

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CINDY JOHNSON, :
STEPHANIE L WALKER, :
BARBARA A. CRAIG, on behalf of :
themselves :
and all others similarly situated, :

Plaintiffs, :

v. :

ARIZONA HOSPITAL AND HEALTH- :
CARE ASSOCIATION; AzHHA SERVICE :
CORPORATION; et. al :

Defendants. :

No. 07-01292 (SRB)

**PROPOSED ALLOCATION PLAN
BY HAL J. SINGER, PH.D.**

I. INTRODUCTION

1. I understand this class action case was brought by several temporary nurses against the Arizona Hospital and Healthcare Association and its subsidiary, the AzHHA Service Corporation (collectively, “AzHHA”), and against a number of Arizona hospitals that participated in a registry program operated by AzHHA for the hospitals, through which the hospitals obtained the services of temporary per diem and temporary travel nursing personnel from outside nurse staffing agencies. Plaintiffs have alleged that the hourly rates set by AzHHA and the hospitals for the nursing positions included in the AzHHA Per Diem Registry and the AzHHA Travel Registry were wrongfully suppressed, thereby causing temporary nurses to be injured.

2. I understand that a classwide settlement has been reached between Plaintiffs and nearly all Defendants,¹ and that the money Defendants have agreed to pay needs to be allocated among members of the Per Diem Settlement Class (“Per Diem Class”) and the Traveler Settlement Class (“Traveler Class”) (collectively, the “Classes”), who submit timely and valid claims at a later time. I have been asked by counsel for Plaintiffs to propose an appropriate allocation procedure (“Allocation Plan”).

3. The factors to be considered and incorporated into the Allocation Plan include (a) whether the class member is a member of the Per Diem or the Traveler Class; (b) what position the class member occupied (such as RN, LPN, CNA, etc.); and (c) how many hours the class member worked for a Defendant hospital or other AzHHA hospital during the Class Period (Jan. 1, 1997 to Sept. 12, 2007). As a general matter, Per Diem Class members will receive more per hour than Traveler Class members (reflecting, among other things, the risk that absent

1. See the Class Settlement Agreement and Release, dated September 3, 2010 (the “Settlement”); and AzHHA Class Settlement and Release, dated September 3, 2010.

settlement, no traveler class would be certified in the face of Defendants' opposition); RNs will receive more per hour than other positions (such as LPNs, CNAs) (reflecting the fact that their bill rates are higher); and those who worked more total hours at an AzHHA hospital during the Class Period will receive more than those who worked fewer hours.

4. For purposes of illustration, I will assume that approximately \$15 million will be available for allocation (the final figure may be different). I also assume that (a) as a general matter (and with an exception I will discuss below), all these funds will be allocated among those class members who submit valid and timely claims; and (b) the ratio of the average per-hour dollar amount to be allocated to hours worked through the Per Diem Registry as compared to hours worked through the Travel Registry will be at least 4 to 1. Put another way, Per Diem Class Members will receive, on a per-hour average basis, four times more than Travel Class members (reflecting, among other things, that no certified Traveler Class currently exists).

5. The Allocation Plan described below, though based on these assumptions, can be applied to allocate other dollar amounts and other ratios if either the amount or the ratio were changed.

6. The Allocation Plan can be broken down, generally, into the following two steps:

- *Step One:* Using data from claim forms to be submitted by class members, and the 4/1 minimum allocation ratio, an average, per-hour allocation amount can be calculated for the Per Diem Class and the Travel Class, respectively.
- *Step Two:* Using the AzHHA Registry hourly bill rates for the class period (Jan. 1, 1997 to Sept 12, 2007), I can calculate a "Bill Rate Index" that allows comparison of AzHHA bill rates for different nursing positions included in the classes, such as RNs, LPNs, etc. The results of Step 1, above, are then combined with the Bill Rate Index, to generate average per-hour allocation amounts corresponding to different nursing positions. Positions with higher AzHHA bill rates will have higher per-hour allocation amounts.² Also, hours

2. The allegation here was that the AzHHA rates were wrongfully suppressed. Suppose that one person was paid \$20/hour, and another was paid \$40/hour, and suppose each should have been paid 10 percent more. The person

worked at AzHHA hospitals that were not in AzHHA at the time and/or through staffing agencies that were never in AzHHA will be allocated lower amounts per hour.

II. STEP ONE

7. Based on data produced in discovery, from 1997 through 2007, there were 7.35 million hours purchased by AzHHA hospitals through the AzHHA Per Diem Registry; and 16.54 million hours purchased through the Travel Registry. These hours, however, are not the only hours that may be claimed by class members. Eligible class members may submit claims for (A) hours worked at an AzHHA hospital while the hospital participated in the AzHHA Registry and worked through a nurse staffing agency that participated in the AzHHA Registry; (B) hours worked at an AzHHA hospital but at a time when the hospital was not in the Registry, and through an agency that participated in the Registry; (C) hours worked at an AzHHA hospital while it was in the AzHHA Registry but through a non-AzHHA agency; or (D) hours worked at an AzHHA hospital when the hospital was not in the Registry and through a non-AzHHA agency. The 7.35 million Per Diem Hours and 16.54 million Travel hours are (or should be) all Type A. The claims to be submitted will also provide information about hours of Type B, C, and D.

8. The Allocation Plan assigns the highest per-hour dollar amount to Type A hours; the lowest to Type D; with Types B and C in the middle. This adjustment corresponds to the relative directness of the relationship of the type of hours to the conduct alleged. In other words, the allegation of Plaintiffs was that the bill rates set by AzHHA for AzHHA hospitals to be paid

who was paid \$40/hour would get \$4 more per-hour, while the person who was paid \$20/hr would get \$2 more per-hour, because 10 percent of 40 = 4, and 10 percent of 20 = 2. Applying this same principle here, those class members who worked at positions with higher AzHHA bill rates will be allocated more per-hour than those who worked at positions with lower bill rates.

to AzHHA staffing agencies were suppressed. Type *A* hours are directly related to this allegation. Hours of Types *B* and *C* are half as related, and Type *D* less still. That is not to say that such Type *B*, *C*, and *D* hours were not affected by the alleged suppression of bill rates, but that whatever effect occurred would have been less as compared to Type *A*. Accordingly, the Allocation Plan would adjust allocation rates as follows:

TABLE 1: ADJUSTMENT FACTORS FOR DIFFERENT TYPES OF HOURS WORKED

Hours Type	AzHHA Hospital At Time That Hours Were Worked?	AzHHA Agency?	Adjustment Factor
<i>A</i>	Y	Y	1.00
<i>B</i>	Y	N	0.50
<i>C</i>	N	Y	0.50
<i>D</i>	N	N	0.25

9. Once all the valid claims data are collected, we will know how many hours of each of the four Types have been claimed. This, in turn, allows us to compute an average hourly allocation amount as follows. I will use the abbreviation “PD-A” to represent all Type *A*, Per Diem hours that are claimed. The abbreviation “PD-B” will stand for all Type *B*, Per Diem hours claimed. The abbreviation “PD-C” will stand for all Type *C*, Per Diem hours claimed. And the abbreviation “PD-D” will stand for all Type *D*, Per Diem hours claimed. I will use the letter “Y” to represent the average hourly allocation amount for all Per Diem class members. Using these abbreviations (and the asterisk symbol, which means “multiplied by”), the total dollar amount to be allocated to the Per Diem Class can be written as:

$$[1] \quad (\text{PD-A} * Y) + (\text{PD-B} * 0.5 * Y) + (\text{PD-C} * 0.5 * Y) + (\text{PD-D} * 0.25 * Y) = \text{Total Per Diem Allocation.}$$

10. The same general formula can be applied to the Travel Class. I will use the abbreviation “TR-A” to represent all Type *A*, Travel hours that are claimed. The abbreviation “TR-B” will stand for all Type *B*, Travel hours claimed. The abbreviation “TR-C” will stand for all Type *C*, Travel hours claimed. And the abbreviation “TR-D” will stand for all Type *D*, Travel

hours claimed. Let “Z” stand for the average hourly allocation amount for the Travel Class. The Total Travel Allocation amount then can be written as:

$$[2] \quad (\text{TR-A} * Z) + (\text{TR-B} * 0.5 * Z) + (\text{TR-C} * 0.5 * Z) + (\text{TR-D} * 0.25 * Z) = \text{Total Travel Allocation.}$$

11. Using the illustrative assumption that the total amount available to be allocated for both classes is approximately \$15 million, I can combine the two formulas into one overall formula, as follows:

$$[3] \quad (\text{TR-A} * Z) + (\text{TR-B} * 0.5 * Z) + (\text{TR-C} * 0.5 * Z) + (\text{TR-D} * 0.25 * Z) \\ + (\text{PD-A} * Y) + (\text{PD-B} * 0.5 * Y) + (\text{PD-C} * 0.5 * Y) + (\text{PD-D} * 0.25 * Y) = \$15 \text{ million.}$$

12. As discussed, the claims submitted will provide data on the total number of hours of the different types (*A*, *B*, *C*, and *D*) being claimed. I also understand that the ratio of the average Per Diem and Travel per-hour amounts will be at least 4 to 1. That means that $Y = 4 * Z$. Once we have all the claims data, we can then calculate the average hourly allocation amount for each class (this is Step One).

13. To illustrate, suppose that the claim forms for Per Diem Class members report 6 million Type *A* hours, 2 million Type *B* hours, 2 million Type *C* hours, and 3 million Type *D* hours. Also, suppose that claims forms for the Travel Class report 10 million hours of Type *A*; 3 million hours of Type *B*; 2 million hours of Type *C*; and 2 million hours of Type *D*. Plugging these illustrative numbers into our equation, we find that $Z = \$0.31$, while $Y = \$1.25$. These two numbers would mean that the Per Diem Class would be allocated in total (in this illustration), \$10.9 million, and the Travel Class \$4.1 million. The per-hour Per Diem average is still four times the Travel average, but the total Per Diem dollars are not four times the total Travel dollars, because there are so many more Travel hours being claimed. This is an illustration only, and the final numbers will come from the actual claim forms submitted. In Step Two, discussed

below, I will use these two averages (Z and Y) to develop per-hour amounts for different nursing positions.

II. STEP TWO

14. Once we obtain the averages Z and Y, the next step is to determine amounts for the various nursing positions, such as RNs, LPNs, CNAs, etc. The AzHHA Registry rates for RNs were higher than the rates for LPNs, and LPN rates were higher than for CNAs. If all rates were suppressed by the same percentage, RNs would, by virtue of their higher bill rate, have incurred higher per-hour damages.

15. To translate Z and Y into amounts for each Position, we compute an index of bill rates for the Positions (“Bill Rate Index”). I understand that the Classes include those positions identified in the AzHHA Registry “rate sheets” from 1997 through 2007, as set forth in Exhibits 6 and 7 to the Settlement Agreement. Using data previously produced in discovery concerning hours purchased through the AzHHA Registry, along with the U.S. Consumer Price Index, I calculated weighted-average bill rates for each Position (separately for the Per Diem and Travel rates), with rates expressed in 2008 dollars. The weighted averages account for total hours billed for a particular position in a particular year, so that the average more accurately reflects actual rates charged and paid over time.

16. The calculation of the Bill Rate Index for Per Diem and Travel is reflected in Tables 2 and 3 below. For example, the weighted-average AzHHA (Per Diem) Registry rate for RNs was \$56.37/hour. I set this rate equal to “1” in the Bill Rate Index. The weighted-average AzHHA (Per Diem) rate for LPNs was \$35.51/hour. This equates to a Bill Rate Index of 0.63, because $35.51/56.40 = 0.63$.

TABLE 2: BILL RATE INDEX CALCULATION FOR CATEGORIES OF PER DIEM NURSES
(EXPRESSED IN 2008 DOLLARS).

Nurse Category	Nurse Type	Weighted Average Bill Rate	Bill Rate Index
RN	Per Diem	\$56.37	1.00
LPN	Per Diem	\$35.51	0.63
OR Tech	Per Diem	\$34.83	0.62
BHT/Psych Tech	Per Diem	\$23.53	0.42
CNA/Nurse Aide	Per Diem	\$21.84	0.39
Sitter	Per Diem	\$15.42	0.27
Monitor Tech*	Per Diem	\$20.61	0.37

* Hours data are lacking for Monitor Techs, which is considered "Miscellaneous Category." Bill rates for Monitor Techs therefore represent non-weighted averages.

17. I did the same calculations for all positions in the AzHHA Travel Registry, as set forth below. Again, I set the weighted-average bill rate for RNs, with generally the highest bill rates in the Travel Registry, at "1"; I then calculated all other positions in comparison to it, as above. A few miscellaneous Positions, which appeared only briefly, have index numbers above 1, reflecting their higher AzHHA rates.

TABLE 3: BILL RATE INDEX CALCULATION FOR CATEGORIES OF TRAVELER NURSES (EXPRESSED IN 2008 DOLLARS)

Nurse Category	Nurse Type	Weighted Average Bill Rate	Bill Rate Index
RN	Travel	\$56.54	1.00
CVOR Tech	Travel	\$41.46	0.73
LPN	Travel	\$39.77	0.70
OR Tech	Travel	\$39.57	0.70
BHT/Psych Tech	Travel	\$21.97	0.39
CNA/Nurse Aide	Travel	\$21.80	0.39
Rad Tech	Travel	\$18.32	0.32
Physician Asst.*	Travel	\$67.85	1.20
Physical Therapist*	Travel	\$61.67	1.09
Speech Pathologist*	Travel	\$61.67	1.09
Occup. Therapist*	Travel	\$61.67	1.09
Nurse Practitioner*	Travel	\$61.67	1.09
Specialty Rad Tech*	Travel	\$60.87	1.08
COTA*	Travel	\$45.47	0.80
PT Assistant*	Travel	\$44.54	0.79
Medical Tech*	Travel	\$38.45	0.68
Resp. Therapist*	Travel	\$35.82	0.63

* These Miscellaneous Categories consist of certain Traveler Positions for which hours data are lacking, because these Positions do not exist for most of the Class Period. Thus, weighted-average bill rates cannot be directly computed. Bill rates for these categories therefore represent non-weighted averages.

18. With the Bill Rate Index in hand, and claims data on hours, we can translate the overall amounts of Z and Y into an average per-hour amount for each position. To use the same illustration as above, recall that we assumed, for Per Diem nurses, 6 million total PD-A hours claimed, 2 million PD-B hours, 2 million PD-C hours, and 3 million PD-D hours. For simplicity, suppose that there were only two nursing categories, RNs and LPN, and suppose that three-quarters of all these Per Diem hours are RN hours, and that the remainder are LPN hours. Let “L” represent the LPN allocation amount, and let “R” represent the RN allocation amount. Recall that in this illustration, the Per Diem Class was allocated a total of \$10.9 million. With this information in hand, we can write:

$$[4] \quad (1.5M * L) + (1M * 0.5 * L) + (0.75M * 0.25 * L) \\ + (4.5M * R) + (3M * 0.5 * R) + (2.25M * 0.25 * R) = \$10.9M$$

19. According to the Bill Rate Index in Table 2 above, $L = 0.63 * R$. Plugging this into the equation above, we find that $L = \$0.87$ and $R = \$1.38$. So, in this illustration, an individual Per Diem class member who was an RN and claimed 100 Type A hours, 20 hours of Type B, 20 hours of Type C, and 10 hours of Type D, would be allocated (before any required deductions for taxes or any other required deduction), the following amount:

$$[5] \quad (100 * \$1.38) + (20 * 0.5 * \$1.38) + (20 * 0.5 * \$1.38) + (10 * 0.25 * \$1.38) = \$169.05.$$

20. Thus, the role of the Bill Rate Index is to determine how average hourly payments are to be allocated across different nurse Positions.

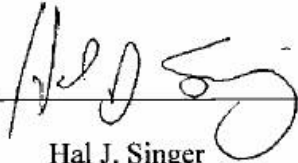
21. It is quite likely that the total hours submitted on Claim forms will differ from the total hours recorded in our databases. Assuming the amount to be allocated remains fixed, the fewer hours that are actually claimed, the higher the average hourly compensation will be. If very few class members file claims, the per-hour amount may be so high that the amount would bear too little relation to the allegations in the litigation and the available evidence on potential damages. AzHHA itself calculated that its rates were \$10/hour below what they otherwise would have been.³ Using this estimate and trebling it (because Plaintiffs claimed entitlement to treble damages), we have a cap of \$30/hour. If so few claims are made that this cap is reached, the excess funds will be, I understand, donated to nursing schools.

* * *

3. See Class Certification Report of Hal J. Singer (Dec. 22, 2008), ¶66 (“AzHHA...advertised “savings” to its member hospitals of \$10 an hour compared to non-AzHHA temporary nurse agencies.”). See also CHW-S000607 (“Row four provides an estimate of what the non-contract RN agency usage is costing your organization using an average billing rate of \$57 per hour . . . Please note that the average RN bill rate through the Registry Program, if using contract agencies, is \$47 per hour.”).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 3, 2010



Hal J. Singer