FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-205 / 93-1022

AMI SAINT JOSEPH CENTER FOR MENTAL HEALTH,

Appellant,

vs.

DEPARTMENT OF HUMAN SERVICES,

Appellee.

Appeal from the Iowa District Court for Polk County, Gene Needles, Judge.

AMI Saint Joseph appeals the district court's ruling on judicial review which affirmed the department's decision denying reimbursement for medical services AMI provided. **AFFIRMED.**

Candy Morgan of Black, Goldman & Powell, P.C., Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, and Marne E. Woods, Assistant Attorney General, for appellee.

Heard by Donielson, C.J., and Cady and Huitink, JJ.

HUITINK, J.

AMI Saint Joseph Center for Mental Health (AMI) is a psychiatric hospital in Omaha. Since 1987 AMI has been a certified provider of psychiatric services with the Iowa Medicaid program. The Iowa Medicaid program provides for reimbursement of services through a diagnostic related group (DRG) payment system. The system reimburses services on the basis of the treatment and services provided. The reimbursement program was changed to allow payment for adolescents treated at designated adolescents-only Medicaid psychiatric units at a higher rate than adolescents receiving treatment in "mixed age" Medicaid certified units.

At the time this change was promulgated in an administrative rule in January 1989, the department sent an informational letter to all hospitals involved in the program to inform them of the changes in reimbursement rates and to state that out-of-state hospitals in the program would be required to send written notification that they had an adolescents-only unit to receive the higher rate. The letter stated that units not designated for treatment of adolescents-only would continue to be reimbursed at the previous lower rate.

In January 1991, AMI began admitting a substantial number of adolescents covered by the Iowa Medicaid program to its adolescents-only psychiatric unit. It received reimbursement under the program at a rate for treating

adolescents in mixed units until May 1992. In May 1991, AMI discovered it was not being reimbursed at the rate provided for treatment of adolescents in adolescents-only designated units. After several communications with the department and its fiscal agent, AMI's financial officer sent a letter to the department in August 1991 informing it that AMI had an adolescents-only psychiatric unit and was seeking reimbursement at the higher rate back to January 1, 1991.

In May 1992, the department informed AMI that the department received documentation of AMI's adolescents-only unit in April 1992. The department decided it would provide retroactive reimbursement to August 1, 1991, at the rate for adolescents-only units. AMI subsequently filed an administrative appeal seeking approximately $350,000 as reimbursement at the higher rate from January through July 1991. The final decision by the director of the department affirmed the department's refusal to provide retroactive reimbursement at the adolescents-only rate.

In October 1992, AMI filed for judicial review. AMI claimed the decision was not supported by the rule adopted under the requirements of Iowa Code section 17A.3. In June 1993, the district court affirmed, holding the notification of adolescents-only psychiatric units for out-of-state hospitals was a request and not a rule.

Our review of the district court's decision is limited to corrections of errors at law. Roberts v. Iowa Dep't of

Job Serv., 356 N.W.2d 218, 221 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. Iowa Code § 17A.19(8)(f) (1991). Evidence is substantial if a reasonable person would find it adequate for reaching a decision. Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. Id.

AMI contends the informational letter is a statement of the type intended to be the subject of rule-making. It argues the department could not deny reimbursement for failure to notify because the notification requirement was not promulgated as an administrative rule. We disagree.

An agency cannot promulgate a rule or "other written statement of law or policy" without first subjecting it to public inspection and indexing. Iowa Code § 17A.3(2) (1991). However, the definition of "rule" does not include "any determination, decision, or order in a contested case." Iowa Code § 17A.2(7)(d) (1991).

Iowa Code section 17A.3(2) does not apply when an agency applies a rule's underlying policy considerations that are relevant to the factual situation presented.

See Ford v. Iowa Dept. of Human Servs., 500 N.W.2d 26, 29 (Iowa 1993) (citation omitted). This is important considering, "not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule." SEC v. Chenery, 332 U.S. 194, 202, 67 S. Ct. 1575, 1580, 91 L. Ed. 1995, 2002 (1947). Whether an agency chooses to develop policy by rule or contested case, as in this situation, lies within the informed discretion of the agency. Ford, 500 N.W.2d at 30 (citation omitted).

The department had duly promulgated reimbursement rules which required out-of-state hospitals to submit a copy of its Medicare acceptance in order to receive special payment as a Medicaid-certified psychiatric unit. 441 Iowa Admin. Code 79.1(5)(b)(3). The rules also established four categories of DRG weights for certified psychiatric units. 441 Iowa Admin. Code 79.1(5)(r). Prior to the promulgation of these rules, mixed-age units and adolescent-only units were reimbursed at the same rate.

The adolescent-only DRG was a new classification and had a new rate of reimbursement. The hospital informational letter in question, No. 88-12, stated out-of-state hospitals could qualify for reimbursement as an adolescent-only unit Medicaid-certified psychiatric unit "by sending written notification of designated adolescent unit" to the department's fiscal agent. The department had more specific information from in-state providers which

allowed it to identify in-state adolescent-only units. However, it did not have this information from out-of-state providers so it requested written notification to ensure those providers would be reimbursed at the proper rate. This was a reasonable request.

Although AMI stated it sent written notification of its adolescent-only status in August 1991, the department's fiscal agent had no record of this letter. The department received written notice of AMI's adolescent-only status in April 1992. If the department applied the informational letter as having the force of law it would have denied all retroactive reimbursement. Instead the department applied the letter to the particular facts before it and granted AMI retroactive reimbursement from August 1991.

The action taken by the department is typical of a case-by-case adjudication. It adopted general reimbursement rules through proper rule-making procedures. The department is not required to anticipate and resolve every issue which arises in the interpretation of its rules, rather it is granted the discretion to address problems with its rules on a case-by-case basis. Id. at 30. The agency is considered the expert when interpreting the statutes which govern its work, and its interpretations are given great deference. Id. at 31. The district court's conclusion that the department did not engage in rule-making is supported by substantial evidence and is a correct interpretation of the law.

AMI also charges the decision to deny payment is arbitrary and capricious and without substantial evidence in the record. We disagree.

The requirement that out-of-state providers give written notification of their status as an adolescent-only designated psychiatric facility is reasonable. Since the department contracts with over 1,000 out-of-state providers of psychiatric care, it is reasonable to place the burden for notifying the department of their unit status on the providers themselves. Until the time when AMI notified the department of its unit status, it was reasonable for the department to assume AMI had a mixed-age unit. We conclude the department's decision was neither arbitrary or capricious. Substantial evidence exists in the record showing the department correctly applied the relevant legal principles when it denied payment for the period from January through July 1991. The decision of the district court on judicial review is affirmed.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. Costs are assessed to AMI.

AFFIRMED.