts' son ultimately totalled $48,008.47. Plaintiffs allege that Watts has insufficient assets to satisfy this obligation, yet she has received numerous threatening and harassing telephone calls from Advocate or its agents. Plaintiffs allege that Advocate *conditioned* the delivery of care on their willingness to sign a promise of payment, and would not treat plaintiffs until they agreed to pay. There is no allegation that defendant failed to treat Watts' son or that his treatment was delayed.

Plaintiff Katherine A. Mazur was a 19-year old student at Loyola University when, in March 2003, she was in a serious automobile accident in a car driven by an uninsured friend. Mazur was delivered unconscious to Lutheran General Hospital in Park Ridge where she remained in a coma for 9 days. Mazur had no health insurance, a fact of which the Hospital was informed when she was admitted. Before she was released, Mazur was required to sign a guaranty of payment. Advocate subsequently billed Mazur $59,758.19. Mazur is without funds to pay this obligation. She and her parents have received several phone calls each day demanding payment and threatening litigation. Ultimately, Mazur was sued, and being without funds, defaulted, resulting in a judgment against her. Plaintiffs allege that Advocate *conditioned* the delivery of care on their willingness to sign a promise of payment, and would not treat plaintiffs until they agreed to pay. It is not alleged that Mazur was denied treatment by Advocate or that her treatment was delayed.

Plaintiffs' attempt to read EMTALA as a statute which regulates a hospital's payment practices must fail; there is nothing in the text of the statute which suggests that that is its purpose or its reach. The statute plainly sets forth its mandate: that regardless of whether an individual who comes to a hospital with an emergency medical condition is "eligible for benefits under this subchapter," the hospital must either do what is necessary medically to stabilize the individual's medical condition or transfer the patient in compliance with the statute's strict requirements. Only an individual "who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section" may bring a private civil suit. The Amended Complaint makes clear that plaintiff Mazur was treated even though she was unconscious when she was brought to the hospital. In the case of plaintiff Watts, her allegations may support a claim that she was compelled to sign a promise of payment under duress, but she indicates that she signed and her son was treated. The court finds nothing in these allegations which suggests a viable EMTALA claim.

In addition, with respect to plaintiff Watts, it is alleged that her son was hospitalized in 1998. EMTALA contains a two year statute of limitations. 42 U.S.C. § 1395dd(d)(2)(C). Plaintiff Watts' claim therefore must also be dismissed as being been brought too late. Moreover, any EMTALA injury that was sustained in the Watts case was sustained by Ms. Watts' son. Her claim additionally fails for the reason that she is not an individual who suffered personal harm as a result of any putative EMTALA violation. 42 U.S.C. § 1395dd(d)(2)(A). Plaintiffs' contention that Advocate's EMTALA violations are ongoing and therefore there is no limitations problem, and that the legal and collection actions she faces satisfies EMTALA's personal harm requirement, read the words of the statutes so expansively that they mean nothing–that is, nothing other than what plaintiffs wish they mean. Plaintiffs argue that case law supports a broad reading of EMTALA's terms. That may be so, but statutes must be construed to have some connection to the literal terms the legislature has chosen, and plaintiffs' concept of a "broad reading" makes the words mean something that has no relation to the terms of the statute or their evident purpose. The court notes that other than cases saying that the terms should be liberally construed, plaintiffs cite no case support for their proffered construction.

Plaintiffs' EMTALA claims are therefore dismissed.

III. CLAIMS AGAINST THE AMERICAN HOSPITAL ASSOCIATION

The American Hospital Association ("AHA") has moved to dismiss the two counts asserted against it, Count VIII, Civil Conspiracy, and Count IX, Aiding and Abetting. These claims appear to charge AHA with participating in Advocate's violation of its alleged contractual responsibilities under 26 U.S.C. § 501(c)(3) as well as its alleged violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, referred to in Count VIII as the Illinois Federal [sic] Consumer Fraud and Deceptive Business Practices Act.

The court sees no way in which any federal claim against AHA can survive, given the court's disposition of plaintiffs' federal claims against Advocate. Therefore, insofar as plaintiffs seek to allege federal claims against AHA based on the putative federal violations asserted against Advocate, those claims are dismissed.

IV. CONCLUSION

Plaintiffs have failed to state a cause of action arising under 26 U.S.C. § 501(c)(3) or 42 U.S.C. § 1395dd, the only two federal causes of action they assert. These claims are accordingly dismissed as to Advocate. Insofar as plaintiffs' claims against AHA are based on these same purported violations of federal law, they also are dismissed. The court finds no reason to exercise supplemental jurisdiction over the remaining claims, all of which arise under state law, and those claims are dismissed without prejudice. This case is hereby terminated.

ENTER:

/s/
Joan B. Gottschall
United States District Judge

DATED: March 30, 2005