



**State of New Jersey
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 Division of Medical Assistance and Health Services
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 Commissioner

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 Director

**STATE OF NEW JERSEY
 DEPARTMENT OF HUMAN SERVICES
 DIVISION OF MEDICAL ASSISTANCE
 AND HEALTH SERVICES**

ATLANTICARE REGIONAL MEDICAL
 CENTER, ET AL.

PETITIONERS,

v.

DIVISION OF MEDICAL ASSISTANCE
 AND HEALTH SERVICES,

RESPONDENT.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

- OAL DKT. NO. HMA 09646-16; HMA 09647-16;
- HMA 09648-16; HMA 09649-16; HMA 09664-16;
- HMA 09665-16; HMA 09666-16; HMA 09667-16;
- HMA 09668-16; HMA 09669-16; HMA 09679-16;
- HMA 09680-16; HMA 09681-16; HMA 09682-16;
- HMA 09683-16; HMA 09684-16; HMA 09686-16;
- HMA 09687-16; HMA 09688-16; HMA 09689-16;
- HMA 09690-16; HMA 09691-16; HMA 09692-16;
- HMA 09693-16; HMA 09695-16; HMA 09696-16;
- HMA 09697-16; HMA 09698-16; HMA 10381-16;
- HMA 14448-16; HMA 14449-16; HMA 14451-16;
- HMA 14453-16; HMA 14455-16; HMA 14457-16

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. Neither party has filed exceptions in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is

October 15, 2018, in accordance with N.J.S.A. 52:14B-10 which requires an Agency Head to adopt, reject, or modify the Initial Decision within 45 days of receipt. The Initial Decision in this matter was received on August 29, 2018.

This matter concerns the consolidation of thirty-five appeals filed by nineteen hospitals challenging the calculation and constitutionality of their Medicaid reimbursement rates that were issued on December 20, 2013 for the 2014 rate year. Based on the motions and briefs filed, the Initial Decision explains that Petitioners were no longer pursuing the calculation error appeals and that the remaining rate-appeal issues are grounded in the Office of Administrative Law's (OAL) jurisdiction to determine constitutional issues. Consequently, the Administrative Law Judge found the issue to be determined to be whether or not the OAL or the Division of Medical Assistance and Health Services (DMAHS) have jurisdiction to determine a constitutional issue.

Based upon my review of the record, I hereby adopt the findings, conclusions and recommended decision of the Administrative Law Judge in their entirety and incorporate the same herein by reference. The Supreme Court has held that "administrative agencies have the power to pass on constitutional issues only where relevant and necessary to the resolution of a question concededly within their jurisdiction." Christian Bros. Inst. of N.J. v. N. N.J. Insterscholastic League, 86 N.J. 409, 416 (1981) (citing Hunterdon Cent. High Sch. Bd. Of Ed. V. Hunterdon Cent. High Sch. Teachers Ass'n, 174 N.J. Super. 468, 474-75 (App. Div. 1980), aff'd o.b., 86 N.J. 43 (1981)). The Appellate Division has held that DMAHS has "jurisdiction to consider challenges to the Medicaid reimbursement rates based on computational error,' which are no longer being pursued in this matter, 'but does not have jurisdiction to determine the constitutionality of the statutory requirement that Petitioner provide Charity Care or related subsidies appropriated by the legislature.'" See In re Medicaid Inpatient Hospital

Reimbursement Rate Appeals for 2009-2012 v. DMAHS, Dkt. No. A-3726-13 (slip op. at 12) (App. Div. May 20, 2016). Petitioners' argument that failure to provide subsidies or compensation for charity care related expenses constitutes "a violation of the Takings Clauses of the Federal and State Constitutions" has been addressed by the Appellate Division.

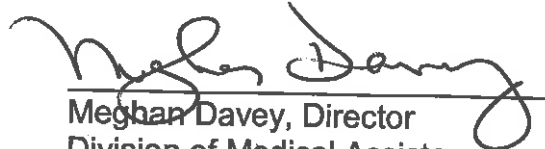
The Court has clearly stated that the Medicaid rate's exclusion of expenses incurred for charity care recipients is proper. See In the Matter of the Adoptions of Amendments to N.J.A.C. 10:52, 2007 N.J. Super. Unpub. LEXIS 372, (App. Div. April 26, 2007) certif. denied 192 N.J. 296 (2007). and In re Hospitals' Petitions for Adjustment of Rates for Reimbursement of In-Patient Services to Medicaid Beneficiaries, 383 N.J. Super. 219, 242 (App. Div.), certif. denied, 187 N.J. 82 (2006). A challenge regarding the appropriateness of the subsidies associated with Charity Care is not effectively before the OAL or DMAHS as neither has authority to grant relief to address these alleged constitutional violations. See In re Medicaid Inpatient Hospital Reimbursement Rate Appeals for 2009-2012, at 16. Specifically, DMAHS "cannot relieve the hospitals of their statutory obligation to provide care to all persons regardless of their ability to pay nor can it provide the hospitals with Charity Care subsidies greater than those appropriated by the Legislature." In re Medicaid Inpatient Hospital Reimbursement Rate Appeals for 2009-2012 v. DMAHS, *citing* In re Deborah Heart & Lung Ctr., 417 N.J. Super., 25, 30-31 (App. Div. 2010).

Based on my review of the record, I concur with the ALJ's findings and hereby ADOPT the Initial Decision. Neither the OAL nor DMAHS has the jurisdiction to address the constitutional claims presented by the Petitioner hospitals in their administration appeals.

THEREFORE, it is on this ^{4th} day of OCTOBER 2018,

ORDERED:

That the Initial Decision is hereby ADOPTED.


Meghan Davey, Director
Division of Medical Assistance
and Health Services