

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of the)
)
A. CARE COORDINATION)
)
_____)

OAH No. 13-0935-MDR

DECISION

I. Introduction

This case relates to a new regulation under which the Office of Rate Review (ORR) reduces the reimbursement rate of certain small Medicaid providers if they fail to, or elect not to, submit audited financial data on an annual basis. A. Care did not submit its 2011 financial data because its proprietor felt she could not afford the cost of the auditor, and as a result ORR notified her in May of 2013 that it would reduce her rate by twenty percent, effective the following month. She appealed the reduction on the basis of hardship.

Normal deadlines for handling an appeal of this type were suspended while the parties unsuccessfully pursued a mediated settlement for a number of months. As soon as the case returned to the active calendar, a brief hearing was held which ascertained that there are no facts in dispute.

This decision concludes that the rate reduction was required by regulation, and that there is no discretion to grant a hardship exemption.

II. Facts

A. Care Coordination is a sole proprietorship operated by Alexandria Miles.¹ It provides care coordination services for about twenty individuals enrolled in Medicaid's Choice Waiver program.² A. Care has been in this business for about six years.³ A. Care's gross billings to Medicaid (prior to any twenty-percent reduction) are about \$60,000 per year.⁴ A. Care maintains financial records and reports on a calendar year basis.⁵

¹ Letter from Miles to Kosin, May 24, 2013 (included in agency record that was admitted without objection at hearing).

² *Id.*

³ *Id.*

⁴ Miles testimony.

⁵ *See* Letter from Kosin to Miles, April 1, 2013.

On April 1, 2013, ORR notified A. Care by letter that its rate would be reduced by a total of twenty percent if it did not submit, within thirty days, the audited financial reporting data specified in department regulation 7 AAC 145.531(e) for the year 2011.⁶ Ms. Miles determined that she could not afford to purchase the necessary accounting work, and she therefore elected not to submit the financial reporting data.⁷ The cost of the accounting work would have been \$3000.⁸

On May 10, 2013, ORR notified A. Care that, in light of the election not to submit financial reporting data, its payment rate would be reduced twenty percent effective June 1, 2013, with the reduction to “remain in effect until a complete report is received.”⁹ It was this decision that A. Care appealed.

Subsequent to initiating the appeal, A. Care paid an accounting firm \$3000, prepared, and submitted a report containing the 7 AAC 145.531(e) financial reporting data for 2012.¹⁰ Ms. Miles reports she was told that submitting the 2012 report would end the rate reduction.¹¹

III. Discussion

In 2011, a regulation became effective that required Choice Waiver providers to submit an annual report containing audited financial statements, a trial balance, and certain other materials.¹² Providers receiving less than \$200,000 in Medicaid payments during the report year are given the option to forego submitting some or all of this material.¹³ However, a provider who exercises the option to forego submitting all of the annual reporting information will have a rate reduction of twenty percent.¹⁴

⁶ *Id.*

⁷ Miles testimony.

⁸ *Id.*

⁹ Letter from Kosin to Miles, May 10, 2013. The letter was phrased so as to indicate that a single “complete annual report” would terminate the rate reduction, but did not specify whether this would be the 2011 report, the 2012 report, the 2013 report (due in 2014), or any one of these at A. Care’s election.

¹⁰ The 2012 report, along with an ORR cover sheet recording that it was complete, is attached to ORR’s “Notice of Filing 2012 Audited Financial Statement” (Feb. 18, 2014). The cover sheet indicates that A. Care’s 2012 report was submitted timely on September 30, 2013.

¹¹ Testimony of Ms. Miles. This testimony is lent some credibility by a statement of ORR’s counsel in a status conference held in July of 2013; counsel seemed to believe that submission of the 2012 materials might render this case “moot.”

¹² 7 AAC 145.531(e).

¹³ 7 AAC 145.535(b).

¹⁴ 7 AAC 145.520(l)(1).

The reporting regulation provides an exemption for certain private providers, but this exemption is available “only for the provider’s first fiscal year of enrollment under Medicaid,”¹⁵ a circumstance that did not apply to A. Care with respect to its 2011 reporting year. Apart from these first-year providers, the regulation is wholly mandatory: it provides that the department “will reduce” the provider’s rate by the specified percentage.¹⁶

A. Care argues that the cost of obtaining audited financial data is unreasonably high for a small business, and could drive providers out of business. The department appears to have attempted to address this concern by giving small providers an option to remain in the program—but at a reduced payment rate—if they choose not to incur the expense of creating this data. Whether this accommodation is reasonable or workable is not a subject for consideration in this forum. The mandatory rate reduction regulation is on the books, and so long as that is true, the agency must follow its own regulation.¹⁷ Accordingly, the decision of May 10, 2013, to reduce A. Care’s rate by twenty percent effective June 1, 2013, must be upheld.

To avoid confusion as ORR and A. Care move forward after this decision, it will be helpful to review what this decision does and does not decide. The only matter appealed, and the only matter decided, is the correctness of the May 10, 2013 decision. Apparently, the May 10 decision was not implemented on June 1, because this appeal was deemed to stay its effectiveness.¹⁸ Accordingly, any implementation of the May 10 decision will require a calculation of the amount by which ORR believes A. Care has been overpaid since June 1, as well as a decision (which may be discretionary) as to whether to expend resources to collect that amount. It is particularly noteworthy that the calculation of the amount owing has not been addressed in this decision, and that calculation will presumably be subject to separate appeal in this or another forum.¹⁹ If it is true that ORR told A. Care that submission of its 2012 report would terminate the rate reduction, and A. Care purchased accounting services to complete its 2012 report in reliance on that assurance, it is conceivable that ORR would be estopped to apply

¹⁵ 7 AAC 145.531(g).

¹⁶ 7 AAC 145.520(l)(1)(B), (C).

¹⁷ See, e.g., *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010) (“Administrative agencies are bound by their regulations just as the public is bound by them”).

¹⁸ Statement of Assistant Attorney General Dosik at hearing.

¹⁹ Cf. AS 47.07.075.

the rate reduction after September 2013, when the 2012 report came in.²⁰ The amount of any recoupment, and the applicability of estoppel, are not decided in this decision.

IV. Conclusion

Because A. Care did not submit audited financial reporting data specified in 7 AAC 145.531(e), the Office of Rate Review was required by regulation to reduce A. Care's payment rate, unless A. Care fit within the single exemption to that requirement. Because A. Care did not fit within that exemption, ORR was correct to reduce the payment rate effective June 1, 2013, and its decision to do so is affirmed.

DATED this 19th day of February, 2014.

Signed

Christopher Kennedy
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 21st day of March 2014.

By: *Signed*

William Streur
Commissioner
Department of Health & Social Services

[This document has been modified to conform to the technical standards for publication.]

²⁰ See, e.g., *In re Imaging Associates of Providence*, OAH No. 08-0447-DHS (Commissioner of Health & Soc. Serv. 2009) (describing and applying the doctrine of estoppel in connection with a DHSS action).