

FILED

DEPARTMENT OF HEALTH
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STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE
DATE 7-3-03

IN RE: PETITION FOR DECLARATORY STATEMENT OF
PROGRESSIVE EXPRESS INSURANCE COMPANY

EW

FINAL ORDER

This matter came before the Department of Health, Division of Medical Quality Assurance (Department), pursuant to Section 120.565, Florida Statutes, for the purpose of considering the Petition for Declaratory Statement filed by Progressive Express Insurance Company (Petitioner). Notice of the Petition was published in the Florida Administrative Weekly on April 25, 2003, in Volume 29, Number 17. Having considered the Petition, the Department makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is an insurance company with office located in Florida.
2. Petitioner has received numerous bills submitted by mobile diagnostic service companies, seeking reimbursement for testing services performed.
3. The mobile diagnostic service companies have provided a business address which is at the home of the owner of the company.
4. The mobile diagnostic service companies own the testing equipment and other computer software programs required to perform such testing.
5. The services performed by the mobile diagnostic companies are comparative muscle

testing, grip and pinch test, and range of motion testing services, and Functional Capacity Evaluations.

6. The companies utilize a technician to transport the required equipment to the offices of various medical providers where the different tests are performed.

7. Once the testing is completed, the technician returns to the home of the business owner with the testing data, which is then inputted into a computer program. A report is prepared, printed, and mailed to the ordering physician who allegedly reviews the same and places his or her signature on the report.

8. Bills for the mobile diagnostic services rendered are submitted by the mobile medical diagnostic service company directly to Petitioner seeking reimbursement for the services performed.

9. Section 456.0375, Florida Statutes, defines a clinic as:

(1)(a) ... a business operating in a single structure or facility, or in a group of adjacent structures or facilities operating under the same business name or management, at which health care services are provided to individuals and which tender charges for reimbursement for such services.

10. Exceptions from the term clinic and from the registration requirements of the statute are provided for:

(b)1. Entities licensed or registered by the state pursuant to chapter 390, chapter 394, chapter 395, chapter 397, chapter 400, chapter 463, chapter 465, chapter 466, chapter 478, chapter 480, or chapter 484.

2. Entities exempt from federal taxation under 26 U.S.C. s. 501(c)(3).

3. Sole proprietorships, group practices, partnerships, or corporations that provide health care services by licensed health care practitioners pursuant to chapters 457, 458, 459, 460, 461, 462, 463, 466, 467, 484, 486, 490, 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, which are wholly owned by licensed health care practitioners or the licensed health care practitioner and the spouse,

parent, or child of a licensed health care practitioner, so long as one of the owners who is a licensed health care practitioner is supervising the services performed therein and is legally responsible for the entity's compliance with all federal and state laws. However, no health care practitioner may supervise services beyond the scope of the practitioner's license.

11. Subsection (4) of Section 456.0375, Florida Statutes, addresses the penalties available for failure to comply with clinic registration requirements. Paragraph (a) of this subsection asserts that:

All charges or reimbursement claims made by or on behalf of a clinic that is required to be registered under this section, but that is not so registered, are unlawful charges and therefore are noncompensable and unenforceable.

12. Petitioner inquires as to whether an unregistered mobile diagnostic service company, as described in the Findings of Fact in this Order, is required to register with the Department of Health as a health care clinic pursuant to the requirements of Section 456.0375, Florida Statutes.

CONCLUSIONS OF LAW

13. The Department has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code.

14. To the extent that reimbursement claims become noncompensable when made by a clinic that is required to be registered but is not so registered, this matter falls within Petitioner's scope of interest and activity and Petitioner is thus a substantially affected party. See *State of Florida, Department of Administration, Division of Retirement, v. University of Florida*, 531 So. 2d 377 (Fla. 1st DCA 1988).

15. Section 456.0375, Florida Statutes was enacted by the Legislature pursuant to Chapter 2001-271, Laws of Florida wherein in pertinent part it is stated:

Section 1. Legislative Findings. The Legislature finds that the Florida Motor Vehicle No-Fault Law is intended to deliver medically necessary and appropriate medical care quickly and without regard to fault, and without undue litigation or other associated costs. The Legislature further finds that this intent has been frustrated at significant cost and harm to consumers by, among other things, fraud, medically inappropriate overutilization of treatments and diagnostic services, inflated charges, and other practices on the part of a small number of health care providers and unregulated health care clinics, entrepreneurs, and attorneys . . . The Legislature further finds insurance fraud related to personal injury protection takes many forms, including, but not limited to, illegal solicitation of accident victims; brokering patients among doctors, lawyers, and diagnostic facilities; unnecessary medical treatment of accident victims billed to insurers by clinics; billing of insurers by clinics for services not rendered; the intentional overuse or misuse of legitimate diagnostic tests; inflated charges for diagnostic tests or procedures arranged through brokers; and filing fraudulent no-fault tort law suits . . .

16. Statutes must be read in a manner that is consistent with the intent of the legislature.

See *United Auto Insurance Co. v. Viles*, 726 So. 2d 320 (Fla. 3d DCA 1998). Based on the legislative findings quoted in paragraph 15, above, it is clear that the legislature in enacting Section 456.0375, Florida Statutes, was particularly concerned with overcharging, overuse, and misuse of diagnostic services.

17. When enacting Section 456.0375, Florida Statutes, the legislature provided a very broad all encompassing definition of a clinic as “. . . a business operating in a single structure or facility, or in a group of adjacent structures or facilities operating under the same business name or management, at which health care services are provided to individuals and which tender charges for reimbursement of such services.”

18. A “facility” is in part defined as something that is established to serve a particular

purpose. Merriam-Webster's Collegiate Dictionary 415 (10th ed. 2001). As mobile diagnostic service companies are established for the particular purpose of providing health care services to individuals, and, as such companies tender charges for reimbursement of such services, mobile medical facilities meet the statute's definition of a clinic.

19. Additionally, the Department recognizes that the legislature specifically elaborated over 30 exemptions to the clinic registration requirements. No specific exclusion was provided for mobile diagnostic service companies. "Where one thing is expressed and others are not, the Legislature is presumed to have intended to omit the items not expressed." *City of Miami v. Cosgrove*, 516 So. 2d 1125 (Fla. 3d DCA 1987).

20. The Department is therefore of the opinion, that mobile diagnostic service companies as specified in the Findings of Fact in this Order, fall under the definition of a clinic under Section 456.0375, Florida Statutes, and accordingly, they are required to register with the Department as a health care clinic, unless one of the specifically enumerated statutory exemptions is available.

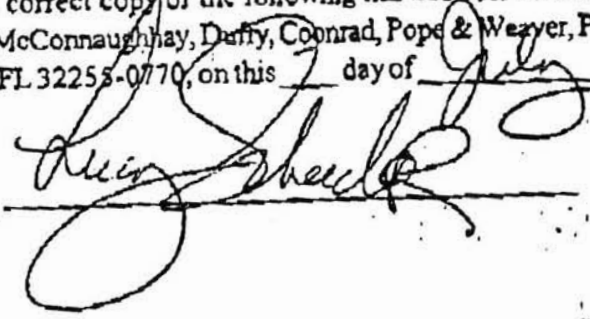
Done and Ordered this 7 day of July, 2003.

John O. Agwunobi, M.D., M.B.A.
Secretary, Department of Health

By: Tom Arnold
Tom Arnold, Deputy Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the following has been forwarded by certified mail to James C. Rinaman, III, Esquire, McConaughay, Duffy, Conrad, Pope & Weaver, P.A., by US Mail to: PO Box 550770, Jacksonville, FL 32255-0770, on this 7 day of July, 2003.



NOTICE OF RIGHTS

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.