

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BAPTIST HOSPITAL, INC., BAY)
MEDICAL CENTER, HOLMES REGIONAL)
MEDICAL CENTER, INC., LEE)
MEMORIAL HEALTH SYSTEM,)
LIFEMARK HOSPITALS OF FLORIDA,)
INC., d/b/a PALMETTO GENERAL)
HOSPITAL, MUNROE REGIONAL)
MEDICAL CENTER, NORTH BROWARD)
HOSPITAL DISTRICT, ET AL.,)
)
Petitioners,)
)
vs.) Case No. 10-2996RX
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Respondent.)
)
_____)

AMENDED SUMMARY FINAL ORDER

Pursuant to Respondent's Motion for Summary Final Order, a telephonic conference call was held on October 18, 2010, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: William E. Williams, Esquire
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STATEMENT OF THE ISSUES

The issues in the case are whether certain provisions of the Florida Medicaid Hospital Services Coverage and Limitations Handbook (Handbook) that exclude non-emergent services rendered in the emergency room from covered Medicaid outpatient services and require revenue Code 451 to be billed with CPT Code 99281 constitute an invalid exercise of delegated legislative authority within the meaning of Subsection 120.56(3), Florida Statutes (2010).¹

PRELIMINARY STATEMENT

On June 1, 2010, Petitioners, Baptist Hospital, Inc.; Bay Medical Center; Holmes Regional Medical Center, Inc.; Lee Memorial Health System; Lifemark Hospitals of Florida, Inc., d/b/a Palmetto General Hospital; Munroe Regional Medical Center; North Broward Hospital District, d/b/a Broward Health; St. Joseph's Hospital, Inc.; South Broward Hospital District, d/b/a Memorial Regional Hospital; Tallahassee Memorial Healthcare, Inc.; and Wuesthoff Health System (collectively referred to as Petitioners) filed a Petition for Administrative Determination of the Invalidity of a Rule. Specifically, Petitioners are challenging provisions of the Handbook, which is

incorporated by reference in Florida Administrative Code Rule 59G-4.160.

On October 15, 2010, Respondent, Agency for Health Care Administration (AHCA), filed AHCA's Motion for Summary Final Order, in which AHCA conceded that the provisions of the Handbook at issue were invalid. At the request of Petitioners, the motion was heard by telephonic conference call on October 18, 2010. Petitioners did not file a written response to the motion, but argued that any order invalidating the provisions of the Handbook must include findings of fact and conclusions of law. Petitioners requested that they be allowed to file a proposed final order. The request was granted. Petitioners filed their Proposed Recommended Order on October 29, 2010.

FINDINGS OF FACT

1. AHCA is the Medicaid agency for the State of Florida as provided under federal law. § 409.901(2), Fla. Stat.

"'Medicaid agency' . . . means the single state agency that administers or supervises the administration of the state Medicaid plan under federal law." § 409.901(15), Fla. Stat.

2. AHCA must administer the Medicaid program pursuant to a state plan that is approved by the Center for Medicare and Medicaid Services (CMS). 42 U.S.C. §§ 1396 and 1396a(a).

3. AHCA reimburses Medicaid providers in accordance with state and federal law, according to methodologies set forth in rules promulgated by AHCA and in policy manuals and handbooks incorporated by reference in the rules. AHCA has adopted Florida Administrative Code Rule 59G-6.030, which incorporates by reference the Florida Title XIX Outpatient Hospital Reimbursement Plan, Version XIX (the Outpatient Plan), with an effective date of July 1, 2009. Reimbursement to participating outpatient hospitals, such as Petitioners, is to be provided in accordance with the Outpatient Plan. AHCA has issued the Florida Medicaid Hospital Services Coverage and Limitations Handbook. The Handbook is incorporated by reference in Florida Administrative Code Rule 59G-4.160.

4. The Outpatient Plan and the Handbook identify those outpatient hospital services that are covered by the Medicaid program by revenue code. Only those revenue codes listed in Appendix A of the Outpatient Plan (Appendix A) and Appendix B of the Handbook (Appendix B) are covered outpatient services.

5. Petitioners have challenged the following provisions of the Handbook:

Handbook at page 2-7: EMTALA Medical Screening Exam

If the medical screening exam determines that no emergency medical condition exists, Florida Medicaid reimburses only for the screening and the ancillary services

required to make the determination (e.g., lab work or x-rays). Medicaid policy does not provide for reimbursement of non-emergency services beyond the medical screening exam required by EMTALA.

Handbook at page 2-40: Non-Emergency Care in the Emergency Room

Medicaid policy does not provide for reimbursement of non-emergency services beyond the medical screening exam required by Emergency Medical Treatment and Labor Act (EMTALA). EMTALA requires emergency rooms to conduct a medical screening exam on any patient presenting to the emergency room for medical services. The purpose of the medical screening exam is to determine if an emergency medical condition exists. If the screening determines that an emergency medical condition exists, the provider must either stabilize the condition or appropriately transfer the patient to a facility that can stabilize the condition. If the medical screening determines that no emergency medical condition exists, Florida Medicaid reimburses only for the screening and the ancillary services required to make the determination (e.g., lab work or x-rays).

Recipients are responsible for a coinsurance on such claims.

Note: See Chapter 3 for information on coinsurance.

Handbook, Appendix B at pages B-6 and B-7:
EMERGENCY ROOM

ONLY THE LANGUAGE UNDERLINED IS CHALLENGED.

0450 General Classification

- Use General Classification code 0450 when recipients require emergency room care beyond the EMTALA emergency medical screening services. Code 0450 cannot be used in conjunction with 0451 (99281).

- All other appropriate and covered outpatient revenue codes can be billed with 0450 to reflect services rendered to the patient during the course of emergency room treatment.

- No MediPass authorization is required when billing 0450, if the type of admission in Form Locator 19 on the claims is "1" (Emergency). MediPass authorization is required when the condition of the patient is not an emergency.

0451 (99281) EMTALA Emergency Medical Screening Services (Effective 7/1/96)

- Report the EMTALA Medical Screening code 0451 (99281) when, following the screening and exam, no further emergency room care or treatment is necessary. If ancillary services are not necessary to determine whether or not emergency or further treatment is required, report the ancillary charges using the appropriate revenue center codes in conjunction with code 0451 (99281). Note that 0451 (99281) cannot be used in conjunction with 0450.

- Effective 10/16/03, HCPCS code 99281 replaces code W1700, used prior to 10/16/03, when billing revenue code 0451.

6. Florida Administrative Code Rule 59G-4.160 provides that the specific authority for the promulgation of the rule is Section 409.919, Florida Statutes, and the law implemented is Sections 409.905, 409.908, and 409.9081, Florida Statutes.

7. Petitioners are acute care hospitals that are and were enrolled as Medicaid providers of outpatient service in Florida at all times material to this proceeding.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.56, Fla. Stat. (2010).

9. Subsection 120.56(1)(a), Florida Statutes, provides that "[a]ny person substantially affected by a rule . . . may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority." Subsection 120.52(8), Florida Statutes, defines "invalid exercise of delegated legislative authority" as follows:

"Invalid exercise of delegated legislative authority" means action that goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law

implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute.

No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.

10. AHCA concedes that the challenged provisions of the Handbook constitute an invalid exercise of delegated legislative

authority. AHCA's interpretation of the statutes and rules that it is charged with implementing is entitled to great deference. Cone v. State, Dept. of Health, 886 So. 2d 1007, 1009 (Fla. 1st DCA 2004).

11. The challenged portions of the Handbook modifies and contravenes Subsection 409.905(6), Florida Statutes, which provides:

The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

* * *

(6) HOSPITAL OUTPATIENT SERVICES.— The agency shall pay for preventive, diagnostic, therapeutic, or palliative care and other services provided to a recipient in the outpatient portion of a hospital licensed under part I of chapter 395, and provided under the direction of a licensed physician or licensed dentist, except that payment for such care and services is limited to \$1,500

per state fiscal year per recipient, unless an exception has been made by the agency, and with the exception of a Medicaid recipient under age 21, in which case the only limitation is medical necessity.

Subsection 409.906(6), Florida Statutes, does not delineate between outpatient services that are provided in an emergency room and outpatient services that are not provided in an emergency room.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that the challenged provisions of the Handbook are invalid exercises of delegated legislative authority.

DONE AND ORDERED this 26th day of January, 2011, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of January, 2011.

ENDNOTE

^{1/} Unless otherwise stated, all references to the Florida Statutes are to the 2010 version.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.