Correctional facilities, medical services contracts

Number: INFORMAL

Date: September 09, 2009

The Honorable Jimmy Patronis
Representative, District 6
455 Harrison Avenue, Suite A
Panama City, Florida 32401

Dear Representative Patronis:

You ask whether the limitations contained in section 945.6041(2) and (3), Florida Statutes, apply to a private correctional facility where the management contract to house inmates was in effect prior to July 1, 2009, has an expiration date of June 30, 2010, and is not the subject of a pending procurement process.[1] This office, however, has no information as to the terms contained in such a contract.

You also ask whether the compensation to a health care provider to provide inmate medical services or emergency medical services is subject to the statute's limitations when a private correctional facility has a contract with the health care provider to provide medical care or with an entity to provide emergency medical transportation services. Finally, you inquire whether proviso language contained in specific appropriation 786, 2008-2009 General Appropriations Act, applies to health care providers and hospitals providing medical services to inmates housed in private correctional facilities pursuant to a contract with the state and the private correctional facility.

According to your letter, you ask these questions "so that health care providers in my district who are providing services to the private prison can fully understand what limitations if any exist that could change their existing contractual relationships."

The authority of the Attorney General to issue opinions is limited to public officials on questions relating to their own official duties under state law. Your inquiry necessarily involves other state agencies that are responsible for providing correctional facilities to the state, or for contracting with private correctional facilities to provide such services.[2] In the absence of a request by such agencies, this office is precluded from formally commenting upon these issues. In an effort to be of assistance, however, the following informal comments are offered.

Section 945.6041, Florida Statutes, provides in pertinent part:

"(2) Compensation to a health care provider to provide inmate medical services may not exceed 110 percent of the Medicare allowable rate if the health care provider[3] does not have a contract to provide services with the department or the private correctional facility, as defined in s. 944.710, which houses the inmate. However, compensation to a health care provider may not exceed 125 percent of the Medicare allowable rate if:
(a) The health care provider does not have a contract to provide services with the department or

the private correctional facility, as defined in s. 944.710, which houses the inmate; and

(b) The health care provider reported a negative operating margin for the previous year to the Agency for Health Care Administration through hospital-audited financial data.

(3) Compensation to an entity to provide emergency medical transportation services[4] for inmates may not exceed 110 percent of the Medicare allowable rate if the entity does not have a contract with the department or a private correctional facility, as defined in s. 944.710, to provide the services."

The statute, which became effective July 1, 2009,[5] does not apply to charges for medical services provided at a hospital operated by the department.[6]

Your first question relates to the effect of the new legislation on a private correctional facility's existing management contract that existed prior to July 1, 2009, and does not expire until June 30, 2010. While a management contract to house inmates would not appear to be a contract between a health care provider and a private correctional facility to provide medical services, this office has no information relating to the terms of such a contract. Therefore, this office cannot comment on the possible effect of the new legislation on such a contract.

Section 945.6041(2), Florida Statutes, however, clearly states that the compensation to a health care provider for inmate medical services "may not exceed 110 percent of the Medicare allowable rate *if the health care provider does not have a contract to provide services* with the department or the private correctional facility, as defined in s. 944.710, which houses the inmate." (e.s.) An exception is recognized if the health care provider reported a negative operating margin for the previous year to the Agency for Health Care Administration, in which case the compensation for such services may not exceed 125 percent of the Medicare allowable rate. It is a basic principle of statutory construction that when the language of a statute is clear, the statute must be given its plain and obvious meaning.[7] Thus, if a private correctional facility has a contract with a health care provider, as defined in section 945.6041(1)(b), Florida Statutes, to provide inmate medical services or emergency medical transportation services, as defined in section 945.6041(1)(a), Florida Statutes, the rate limitations contained in section 945.6041, Florida Statutes, would not appear to be applicable.

You also inquire about language contained in the 2008-2009 appropriations act which provided:

"In order to implement Specific Appropriation 786, the Department of Corrections shall comply with the following reimbursement limitations: (1) If no contract exists between the Department of Corrections and a hospital licensed under chapter 395, Florida Statutes, or a health care provider providing services at a hospital licensed under chapter 395, Florida Statutes regarding services, payments shall not exceed 110 percent of the Medicare allowable rate; (2) If a contract has been executed between the Department of Corrections and a hospital licensed under chapter 395, Florida Statutes, or a health care provider providing services at a hospital licensed under chapter 395, Florida Statutes, payments shall continue at the currently contracted rates through the current term of the contract; however, if the contract expires or is subject to renewal during this fiscal year, the payments shall not exceed 110 percent of Medicare allowable rate; (3) If the Department of Corrections enters into a new contract with a hospital licensed under

chapter 395, Florida Statutes, or a health care provider providing services at a hospital licensed under chapter 395, Florida Statutes, the payments shall not exceed 110 percent of the Medicare allowable rate. (4) Notwithstanding the limitations of subsections (1), (2), and (3) to the contrary, the department may pay up to 125% of the Medicare allowable rate for hospitals licensed under chapter 395, Florida Statutes, that reported to the Agency for Health Care Administration, through hospital audited financial data, a negative operating margin for the previous year. The department shall not negotiate contracts for medical services at hospitals licensed under chapter 395, Florida Statutes, for rates other than rates based on a percentage of the Medicare allowable rate."[8]

The limitations contained in the 2008-2009 appropriations act have expired as the state is currently operating under the 2009-2010 appropriations act. A contract, however, that was negotiated during the 2008-2009 fiscal year would have been subject to the language contained in the 2008-2009 appropriations act and implementing act that stated that if the contract expires or is subject to renewal during that fiscal year, the payments shall not exceed 110 percent of Medicare allowable rate. This office, however, does not have sufficient information regarding any existing contract that may be called into question. This office would note that unlike the language in the 2008-2009 appropriations act and implementing act, section 945.6041, Florida Statutes, does not contain language expressly requiring the department or a private correctional facility, if the contract expires or is subject to renewal, to limit payments to those specified in the statute under the new contract.

I hope that the above informal advisory comments may be of assistance. Thank you for contacting the Attorney General’s Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

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[1] Your letter refers to Senate Bill 1772 (2009 general session). The bill was enacted as Ch. 2009-63, Laws of Fla. Section 8 of Ch. 2009-63 creates section 945.6041, Florida Statutes, relating to inmate medical services.

[2] *Cf.* s. 944.105, Fla. Stat., authorizing the Department of Corrections to enter into contracts with private vendors for the provision of the operation and maintenance of correctional facilities and the supervision of inmates. *And see* s. 945.6033, Fla. Stat., authorizing the Department of Corrections to enter into continuing contracts with licensed health care providers for the provision of inmate health care services which the department is unable to provide in its facilities. In your letter, you refer to a contract between a private correctional facility and the Department of Management Services.

[3] *See* s. 945.6041(1)(b), Fla. Stat., stating that "Health care provider" for purposes of this

statute has the same meaning as provided in s. 766.105, Fla. Stat.

[4] *See* s. 945.6041(1)(a), Fla. Stat., stating that "Emergency medical transportation services" as used in the statute "includes, but is not limited to, services rendered by ambulances, emergency medical services vehicles, and air ambulances as those terms are defined in s. 401.23."

[5] *See* s. 18, Ch. 2009-63, Laws of Fla., stating that "[t]his act shall take effect July 1, 2009."

[6] *See* s. 945.6041(4), Fla. Stat.

[7] *See, e.g., M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000) (when language of statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation and construction as statute must be given its plain and obvious meaning); *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998); *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130 (Fla. 1990) (best evidence of intent of Legislature is generally plain meaning of statute); Op. Att'y Gen. Fla. 00-46 (2000) (where language of statute is plain and definite in meaning without ambiguity, it fixes the legislative intention such that interpretation and construction are not needed).

[8] Section 4 , Specific Appropriation 786, Ch. 2008-152, Laws of Fla. *And see* s. 11, Ch. 2008-153, Laws of Fla., implementing the 2008-2009 General Appropriations Act and providing legislative intent, which states:

"In order to implement Specific Appropriation 786 of the 2008-2009 General Appropriations Act, the Department of Corrections shall comply with the following reimbursement limitations:

(1) If no contract exists between the Department of Corrections and a hospital licensed under chapter 395 or a health care provider providing services at a hospital licensed under chapter 395 regarding services, payments may not exceed 110 percent of the Medicare allowable rate.

(2) If a contract has been executed between the Department of Corrections and a hospital licensed under chapter 395 or a health care provider providing services at a hospital licensed under chapter 395, payments shall continue at the currently contracted rates through the current term of the contract; however, if the contract expires or is subject to renewal during the 2007-2008 fiscal year, the payments may not exceed 110 percent of Medicare allowable rate.

(3) If the Department of Corrections enters into a new contract with a hospital licensed under chapter 395 or a health care provider providing services at a hospital licensed under chapter 395, the payments may not exceed 110 percent of the Medicare allowable rate.

(4) Notwithstanding the limitations of subsections (1), (2), and (3) to the contrary, the Department of Corrections may pay up to 125 percent of the Medicare allowable rate for hospitals licensed under chapter 395 that reported to the Agency for Health Care Administration, through hospital audited financial data, a negative operating margin for the previous year.

(5) This section shall not be applicable to charges for medical services provided at any hospital operated by the Department of Corrections.

The Department of Corrections may not negotiate contracts for medical services at hospitals licensed under chapter 395 for rates other than rates based on a percentage of the Medicare allowable rate. This section expires July 1, 2009."