

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

In the Matter of )  
)  
TUNDRA SUITES, LLC ) OAH No. 18-0128-MPC  
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**PARTIAL ADOPTION**

The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

Part III-E is stricken from the decision solely for the reason that the respondent did not raise good cause as an affirmative defense to avoid suspension. This decision shall not be construed as a determination that a provider may not assert an affirmative defense under 42 C.F.R. § 455.23(a) and (e).

In all other respects, the proposed decision is adopted pursuant to AS 44.64.060(e)(1).

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 16 day of April, 2018.

By: Signed  
Erin Shine  
Commissioner's Delegate

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**DECISION**

**I. Introduction**

Tundra Suites, LLC, a hotel in Bethel, is a certified Medicaid provider. The Medicaid Program Integrity unit temporarily suspended Tundra Suites’ Medicaid provider payments effective January 16, 2018, based on what Program Integrity deemed a “credible allegation of fraud” being investigated by the Medicaid Fraud Control Unit. Tundra Suites appealed the payment suspension, and an expedited hearing was held. Because Program Integrity met its burden of proving that a credible allegation of fraud involving Tundra Suites is currently being investigated by the MFCU, the temporary suspension of payments is upheld.

**II. Facts**

*A. Overview of Medicaid travel services*

The Alaska Medicaid program provides medical assistance to low income and disabled Alaskans. When recipients require medically necessary care that is unavailable in their home community, Medicaid will pay for their travel expenses associated with obtaining that care.<sup>1</sup> If the recipient is a minor or an adult who requires assistance for travel, Medicaid will also approve travel costs for an escort to accompany the recipient.<sup>2</sup>

The Division of Health Care Services’ Transportation Program provides approved recipients with travel vouchers to use for airfare, ground transportation, lodging, and meals.<sup>3</sup> A recipient’s voucher states the amount of “units” that has been approved – for example, a set number of days of lodging – and may not be redeemed for more than that approved number of units.<sup>4</sup> The recipient uses the vouchers by presenting the voucher to the provider at the time the service is used. The provider then bills Medicaid for the service, using the unique authorization number listed on the voucher.

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<sup>1</sup> 7 AAC 120.405.  
<sup>2</sup> 7 AAC 120.430.  
<sup>3</sup> Walters testimony.  
<sup>4</sup> Walters testimony.

As with their medical care, Medicaid recipients can only use their travel vouchers with Medicaid-certified providers. In order to participate in the Medicaid program, a provider must go through the certification process which includes, *inter alia*, certifying that the provider is familiar with the Medicaid regulations governing the travel program.<sup>5</sup> Those regulations establish that a provider must submit a claim for reimbursement within twelve months after the services are provided,<sup>6</sup> may not charge Medicaid more than the lowest rate it charges the general public,<sup>7</sup> and may not charge Medicaid for escorts to stay in the same room as the recipient unless a double occupancy rate is charged to the general public.<sup>8</sup> Medicaid providers are also instructed that they may contact the Division if they have questions or concerns or if they require assistance.<sup>9</sup>

*B. Program Integrity Unit*

The state Medicaid program has a “Program Integrity unit” tasked with ensuring that Medicaid payments are properly made. In addition to overseeing state and federal audits, Program Integrity’s work includes conducting “post-payment reviews” of payments made to providers to ensure that providers have not received payments to which they are not entitled under the program’s regulations.<sup>10</sup>

When Program Integrity finds that a provider has received an overpayment, it recoups the overpayment, and, depending on the circumstances that gave rise to the overpayment, may take corrective action that can range from provider education to suspension or revocation of the provider’s certification.<sup>11</sup> The most common sanction is temporary suspension of the provider’s Medicaid payments while the overpayment is investigated.<sup>12</sup>

In rare cases, discovery of a suspected overpayment triggers referral to the Department of Law’s Medicaid Fraud Control Unit (MFCU) for a criminal investigation. Such a referral is made where Program Integrity has determined that the totality of circumstances surrounding the suspected overpayment give rise to a credible suspicion of fraud. While audits and overpayment

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<sup>5</sup> See 7 AAC 105.210; 7 AAC 105.220(a)(1).

<sup>6</sup> 7 AAC 145.005(c).

<sup>7</sup> 7 AAC 145.005(h)(2), 7 AAC 145.020.

<sup>8</sup> 7 AAC 120.430(d).

<sup>9</sup> Walters testimony.

<sup>10</sup> See 7 AAC 105.410.

<sup>11</sup> Walters testimony; 7 AAC 105.410.

<sup>12</sup> Walters testimony; *see generally*, 7 AAC 105.470, 7 AAC 105.480.

reviews are common, numbering in the hundreds annually, referrals to MFCU number roughly five per year.<sup>13</sup>

*C. Tundra Suites*

Chin Soo Kim and his wife, Miyoung Kim, own and operate the Tundra Suites hotel in Bethel. The hotel consists of nine regular rooms and five suites. The regular rooms – rooms 7, 8, 9, 10, 11, 12, 14, 15, and 16 – have one or two beds in a single room. The suites – rooms 2, 3, 4, 5, and 6 – have two separate rooms, each of which has one or two beds.<sup>14</sup> There is no room 1 or 13.

Tundra asserts that it generally charges \$160 per night for single occupancy in a regular room, \$180 per night for double occupancy, and \$240 per night for triple occupancy.<sup>15</sup> Tundra reportedly charges between \$220 and \$240 per night for double occupancy of a suite, \$240 per night for triple occupancy, and \$320 per night for quadruple occupancy.<sup>16</sup> (Somewhat incredibly, Mr. Kim testified that the rate for four people to share a regular room is \$320, the same rate for four people to share a two-room suite.) Sometimes Mr. Kim charges less than these rates – for example, if it is very cold out and a prospective customer has nowhere to sleep but cannot pay the full room rate, or if a large group requests a discount.<sup>17</sup>

The Kims purchased the hotel in 2014.<sup>18</sup> At some point, at the urging of his former accountant, Mr. Kim decided to become a Medicaid provider. He enrolled in the program and signed a provider enrollment agreement agreeing to follow the program’s regulations.<sup>19</sup> The hotel obtained its Medicaid provider certification in May 2016.

Unlike its billing to the general public, Tundra charges Medicaid a set rate of \$89 per traveler, per night, regardless of the particular room arrangements. For a recipient traveling alone, Tundra bills Medicaid \$89 per night.<sup>20</sup> For a recipient accompanied by a medical escort in the same room, Tundra bills Medicaid \$178 per night.<sup>21</sup> As described further below, Tundra sometimes places unrelated Medicaid recipients, and their escorts, together in the same room,

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<sup>13</sup> Walters testimony.

<sup>14</sup> Kim testimony.

<sup>15</sup> Kim testimony.

<sup>16</sup> Kim testimony.

<sup>17</sup> Kim testimony.

<sup>18</sup> Kim testimony.

<sup>19</sup> Kim testimony.

<sup>20</sup> Kim testimony; *see, e.g.*, R. 144.

<sup>21</sup> Kim testimony; *see, e.g.*, R. 152

and bills Medicaid separately for each traveling pair.<sup>22</sup> For two separate recipients and each of their escorts all sharing either a regular room or a suite, Tundra’s practice has been to bill Medicaid \$89 per person, or \$356 for the room.<sup>23</sup>

Tundra’s revenues from its participation in the Medicaid travel program have grown rapidly since it first joined the program. In the early months of 2017, its billing averaged \$4,000 per month. In December 2017, it billed \$57,000 to the Medicaid travel program.<sup>24</sup>

*D. Report and investigation*

In December 2017, Program Integrity received complaints from five separate Medicaid providers certified to provide overnight accommodations to Medicaid recipients. Each provider complained that on multiple occasions, it had provided overnight accommodation to a recipient presenting a voucher, then later had the claim denied based on the voucher’s “service authorization units” having already been used by another provider.<sup>25</sup> Prior to this group of complaints, Program Integrity had not seen providers raise concerns about travel vouchers being denied because the units had already been used.<sup>26</sup>

In response to these complaints, Program Integrity Medical Assistance Administrator Kristina Walters reviewed the various providers’ claims data for the claims that had been denied. This review led to the discovery that each of the vouchers in question had previously been submitted for reimbursement by a single provider: Tundra Suites.<sup>27</sup>

The identification of Tundra Suites as the “common denominator” in the non-payment complaints of five separate providers led Program Integrity to begin reviewing Tundra’s claims history in depth. Ms. Walters’ review led to the following observations:

- Unlike most providers, who generally submit their claims to Medicaid once a month, Tundra was billing each night of each recipient’s stay the following day.
- Tundra had rapidly enlarged its use of the Medicaid program, growing from \$4000 in monthly billings at the start of the year to \$57,000 in monthly billings for December 2017.
- On some dates, Tundra had billed Medicaid for multiple recipients staying in the same room – including recipients who did not appear to be family members or from the same community.

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<sup>22</sup> Kim testimony.

<sup>23</sup> Kim testimony.

<sup>24</sup> Walters testimony.

<sup>25</sup> Walters testimony.

<sup>26</sup> Walters testimony.

<sup>27</sup> Walters testimony.

- On at least one occasion, Tundra had redeemed a voucher for a recipient who had been approved to be in Anchorage, not Bethel, and who had airfare to Anchorage on the date that had been billed by Tundra.<sup>28</sup>

As part of the investigation into this issue, Program Integrity Manager Doug Jones contacted Tundra on January 16, 2018. Mr. Jones asked about the number of rooms at Tundra, and was told there were sixteen rooms.<sup>29</sup> In her review of Tundra’s claims data, Ms. Walters then discovered multiple dates on which Tundra appeared to have billed Medicaid for more than sixteen rooms, including billing for seventeen recipients on August 3, 2017; nineteen recipients on December 18, 2017; and eighteen recipients on December 22, 2017.<sup>30</sup>

The totality of these circumstances led Program Integrity to formally refer the matter to the MFCU.<sup>31</sup> As the result of this referral, MFCU opened an investigation, which remains ongoing, into “whether Tundra suites is committing fraud by billing Medicaid for recipients who are not staying at their hotel and/or billing Medicaid on particular days for services allegedly provided to more recipients than there are rooms in the hotel.”<sup>32</sup>

*E. Notice of Immediate Suspension*

The same day that it referred the matter to MFCU, Program Integrity sent Tundra a notice of immediate suspension of Medicaid payments.<sup>33</sup> Under a section titled “Notice of Grounds for Sanction,” the January 17, 2018 notice read:

The Department of Health and Social Services verified that Chin Soo Kim dba Tundra Suites, LLC, is under investigation of a credible allegation of fraud. It is alleged that you violated the provisions of Alaska Statue (AS) 47.05.210(a)(1) and AS 47.05.210(a)(5); by knowingly submitting Medicaid claims for medical assistance services that were not provided. It is further alleged that you specifically billed for accommodations services for a recipient who was in another hotel and/or other city on the dates of service in question.<sup>34</sup>

Program Integrity issued a second notice on January 18, 2018, titled “Notice for Suspension January 17, 2018 Grounds for Sanction.” This notice repeated the grounds for sanction set forth in the prior day’s notice, and added: “It is alleged that you billed for more services than were

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<sup>28</sup> Walters testimony.

<sup>29</sup> Walters testimony; Jones affidavit. As noted above, it emerged at the hearing that there are fourteen rooms, although five are suites containing beds in two separate rooms. Kim testimony.

<sup>30</sup> Walters testimony; Walters Aff.

<sup>31</sup> Walters testimony; Walters Aff.

<sup>32</sup> Warren Aff., ¶ 3.

<sup>33</sup> R. 1.

<sup>34</sup> R. 1.

actually provided on the following dates: August 3, 2017; December 18, 2017; and December 22, 2017.”<sup>35</sup>

*F. Appeal*

Tundra, through counsel, timely appealed, and an expediated hearing was scheduled pursuant to 7 AAC 105.460(c). The hearing was held on February 20, 2018. John Pharr represented Tundra Suites. Assistant Attorney General Scott Friend represented Program Integrity. A Korean language interpreter assisted in the proceedings. Testimony was taken from Kristina Walters on behalf of Program Integrity, and from Chin Soo Kim on behalf of Tundra. All exhibits from both parties were admitted by stipulation.<sup>36</sup> In addition to the facts described above, the following significant evidence emerged at the hearing:

1. Testimony about multiple recipients sharing a room

Once Ms. Walters began her review of Tundra’s billing practices, a key “red flag” was that Tundra was submitting bills for more recipients than it had rooms. As described further below, the agency record contains multiple examples of Tundra billing for multiple recipients and escorts in the same suite, or even the same regular room.<sup>37</sup>

In its prehearing brief, Tundra offered that this occurred because its mostly Native Alaskan clientele prefers to stay with family members “for cultural reasons,” and that “in fact the hospital recommends that.” At the hearing, Ms. Walters testified that the recipients she had identified as being billed for the same room on the same night had different last names, tended to be from different villages, and tended to be anomalous pairings that seemed unlikely to voluntarily seek out shared accommodation – for example, an older male recipient and a minor recipient traveling with a female parent escort.<sup>38</sup>

Following this testimony, Mr. Kim offered a different explanation than the one suggested in Tundra’s prehearing brief. According to Mr. Kim’s testimony, recipients wind up sharing suites or rooms in two contexts. Sometimes, two families meet at the hospital and ask to lodge together. Sometimes, during particularly busy times, there are not enough rooms for all of the prospective guests. On those occasions, the Kims ask an existing guest if they would be willing to share their suite (or their regular room). If that guest consents, Tundra houses a second

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<sup>35</sup> R. 4.

<sup>36</sup> Program Integrity’s exhibits included affidavits from Doug Jones and Quinten Warren. At the parties’ request, post-hearing briefing was submitted on February 27, 2018.

<sup>37</sup> See R. 138-139, 140-141, 165, 171.

<sup>38</sup> Walters testimony.

recipient and escort in the suite's second room (or, more rarely, the room's other bed).<sup>39</sup> In either case, because Tundra bills Medicaid a set rate of \$89 per guest, when housing four Medicaid-covered travelers in either a suite or a regular room, it bills Medicaid \$356 per night.<sup>40</sup>

Ms. Walters credibly testified that in her experience as the Transportation Program Manager and in her experience in Program Integrity, she is aware of no other situation in which multiple unrelated recipients allegedly chose to share a room while traveling on Medicaid vouchers. She is also unaware of any shortage of Medicaid lodging in Bethel such that recipients would be required to share a room.<sup>41</sup>

2. Evidence about Tundra billing Medicaid for multiple recipients shown as staying in the same room on the same night

The agency record contains multiple examples of Tundra billing Medicaid for multiple recipients and their escorts in the same room on the same night. Thus, for August 3, 2017, Tundra submitted a voucher seeking \$178 in reimbursement for recipient K.J. and his escort, S.A., to stay in Room 6.<sup>42</sup> But Tundra separately submitted another voucher seeking another \$178 for a different recipient and her escort to stay in Room 6 on the same night.<sup>43</sup> For Room 5, Tundra billed Medicaid for two separate sets of recipients and escorts, as well as a separate single traveler.<sup>44</sup> Perhaps most remarkably, Tundra billed Medicaid for recipient R.A., an adult female travelling without an escort, to stay in Room 11. Tundra then separately billed for a minor, C.A., to stay with his escort – R.A. – in Room 11. In other words, Tundra billed Medicaid twice for R.A.'s August 3 stay in Room 11.<sup>45</sup>

Likewise, on December 18, 2017, Tundra submitted a voucher seeking \$178 in reimbursement for a 69-year-old male recipient to stay in Room 5.<sup>46</sup> But Tundra separately submitted another voucher seeking another \$89 for a 20-year-old female recipient from a different community to stay in Room 5 on the same night.<sup>47</sup> Tundra submitted three vouchers for

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<sup>39</sup> Kim testimony.

<sup>40</sup> Kim testimony. Mr. Kim testified that in April or May 2017 he was asked by “a young lady from the government agency” to stop billing separately for recipients and escorts sharing the same room. However, he continued to do so on the advice of the “hospital manager.”

<sup>41</sup> Walters testimony.

<sup>42</sup> R. 138.

<sup>43</sup> R. 139.

<sup>44</sup> R. 140-141, 194.

<sup>45</sup> R. 150, 152; Ex. D, pp. 18, 20.

<sup>46</sup> R. 156.

<sup>47</sup> R. 158.



two separate sets of recipients and escorts as well as a single recipient for Room 4.<sup>48</sup> Tundra also submitted multiple duplicate vouchers for December 22, 2017.<sup>49</sup>

### 3. Testimony about Tundra’s billing practices

Ms. Walters testified that Tundra’s billing practices were unusual in that most providers bill Medicaid monthly, whereas Tundra was submitting claims very frequently – even submitting separate claims for each day of a recipient’s multi-day stay. While this unusual practice is not necessarily proof of malfeasance, it raised concerns for Ms. Walters in the context of the larger constellation of irregularities surrounding Tundra’s billing and claims history.

Mr. Kim contends that early in his program participation he had problems with claims going unpaid, so he started submitting bills to Medicaid immediately each day, apparently based on a belief that his claims were being denied when “the program ran out of money.”<sup>50</sup> As Ms. Walters explained, however, that is not how the travel reimbursement program works. The program does not run out of money and stop paying valid claims. Rather, if a voucher has been issued through the prior authorization process, and a valid claim is submitted, the claim will be paid.

Accordingly, providers who have valid claims denied typically contact Medicaid to determine why the claim was denied and to attempt to have the claim paid. Mr. Kim acknowledges he has never contacted Medicaid to inquire about or contest unpaid claims, despite asserting that he had nearly \$10,000 in unpaid travel claims in 2017.

## **III. Discussion**

### *A. Applicable law*

Medicaid is a federal program implemented by the states. As such, there are both federal and state regulations. The governing federal regulation, 42 C.F.R. 455.23(a)(1), provides:

The state Medicaid agency must suspend all Medicaid payments to a provider after the agency determines there is a credible allegation of fraud for which an investigation is pending under the Medicaid program against an individual or entity unless the agency has good cause to not suspend payments or to suspend payment only in part.

The federal regulations further explain that “a credible allegation of fraud may be an allegation, which has been verified by the State, from any source, including but not limited to ... patterns

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<sup>48</sup> R. 164, 167, 168.

<sup>49</sup> R. 180-181 (Room 12), 183-184 (Room 6).

<sup>50</sup> Mr. Kim testified that he has gotten most of his advice on program compliance from “the hospital travel office,” which he is aware is not part of the Medicaid program, or from his former accountant, “Mr. Louie.”

identified through provider audits[.]”<sup>51</sup> As for the question of credibility, “[a]llegations are considered to be credible when they have indicia of reliability and the state Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis.”<sup>52</sup>

The implementing state regulation, 7 AAC 105.480(a), provides that:

The department may temporarily withhold medical assistance payments to a provider under 7 AAC 105.410, in whole or in part, upon receipt of reliable information that the circumstances giving rise to the need for the withholding involve medical assistance fraud as defined in AS 47.05.210. Regardless of whether it elects to withhold payments under this section, the department will refer the information described in this subsection to the Department of Law.<sup>53</sup>

The referenced fraud statute, AS 47.05.210(a)(1) provides that “[a] person commits the crime of medical assistance fraud if the person knowingly submits or authorizes the submission of a claim to a medical assistance agency for property, services, or a benefit with the reckless disregard that the claimant is not entitled to the property, service, or benefit.”

*B. Tundra had adequate notice of the allegations against it*

As a threshold matter, Tundra has alleged that it had insufficient notice to meaningfully challenge Program Integrity’s action against it. Specifically, Tundra alleges that it “was not fairly put on notice of what it was being suspended for.”<sup>54</sup>

Tundra argues that it has not been provided the full evidence of a supposed fraudulent scheme, so it cannot understand the nature of the allegations, let alone defend against them. This argument fails on a legal basis because the Division’s notice for temporary suspension purposes is only required to identify the “general allegations,” not prove the existence of the fraud. The argument also fails factually because the notice in this case sufficiently advised Tundra of the nature of the credible allegation of fraud – specifically, that on three identified dates Tundra had billed for services not provided, including for recipients not in Bethel at the time those services were supposedly provided.

The regulation sets out notice requirements for temporary suspension of payments. The notice must, in pertinent part: “state that payments are being withheld in accordance with 42 C.F.R. 455.23 or an applicable provision of state law,” and “specify, when appropriate, general

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<sup>51</sup> 42 C.F.R. 405.370(a)(3).

<sup>52</sup> 42 C.F.R. 405.370(a)(3).

<sup>53</sup> 7 AAC 105.480(a).

<sup>54</sup> Tundra post-hearing brief, p. 8.

allegations that justify the withholding action.”<sup>55</sup> Here, the January 17 notice informed Mr. Kim that he is “under investigation of a credible allegation of fraud” as follows:

It is alleged that you violated the provisions of Alaska Statue (AS) 47.05;210(a)(1) and AS 47.05.210(a)(5); by knowingly submitting Medicaid claims for medical assistance services that were not provided. It is further alleged that you specifically billed for accommodations services for a recipient who was in another hotel and/or other city on the dates of service in question.<sup>56</sup>

The January 18 notice reiterated these general allegations and then specified three dates on which billing improprieties had occurred.<sup>57</sup> Taken together, these notices satisfy the requirements of the regulation.

The notices also satisfy the requirements found in case law that an affected party be made aware of the factual reasons and legal authority for the suspension, as well as their right to challenge it. In the context of Medicaid recoupment, the Alaska Supreme Court has explained that, in addition to identifying the proposed agency action and the right to seek administrative relief, an agency must provide notice that is “reasonably calculated, under all the circumstances, to inform interested parties of action affecting their property rights.”<sup>58</sup> In the context of recoupment of overpayment to foster parents, the Court has held that due process requires the notice of recoupment to “include specific factual reasons and legal authority for the recoupment and [ ] also inform the [recipients] of their right to contest” the decision.<sup>59</sup>

Given the more limited scope of the sanction here (a temporary suspension of payment, as opposed to recoupment of prior payments), and the regulation’s reasonably limited requirements (that is, because such suspensions necessarily arise in the context of a simultaneous criminal fraud investigation, the agency must describe the general basis for its actions, but not more), the notice sufficiently advised Tundra of the action being taken, the reason for the action, and the ability to challenge the action on appeal.

*C. Tundra was not denied due process at the hearing*

In its post-hearing brief, Tundra has also alleged that it “was denied due process at the hearing when it could not cross-examine Ms. Walters.”<sup>60</sup> However, Tundra was not prohibited

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<sup>55</sup> 7 AAC 104.480(b)(1), (4).

<sup>56</sup> R. 1-3.

<sup>57</sup> R. 4.

<sup>58</sup> *Smart v. State, Dep't of Health And Soc. Servs.*, 237 P.3d 1010, 1015 (Alaska 2010) (quoting *City of Homer v. Campbell*, 719 P.2d 683, 686 (Alaska 1986)).

<sup>59</sup> *Heitz v. State, Dep't of Health & Soc. Servs.*, 215 P.3d 302, 308 (Alaska 2009).

<sup>60</sup> Tundra post-hearing brief, p. 9.

from cross-examining Ms. Walters. To the contrary, Tundra's counsel cross-examined Ms. Walters in depth. Tundra's actual complaint concerns its questions to Ms. Walters about details of the fraud investigation.

Because the issue posed in a payment suspension appeal is only whether a credible allegation of fraud exists, not whether fraud has in fact occurred, Ms. Walters was not required to respond to counsel's question about certain details of the ongoing fraud investigation. Ms. Walters described in detail the nature of the Program Integrity program and its various post-payment reviews. She described the events that led to her investigation of Tundra's billing practices. She described, in general terms, the findings that led Program Integrity to refer the matter to MFCU – explaining, as the record shows, that on the dates identified in the letter, Tundra billed for more rooms than it has, and billed for multiple recipients and escorts in the same room. She explained why this – as well as multiple unrelated providers reporting billing problems that all led back to Tundra – was unusual and suspicious.

Tundra was permitted to cross examine Ms. Walters on all of these issues. However, Tundra was not permitted to cross-examine Ms. Walters as to further details of her investigation's findings – specifically, the identities of recipients who she claimed had not stayed at Tundra despite invoices having been submitted for those recipients. Program Integrity objected to this questioning as outside the scope of direct, beyond the scope of the hearing, and impermissibly intruding into the ongoing fraud investigation. This objection was properly sustained in light of the limited nature of the inquiry on a payment suspension appeal. Tundra's inability to dive further into the specifics of Ms. Walters' findings as to possible fraudulent activity did not impair its ability to cross-examine her on the question at issue in this appeal: whether there is evidence supporting a credible allegation of fraud.

Tundra was permitted to, and did, cross-examine Ms. Walters as to the circumstances giving rise to that credible allegation – namely, the unusual billing practices, the identification of Tundra as the common link in a series of otherwise unrelated voucher validity complaints, the rapid growth in Tundra's billing, and the revelation that Tundra had billed for more recipients than it had rooms. For purposes of the temporary suspension of payments, the identity of specific recipients whose vouchers are believed to be at issue is not determinative, and restriction of cross-examination on this issue did not impair Tundra's right to due process.

*D. Program Integrity established that there is a credible allegation of fraud by Tundra being investigated by MFCU*

The evidence presented at hearing supports Program Integrity's finding that there is a credible allegation of fraud being investigated by MFCU. As described by both Ms. Walters and Mr. Jones, the suspected fraud is two-fold and interrelated: billing for services not provided, and billing for more recipients than Tundra has rooms.<sup>61</sup>

Tundra's prehearing brief argued that this is a case of business competitors making false complaints to try to hurt its business. The evidence at hearing plainly established that this is not the case. First, only one of the five complaining providers is in Bethel; the others are in Anchorage and would have no reason to view Tundra as a competitor. Moreover, the other providers' complaints did not mention Tundra, but rather concerned the provider's own unpaid invoices. It was only the investigation into those complaints that led Ms. Walters to discover Tundra as the common denominator.

Tundra appearing as a common denominator in multiple other providers' complaints about unpaid invoices is strong evidence that something is amiss in Tundra's practices. The additional evidence uncovered in Ms. Walters' investigation – particularly, multiple invoices listing multiple recipients as staying in the same room on the same nights, with Medicaid being billed separately for each recipient – is additional strong evidence of improper practices.<sup>62</sup> Tundra's explanation of its billing practices does little to allay the concerns raised by Program Integrity. To the contrary, Tundra described a series of practices that are flatly prohibited by the program regulations it has committed to follow. Most concerning, when asked why he was charging Medicaid more for four people in a suite than he charges the general public, Mr. Kim responded by asking why it was okay for Medicaid to only pay him \$89 for a \$180 room. While Mr. Kim later backed away from this rationale, it was troubling testimony.

Tundra's prehearing brief also takes issue with the regulations' use of the words "reliable" and "credible," arguing implicitly that the evidence here does not meet these standards. As noted above, the federal regulations provide for suspension upon receipt and

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<sup>61</sup> Walters testimony; Jones Affidavit.

<sup>62</sup> When pressed on cross-examination, Ms. Walters also testified that her investigation had revealed (1) evidence of the same recipient being billed in two hotels on the same night, and (2) at least one recipient who denied ever having stayed at the Tundra Suites. While Tundra now seeks to have this evidence disregarded because Ms. Walters did not then offer full details of the ongoing fraud investigation, it was Tundra whose questioning elicited the evidence it now seeks to strike, and Ms. Walters gave credible testimony in response to those questions. Further, even without this evidence, Program Integrity presented sufficient evidence of a credible allegation of fraud.

investigation of a credible allegation of fraud, and provide that an allegation is credible if it has “indicia of reliability” and the agency has carefully reviewed the evidence “on a case-by-case basis.”<sup>63</sup> The state regulation, in turn, authorizes suspension “upon receipt of reliable information” giving rise to a concern of possible Medicaid fraud.<sup>64</sup> Tundra argues that the state regulation’s use of “reliable,” rather than the term “credible” in the federal regulation, is legally significant and imposes a higher burden than the federal regulation – a burden Tundra claims has not been met in this case.

But the state regulation’s use of the term “reliable” mirrors the federal definition of what constitutes a credible allegation of fraud. A credible allegation of fraud is one that has indicia of reliability. The state regulation, in turn, allows withholding in the event of a reliable allegation. The two regulations do not impose separate burdens. Moreover, the evidence in this matter readily satisfies the requirement that the allegation – here, “patterns identified through provider audits” and other post-claim review practices – have “indicia of reliability.” These include: (1) that concerns about Tundra arose organically from reports by multiple other providers about their own unpaid bills, rather than as complaints by a provider directed towards a competitor; (2) that Tundra’s own written records reveal irregularities; (3) that Tundra has offered shifting explanations for these irregularities; and (4) that Tundra’s explanations for each irregularity is implausible, such that accepting any, let alone all, of those explanations requires a tremendous suspension of disbelief. More specifically:

- It is implausible that a Medicaid provider whose legitimate claims are being frequently denied would not contact the agency to correct the errors leading to those denials.
- It is implausible that multiple providers across the state are engaged in a conspiracy to drive Tundra out of business.
- It is implausible that the separate billing concerns of multiple providers would all wind up implicating a single provider, if that provider in fact had nothing to do with those concerns.
- It is implausible that strangers meeting at a hospital while undergoing medical treatment make the spur-of-the-moment decision to share a hotel room.
- It is even more implausible that strangers would do so where, as here, they are traveling with medical escorts and their lodging is being paid in full regardless of whether or not they make such arrangements.

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<sup>63</sup> 42 C.F.R. 455.23(a)(1); 42 C.F.R. 405.370(a)(3).

<sup>64</sup> 7 AAC 105.480(a).

- It is further implausible that this is happening frequently.
- It is further implausible that, despite the large number of Medicaid recipients in the state, these frequent roommate occurrences are only happening at Tundra Suites.

In short, there is certainly evidence in this record to give rise to deep concerns about Tundra's billing practices. Whether they rise to the level of provable fraud is not the subject of this case. The question here is more limited in scope: is there a credible allegation of fraud? There is. Both the presence of Tundra as the common link in multiple unrelated providers' complaints, and Tundra's practice of billing multiple recipients to the same room are each, standing alone, suspicious circumstances giving rise to serious questions about the nature of Tundra's participation in the Medicaid travel program. These two circumstances occurring together, and in the presence of other indicia of possible misconduct, amply support Program Integrity's finding.

On the limited question presented, Program Integrity has shown that sufficient irregularities exist to give rise to a credible allegation of fraud. That allegation is currently being investigated by the MFCU. Tundra will have the opportunity to defend its practices in a full proceeding should one be brought. In the interim, however, sufficient reliable evidence exists to support the suspension of Medicaid payments to this provider.

*E. Tundra did not establish that good cause exists not to suspend payments*

Federal regulations provide that payments must be suspended unless the Department finds good cause not to suspend. The evidence presented did not establish that such cause exists. To the contrary, taken in the most favorable light possible, Mr. Kim's testimony suggests that Tundra routinely engages in multiple violations of the program regulations governing billing and reimbursement for travel services. These include: charging Medicaid more than the general public, double-billing the program for rooms in which he has lodged unrelated recipients, and charging Medicaid to lodge recipients who in fact have been denied lodging (e.g. for fighting or drunkenness). Even if these actions were undertaken out of a genuine misunderstanding of program requirements, Tundra's provider certification carries with it an obligation to understand and follow those requirements. Given Mr. Kim's own testimony of Tundra's failures in this regard, there is no good cause that would justify deviating from the presumptive payment suspension in this case.

#### **IV. Conclusion**

The issue for decision in this case is not whether Tundra has, in fact, committed fraud. Rather, the inquiry here is limited to whether there is a credible allegation of fraud currently under investigation by MFCU. The evidence presented at hearing overwhelmingly supports the conclusion that there is. Accordingly, the Division's decision to suspend payments to Tundra Suites pending resolution of that investigation is upheld.

Dated: March 6, 2018

*Signed* \_\_\_\_\_  
Cheryl Mandala  
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]