



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

March 12, 2021

TRANSMITTED VIA EMAIL

The Honorable Fred Wood
Idaho House of Representatives
Idaho State Capitol
700 W. Jefferson Street
Boise, Idaho 83702
fwood@house.idaho.gov

Re: Request for legislation review of Senate Bill 1092a – Our File No. 21-72997

Dear Representative Wood:

I am writing in response to your question regarding Senate Bill 1092a (S.1092a). You asked whether a hospital that received CMS accreditation in December 2019 is considered a “new hospital” for purposes of reimbursement under Subsection 6(e) of S. 1092a. This bill proposes to amend Idaho Code section 56-265 to add a new subsection regarding Medicaid reimbursement to newly accredited in-state hospitals for the first thirty-six (36) months of operation. Subsection 6(e) provides:

(e) New in-state hospitals, defined as those that have received first accreditation from the centers for medicare and medicaid services (CMS) or other CMS-approved accreditation bodies and are designated as in-state noncritical access hospitals may, at the hospital's option, be reimbursed at ninety-one percent (91%) of cost for a period of up to thirty-six (36) months following receipt of accreditation approval. Following the initial period of operation of up to thirty-six (36) months, new in-state hospitals will be reimbursed pursuant to subsection (8) of this section.

After the thirty-six-month period ends, the hospital will be reimbursed in accordance with Subsection 8. This amendment will only be effective from July 1, 2021 through June 30, 2024.

Idaho Code section 73-101 requires that for a statute to be applied retroactively, it must be expressly stated. This provision of code is consistent with a fundamental rule of statutory

Representative Fred Wood

March 12, 2021

Page 2

construction that statutes should be interpreted prospectively rather than retrospectively. Guzman v. Piercy, 155 Idaho 928, 937–38, 318 P.3d 918, 927–28 (2014). Amendments to already-existing statutes will not be deemed to have retroactive effect “absent an express legislative statement to the contrary.” Nebeker v. Piper Aircraft Corp., 113 Idaho 609, 614, 747 P.2d 18, 23 (1987). Such legislative intent should be clearly expressed or implied by the language of the statute. Guzman, 155 Idaho at 938 (citing Kent v. Idaho Pub. Utils. Comm'n, 93 Idaho 618, 621, 469 P.2d 745, 748 (1970)). As explained below, S. 1092a lacks a specific declaration of retroactivity sufficient to allow it a retroactive application.

It is unclear from the express or implied language of S. 1092a whether Subsection 6(e) is intended to apply retroactively to hospitals that were accredited prior to the enactment of this bill. “New hospitals” are defined as “those that have received first accreditation from” CMS, but it is not clear whether it would apply to an accreditation that occurred before July 1, 2021. Thus, the definition of “new hospital” is ambiguous as applied to hospitals accredited prior to the enactment of this bill. Recognizing that retroactive application of a statute requires an express declaration of retroactivity, this office recommends an interpretation or application of this provision (if enacted) as written retroactively be avoided.

Furthermore, pursuant to Subsection 10, this amendment is only in effect for three years, which is the same time period for a new hospital to be reimbursed at 91% of costs. A question arises whether a “new hospital” accredited during that time frame will continue to be reimbursed at this higher rate after June 30, 2024, if its thirty-six-month accreditation period extends beyond that. These issues should be clarified in order to alleviate any confusion this could cause to the Medicaid program.

I hope you find this analysis helpful.

Sincerely,



BRIAN KANE
Chief Deputy

BK:kw