STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF ADMINISTRATIVE HEARINGS
14DHR03558

ALAMANCE REGIONAL MEDICAL CENTER, *et al.* PETITIONER, V. NC DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE RESPONDENT.	**FINAL DECISION** **ORDER ON SUMMARY JUDGMENT**

THIS MATTER came before the Honorable J. Randall May, Administrative Law Judge presiding, on December 5, 2014 for consideration of *Petitioners' Motion for Summary Judgment* (filed September 25, 2014), and *Respondent's Cross Motion for Summary Judgment and Response to Petitioners' Motion for Summary Judgment* (filed October 10, 2014).

Based upon careful consideration of the parties' respective motions, supporting papers, arguments, and other matters of record, it is HEREBY ORDERED as follows:

ISSUE PRESENTED

Whether Respondent violated the standards of N.C.G.S. § 150B-23(a) when it interpreted and applied The Hospital Provider Assessment Act, N.C.G.S. § 108A-120 *et seq.* and State Medicaid Plan Amendment 11-003 to exclude (remove) the Provider Assessment as an allowable cost from Petitioners' 2012 cost reports.

FINDINGS OF FACT

The Undersigned finds that the following material facts are undisputed.

1. Petitioners are 28 hospitals or health care systems operating in North Carolina and enrolled in the North Carolina Medicaid program.

2. Respondent, the North Carolina Department of Health and Human Services ("DHHS"), is an agency of the executive branch of the government of the State of North Carolina. The Division of Medical Assistance ("DMA") is a division of DHHS. DMA is responsible for administering and managing the State Medicaid plan and program.

3. Cost settlement is an accounting reconciliation process. Through cost settlement, DMA reconciles interim Medicaid payments made to a hospital against the hospital's actual, allowable, certified Medicaid costs. Following cost settlement, DMA is able to calculate a reimbursement amount which is due to (or due from) the hospital.

4. The Hospital Provider Assessment Act became law in 2011. *See* N.C.G.S. § 108A-120 *et seq.* (the "Act"). Section 108A-126 of the Act directed the Department to file a State Plan Amendment with the Centers for Medicare and Medicaid Services ("CMS"). The amendment was to incorporate the Provider Assessment and distribution provisions consistent with the provisions of the Act. *Id*.

5. Respondent submitted an Affidavit from James B. Flowers, Chief of the DMA Audit Section, which explained the drafting of the State Plan Amendment. That testimony was not disputed.

6. In pertinent part Mr. Flowers' Affidavit stated that in 2011, DMA worked closely with interested stakeholders including hospital groups to develop the proposed State Plan Amendment. As the language was drafted, DMA participated in weekly telephone calls with the North Carolina Hospital Association. In at least two calls, the parties discussed the Provider Assessment/cost settlement provision. During those calls, DMA explained its position that the Provider Assessments would "not be subject to cost settlement" on hospitals' annual cost reports.

7. Also during these discussions, DMA confirmed to the Association that the Provider Assessment would be treated as an allowable cost of the hospitals for other purposes, outside of cost settlement. Specifically, DMA explained that it would treat Provider Assessments as allowable costs in the following contexts: (1) for the calculation of the Disproportionate Share Hospital ("DSH")/Medicaid Reimbursement initiative annual payment plan; and (2) for the annual DSH independent audit. In contrast, DMA explained to the Hospital Association that Provider Assessments would not be an allowable cost for purposes of cost settlement.

8. The Hospital Association representatives did not disagree with DMA's interpretation of the draft language in 2011. That provision states that "[a]ssessments collected under this section are considered an allowable cost and are not subject to cost settlement." *See* State Plan Amendment, 11-003. Based upon this mutual understanding of this language, DMA submitted the State Plan Amendment to CMS for approval.

9. Each Petitioner submitted a 2012 cost report to DMA. Each Petitioner's cost report included a line item pertaining to the Provider Assessment.

10. DMA, through its auditing team, reviewed Petitioners' 2012 cost reports for cost settlement. Following the review, and as part of the cost settlement process, DMA excluded (removed) the Provider Assessment from each of the cost reports. DMA took this action based upon the applicable language in the State Plan Amendment.

11. Petitioners disagreed with DMA's decision and action to exclude the Provider Assessment from cost settlement. Petitioners requested and participated in a DMA Administrative Conference on April 1, 2014. Following that conference, the Administrative Hearing Officer issued a decision dated April 15, 2014. The Hearing Officer's decision agreed with and upheld DMA's removal of the Provider Assessment from Petitioners' cost reports.

12. On May 13, 2014, Petitioners appealed to the Office of Administrative Hearings. The parties have filed cross motions for summary judgment on the proper interpretation of the applicable law.

13. There are no material facts that are genuinely disputed.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate where there is no genuine dispute of any material fact and the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56; *Azar v. The Presbyterian Hosp. et al*, 191 N.C. App. 367; 663 S.E.2d 450 (2008).

2. North Carolina law presumes that the agencies have properly performed their duties. *In re Broad & Gales Creek Community Ass'n*, 300 N.C. 267, 280, 266 S.E.2d 645, 654 (1980); *In re Land & Mineral Co*., 49 N.C. App. 529, 531, 272 S.E.2d 6, 7 (1980) (stating that "official acts of a public agency . . . are presumed to be made in good faith and in accordance with law").

3. Petitioners assert that DMA has acted in violation of N.C.G.S. § 150B-23(a). Administrative agency decisions may be reversed as arbitrary and capricious only if they are "patently in bad faith" or "whimsical" in the sense that "they indicate a lack of fair and careful consideration," or "fail to indicate 'any course of reasoning and the exercise of judgment.'" *ACT-UP Triangle v. Comm'n for Health Servs*., 345 N.C. 699, 707, 483 S.E.2d 388, 393 (1997) (quotations omitted).

4. A long-standing rule of statutory construction declares that a facially clear and unambiguous statute requires no interpretation. *Taylor v. City of Lenoir*, 129 N.C. App. 174, 179, 497 S.E.2d 715, 719 (1998). A law that speaks directly and in detail to a particular situation will be construed as controlling over a more general provision, absent clear legislative intent to the contrary. *Whittington v. North Carolina Dep't of Human Res.*, 100 N.C. App. 603, 606, 398 S.E.2d 40, 42 (1990) *(citing Food Stores v. Board of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966)).

5. The Hospital Provider Assessment Act, N.C.G.S. § 108A-120 *et seq*. became law in 2011. The Act requires certain hospital providers to pay funds to the state (hereafter, the "Provider Assessment"). These funds provide revenue to Medicaid "to improve funding for payments for hospital services provided to Medicaid and uninsured patients." *Id*.; *see also* § 108A-124 (use of Provider Assessment proceeds). Section 108A-122(b) provides that the

Provider Assessment "may be included as allowable costs of a hospital for purposes of any applicable Medicaid reimbursement formula."

6. State Plan Amendment 11-003 provides that:
[a]ssessments collected under this section are considered an allowable cost and are not subject to cost settlement.

See State Medicaid Plan, Attachment 4.19A, Page 10, Paragraph (e.2(2)); Attachment 4.19A, Page 13b, Paragraph (i); Attachment 4.19A, Page 13c, Paragraph (j); Attachment 4.19B, Section 2, Paragraph 2.a.1, Equity Enhanced Payments.

7. On March 26, 2012, the Center for Medicaid Services ("CMS") granted approval of State Plan Amendment 11-003 with an effective date of January 1, 2011. Because it has been approved by CMS, the State Plan amendment has the full force and effect of rules promulgated under Article 2A of the Administrative Procedure Act. *See* N.C.G.S. § 108A-54.1B(d).

8. The Court finds that the language in the State Plan Amendment is precisely on point and dispositive of the parties' dispute. The Court further finds that this language is clear and unambiguous as applied to the undisputed facts presented here. *Taylor,* 129 N.C. App. at 179, 497 S.E.2d at 719 (1998) (a long-standing rule of statutory construction declares that a facially clear and unambiguous statute requires no interpretation).

9. The State Plan Amendment makes explicitly clear that the referenced "[a]ssessments … are not subject to cost settlement." The phrase "[n]ot subject to cost settlement" can only mean that Provider Assessments are to be excluded from, and may not properly be included as part of, Petitioners' cost reports. That is the proper interpretation of the State Plan Amendment.

10. Petitioners argue that N.C.G.S. § 108A-122(b) requires that the Provider Assessment must be an allowable cost for purposes of cost settlement. However, Section 122(b) does not address cost settlement at all. It never uses the words "cost settlement." Instead, this section addresses the use of the Provider Assessment "for purposes of any applicable Medicaid reimbursement formula." *Id*. The use of the limiting modifier "***any applicable*** Medicaid reimbursement formula" is significant. *Id*. (emphasis added). The statute itself does not include any such formulas. Therefore, the reference to "any applicable Medicaid reimbursement formula" is properly read as a reference to the State Plan Amendment, 11-003, which does set forth such provisions. As noted above, one of those provisions is precisely on point and is dispositive of this dispute: that "[a]ssessments … are not subject to cost settlement."

11. Under *Whittington*, 100 N.C. App. at 606, 398 S.E.2d at 42, and the traditional rules of statutory construction, the State Plan Amendment controls because it is more specific than Section 122(b) on the question presented.

12. Petitioners have offered an interpretation that attempts to give the phrase "not subject to cost settlement" its opposite meaning. Petitioners' interpretation is not consistent with the plain meaning of the State Plan Amendment or statute, and is rejected.

13. DMA's interpretation of the State Plan Amendment and Act is consistent with the plain meaning of these provisions. It is consistent with the interpretation DMA articulated to the Hospital Association during telephone calls in 2011. It is consistent with its current practice of treating the Provider Assessment as an allowable cost for *certain* purposes (*i.e.*, calculation of the Disproportionate Share Hospital("DSH")/Medicaid Reimbursement initiative annual payment plan, and for the annual DSH independent audit), but not treating it as an allowable cost for purposes of cost settlement.

14. DMA's action in excluding the Provider Assessment line item from each Petitioners' cost report was consistent with the State Plan Amendment and Act.

15. DMA's actions were not taken in violation of the standards of N.C.G.S. § 150B-23(a). Specifically, based upon the undisputed evidence of record, DMA did not deprive Petitioners of property; did not order Petitioners to pay a fine or civil penalty; and did not substantially prejudice Petitioners' rights. Further, DMA did not exceed its authority or jurisdiction; did not act erroneously; did not fail to use proper procedure; did not act arbitrarily or capriciously; and did not fail to act as required by law or rule.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby DENIES Petitioners' motion for summary judgment, and GRANTS Respondent's cross motion for summary judgment.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial

Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 25th day of February, 2015.

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J. Randall May
Administrative Law Judge