

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTH EASTERN COUNSELING CENTER, INC.,)	
)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-5575
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent.)	
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A.R.T.S OF BREVARD, INC.,)	
)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-5576
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent.)	
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CO-DEP COUNSELING CENTER, INC.,)	
)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-5577
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent.)	
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COLONIAL COUNSELING ASSOCIATES,)	
)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 95-5578
)	
AGENCY FOR HEALTH CARE)	
ADMINISTRATION,)	
)	
Respondent.)	
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RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark, held a formal hearing in the above-styled consolidated cases on May 14, 1996, in Tallahassee, Florida.

APPEARANCES

For Petitioner: John M. Knight, Esquire
2804 Remington Green Circle, Suite 4
Tallahassee, Florida 32308

For Respondent: Gordon Scott, Senior Attorney
Agency for Health Care Administration
Fort Knox 3, Suite 3431
2727 Mahan Drive
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STATEMENT OF THE ISSUE

The issue for resolution is whether Petitioners' Medicaid provider numbers should be cancelled as proposed by the respondent agency.

PRELIMINARY STATEMENT

On or about October 1, 1995, the Agency for Health Care Administration (Agency) notified each of the above petitioners that their Medicaid provider numbers were being cancelled for their failure to have a contract with the Department of Health and Rehabilitative Services. The letter cited section 409.906(8), Florida Statutes, as authority and provided the right to a Chapter 120 hearing to challenge the agency action.

After timely requests for such hearings and referral to the Division of Administrative Hearings, the four cases were consolidated and proceeded as described above.

At the commencement of the hearing the hearing officer considered Petitioners' motion in limine to exclude a December 1995 version of the Medicaid handbook describing requirements for community mental health services. The motion in limine was denied, but the weight to be accorded the document was specifically reserved. The exhibit, received in evidence as Respondent's exhibit no. 2, has been considered but is determined to be immaterial, as more fully explained below.

Without objection, Petitioners' exhibits nos. 1-27 were received in evidence, including a deposition of Sara "Sally" Morton, a program administrator in the Agency's Medicaid Program Development Office. Respondent's exhibits nos. 1 and 2 were received in evidence. After the exhibits were marked and received the parties stipulated that there were no disputed issues of material fact and no need to take testimony.

On June 3, 1996, the parties filed proposed recommended orders with thorough legal argument. The findings of fact proposed by each are substantially adopted here.

FINDINGS OF FACT

1. At all times material each of the petitioners was licensed by the Department of Health and Rehabilitative Services in accordance with Chapter 397, Florida Statutes. Each was enrolled as a mental health provider in the Florida Medicaid program under section 409.906(8), Florida Statutes, administered by the Agency for Health Care Administration (Agency).

2. The Agency's handbook describing community mental health Medicaid provider requirements states that to be enrolled in Medicaid a provider must have a current contract for the provision of community mental health services or hold a regular license from the Department of Health and Rehabilitative Services (HRS) as an alcohol or drug abuse treatment and prevention program. The petitioners were licensed but did not have and still do not have contracts with HRS' Alcohol, Drug Abuse and Mental Health program office.

3. In or about April 1995, staff in the agency's Medicaid program office revisited a prior interpretation of the Medicaid statute and determined that an HRS contract was required. After consulting with HRS as to which providers were under contract, the agency sent notices to those, including petitioners, which it deemed were out of compliance.

4. The notification letter provides, in pertinent part:

According to s. 409.906(8), Florida Statutes, Medicaid can pay for community mental health services that are provided in a mental health, drug abuse or alcohol abuse center that is licensed, if applicable, and under contract to the Department of Health and Rehabilitative Services (HRS), Alcohol, Drug Abuse and Mental Health (ADM) program office. Since your center does not have a contract with the ADM office, your Medicaid provider number must be cancelled.

(Petitioners' exhibit no. 24)

The letter was amended later in October to establish a 30-day delay in the termination effective date.

5. As stipulated, the lack of contract is the only basis for termination of the petitioners' provider numbers. The agency does not consider this basis as a "violation" subject to sanction or discipline.

6. Effective December 1995, the agency changed its Medicaid handbook to reflect the requirement of a current HRS contract for the provision of community mental health services.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this proceeding pursuant to section 120.57(1), Florida Statutes.

8. Effective July 1, 1993, all powers, duties and functions, records, personnel and funds of the Medicaid program within HRS were transferred to the Agency for Health Care Administration. Section 58, Chapter 93-129, Laws of Florida.

9. Section 409.902, Florida Statutes (1995), provides:

409.902 Designated single state agency; payment requirements; program title.- The Agency for Health Care Administration is designated as the single state agency authorized to make

payments for medical assistance and related services under Title XIX of the Social Security Act. These payments shall be made, subject to any limitations or directions provided for in the General Appropriations Act, only for services included in the program, shall be made only on behalf of eligible individuals, and shall be made only to qualified providers in accordance with federal requirements for Title XIX of the Social Security Act and the provisions of state law. This program of medical assistance is designated the "Medicaid program."

10. Section 409.906, Florida Statutes (1995), provides, in pertinent part:

409.906 Optional Medicaid services.- Subject to specific appropriations, the agency may make payments for services which are optional to the state under Title XIX of the Social Security Act and are furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided.... Optional services may include:

* * *

(8) COMMUNITY MENTAL HEALTH SERVICES.-[The agency may pay for rehabilitative services provided to a recipient in a mental health, drug abuse, or alcohol abuse center licensed by the agency and under contract to the Department of Health and Rehabilitative Services], which are psychiatric in nature and rendered or recommended by a psychiatrist or which are medical in nature and rendered or recommended by a physician or psychiatrist. The agency is authorized to utilize diagnostic criteria in setting reimbursement rates, to preauthorize certain high-cost or highly utilized services, to limit or eliminate coverage for certain services, or to make any other adjustments necessary to comply with any limitations or directions provided for in the General Appropriations Act.

[emphasis added]

11. The provision is peculiar, since it is not the agency (AHCA) but rather the department (HRS) which licenses the centers. Prior to the transfer of the Medicaid program to AHCA, section 409.906(8), Florida Statutes, provided:

(8) COMMUNITY MENTAL HEALTH SERVICES.- [The department may pay for rehabilitative services provided to a recipient in a mental health, drug abuse, or alcohol abuse center licensed by and under contract to the department], which are psychiatric in nature and rendered or recommended by a psychiatrist or which are

medical in nature and rendered or recommended
by a physician or psychiatrist.

[emphasis added]

(See section 35, Chapter 91-282, Laws of Florida)

Chapter 94-299, Laws of Florida, amended section 409.906 to change certain references from the Department of Health and Rehabilitative Services to the Agency for Health Care Administration. These changes to section 409.906(8), Florida Statutes, are found in section 1 of the 1994 re-write:

(8) COMMUNITY MENTAL HEALTH SERVICES.- The agency department may pay for rehabilitative services provided to a recipient in a mental health, drug abuse, or alcohol abuse center licensed by the agency and under contract to the Department of Health and Rehabilitative Services department, which are psychiatric in nature and rendered or recommended by a psychiatrist or which are medical in nature and rendered or recommended by a physician or psychiatrist.

One might conjecture that the drafters intended to leave the "licensed by" function in HRS and change to the agency "under contract to," but in spite of other subsequent amendments to that same sub-section (see section 4, Chapter 95-393, Laws of Florida), the possible oversight has not been corrected and the language endures which plainly requires a contract with HRS.

12. Contrary to Petitioners' argument, AHCA rule 59G-4.050, Florida Administrative Code, provides authority for the HRS contract requirement:

59G-4.050 Community Mental Health Services.

(1) For definitions refer to section 59G-1.010, Florida Administrative Code (F.A.C.).

(a) Community mental health services provider.

1A community mental health clinic or center as defined in section 10E-4.010 or 10E-4.011, F.A.C.; or

2. An alcohol prevention and treatment or drug abuse treatment and prevention program as defined in Chapter 10E-16, F.A.C.; or

3. Any other agency under contract with the Department of Health and Rehabilitative Services (HRS) to provide community mental health services.

* * *

(c) All applications to become a provider shall be accompanied by:

* * *

4. A copy of the contract between the enrolling community mental health services provider and HRS.

This rule was in effect at the time that the agency sent its notice of termination to the providers. The handbook change in December 1995 is of no

consequence except as a reflection of the agency's reasonable interpretation of section 409.906(8), Florida Statutes. The agency has consistently applied that interpretation in other Chapter 120 cases involving providers without HRS contracts. See, Forest Hill Counseling Center v. AHCA, DOAH Case No. 95-5786 (Final Order 3/29/96); Alpha House of Tampa v. AHCA, DOAH Case No. 95-5675 (Final Order 3/31/96).

13. The Petitioners in this case lack the requisite contracts and are not entitled to enrollment as Medicaid providers.

RECOMMENDATION

Based on the foregoing, it is hereby RECOMMENDED that the Agency for Health Care Administration enter its final order revoking the Petitioners' Medicaid provider numbers.

DONE and ENTERED this 20th day of June, 1996, in Tallahassee, Florida.

MARY CLARK, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of June, 1996.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to the Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the agency that will issue the Final Order in this case concerning their rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.