

FILED

MAR 11 2019

Chief Financial Officer  
Docketed by: *[Signature]*



CHIEF FINANCIAL OFFICER  
JIMMY PATRONIS  
STATE OF FLORIDA

LAKELAND REGIONAL HEALTH  
SYSTEM, INC.,

Petitioner,

DOAH CASE NO.: 18-3845  
DFS CASE NO.: 20180504-003

v.

DEPARTMENT OF FINANCIAL  
SERVICES, DIVISION OF WORKERS'  
COMPENSATION,

Respondent.

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LAKELAND REGIONAL MEDICAL  
CENTER, INC.,

Petitioner,

DOAH CASE NO.: 18-3846  
DFS CASE NO.: 20180504-004

v.

DEPARTMENT OF FINANCIAL  
SERVICES, DIVISION OF WORKERS'  
COMPENSATION,

Respondent.

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FINAL ORDER

THIS CAUSE came on for consideration of and for final agency action on a Recommended Order. Petitioners timely filed exceptions to the Recommended Order. Respondent did not file exceptions, but did file a response to Petitioners' exceptions.

## RULING ON PETITIONERS' EXCEPTIONS

Exceptions to a recommended order are authorized by section 120.57(1)(k), Florida Statutes (2018), and Rule 28-106.217, *Florida Administrative Code*.

The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

§ 120.57(1)(k), Fla. Stat. (2018).

### Exception # 1: Recommended Order Paragraphs 16 and 22<sup>1</sup>

Petitioners assert that the 45-day period to file a Petition for Resolution of Reimbursement Dispute, established by section 440.13(7)(a), Florida Statutes (2018), should begin running anew when a carrier resends an Explanation of Bill Review (“EOBR”), even if the carrier makes no substantive changes to the EOBR. Petitioners’ exception challenges the Department’s position that the period to file a petition runs from receipt of the initial EOBR, and a new 45-day period begins only if an EOBR makes substantive changes to a prior EOBR.

The Recommended Order concludes that, under the facts of this matter, the Department’s position “is the more reasonable one.” This finding is consistent with section 440.13(7)(a), ~~Fla. Stat.~~ <sup>Florida Statutes,</sup> which expressly states that a health care provider must file a petition to dispute a payment disallowance or adjustment within 45 days of the receipt of notice of disallowance or adjustment of payment. If a subsequent EOBR does not make any changes to the reasons for disallowance or adjustment there is no basis

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<sup>1</sup> In addition to paragraphs 16 and 22, Exception #1 includes a reference to page 17, line 38, but page 17 of the Recommended Order has only 23 lines. Therefore, it is not possible to identify the disputed portion of page 17.

under the statute for a new 45-day period to file a petition. *See Munro Reg. Med. Ctr. v. Ag. for Health Care Admin*, Case No. 08-0103 (DOAH April 10, 2008; AHCA May 19, 2008) (finding that petitioner’s informal attempt to resolve the payment dispute, and the issuance of “second or third EOBRs, which simply reaffirmed the disallowances and adjustments in the first EOBR,” did not toll the time period for filing a petition under section 440.13(7), Fla. Stat.).<sup>2</sup> Moreover, the Recommended Order correctly finds in paragraph 23 that the petitions would have been untimely even if one were to accept Petitioners’ argument that issuance of a later EOBR without substantive changes starts a new 45-day period to file a petition. For the foregoing reasons, Petitioners’ exception to paragraphs 16 and 22 is rejected. Because the exception is rejected, it is not necessary to address Respondent’s response to the exception.

Exceptions # 2-4: Recommended Order Paragraphs 33, and 47-50

In these exceptions, the Petitioners challenge evidentiary hearsay rulings. However, when an agency conducts a review of a recommended order it has no authority to reject an administrative law judge’s ruling on an evidentiary issue. *See Barfield v. Dep’t of Health*, 805 So. 2d 1008, 1011-1012 (Fla. 1st DCA 2001) (concluding that a 1999 amendment to section 120.57(1), Florida Statutes, eliminates agency jurisdiction over evidentiary rulings). Therefore, the exceptions are rejected. Because the exceptions are rejected, it is not necessary to address Respondent’s responses to the exceptions.

Exception # 5: Recommended Order Paragraph 47, Footnote 8

Petitioners’ exception challenges a footnote appended to paragraph 47, in which

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<sup>2</sup> In 2003, the Department of Financial Services assumed responsibility from AHCA for resolution of workers’ compensation medical reimbursement disputes. *See One Beacon Ins. v. Ag. for Health Care Admin*, 958 So. 2d 1127 (Fla. 1st DCA 2007).

the Recommended Order states that Lakeland Regional Medical Center's ("LRMC's") Petition for Resolution of Reimbursement Dispute mischaracterized the carrier's March 27, 2018, fax as an EOBR and that Petitioners' counsel repeated this error in the Proposed Recommended Order ("PRO"). Petitioners' exception concedes that its PRO contains a scrivener's error, but maintains that the petition filed by LRMC did not mischaracterize the fax as an EOBR. Footnote 8 consists of factual findings. Competent, substantial evidence supports the findings. Therefore, the exception is rejected. *See Pillsbury v. Dep't of HRS*, 744 So. 2d 1040, 1041 (Fla. 2d DCA 1999). Because the exception is rejected, it is not necessary to address Respondent's response to the exception.

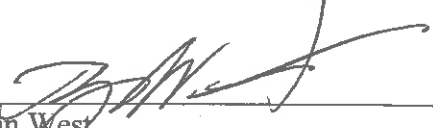
After reviewing the record, including all testimony and admitted exhibits, considering applicable law, and otherwise being fully apprised in all material premises, the Recommended Order is hereby adopted with the following modifications.

1. Findings of Fact paragraph 18 is modified by replacing "LRMC" with "LRHS." *See Kolbe v. Dep't of Ins.*, 846 So. 2d 656, 657 (Fla. 2d DCA 2003) and *Keen v. Dep't of Bus. & Prof'l Reg.*, 920 So. 2d 805, 807, 809 (Fla. 5th DCA 2006) (both cases addressing the correction of scrivener's errors).

2. Conclusions of Law paragraph 66 is modified by replacing "220 So. 2d 457" with "220 So. 2d 467".

Accordingly, the Department's dismissals of the Petition for Resolution of Reimbursement Dispute filed by Lakeland Regional Health Systems, Inc., and the Petition for Resolution of Reimbursement dispute filed by Lakeland Regional Medical Center, Inc., are upheld.

DONE and ORDERED this 11<sup>th</sup> day of March, 2019.

  
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Ryan West  
Chief of Staff



NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com

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 **MAILED**  
3.11.19  
*J. Johnson*