IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT KOTZEBUE

MANIILAQ ASSOCIATION,	)	
	)	
Appellant,	)	
v.	)	
	)	Case No. 2KB-14-006CI
STATE OF ALASKA,	)	
DEPARTMENT OF HEALTH AND	)	
SOCIAL SERVICES	)	
	)	
Appellee.	)	
	)	

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ORDER ON ADMINISTRATIVE APPEAL

Before the Court is Maniilaq Association's (Maniilaq) appeal of the Department of Health and Social Services Commissioner's reversal of the administrative law judge's decision in a billing dispute that arose from an audit performed by the Department of Health and Social Services (Department) that revealed overpayment. The Department opposes.

INTRODUCTION

Maniilaq Association and the State of Alaska, Department of Health and Social Services (Department) dispute the appropriate interpretation of Medicaid billing guidelines for reimbursement of medical services provided to Medicaid patients. A Department audit of Maniilaq's 2005 Medicaid billings determined overbilling occurred by interpreting the guidelines to require only one provider reimbursement in the situation where a patient was first seen at the tribal clinic, but later the same day referred to the outpatient hospital for services (e.g., x-ray or laboratory services) not provided at the clinic. Maniilaq successfully appealed the Department's audit findings after administrative review determined the Department misinterpreted the Medicaid Billing Manual. The Department's Commissioner overruled the decision of the administrative law judge. Maniilaq appeals the Commissioner's decision.

The Court finds the Department's application of the Billing Manual improperly restricts Medicaid reimbursements only to the tribal clinic, when the outpatient hospital

also provided medical services to Medicaid patients that same day. A plain reading of the Provider Billing Manual allows Medicaid reimbursements per patient, per day, per facility which was the billing method utilized by Maniilaq. The decision of the Commissioner is REVERSED.

FACTS AND PROCEEDINGS

Maniilaq Association operates both an outpatient hospital and a tribal clinic. The tribal clinic is located in the same building as the outpatient hospital. Both the outpatient hospital and the tribal clinic provide services to Medicaid recipients and bill for these services under separate Medicaid provider numbers. The tribal clinic does not have equipment to provide laboratory or x-ray services. The outpatient hospital has both the equipment and personnel to provide these services.

The Indian Health Care Improvement Act provides for Medicaid reimbursements to Maniilaq at set rates called "encounter rates" through procedural guidelines specified in a Billing Manual.[1] This Billing Manual establishes encounter rates by provider type. Both the outpatient hospital and the tribal clinic are "providers" under the Billing Manual and each has a unique provider number to bill Medicaid. This is how the tribal clinic and outpatient hospital are reimbursed for the services they provide to Medicaid recipients at their facilities.

Under Alaska law, the Department of Health and Social Services is required to perform annual audits of Medicaid providers. In early 2012, the Department performed an audit of Maniilaq's outpatient hospital for Medicaid claims from the year 2008.[2] The Department audit reviewed approximately 2,000 Medicaid claims that totaled over $800,000 in billings. This same audit identified twenty overpayments. The Department stated these overpayments resulted when patients received physician services at the tribal clinic and were later that day referred to the Hospital for x-rays or lab services, since the equipment to perform these services was not available at the tribal clinic, and the hospital

[1] There are three Billing Manuals discussed by parties in their briefs, the administrative law judge, and in the DHSS Commissioners final decision. The parties agree the 2005 Billing Manual applies to this case. The ALJ determined the 2000 Billing Manual applied, but determined application of either would result in the same outcome. The Court agrees with the ALJ's analysis.

[2] The Program Integrity Unit is the Department of Health and Social Services' Medicaid auditing unit.

billed for reimbursement for these services.[3] The Department determined these separate billings amounted to overbilling by interpreting the Indian Health Service Provider Billing Manual to allow only one, not two encounter rates, in this circumstance.[4] The Billing Manual states that tribal clinics are reimbursed "per patient, per day, per facility". The Department views the tribal clinic and outpatient hospital submitting bills for reimbursements for a single patient seen in the same day for different services as a double billing and since Maniilaq operates both facilities. Because the tribal clinic and the outpatient hospital billed in this manner, the Department determined Maniilaq was overpaid and sought repayment.

Maniilaq appealed the audit and following an administrative appeal process, the administrative law judge granted summary adjudication in favor of Maniilaq. In his findings, the administrative law judge determined the plain language of the Billing Manual did not prohibit the clinic and the hospital to each bill an encounter rate for the same patient seen on the same day for services. Since the tribal clinic does not have equipment for x-ray and lab services, those patients must be seen at the outpatient hospital. The administrative law judge also found that nothing in the Billing Manual language implied that only one provider may bill an encounter rate when a patient is seen in this manner.[5] However, the Commissioner overruled the Administrative Law Judge's decision.[6] Maniilaq appeals the Commissioner's Final Administrative Decision.

STANDARD OF REVIEW

Maniilaq and the Department dispute which standard of review the Court should apply in this case. As stated, *supra*, there are no facts in dispute. The issue on appeal is a question of law: Whether the Provider Billing Manual allow reimbursement to two providers—a tribal clinic and outpatient hospital—for Medicaid patients seen at both facilities the same day for different services.

The Alaska Supreme Court has determined two standards under which the Court should review questions of law involving agency interpretation of statutory terms—"the

[3] DHSS does not dispute these services were provided or not properly documented, only the manner in which they were billed. See Record at 000010-11.
[4] The Provider Billing Manual is Exhibit 4 in Appellant's Motion for Summary Judgment.
[5] *Id.*
[6] *See* Final Administrative Decision on Summary Judgment at p. 4.

reasonable basis test" and "the substitution of judgment test".[7] The Department argues the rational basis standard applies because interpretation of the Provider Billing Manual involves the agency's expertise, experience and policy considerations. Maniilaq contends this appeal is merely a question of statutory interpretation not involving agency expertise and therefore the substitution of judgment test is appropriate.

The reasonable basis standard is appropriate when statutory interpretation requires applying agency expertise and knowledge.[8] To apply, the question at bar must implicate and depend upon the agency's particular experience and personnel knowledge to interpret the statute.[9] More specifically, this standard is appropriate either "where the agency is making law by creating standards to be used in evaluating the case before it and future cases" or "when a case requires resolution of policy questions which lie within the agency's area of expertise and *are inseparable from* the facts underlying the agency's decision."[10]

The substitution of judgment standard applies when the statutory interpretation does not involve or require agency expertise because the agency's knowledge and experience does not assist the Court since the question amounts to straight "statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience."[11] In applying this test, the reviewing court uses its own judgment instead of the agency's, even if the agency's interpretation was reasonable.[12]

As mentioned above, the issue in this case is the interpretation of the Billing Manual payment provisions and whether they allow two encounter rates to be billed for medical services provided to a single patient, in a single day, at two facilities. The relevant definitions for "facility", "encounter rate", "tribal clinic", "out-patient hospital", are not in dispute and do not require specialized knowledge for understanding. The Department characterizes Maniilaq's billing two encounter rates through the two providers as double reimbursement. They argue interpreting the Billing Manual requires agency expertise to give context to the Billing Manual language. However the

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[7] *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175 (Alaska 1986).
[8] *Union Oil Co. of California v. State*, 804 P.2d 62, 64 (Alaska 1990).
[9] *See Gulf Oil Corp. v. State, Dept. of Revenue*, 755 P.2d 372, 378 n.19 (Alaska 1988).
[10] *Earth Resources Co. of Alaska v. State, Dept of Revenue*, 665 P.2d 960 (Alaska 1983); (Emphasis added).
[11] *Id.* At 965.
[12] *Id.*

Department does not explain or develop what expertise the agency interpretation relies. The Department's position challenges Maniilaq's reliance on a plain meaning interpretation by stating Maniilaq's view does "not make sense", is "illogical", and is "strained".[13] The Department looks to the outpatient hospital billing language involving "lab and x-ray services" to compare the billing for these services in the tribal clinic context. The Department also points to billing language that allows doctors to bill for these services. The Department does not state if their interpretation has been applied in other instances where two providers are operated by a single association or organization to support whether their view is longstanding.

Maniilaq points to the nontechnical writing and lay audience intended to read and understand the manual to demonstrate that agency expertise is not required to interpret the manual's meaning. Maniilaq also points out that no expert testimony was utilized to explain the agency's interpretation.[14]

Since the issue in this case surrounds questions of how to interpret and apply the plain language of the billing manual, though a statute is not involved, this type of "statutory interpretation" is squarely within the Court's special competency. No agency expertise appears to have been applied. Rather the question involves determining the intent and application of a Medicaid billing guideline. The question in this case is whether the Department may limit, by interpreting the Billing Manual, facilities from being reimbursed for services they provide to Medicaid patients. The independent judgment test is therefore the appropriate standard of review. With this in mind, the Court need not defer to the agency's interpretation and application of the Billing Manual, but must independently make its determination.

LAW AND DISCUSSION

The Medicaid regulations require that each Provider follow the Billing Manual for reimbursement as expressed in the specific guideline section for that particular provider-type. The relevant language of the Billing Manual describing how outpatient hospitals are reimbursed states:

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[13] See Appellee's Brief. Argument Section.
[14] See Appellant's Reply Brief at p. 3.

> Outpatient hospital services are reimbursed on an encounter rate, which is published in the Federal Register. The encounter rate is payment for all outpatient-hospital services (including physician services) provided to one recipient on one day at one Tribal outpatient hospital.[15] (emphasis added).

The relevant language of the Billing Manual describing how tribal clinics are reimbursed reads:

> The services listed above can be billed under the Tribal Clinic Provider ID number and will be paid at the most current outpatient visit rate (encounter rate) published by the Indian Health Service. The encounter rate is paid per patient, per day, per facility and is payment for all services received at the clinic, including laboratory and x-ray services that are provided at the clinic and drugs and medical supplies provided on the day of the patient's visit.[16] (emphasis added).

As written, the Billing Manual dictates that reimbursement under the tribal clinic provider number is "per patient, per day, per facility" and "for all services received [there]". There are no stated prohibitions restricting reimbursement to just one facility for a patient seen at two facilities within a single day. Instead, the Billing Manual uses the term "per facility", an expressed statement that each facility providing patient services is authorized to bill for that patient. Regarding services, the plain language states that the reimbursement includes "laboratory and x-ray services" provided "at the clinic". If these services are not provided at the clinic, then the clinic is not allowed to bill for them. If these services are provided at the clinic, the clinic is reimbursed for them per the encounter rate. Since the clinic does not have a lab or x-ray equipment it cannot provide these services, and is therefore not authorized to seek reimbursement for these services since they are provided at another facility.

The Department focuses its interpretation on the fact that "laboratory and x-ray" services are included in the Billing Manual, but glosses over the language that specifies a precondition for billing depends on *where* the services are provided, e.g., "at the clinic...". After disregarding the qualifying location term "at the clinic" the Department

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[15] See 2005 Billing Manual, p. D-9.
[16] See 2005 Billing Manual, p. A-1.

argues the "x-ray and laboratory services" are "services in conjunction with" or "ancillary to physician services" which broadens the meaning of the language contained in the Billing Manual, but which they argue is necessary to understand what services may be billed.[17] It is only by overlooking the written terms and adding new terms that the Billing Manual can manifest the interpretation the Department asks the Court to adopt.

The Department justifies its interpretation by focusing on Maniilaq as operator of both an outpatient hospital and a tribal clinic. This fact, the Department argues, should control the manner in which the outpatient hospital and the tribal clinic submit their respective Medicaid reimbursements. But the Department does not hold this view when the tribal clinic and outpatient hospital are operated by separate entities.[18] Nor does the Billing Manual limit reimbursement to a single facility when more than one provides medical services to a single patient in a single day. This interpretation is in derogation of the express language authorizing reimbursement based on services rendered by provider. If the guidelines were intended to provide reimbursement to a single facility then language expressing that limitation would be present. Instead the Billing Manual directs tribal clinic providers to bill for the services they provide "per patient, per day, per facility".

In reversing the decision of the administrative law judge, the Commissioner adopted the Department's interpretation without deviating from their analysis that misreads and misinterprets the express language. Thus, the Commissioner's interpretation, like the Department's, is unsupported.

For the foregoing reasons, the Commissioner's Final Administrative Decision on Summary Judgment is REVERSED. The amount of overpayment shall be recalculated.

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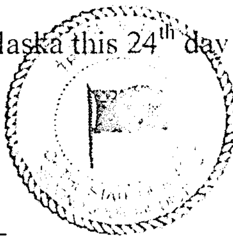
IT IS SO ORDERED.

Dated at Kotzebue, Alaska this 24th day of April, 2015.



PAUL A. ROETMAN
Superior Court Judge

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[17] See Appellee's Brief at p. 5.
[18] See Final Administrative Decision on Summary Judgment at p.3: (Stating the Department agreed at oral argument that "if a patient visited a physician or clinic not affiliated with Maniilaq, and was then referred to the Hospital for x-rays, both providers would be paid.")