



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

AUG 20 2010

IN THE MATTER OF

Docketed by RLH

AMERISURE MUTUAL INSURANCE COMPANY

CASE NO. 091264-07-WC

FINAL ORDER

THIS CAUSE came on for consideration of and final agency action on the Written Report and Recommended Order entered on May 25, 2010, attached hereto as Exhibit A.

Pursuant to Section 120.57(2), Florida Statutes an informal hearing was conducted via written submissions, before Hearing Officer, Donald A. Dowdell.

After review of the record, including testimony and admitted exhibits, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that the underlined introductory heading to paragraph 42 of the Written Report and Recommended Order is rejected, and the following substituted therefore:

The holding in the case of *One Beacon Insurance v. Agency for Health Care Administration*, 958 So.2d 1127 (Fla. 1st DCA 2007) does not dictate the result in this case, in part, because it dealt with reimbursements for services rendered by ambulatory surgical centers rather than, as here, hospital outpatient care. At the time *One Beacon* was decided, the two statutory sections governing reimbursements for hospital outpatient surgical services and ambulatory surgical centers treated the respective

reimbursements differently, so that different results would appropriately be obtained from the application of those statutory provisions. (The *One Beacon* Court held that by deleting all reference to individual providers, the Legislature intended to base an ambulatory surgical center's reimbursement upon the usual and customary charges for that geographic location.) Hence, the holding in *One Beacon* could logically be limited to ambulatory surgical center reimbursements on that basis.

However, in the interim, the statutory section governing hospital outpatient care has been amended and no longer references an individual hospital's fees by referencing the individual hospital or utilizing the terms "each" or "their". Section 440.13(12), Fla. Stat. presently provides that:

"All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection."

Thus, the *rationale* underlying the *One Beacon* holding would now appear to be applicable to hospital outpatient care. However, as the Hearing Officer correctly states in his introduction to Paragraph 39, "Unless and until the Department adopts a rule setting forth a different method for determining hospital reimbursement, it must act in accordance with its currently adopted rule". See *Gessler v. Department of Business and Professional Regulation*, 627 So.2d 501 (Fla. 4th DCA 1993); *University Community Hospital v. Department of Health and Rehabilitative Services*, 610 So.2d 1432 (Fla. 1st DCA 1991). Moreover, it is well established that until and unless an agency rule is successfully challenged in a Section 120.56 proceeding, the rule is presumptively valid and must be given legal effect by the agency. *Board of Optometry v. Florida Society of Ophthalmology*, 532 So.2d 1279 (Fla. 1st DCA 1988), rev. den. 542 So.2d 1333. In that regard, it should be noted that the Department has, indeed, initiated rule-making

proceedings to modify the current rule (and the attendant manual), to utilize a methodology for reimbursing hospital outpatient care that is not based upon a hospital's individual charges. Although the Hearing Officer's recommendation remains unchanged, the Department is rejecting paragraphs 16, 32, the introductory heading to paragraph 42, and 48 of the Recommended Order to the extent, *if any*, these paragraphs were intended to preclude an application of the rationale of the One Beacon case to the present statute governing hospital outpatient care.

This substitution more clearly and correctly states the current law governing reimbursement for hospital outpatient care, and is as or more reasonable than the paragraphs it replaces.

IT IS HEREBY FURTHER ORDERED that the Recommendation made by the Hearing Officer is adopted by the Department, and that the Department's Determination requiring Amerisure Mutual Insurance Company to pay additional reimbursements of \$13,234.53 to Southwest Florida Regional Medical Center is hereby affirmed.

DONE and ORDERED this 20th day of August, 2010.




Brian London
Deputy Chief Financial Officer

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, DFS Agency Clerk, at 612 Larson Building, Tallahassee, Florida 32399-0390, and a copy of the same with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

Copies furnished to:

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