



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 24, 2007

Julia A. Huddleston, Manager
Department of Human Services/SPD/RPRS
500 Summer Street NE, E18
Salem, OR 97301

Re: Opinion Request OP-2007-3

Dear Ms. Huddleston:

You have asked for advice about the meaning of section 24(4) of Oregon Laws 2003, chapter 736, as amended by Oregon Laws 2005, chapter 757 section 11. (Compiled as a note after ORS 409.750; hereinafter “§ 24”). That law provides the basis for DHS long term care facility reimbursement rates. Your question concerns the meaning of subsection (4)(f), which establishes a minimum reimbursement rate. Below, we set forth your specific question and our short answer, followed by supporting discussion.

QUESTION AND SHORT ANSWER

Question: Does § 24(4)(f) result in a one-time calculation establishing a dollar amount that is the permanent floor for the reimbursement rate, or does it establish a method for calculating a minimum rate that changes over time?

Short Answer: The former; the law establishes a one-time calculation, based on data established in the 2005-2007 biennium, resulting in a fixed dollar amount as the minimum reimbursement rate going forward.

DISCUSSION

1. Statutory Analysis Generally

In interpreting a statute, the Oregon Supreme Court directs that we look first at the text and context of the statute to determine legislative intent. *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 610, 859 P2d 1143 (1993). In examining the text of the statute, we give “words of common usage * * * their plain, natural, and ordinary meaning.” *Id.* at 611. The context for a statutory provision includes other portions of the same statute, the other provisions of the bill in which the statute was adopted, and the chapter into which a provision has been

codified. *Vsetecka v. Safeway Stores, Inc.*, 337 Or 502, 508, 98 P3d 1116 (2004); *Morsman v. City of Madras*, 203 Or App 546, 561, 126 P3d 6, *rev den* 340 Or 483, 135 P3d 318 (2006); *State v. Ortiz*, 202 Or App 695, 698, 124 P3d 611 (2005). The context of a statute also includes changes in the statute over time. *Krieger v. Just*, 319 Or 328, 336, 876 P2d 754 (1994) (“[W]ording changes adopted from session to session are a part of the context of the present version of the statute being construed.”). If the legislative intent is clear from the text and context, the inquiry ends there. If the legislative intent is not clear from the text and context of the statute, then we look to the legislative history of the pertinent statutes to attempt to discern that intent. *Id.* at 611-612.

2. Analysis of the text and context of § 24(4)

We begin by examining the text of the statute itself:

(4) The reimbursement methodology used to make additional payments to Medicaid-certified long term care facilities includes but is not limited to:

(a) Rebasing biennially, beginning on July 1 of each odd-numbered year;

(b) Adjusting for inflation in the nonrebasing year;

(c) Continuing the use of the pediatric rate;

(d) Continuing the use of the complex medical needs additional payment;

(e) Discontinuing the use of the relationship percentage, except when calculating the pediatric rate in paragraph (c) of this subsection; and

(f) Requiring the Department of Human Services to reimburse costs at a rate not lower than the 70th percentile ceiling of allowable costs for the 2005-2007 biennium.

Or Laws 2003, ch. 736 §24(4); Or Laws 2005, ch. 757, § 11. The statute provides that the long-term care reimbursement methodology must establish a base rate biennially, on July 1 of odd-numbered years. Or Laws 2003, ch. 736, § 24(4)(a). In even-numbered years, the base rate is to be adjusted for inflation. Or Laws 2003, ch. 736, § 24(4)(b). Section 24(4)(f) specifies that the reimbursement rate cannot be lower than a minimum reimbursement rate that is to be calculated based on the 70th percentile of allowable costs for the 2005-2007 biennium. Or Laws 2003, ch. 736 §24(4)(f); Or Laws 2005, ch. 757, § 11.

The term “rate” in this context means “a charge, payment, or price fixed according to a ratio, scale, or standard,” as in a hotel rate. WEBSTER’S THIRD NEW INT’L DICTIONARY 1884 (unabridged ed 2002). That definition is consistent with the use of the term in other sections of the same law. Oregon Laws 2003, chapter 736 sections 27(1) and 28(2), dealing with taxation, refer to an “assessment rate” in connection with a specific dollar amount.

Section 24(4)(f) does not provide for changing the data set to be used in determining the minimum rate in future years. On the contrary, it specifies a fixed period of time – 2005 to 2007 – rather than, say, “the previous biennium,” in establishing the data set. Based on the clear text of the statute, § 24(4)(f) establishes a method for calculating specific dollar amounts from the allowable costs data from the 2005-2007 biennium. Those dollar amounts establish a floor below which reimbursement rates may not fall.

3. Analysis of the legislative history of § 24(4)(f).

The text of the statute is clear and unambiguous. We would expect a court construing the statute to stop at this phase of the analysis. However, we also have examined the legislative history of § 24(4)(f). Nothing in the legislative history contradicts the plain meaning of this provision, as discussed above.

The 2003 version of § 24(4)(f) required DHS to “reimburse costs at a rate not lower than the *63rd percentile ceiling of allowable costs for the 2003-2005 biennium and the 70th percentile ceiling of allowable costs for the 2005-2007 biennium.*” (Italics added.) The 2005 bill deleted the italicized text. Nothing in the available legislative history contradicts the plain meaning of the text of § 24(4)(f).

CONCLUSION

The unambiguous text of § 24(4)(f) sets forth a one-time calculation based on data from the 2005-2007 biennium in order to arrive at a specific dollar amount. That amount is to be the minimum reimbursement rate for long-term care facilities under the act.

Please let me know if you have any other questions or concerns.

Sincerely,

Donald C. Arnold
Chief Counsel
General Counsel Division