

FORMAL OPINION

February 27, 1976

ANN KLEIN, *Commissioner*
Department of Institutions and Agencies
State Office Building
Trenton, New Jersey 08625

FORMAL OPINION NO. 8-1976

Dear Commissioner Klein:

You have requested an opinion as to whether the Legislature has authorized the Commissioner of Institutions and Agencies or the Commissioner of Health to set a rate at which the Division of Medical Assistance and Health Services in the Department of Institutions and Agencies may reimburse a health care facility for care provided to its eligible recipients. It is our opinion that the Commissioner of Institutions and Agencies has the specific and exclusive power to establish reasonable rates of reimbursement for authorized health care services provided to a Medicaid recipient.

It is necessary to review the statutory framework which governs the payment of Medicaid reimbursement to eligible recipients. Medical assistance in substantially its present form was enacted by Congress in 1965 and is one of several matching-fund programs administered by the Department of Health, Education and Welfare in conjunction with participating states. Subchapter XIX of the Social Security Act, 42 U.S.C. §1396 *et seq.* A state may receive federal funds to furnish medical assistance to needy individuals upon approval by the Secretary of Health, Education and Welfare of a state plan to provide such assistance. 42 U.S.C.A. §1396. A state plan in part must "provide for the establishment or designation of a *single* state agency to administer or supervise the administration of the plan. . ." 42 U.S.C.A. § 1396 a (a)(5) (emphasis supplied).

In 1968 the Legislature authorized the state to participate in this program and designated the Department of Institutions and Agencies as the single state agency to administer its provisions. N.J.S.A. 30:4D-3(c); N.J.S.A. 30:4D-5. The Department of Institutions and Agencies through the Division of Medical Assistance and Health Services was authorized to reimburse a provider for basic medical care rendered to a Medicaid recipient, including inpatient hospital care. N.J.S.A. 30:4D-6. In order to further implement its purpose, the Legislature also conferred specific and pervasive authority on the Commissioner of Institutions and Agencies to administer the program. N.J.S.A. 30:4D-7. The Commissioner was empowered to submit a plan for medical assistance as required by the Federal Social Security Act to the Department of Health, Education and Welfare for its approval; to act for the state in making negotiations relative to the submission and approval of such plan; and to make such arrangements as may be required to retain such approval and to secure for the state the benefits of the provisions of such law. N.J.S.A. 30:4D-7(a). In addition, the Commission was authorized to determine the amount and scope of services to be covered by the program, the duration of medical assistance to be furnished and to "determine . . . that *the amounts to be paid are reasonable* . . ." N.J.S.A. 30:4D-7(b).

In 1971, the Legislature enacted the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 *et seq.*, which conferred upon the Commissioner of Health broad authority to assure that "hospital . . . services of the highest quality of demonstrated need, [are] efficiently provided and properly utilized at reasonable cost . . ." N.J.S.A. 26:2H-1. In this regard, the Legislature generally empowered the Commis-

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sioner of Health to establish a rate by which a government agency may pay a provider for health care services. N.J.S.A. 26:2H-18(5). A government agency whose payments are controlled by this provision includes "a *department*, board, bureau office, agency, public benefit or other corporation, or any other unit, however described, of the state . . ." N.J.S.A. 26:2H-2(e) (emphasis supplied). The issue therefore raised is whether the specific authority of the Commissioner of Institutions and Agencies to determine the reasonableness of a Medicaid payment rate as part of his administration of a program of medical assistance takes precedence over the general authority of the Commissioner of Health to establish a reimbursement rate paid by a government agency.

The general rule is that when two statutes deal with the same subject, one in specific and concrete terms and the other in a more general manner, the specific statute will supersede the general and govern a given situation. 2A Sutherland, *Statutory Construction*, §51.05 (4th Ed. 1973). The Supreme Court of New Jersey has consistently applied this doctrine whenever it is necessary to discern the probable legislative intent. See, e.g., *W. Kingsley v. Wes Outdoor Advertising Co.*, 55 N.J. 336, 339 (1970); *State, by Highway Com'r. v. Dilley*, 48 N.J. 383, 387 (1967). In the present circumstance, the specific and comprehensive manner with which the Legislature addressed the issue of Medicaid reimbursement leads one to conclude that the Commissioner of Institutions and Agencies possesses exclusive jurisdiction to establish and determine the reasonableness of reimbursement rates.

This conclusion is reinforced by the strong policy against a repeal of legislation by implication. In the absence of an express repealer, there must be a clear showing of legislative intent to effect a repeal. See, e.g., *N.J. State P.B.A. v. Morristown*, 65 N.J. 160, 164 (1974); *State v. States*, 44 N.J. 285, 291 (1965); *Goff v. Hunt*, 6 N.J. 600, 606 (1951). In the present situation, the Legislature did not expressly repeal the authority of the Commissioner of Institutions and Agencies to establish a Medicaid reimbursement rate. Moreover, there is no indication that it intended to repeal this authority by implication. It is significant to note in this connection that, with regard to reimbursement rates paid by a hospital service corporation (Blue Cross), the Legislature specifically amended N.J.S.A. 17:48-7 (which authorizes Blue Cross to contract with a hospital to provide services for a subscriber) to state that such reimbursement rates shall be approved by the Commissioner of Insurance *only* after certification of costs by the Commissioner of Health. See also N.J.S.A. 26:2H-18(a) and (d). Thus, the Legislature firmly established that the "responsibility for fixing [*Blue Cross*] reimbursement rates is that of the Commissioners [of Health and Insurance]." See *Formal Opinion No. 12 - 1975*, dated April 30, 1975. On the other hand, in this instance the Legislature has not in any way modified the exclusive preexisting authority of the Commissioner of Institutions and Agencies to administer the medical assistance program and to determine the reasonableness of a reimbursement rate paid for services rendered to an eligible recipient.

You are therefore advised that the Legislature has conferred upon the Commissioner of Institutions and Agencies the specific and exclusive authority to establish a rate of reimbursement for inpatient hospital and other authorized health care services provided to a Medicaid recipient.

Very truly yours,
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