STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION,

Petitioner,

v.

FLORIDA HOSPITAL ORLANDO,

Respondent.
_____/

DOAH CASE NO. 09-3160MPI
AUDIT NO. C.I. 08-7310-000
RENDITION NO.: AHCA-10-1084 -FOF-MDO

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), J.D. Parrish, issued a Recommended Order after conducting a formal hearing. At issue in this proceeding is whether Respondent was overpaid by Medicaid for care provided to Patient L.D. The Recommended Order dated August 11, 2010, is attached to this Final Order and incorporated herein by reference, except where noted infra.

RULING ON EXCEPTIONS

The Petitioner filed exceptions to the Recommended Order, and the Respondent filed a response to Petitioner's exceptions.

In determining how to rule upon the Petitioner's exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency for Health Care Administration ("Agency" or "AHCA") must follow Section 120.57(1)(*l*), Florida Statutes, which provides in pertinent part:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state

> with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

Fla. Stat. § 120.57(1)(*l*). In accordance with these legal standards, the Agency makes the following rulings on the Petitioner's exceptions:

In Exception No. 1, Petitioner took exception to the conclusions of law in Paragraph 34 of the Recommended Order, arguing that the Medicaid laws and policy requirements as to "medical necessity" and "recordkeeping requirements" need to be clarified. The Petitioner goes on to propose additional language that it feels should be added to the conclusions of law in Paragraph 34. However, a review of the record and the Recommended Order reveals that Petitioner's contention is misplaced. The Agency agrees that, to receive payment from Medicaid, a provider must substantiate the medical necessity of services rendered with contemporaneous records. A provider who renders medically necessary services, but fails to contemporaneously document the need for the services, is subject to recoupment. Conversely, a doctor who renders medically unnecessary services is subject to recoupment regardless of documentation. Here, however, there was no disagreement that the services provided to Patient L.D. were contemporaneously documented. The issue in this case is whether the contemporaneous documentation supported the medical necessity of the services, and that was a factual issue that was decided by the ALJ after weighing the evidence presented. See Paragraph 29 of the Recommended Order. There is no need for clarification on Medicaid laws and policy requirements as to "medical necessity" or "recordkeeping requirements" because it is quite

obvious that the ALJ's conclusions of law in Paragraph 34 of the Recommended Order were fact-specific to this case, and not general interpretations of Medicaid laws and rules. Thus, Agency finds that, while it does have substantive jurisdiction over the conclusions of law in Paragraph 34 of the Recommended Order, it could not substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency denies Exception No. 1.

In Exception No. 2, Petitioner took exception to the conclusions of law in Paragraph 36 of the Recommended Order, and essentially asks the Agency to modify the sixth sentence of Paragraph 36 due to an apparent scrivener's error. It is apparent from a full reading of Paragraph 36 that the sixth sentence should read, "Prior approval does not excuse fraud or misinformation or cases where medical necessity cannot be established." The Agency has substantive jurisdiction over the conclusions of law in Paragraph 36 of the Recommended Order, and it can substitute conclusions of law that are as or more reasonable than those of the ALJ (or to be more specific here, correct a scrivener's error in the ALJ's conclusions of law). Therefore, the Agency grants Exception No. 2, and modifies Paragraph 36 to read:

> 36. Finally, Respondent's asserted that AHCA was estopped from pursuing its recoupment claim against FHO. Equitable estoppel against an entity, such as AHCA, is rare. Respondent has not shown exceptional circumstances that would warrant equitable estoppel in this case. See Associated Industries Insurance Company, Inc. v. State of Florida, Department of Labor and Employment Security, 923 So. 2d 1252 (Fla. 1st DCA 2006). Prior approval by KePro cannot estop AHCA from pursuing overpayment claims when an audit does not support the charges and services billed to Medicaid. AHCA has the daunting task of chasing monies already paid to providers who may or may not have submitted accurate or truthful information to KePro. Prior approval does not excuse fraud or misinformation or cases where medical necessity cannot be established. In this case, FHO was able to show that the patient required the length of stay provided. In other cases, a provider who may be motivated by a low census or other financial interests may not be able to, after-the-fact, support its decision to hold a patient for a given length of stay.

AHCA must always protect the Medicaid funds it is challenged to conserve so that bona fide recipients receive the medical care they require. Medicaid providers must provide adequate records to support the claims given prior approval through KePro. In this case, while the records could have better documented the necessity for L.D.'s length of stay, it is concluded that the records taken in totality were adequate to meet the recordkeeping requirements of the Medicaid Program.

FINDINGS OF FACT

The Agency adopts the findings of fact set forth in the Recommended Order.

CONCLUSIONS OF LAW

The Agency adopts the conclusions of law set forth in the Recommended Order, except where noted supra. The Agency also notes that the conclusions of law should be limited to the specific facts of this particular case and not used as general Agency precedent.

IT IS THEREFORE ADJUDGED THAT:

The May 19, 2009 Final Audit Report issued by the Agency in this matter is hereby withdrawn and this matter is now closed. The parties shall govern themselves accordingly.

DONE and ORDERED this 4 day of October, 2010, in Tallahassee, Florida.

ELIZABETH DUDEK, INTERIM SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY ALONG WITH THE FILING FEE PRESCRIBED BY LAW WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. or interoffice mail to the persons named below on this 5th day of October, 2010.

RICHARD J. SHOOP, Agency Clerk
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