

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 Nos. 10-2997RU
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Respondent.)
_____)

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 Petitioner: William E. Williams, Esquire
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For Respondent: David W. Nam, Esquire
Agency for Health Care Administration
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STATEMENT OF THE ISSUES

The issues in this case are whether the statement contained in Respondent's letter dated September 9, 1997 (1997 Letter), establishing a \$24.00 payment for hospital outpatient services billed as revenue code 451 constitutes a rule as defined by Subsection 120.52(15), Florida Statutes (2010),¹ and, if so, whether Respondent violated Subsection 120.54(1), Florida Statutes, by not adopting the statement in accordance with applicable rulemaking procedures.

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 Determination of Invalidity of Non-Rule Policy. Specifically, Petitioners are challenging certain provisions of a letter from Respondent,

Agency for Health Care Administration (AHCA), dated September 9, 1997, to hospital administrators.

On October 15, 2010, AHCA filed AHCA's Motion for Summary Final Order, in which AHCA conceded that the challenged statement of the 1997 Letter constitutes a rule, which has not been promulgated pursuant to Section 120.54, Florida Statutes. At the request of Petitioners, the motion was heard by telephonic conference call on October 18, 2010. Petitioners requested and were granted leave to file a proposed final order. Petitioners filed their Proposed Final Order on October 29, 2010.

FINDINGS OF FACT

1. AHCA is the state agency responsible for the administration of the Florida Medicaid Program. § 409.902, Fla. Stat.

2. Petitioners are acute care hospitals that are and were enrolled as Medicaid providers of outpatient services in Florida, at all times relevant to this proceeding.

3. On September 9, 1997, AHCA issued a letter to hospital administrators, which provided the following:

This letter is to inform you that Medicaid coverage for hospital emergency room screening and examination services is now in effect. Hospitals will be reimbursed a \$24.00 flat fee for providing these services to Medipass and Medicaid fee-for-service recipients who do not require further

treatment beyond the screening and examination services. This policy is retroactive to July 1, 1996.

The letter further provides that the \$24.00 reimbursement would be billed under the revenue code 451.

5. The statement in the letter applies to hospitals which are Medicaid providers and, therefore, is a statement of general applicability. The statement meets the definition of a rule. AHCA concedes that the statement, which provides "payment of a \$24 rate for Medicaid Hospital Outpatient Services billed under Revenue Code 451, constitutes a rule under s. 120.52(16), Fla. Stat."

6. AHCA concedes that the statement has not been adopted as a rule by the rule adoption procedures provided in Section 120.54, Florida Statutes.

7. AHCA has discontinued all reliance on the challenged statement.

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 120.52(16), Florida Statutes, defines a rule as follows:

"Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or

describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

(c) The preparation or modification of:

1. Agency budgets.

2. Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.

3. Contractual provisions reached as a result of collective bargaining.

4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

10. Subsection 120.56(4), Florida Statutes, provides that "[a]ny person substantially affected by an agency statement may seek an administrative determination that the statement violates Subsection 120.54(1)(a)," Florida Statutes. Petitioners must

show that the statement constitutes a rule and that the statement has not been adopted as a rule by the rulemaking procedures described in Section 120.54, Florida Statutes.

11. The challenged statement of reimbursing \$24.00 for screening and examination is a rule, which has not been promulgated as a rule in accordance with the rulemaking procedures in Section 120.54, Florida Statutes, and, therefore, violates Subsection 120.54(1) (a), Florida Statutes.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the challenged statement contained in AHCA's letter dated September 9, 1997, establishing a \$24.00 payment for Medicaid hospital outpatient services billed under revenue code 451 is invalid.

DONE AND ORDERED this 28th day of December, 2010, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of December, 2010.

ENDNOTE

1/ All references to the Florida Statutes are to the 2010
version.

COPIES FURNISHED:

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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 one copy of a Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a second 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.