BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
TREASURES ANGELS INC	)	OAH No. 24-0534-MPC
	)	

DECISION

I. Introduction

Treasures Angels, Inc., applied to the Division of Senior and Disabilities Services, Alaska Department of Health, to be certified to provide and bill for a variety of Medicaid services in a group home setting. After back-and-forth exchanges between the Division and the owner of Treasures Angels, Monica Martinez, the Division denied the application. Treasures Angels requested a hearing to challenge the denial.

To be certified, a provider must submit documents, including a policy manual that addresses how the provider and its staff will fulfill the key requirements for service providers. The Division has established that at least one important section of Treasure Angels' policy manual was deficient. In addition, Treasures Angels workers compensation insurance (which is also required for certification) had expired and was not renewed until after expiration. Treasures Angels had been given an opportunity to correct these issues, but did not do so. Because of these deficiencies, Treasures Angels is unable to meet the standard for certification. Accordingly, the Division's denial is affirmed.

II. Facts and Proceedings

Treasures Angels, Inc., is a corporation that operates two assisted living homes in Anchorage. The corporation is run by Ms. Martinez.[1] Under the same umbrella business, Ms. Martinez also operates an affiliate that provides information on resources available to people who need assistance due to mental or cognitive challenges.[2]

Ms. Martinez testified that she has considerable experience, passion, and skill for serving this at-risk population. The record documents that she has received training in providing these services.[3] Her testimony regarding the two issues in this case (critical incident reporting and

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1 Martinez testimony. Her resume describes her as the "Caregiver/CEO/Administrator" of Treasures Angels, Inc. AR 186.

2 Martinez testimony.

3 AR 182-223.

medication management) revealed a depth of understanding, and a genuine concern and interest, regarding the needs of this clientele.[4]

Treasures Angels currently has at least one client who is Medicaid-eligible. That client is currently receiving services under a limited Medicaid program and general relief.[5] The client is in the process, however, of being evaluated to receive additional Medicaid services under a "Home and Community-Based Waiver" designation.[6]

Services provided under this designation are generally described as "waiver" services. The waiver program makes available funding for services that help a needy individual live a normal (or as normal as possible) life without being place in an institutional setting. Ms. Martinez explained that one motivation for her desire to be certified to provide waiver services was so that her Medicaid-eligible client would not have to leave his stable home (where he has lived for over five years) once he becomes eligible to receive waiver services.[7]

A provider who wants to provide waiver services must be certified by the Division before the provider can bill Medicaid for those services. Medicaid regulations describe the different services that can be provided, each with its own set of requirements.[8] A separate certification must be obtained for each category of service.

On June 20, 2023, Treasures Angels submitted an application to be certified to provide to provide waiver services in the following categories: chore, day habilitation, residential habilitation (for group home, in-home, and supported living), services, respite, supported employment, and transportation.[9]

The application was referred to Health Program Manager Gao Her for evaluation. Ms. Her has been with the Division for six years, and has over 20 years experience in evaluating various health or social service applications for conformance with the legal requirements.[10]

Ms. Her found several problems with the application. These included missing, incomplete, or illegible documents, and deficiencies in the required operations manual. She wrote up her findings, and sent a notice to Treasures Angels. The notice described the

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4 Martinez testimony.
5 Wheeler testimony; Martinez testimony.
6 *See generally* AS 47.07.045.
7 Martinez testimony.
8 *See* 7 AAC 130.220.
9 AR 139.
10 Her testimony.

deficiencies and provided a deadline for Treasures Angels to resubmit those parts of the application that were deficient.[11]

After being granted an extension of time, Treasures Angels submitted additional documents. Ms. Her found that the new documents did not cure all of the deficiencies. A second notice was sent, and then, after a further submission and evaluation, a third deficiency notice. In a letter sent on December 8, 2023, Ms. Her explained that because the manual addresses many different discrete topics, and because some of the individual topics had been revised and resubmitted multiple times, it was now difficult to determine which parts carried forward and which parts had been jettisoned.[12] Accordingly, the letter instructed that Ms. Martinez was to "[p]rovide an entire Operations Manuals [sic] with the new edits and highlights."[13]

Because Ms. Martinez was unsure about what she needed to do to satisfy the Division, she requested an in-person meeting with Ms. Her to go over the deficiencies. Ms. Her agreed to meet.[14] Ms. Martinez brought documents to the meeting.[15] She asked Ms. Her to explain what the Division needed her to do, and to take what the Division needed from the stack of documents. The Division received a new copy of most of the required topics in the policy manual on December 26th.[16]

Ms. Her then hand-wrote a list of eight issues to be addressed.[17] Three items on the list related to transportation services, which are no longer relevant to this decision because Ms. Martinez withdrew her request to be certified to provide transportation services. One item noted issues with the worker's compensation certificate of insurance. The list also requested clarifications regarding Treasures Angels' Assisted Living Home and Care Coordinator licenses,

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11 AR 88; Her testimony.

12 AR 88.

13 AR 88; Her testimony.

14 Martinez testimony; Her testimony.

15 Martinez testimony; Martinez video exhibit.

16 AR 98-124 (policy documents all stamped with the notation "SDS PCC Date REC'd 12/26/23"). The parties seemed either confused or in dispute about which documents were delivered on December 26th. The policy documents received on December 26th include the policies for Critical Incident Reporting (AR 98-99), Financial Accountability (AR 100-02), Independence and Inclusion (AR 103-04), Person-Centered Practice (AR 105-06), Medication Service (AR 107-112), Medical Administration (AR 113), Quality Improvement (AR 114), Restraints and Assessment (AR 115-22), Termination of Provider Services (AR 123) and Training Requirements (AR 124). This collection is the entire set of policies that required to be submitted for the waiver services sought by Treasures Angels except for the policy on Background Checks. *See* AR 138, 140, 142, 145. Ms. Martinez had submitted Treasures Angels' policy on Background Checks with the initial application, AR 165, and a revised version on November 24, 2023. AR 236. For purposes of this decision, this issue is not material to the outcome.

17 Martinez Exhibit A-5.

and to its organization chart. With regard to Treasures Angels' policy manual, the list requested that Ms. Martinez provide a copy of Treasures Angels' House Rules and a revised Medication Management policy. The list did not mention Treasures Angels' Critical Incident Reporting policy. Ms. Her set the deadline for submission of conforming documents at January 8, 2024. On January 8th, Ms. Martinez submitted a medication management policy. On January 16th, she submitted a different version of the policy.

On March 15, 2024, the Division denied Treasures Angels' application for certification.[18] The denial letter explained the reason for the denial as follows:

> The following documentation remains insufficient:
> • Business License, physical location differs from the application.
> • Certificate of Insurance (COI) for Workers Compensation expired 1/22/2024.
> • Organization Chart is not legible to reconcile with NABCS account.
> • Operations Manual: Critical Incident Reporting, Financial Accountability, Person-Centered-Practice, and Restrictive Interventions.[19]

The letter did not explain why these items were considered deficient.

On April 10, 2024, Ms. Martinez requested a hearing to contest the denial. The Division did not refer the request to the Office of Administrative Hearings until August 15, 2024. A hearing was held on October 7-8, 2024. The issues raised in the hearing are analyzed below.

III. Discussion

The requirements for certification for each category of waiver service are laid out in documents prepared by the Division called "Conditions of Participation." These conditions are adopted in regulation, which means that requirements contained in the Conditions of Participation are legal requirements.[20]

To simplify the analysis, this decision will focus on only one set of Conditions of Participation: the "Provider Conditions of Participation for Home and Community-Based Waiver Services and Community First Choice Chore Services."[21] Although Treasures Angels

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18 AR 128-31.

19 AR 130.

20 7 AAC 160.900(d)(44). Note that the Division cannot enforce a requirement or standard that is not set out in statute or regulation. *See, e.g. Kenai Peninsula Fisherman's Co-op. Ass'n, Inc. v. State,* 628 P.2d 897, 905 (Alaska 1981) (policy not adopted in regulation by procedure prescribed in Administrative Procedures Act is not valid and may not be enforced).

21 State of Alaska, Department of Health, Senior and Disabilities Services, *Provider Conditions of Participation for Home and Community-Based Waiver Services and Community First Choice Chore Services*; *available at*:

must meet all of the conditions of participation for each waiver service for which it applied, this one set of conditions of participation is the most comprehensive, and it contains all of the requirements necessary to determine the outcome here. Accordingly, when this decision refers to "the Conditions" or "Conditions of Participation," it means only this set of conditions of participation. (This does not mean that the other conditions can be ignored in a future application—it only means that we are not discussing them here because there is no need to do so.)

We start the analysis by noting that the Conditions set out two types of requirements. First, the conditions establish absolute requirements for documents that must be in the application for certification. If an applicant does not submit the required document, or the document submitted does not meet the requirements laid out in the Conditions or regulation, then the applicant cannot be certified. For example, the Conditions require that the applicant submit certificates of insurance coverage, including a general liability policy and a worker's compensation policy.[22] If these certificates are missing, or are expired or otherwise fail to certify the coverage required by law, the applicant cannot be certified to provide waiver services.

The second type of requirement, however, is not an up-or-down absolute requirement—it requires that the Division make a judgment call regarding whether the applicant has "demonstrate[d] readiness to provide services and comprehension of applicable Medicaid regulations and pertinent service Conditions of Participation."[23] The Division must make this judgment call based on the documents submitted by the applicant that describe provider operations.[24]

Obviously, this exercise of judgment involves shades of gray. To help with this analysis, we will make the following observations. First, we will not require an application to be perfect. Everyone makes mistakes and documents can always be improved by further editing and refinement. Some degree of oversights or imperfections will be tolerated, as long as the

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https://health.alaska.gov/dsds/Documents/SDSforms/Provider%20COP%20for%20Waiver%20and%20Chore%20corrected%2010.4.22.pdf. This document will be cited in these footnotes as "Waiver and Chore COPs."

22 Waiver and Chore COPs at I.A.2.a; I.A.4.ii; I.C.1.a.

23 Waiver and Chore COPs at I.A.1. The Division's forms distinguish between "core" requirements and policy documents. That is not quite the same distinction that this decision is making here. Here, we are distinguishing between the substantive requirement for production of documents (which includes both core and policy documents) and the qualitative requirement that the documents in the application, taken as a whole, must show sufficient understanding of Medicaid waiver rules.

24 Waiver and Chore COPs at I.A.1.

submittal contains content required by the Conditions and regulations, and it demonstrates a sufficient understanding of the requirements for waiver services. For example, if an insurance certificate has been issued that meets the requirements spelled out in regulation, that certificate will be accepted, even if the certificate would be improved by having additional information on it.

Second, although imperfections in one part of the required submittals may be relatively minor, we will consider these imperfections in conjunction with all other errors. If the overall submittal has many deficiencies, we will judge the submittal as a whole to determine whether it is evidence that the applicant does not have readiness or sufficient understanding of waiver services. Thus, using the example above, if a Certificate of Insurance technically meets the requirements, but is confusing or otherwise imperfect, it will be taken as evidence that, in conjunction with other evidence, may support a conclusion that the provider lacks readiness or understanding, even though, standing alone, it would not be sufficient to support that conclusion.

Third, a waiver service provider must be able to pay attention to detail. Waiver services must be documented and delivered as prescribed under Medicaid rules. The unit manager for provider certification, Health Program Manager III Summer Wheeler, testified persuasively that the issue of an applicant's ability to understand Medicaid rules is an important and demanding requirement.[25] As the Commissioner explained in a previous certification case, "Medicaid is a highly regulated program."[26] A failure to fully comprehend these rules, or incomplete or careless documentation of services, could lead to troubles for even the most conscientious and caring provider. Thus, at a certain point, an application that is too sloppy, or otherwise seriously unprofessional, will support a conclusion that the applicant will not be able to meet the requirements of the Medicaid program.

With this understanding, we turn to the analysis of the four issues identified in the Division's denial letter: whether Treasures Angels' application was properly denied because its

- Business License –physical location differs from the application.
- Certificate of Insurance (COI) for Workers Compensation—expired 1/22/2024.
- Organization Chart—is not legible to reconcile with NABCS account.

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[25] Wheeler testimony.

[26] *In re Baker Personal Homecare,* OAH No. 15-0656-MPC at 10 (2015 Dep't of Health and Soc. Servs.). In my experience, Medicaid rules can be difficult for even sophisticated providers, with many high-level staffers, and supporting software.

- Operations Manual—Critical Incident Reporting, Financial Accountability, Person-Centered-Practice, and Restrictive Interventions, policies were deficient.

We start the analysis with the Critical Incident Reporting policy section of Treasures Angels' Operation Manual because that is the most important issue in this case. We then turn to the other policies and issues.

A. Does Treasures Angels' Critical Incident Reporting policy support the Division's denial?

This decision must discuss three issues regarding Treasures Angels' Critical Incident Reporting policy. The first issue is whether the policy is deficient. About that issue there is no real dispute. The second issue is whether the Division misled Ms. Martinez at the December 26th meeting into thinking that she did not need to revise the Critical Incident Reporting policy for resubmission by the January 8th deadline. The third issue raised by Ms. Martinez is whether the Division treated her fairly in the application process.

(1) Is Treasures Angels' Critical Incident Reporting policy deficient?

There is no dispute that Treasures Angels submitted, and then resubmitted a deficient Critical Incident Reporting policy. To just point out a few of the deficiencies with the version submitted on October 13th:[27]

- The policy starts with a heading "SAFETY CONCERNS." Under that heading is the following sentence "Missing persons, when law-enforcement is notified for recipient behaviors that resulted in harm to self or others, and requires intervention beyond the services specified in the service plan."[28] This sentence is extremely confusing. It combines several different issues, confusing the reader as to whether they all must be present for a report, or if they are separate triggers for reporting. No person reading this sentence would know when a report is required.
- After this sentence, the policy veers into setting limits for use of restrictive interventions. This is confusing because, although some restrictive interventions should be reported as critical incidents, this sentence does not

[27] Ms. Martinez requested that we use the version of the policy she submitted on October 13th (AR 38-39) rather than the version that she gave to Ms. Her at the December 26th meeting. (AR 98-99). The later version includes an additional paragraph on the second page.

[28] AR 38.

explain when that is necessary. Instead, it sets limits (which should be set in the policy on restrictive interventions, not the policy on critical incident reporting). The sentence discussing when restrictive interventions may not be used ends in a colon and then, in a very tiny font, the policy discusses 911 calls, which, because of the colon, appears to relate only to restrictive interventions and perhaps medication errors.[29] This does not make sense and does not indicate an understanding of the requirements for critical incident reporting. (The regulation is very clear on when restrictive interventions would result in a report: "misuse of restrictive interventions" or "a use of restrictive intervention that resulted in the need for evaluation by or consultation with medical personnel."[30])

- Below the top set of columns is a bullet list. The list has no heading. It appears to be a list of critical issues that require reporting. The first three bullets demonstrate deficiency as follows:
  - The first bullet says: "Critical incident reports in when and incident stands out from what you know about that person to be." This sentence is incomprehensible. Even if we interpret to mean that a critical incident is an unusual event in a person's day-to-day life, that is not a helpful statement without some explanation or context. Although all critical incidents may be unusual events, not all unusual events are critical incidents.
  - The second bullet says: "Impact health and safety."[31] This does not convey meaning. Under the regulation, a critical incident includes "an accident, an injury, or another unexpected event that affected the recipient's health, safety, or welfare to the extent evaluation by or consultation with medical personnel was needed."[32] This conveys a different meaning than merely saying "impact health and safety." And

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29 *Id.*

30 7 AAC 130.224(c)(1)(C) and (D). For medication errors, the regulation clarifies that a critical incident would be "a medication error that resulted in the need for evaluation by or consultation with medical personnel." 7 AAC 130.224(c)(1)(G).

31 AR 38.

32 7 AAC 130.224(c)(1)(F).

reading the first two bullets together still would be misleading because they do not include the requirement for evaluation by medical personnel.

- The third bullet states "People that have medical condition and receive services that are medically necessary."[33] This bullet appears to say that normal medical services are critical incidents, which is not correct.[34]

The policy continues with additional bullets, which, in general, are difficult to understand or not consistent with legal requirements. In sum, the format of this policy is so jumbled, and its content so incomprehensible, that a staff member could not make sense of the policy.

Accordingly, Treasures Angels' application fails on both tests that were discussed above. First, the Critical Incident Reporting policy is so deficient that the outcome is the same as if no policy had been submitted. Second, the deficiencies in this policy sustain a conclusion that Treasures Angels has not demonstrated readiness to provide waiver services or comprehension of the rules that govern provision of these services.

In testimony, Ms. Martinez was able to speak clearly and coherently about the requirements for critical incident reporting. Thus, she orally demonstrated a readiness to provide services and an understanding of the rules governing those services. The requirement that she must meet, however, is to submit documentation that demonstrates readiness and comprehension of Medicaid regulations.[35] The requirement of a written showing of understanding makes sense for many reasons. For one, the Division is not going to interview each applicant to determine their depth of understanding. Moreover, a well-written policy is for the provider's staff, and staff would not be ready to provide services based on a deficient policy manual. In addition, as stated earlier, if a provider cannot draft a coherent policy manual, that is strong evidence that a provider will not be able to comply with Medicaid rules for delivery, documentation, and billing of services.

(2) Did the Division mislead Ms. Martinez into thinking that she did not need to revise the Critical Incident Reporting policy?

Ms. Martinez's main argument at the hearing was that she left the December 26th meeting believing that the Critical Incident Reporting policy did not need to be revised. She noted that the handwritten checklist of deficiencies she received from Ms. Her at the end of the meeting

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33 AR 38.
34 *See* 7 AAC 130.224(c)(1)(F).
35 Waiver and Chore COPs at I.A.1.

listed only one policy that needed revision: the Medication Management policy. From this, Ms. Martinez asserts she concluded that she did not need to submit a revised Critical Incident Reporting policy. Accordingly, in her view, it was unfair to deny her application based on a document that she had been led to understand was sufficient.

Ms. Martinez is correct that there is a legal doctrine, called "equitable estoppel," under which, in some circumstances, a respondent can be forgiven for an error if the error was due to the respondent's reliance on a representation from a government official.[36] Here, however, we do not need to dig into the elements of this legal doctrine because we have direct evidence of what Ms. Her said to Ms. Martinez. An exhibit submitted by Ms. Martinez proves that Ms. Her did not mislead Ms. Martinez.

The evidence comes from a video recording that Ms. Martinez made of the December 26th meeting. The video was submitted into evidence. During the meeting, Ms. Her can be seen taking new copies of Treasures Angels' policies from Ms. Martinez, including the Critical Incident Reporting policy. As she is taking the policies, Ms. Her states, "I'm going to have to review the whole entire policy again."[37] Thus, Ms. Her told Ms. Martinez that the Critical Incident Reporting policy was under review. It follows that Treasures Angels' application was subject to rejection if that policy proved to be substandard.

Based on that statement by Ms. Her, Ms. Martinez should have known that the Division would reject the application if the December 26th version of the Critical Incident Reporting policy was deficient. If Ms. Martinez was concerned about the document, she had the option to submit a revised version by the January 8th deadline. Therefore, she cannot argue that she did not submit a revised Critical Incident Reporting policy because she was relying on its absence from the December 26th list.

Moreover, the Division's September 15th letter to Ms. Martinez noted that the Critical Incident Reporting policy was deficient.[38] Thus, Ms. Martinez was on notice that the policy

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[36] *Baker Personal Homecare,* OAH No. 15-0656-MPC at 11 (citing *Hidden Heights Assisted Living, Inc. v. State, Dep't of Health and Social Services,* 222 P.3d 258, 268 (Alaska 2009)).

[37] Treasures Angels video exhibit at 20:05. *See also* Her testimony.

[38] AR 11. Ms. Martinez asserted in an email submitted at the same time as the video that the video proved that the Division was failing to acknowledge the revised edition of the Critical Incident Reporting policy that had been submitted in October, which can be found at AR 24. I agree with Ms. Martinez that she was cooperative with the Division and that some of the Division's arguments regarding her alleged failure to submit policies were not valid criticisms. To the extent that Ms. Martinez is focusing on the October version of the Critical Incident Reporting policy, however, that does not help her case. I have reviewed that version and it is deficient.

needed revision. Given that the policy was drawn to her attention, she should have read it, should have known that the policy was not coherent, and that the versions submitted on October 2nd and 13th did not cure the deficiencies. Accordingly, even if Ms. Her's December 26th list of issues to be corrected were somewhat misleading, it would not have excused Ms. Martinez's failure to correct the deficient policy.

(3) Was Ms. Martinez treated unfairly by the Division?

Ms. Martinez also requested relief based on her argument that the deficiencies in her application were minor and that the Division had not treated her fairly. She noted the inordinate time taken for the review of her application. While not disputing that the Critical Incident Reporting policy was deficient, she noted the enormity of the entire application, and the burden on both herself and the Division from starting the process over. She asked that her application not be rejected based on one deficient item.

To be clear, I did not understand Ms. Martinez to be asserting that Ms. Her treated Ms. Martinez unfairly. Having watched the video of the December 26th meeting, I confirm that Ms. Her was extremely considerate and helpful in providing feedback to Ms. Martinez.

The evidence does show, however, that the review of this application took an extremely long time. Although some of the delay is due to Ms. Martinez's requests for extensions, the time required for the final review after the January 8th deadline appears excessive. Most concerning here is the Division's failure to timely refer Ms. Martinez's request for appeal to the Office of Administrative Hearing. Under law, the Division must refer the request to OAH "within 10 days" of receipt of the request.[39] The Division's failure to refer it until 127 days after receipt was harmful to Ms. Martinez because she needs to resolve matters quickly so that her client does not have to move to a different facility. This is especially true in this case, where, now that we finally have the evidence, it is clear that Ms. Martinez must start the process over.

The remedy for this delay, however, is not to grant Ms. Martinez's existing application. Simply put, this decision cannot ignore the fact that the existing application does not conform to the requirements of the law. The proper remedy for the delay is to require that the Division give expedited consideration to a new application (should Ms. Martinez decide to submit one). This will make up at least in part for the time lost when the Division failed to timely refer the request for a hearing to OAH. That remedy is addressed in the order attached to this decision.

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[39] AS 44.64.060(b).

B. Is Treasures Angels' Medication Management policy deficient?

The Division's March 15th denial letter did not list the Medication Management policy as a reason for the denial. Yet, it is the only policy other than Critical Incident reporting for which the Division provided any testimony in support of its position that the application was denied because of insufficient policies. Therefore, it will be briefly discussed here.

Ms. Her testified that Treasures Angels' Medication Management Policy was deficient because it did not provide for evaluation of employees. Ms. Her is correct that the regulation on medication management requires that a provider of waiver services in a group home must monitor and evaluate employees on their understanding and performance of medication services.[40] As Ms. Martinez testified, however, the supplemental Medication Management policy that she submitted on January 16, 2024, does provide for evaluation of staff.[41] Therefore, that issues is not a grounds for denial.

An additional problem, as Ms. Her also explained, is that the Medication Management policy was not submitted as a coherent and complete document. Accordingly, it was not clear how the January submittals fit with the Medication Management policies submitted in October and December. Treasures Angels should have submitted one complete policy, with a heading that shows when the policy was revised.

In sum, this policy is not so deficient that, standing alone, it would warrant a denial of the application. The failure to submit a complete policy manual, however, does provides some support for a conclusion that, when considered in conjunction with other deficiencies in the application, Treasures Angels may not have sufficient understanding of Medicaid regulations to provide waiver services.

C. Are Treasures Angels' Financial Accountability, Person-Centered-Practice, and Restrictive Interventions policies deficient?

Turning to other policies cited as insufficient in the March 15th letter (Fiscal Accountability, Person-Centered Practice, and Restrictive Intervention), neither the testimony nor the March 15th letter provided any specifics for why these policies were deemed deficient. The only testimony given was a general statement by Ms. Her stating that policies will be

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40 7 AAC 130.227(d)(4) and (5).

41 Martinez testimony; Martinez Exhibit C at 3. This document was submitted after the January 8th deadline for supplementing the application. Yet, given that the Division's March 15th denial letter did not list the Medication Management policy as deficient, it appears that the Division accepted the late-filed policy.

considered deficient if they do not describe the steps for compliance with requirements. Merely stating that the provider will "ensure" compliance is not sufficient.[42]

For her part, Ms. Martinez also did not provide any explanation for why she considered these policies to be sufficient. She noted that she did submit all of the policies required to be submitted, and asked that I review them for sufficiency.

This absence of guidance from the parties makes the evaluation here very difficult. I have reviewed the policies and the regulations that govern each policy.[43] In addition, the Division's letter to Ms. Martinez written on September 15th provided specific bullet points about the insufficiencies in the policies. The September 15th letter, the limited testimony, and the standards in the regulations will be considered in the evaluation below.

(1) Financial Accountability policy

The Division's September 15th letter described the deficiencies of Treasures Angels' Financial Accountability policy as follows:

> Financial Accountability: Please add and/or clarify the following in this policy/procedure:
>
> a. how the agency's financial system will maintain records in accordance with 7 AAC 105.230
> b. how the agency will report to the Medicaid fiscal agent, and void or adjust, when identified, Medicaid monies that represent overpayments
> c. how the agency will cooperate with all required audits, investigation, and remediation activities[44]

In general, these comments are consistent with Ms. Her's testimony that the Division expects a provider's policy manuals to answer the question of "How" the provider will undertake a required action, rather than merely list that it is the provider's policy to ensure that the action will be taken. This is a reasonable approach, although it cannot be applied too strictly because a listing of too much detail would lead to a manual that is cumbersome and impossible for staff to read or digest.

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42 Her testimony.

43 The Department has regulations that address each of the three policy matters cited as insufficient. *See* 7 AAC 105.230 (requirements for provider records); 7 AAC 130.218 (person-centered practice); 7 AAC 130.229 (use of restrictive interventions). The Division has also prepared a useful document that provides tips to an applicant for waiver service provider certification. *See Home and Community-Based Waiver Services, Provider Certification Application Content Guidance, available at:* https://health.alaska.gov/dsds/Documents/docs/WaiverCertAppGuidance.pdf. This document serves merely as a helpful support document. It is not adopted as a regulation so conformance with its suggestions is not a legal requirement.

44 AR 11 (punctuation in original).

Although I agree with Ms. Her that Treasures Angels' Financial Accountability policy is hard to follow, it does provide some steps that Treasures Angels will take to ensure compliance with requirements. For example, it describes use of an electronic record keeping system. This answers the question of "how" Treasures Angels will maintain records. The policy also provides that management will "review timecards to match the approved plan of care, to verify correct billing and to verify for overpayments and issue recoupment" and that the financial manager will "review the program claims through prepayment and post-payment controls."[45] These are descriptions of actions that help to answer the question of "how" Treasures Angels will ensure financial accountability.

In short, the Financial Accountability policy needs work.[46] It can be made clearer and more professional by further editing. Given the lack of explanation by the Division, however, we cannot conclude that this portion of the manual is so deficient that, standing alone, it would be grounds for rejecting the application. At most, this policy provides some limited support for a conclusion that Treasures Angels may have deficiencies in its readiness to provide services or understanding Medicaid regulations.

(2) Person-Centered Practice policy

The September 15th letter cites the following deficiencies in Treasures Angels' Person-Centered Practice policy:

> Person-Centered Practice: Please add and/or clarify the following in this policy/procedure:
>
> a. the agency's process to:
>
> i. identify recipient choice and preference in activities/services offered
>
> ii. monitor and evaluate recipient services and satisfaction for inclusion in the Quality Improvement Report
>
> b. how the agency ensures services:
>
> i. meet the clinical and support needs of the recipient
>
> ii. reflect recipients' goals and desired outcomes

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45 AR 260.

46 One example of the policy being hard to follow is the declaration that "[t]he agency will monitor the correct services rendered by reviewing the workers that have a valid criminal history or variance to work for a recipient by reviewing Recipient individual service plans, employee timecards, services rendered and eligibility codes on the ISP to ensure claims for payment are accurate." *Id.* Although this review by management would be an appropriate step toward ensuring financial accountability, I do not understand why the review would be limited to workers with a criminal history or variance. It appears that this review should apply to all workers and that the scrutiny of workers who have a criminal history or variance, while likely necessary, is a different issue from financial accountability.

iii. are delivered by direct care workers who demonstrate the capacity to provide services according to the person-centered plan

c. how the agency will:

i. evaluate whether the services offered can meet the needs of the recipients

ii. develop and implement a person-centered support plan for each recipient

iii. reevaluate the recipient to determine whether services delivered are meeting identified needs and the frequency in which this process will occur[47]

Treasures Angels' Person-Centered Practice policy has some limited description of its processes. For example, it provides for review and updates of the resident's support plan every 90 days, including a description of who would be responsible for the review and a list of items to be included in the review.[48] This answers some of the questions asked by the Division in the September 15th letter, such as the questions regarding how Treasures Angels will evaluate and reevaluate its services. The policy would be improved by additional descriptions of the processes used by Treasures Angels. In addition, although not mentioned by the Division, the policy would be improved by addressing Treasures Angels' strategies for solving conflicts or disagreements as required under 7 AAC 130.218(b)(6).

(3) Restrictive Intervention policy

The September 15th letter cites the following deficiencies in Treasures Angels' Restrictive Intervention policy:

> Restrictive Interventions: Please add and/or clarify the following in this policy/procedure:
>
> a. the circumstances under which the agency will allow use of restrictive intervention
>
> b. how the agency determines appropriate types of restrictive intervention for the population served
>
> c. how the agency will evaluate the use of a restrictive intervention while recipients are in the care of or receiving services from the provider
>
> d. training in the use of restrictive intervention to include:
>
> i. type of training

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47 AR 12 (punctuation in original).

48 AR 245-46. The Division's support document suggests that the policy must address questions regarding *how* the provider will ensure that it meets the resident's clinical needs, support needs, goals, etc. *Provider Certification Application Content Guidance* at 8. Treasure Angels' answer to these questions, however, appears to be that Treasures Angels will include them in the plan of care, provide them, and then continually review the plan. AR 245. The Division did not testify or explain whether this approach is sufficient or deficient.

ii. how and when training is conducted
e. the requirements for documenting each intervention
f. how the agency will manage and report the use of restrictive interventions including:
i. documenting and tracking the use of restrictive interventions by the agency in accordance with 7 AAC 130.229
ii. reporting any misuse of restrictive intervention, and any use that results in medical intervention, as a critical incident
iii. monitoring and evaluating of the use of restrictive interventions for inclusion in the Quality Improvement Report[49]

Treasures Angels' Restrictive Intervention policy appears reasonably thorough and clear. The Division's September 15th letter is correct, however that the circumstances under which the agency will allow use of restrictive intervention needs to be clarified. The policy list five conditions for use of restrictive interventions, and implies that all five must be present for use of a restrictive intervention.[50] The regulation, however, separates "imminent harm" from the "safe management" of a resident's behavior.[51] The policy needs to make clear that prevention of imminent harm would be a reason for an intervention that is different from safe management issues.

Yet, without additional explanation, some of the points in the September 15th letter are not well taken. For example, the Division has not persuaded me that the policy needs more detail on "how the agency determines appropriate types of restrictive intervention for the population served."[52] The policy describes how Treasures Angels will assess residents for needs for restraints, including several factors to evaluate such as cognitive function, dementia, delirium, and confusion.[53] Although it would benefit from refinement and clarity, without more explanation, reading the policy as a whole indicates that the policy generally conforms to the requirements of the law.

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49 AR 12 (punctuation in original).
50 AR 249.
51 7 AAC 130.229(a). Using an intervention for management purposes is allowed only if other means have failed, the intervention is described in the plan of care, and the intervention is proportionate to individual's behavior and physical and mental condition. *Id.* at (a)(2). A second helpful clarification would be to make explicit that involuntary seclusion will not be used as a restraint. *See* 7 AAC 130.229(b)(2)(A). The policy appears to conform to the requirement in the regulation because its description of "time outs" as a voluntary time spent in an unlocked room does indicates that Treasures Angels will not use involuntary confinement as a restriction. AR 248. Saying it explicitly, however, would be helpful.
52 AR 12.
53 AR 249.

In sum, on this record, Treasures Angels' Financial Accountability, Person-Centered Practice, and, to a lesser extent, Restrictive Intervention, policies need additional work.[54] Although we do not have grounds for concluding that these policies, standing alone, would be considered deficient, their imperfections lend some support to a conclusion that, when considered in conjunction with other deficiencies in the application, Treasures Angels may not have sufficient understanding of Medicaid regulations to provide waiver services.[55]

D. Is Treasures Angels' application deficient because its Organization Chart is not legible to reconcile with NABCS account?

The Conditions of Participation require submission of an organizational chart and a personnel list.[56] At least one purpose of these requirements is to meet the requirements of the state's New Alaska Background Check System (NABCS).

The original organizational chart submitted by Treasures Angels was illegible. Therefore, the Division initially had grounds to reject the application for failure to provide an organizational chart that met the standards of the Conditions for Participation. On October 13, 2023, however, Ms. Martinez submitted a new version of the chart that was legible.[57] Thus, well in advance of the final date for submission of a conforming application, legibility was no longer an issue.

At the hearing, Ms. Her advanced a second reason for denial based on the organizational chart. She compared Treasures Angels' organizational chart to its personnel list, and noticed that the personnel list included the name "Treasure Martinez-Wren" who was listed as office staff.[58] Ms. Martinez-Wren, however, was not included on the organizational chart. Ms. Her testified

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[54] The Division asserted at the hearing that it can prevail on its allegations of insufficiency by merely noting that the respondent has the burden of proof. This, however, is not dispositive. Here, Treasures Angels has submitted the requisite policies. For the policies other than Critical Incident Reporting, I could be persuaded either way on the issue of deficiency of the policies if I had additional context for decisionmaking, including a description of how the Division generally evaluates policies, what it considered deficient here, and whether this policy falls below the standard it applies to other policies submitted by providers of waiver services. Thus, if the Division is arguing that these three policies are so deficient that they would cause the application to fail, it has not met its burden of persuasion (which is different from the burden of proof) on this issue. As explained in the discussion, however, an independent review of the three policies reveals that they would benefit from additional refinement. This provides some additional support for a conclusion that the application, taken as a whole, does not demonstrate sufficient readiness to provide service or understanding of Medicaid requirements.

[55] To be clear, this decision is not holding that any of the policies submitted by Treasures Angels are adequate or conforming. The point being made here is that on this record, where the Division did not explain why it found these three policies to be insufficient, this decision will not find that they are so deficient that they would cause the application to fail.

[56] Waiver and Chore COPs at I(A)(4)(b)(i) and (iv).

[57] AR 35. The same legible organizational chart, with red checkmarks apparently added by the Division, can be found at AR 158.

[58] *See* AR 159.

that the failure to include Ms. Martinez-Wren on the organizational chart was a ground for rejecting the application.[59]

This is not correct. A personnel list is different from an organizational chart. That is why the Conditions require both. Indeed, the Conditions make clear that the personnel list is for "individuals not listed on the organizational chart."[60] The common understanding of an organizational chart is to show the flow of business and who reports to whom. Generally, we would expect that a person who serves as "office staff" provides support across the business. This position would not have to be included on an organizational chart. Moreover, given that Treasures Angels identified Ms. Martinez-Wren as an employee, the Division had adequate information for Treasures Angels' NABCS. Accordingly, Treasures Angels' organizational chart is not deficient.

E. Is Treasures Angels' business license deficient?

The Division found that Treasures Angels business license was deficient because the "physical location differs from the application."[61] The address on the most recent business license in the record is for a site on DeBarr Rd.[62]

Ms. Martinez, however, explained that the address on her business license is the address for her umbrella company's headquarters. The assisted living homes were part of that business. At the hearing, Ms. Her acknowledged that a waiver services provider can have more than one assisted living home and a headquarters that is separate from its homes. She explained however, that Treasures Angels' application did not make clear that the address on the business license was the address of the company's headquarters.

The Division cannot reject an application based on a standard that is not adopted into law. Here, the Division has not come forward with any rule from either the Department of Health or the Department of Commerce and Economic Development (which issues business licenses) that

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59 Her testimony.

60 Waiver and Chore COPs at I(A)(4)(b)(iv).

61 AR 130.

62 Martinez Exhibit B29. The record is confused regarding which version of the business license the parties were discussing in their testimony. Rather than try to sort this out, this decision will simply focus on the most recent version of the license in the record and explain that it meets the requirements even though it does not have the addresses of the assisted living homes on it.

prohibits a company from applying for its business license using its headquarters' address. Accordingly, the Division's finding of deficiency in the business license is reversed.[63]

F. Is Treasures Angels' Worker's Compensation Insurance certificate deficient?

At the December 26th meeting, Ms. Her informed Ms. Martinez that Treasures Angels' worker's compensation certificate of insurance should be amended to include the addresses of both assisted living homes, remove the dba "The Threshing Floor" from the block on the certificate labeled "insured," and to ensure that the insurance would be renewed (the certificate showed an expiration date of January 22, 2024, meaning it was current at the time but likely to expire before the application approval process ended).[64] These were all reasonable requests. Removing the "dba" would add clarity regarding who is the insured. The certificate has a block for "locations" under which it would be easy to add the addresses of both assisted living homes and the headquarters. (Indeed, Treasures Angels' certificate for liability insurance has three locations listed in the "locations" block, showing how easy it would be to fill out the form correctly.[65]) And given that the renewal process can be cumbersome, it makes sense to have an applicant provide assurance that renewal is underway for an insurance policy set to expire within a month of the time of final submission. Indeed, Ms. Martinez testified that her workers compensation insurance did in fact lapse. She stated that she started the renewal process before the insurance expired but her insurance company did not finalize the renewal until after the expiration date.[66] An expired insurance policy would be grounds for denying an application. Here, the policy was not expired on the date that Ms. Martinez submitted the certificate, but it did in fact expire shortly thereafter.

In short, a clear and current certificate of insurance would be evidence that an applicant is ready to provide waiver services and capable of complying with Medicaid requirements for

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63 Under AS 47.70.020(a), "[a] license issued to a firm for a particular line of business covers all its operations in the state regardless of the number of its establishments." The Division did not assert that this law does not apply here, or come forward with a different law that makes Treasures Angels' business license deficient. I agree with the Division that it is Ms. Martinez's responsibility to make clear the form of the business and explain why the address on the business license was different from the addresses where the service is provided. Here, although the application could have been clearer, there was no doubt that the DeBarr Road address was a legitimate address for Ms. Martinez's business. To the extent that the Division was rejecting the application on the basis that the business license address was the address of the company's headquarters, rather than the address where services were to be delivered, it was imposing a requirement that was based on a standard that does not exist in law. This it cannot do.

64 Martinez Exhibit A4.

65 Martinez Exhibit A3.

66 Martinez testimony.

delivery and billing. In this case, where the workers' compensation insurance policy did in fact expire, the Division had grounds for denying the application until the policy was renewed.

IV. Conclusion

Ms. Martinez has shown in this hearing that she is a compassionate, caring, and responsible individual who has the ability and skill to offer services of the type that are compensable under the Medicaid waiver program. The documents she submitted in Treasures Angels' application for certification as a Medicaid waiver provider, however, do not demonstrate an ability to carefully pay attention to detail in written submissions. The required policy manual for Critical Incident Reporting was so deficient that it alone would cause the application to fail. The failure to timely renew Treasures Angels' workers' compensation insurance also was grounds for denial and a further lapse of attention to detail.

A provider of Medicaid services must pay close attention to detail in documenting and billing for services. A failure to document, or the use of incorrect terminology, can lead to considerable difficulty. Here, a person reading Treasures Angels' application would doubt its readiness to provide services and understanding of Medicaid regulations. Accordingly, the Division's denial of Treasures Angels' application for certification as a waiver services provider is affirmed.

Going forward, if Ms. Martinez chooses to reapply for certification, she should professionalize her application. The application does not have to perfect, but it should be clear, concise, well-organized, understandable, and consistent with the requirements in regulation and the relevant Conditions of Participation.

V. Order for expedited consideration

Because the Division delayed the processing of Treasures Angels' administrative appeal, if Treasures Angels submits a new application for certification as a provider of Medicaid waiver services within six months of the date of this decision, the Division is instructed to perform its evaluation of the application as quickly as practicable. This order applies only to the issue of scheduling the evaluation. The Division should evaluate the application applying the same scrutiny and the same standards that it would any other application.

Dated: November 7, 2024

SIGNED
Stephen Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health, I adopt this Decision, as provided by 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 5th day of December, 2024.

By: SIGNED
Name: Daniel R. Phelps II
Title: Process Improvement Manager
Office of the Commissioner
Alaska Department of Health

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