COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

MI Nursing/Restorative Center, Inc.,
Petitioner,

v.

Executive Office of Health and Human Services,
Respondent.

Docket No.: RS-24-0647

Dated: March 24, 2026

MEMORANDUM AND ORDER ON MOTION FOR SUMMARY DECISION

Petitioner MI Nursing/Restorative Center, Inc. (MI Nursing) appeals from rates of reimbursement established by respondent the Executive Office of Health and Human Services (EOHHS). EOHHS moves for summary decision. The motion is meritorious.

I. Background

The following paragraphs combine the regulatory background with pertinent facts established beyond genuine dispute. *See* 801 C.M.R. § 1.01(7)(h); *Caitlin v. Board of Reg. of Architects*, 414 Mass. 1, 5-7 (1992).

EOHHS sets rates of reimbursement for healthcare services by constructing calculation formulas, stating them in annual regulations, and applying the regulations to each nursing facility's cost data and other information. The regulation implicated here provides for a "high-Medicaid adjustment": i.e., it increases the rates paid to facilities that care primarily for Medicaid patients. More specifically, a facility's rates are adjusted upward by 6% if its "Massachusetts Medicaid days are at least 75.00% and less than 90.00% of its total resident

days." 101 C.M.R. § 206.06(14)(b). A "Medicaid day" in this context apparently means one day's worth of care for one Medicaid-eligible patient.

To ascertain a facility's tallies of "Medicaid" and "total" days, the rate-setting regulations draw on another aspect of EOHHS's operations. Each nursing facility is obligated to pay EOHHS a quarterly "user fee." 101 C.M.R. § 512.05. The size of the fee depends on data reported by each facility on quarterly forms. It is those "quarterly User Fee Assessment Forms" that the rate-setting regulations use to determine a facility's eligibility for the high-Medicaid adjustment. *See id.* § 206.06(14).

In the user-fee context, an EOHHS bulletin announces a measure of flexibility: "[T]he agency acknowledges that under certain circumstances, nursing facilities may need to adjust their previously submitted quarterly user fee forms. Therefore, EOHHS sets the deadline for user fee form resubmissions to be six months after the original due date." Administrative Bulletin 24-20 (July 15, 2024). A related provision in the rate-setting regulations says: "EOHHS will *not* adjust any High Medicaid Adjustment solely because a facility under-reported Massachusetts Medicaid days in its quarterly User Fee Assessment Form." 101 C.M.R. § 206.06(14)(d) (emphasis added). The precise meaning of this provision is discussed below (along with additional language from Administrative Bulletin 24-20).

EOHHS established the rates at issue in October 2024. MI Nursing's pertinent user-fee forms covered the last three quarters of 2023 and the first quarter of 2024. In compliance with EOHHS's instructions, MI Nursing's forms counted up the facility's Medicaid days based on the approvals that MassHealth had already granted; patients who were still pursuing Medicaid eligibility through appellate proceedings were treated as "private pay" patients. On the basis of

the forms as submitted, MI Nursing's Medicaid days came to 74.8% of its total days. The missing 0.2% resulted in MI Nursing missing out on the 6% upward adjustment and on approximately $667,000 in revenue.

During the ensuing six months, several of MI Nursing's patients prevailed in their MassHealth appeals. They were granted Medicaid coverage extending retroactively into the period covered by MI Nursing's pertinent user-fee forms. As a result, the number of days that Medicaid actually paid for came to exceed 75% of MI Nursing's total patient days during the pertinent quarters. Essentially on that basis, MI Nursing asks for its rates to be recomputed with the benefit of the 6% high-Medicaid adjustment.

II. Jurisdiction

In this appeal, "the rate . . . shall be adequate, fair and reasonable . . . based upon the costs of [the] provider, but not limited thereto." G.L. c. 118E, § 13E. It is MI Nursing's burden to demonstrate that the EOHHS-assigned rates do not already meet these standards. *See Medi-Cab of Massachusetts Bay, Inc. v. Rate Setting Comm'n*, 401 Mass. 357, 366 (1987).

The authority to impose "adequate," "fair," "reasonable" rates means that in some cases, DALA must modify a facility's rates "regardless of the actual language of the regulation[s]." *Bottomley v. Div. of Admin. L. Appeals*, 22 Mass. App. Ct. 652, 657 (1986).[1] If that authority were to be exercised in circumstances shared by a large group of providers, the result would be to nullify "regulations of general applicability." *Beth Israel Hosp., Inc. v. Rate*

[1] This feature of the rate-setting legal framework may be viewed as an application of the principle that a regulation (here, an annual rate-setting regulation) must yield to a statute (here, G.L. c. 118E, § 13E) in circumstances where the two are irreconcilable. *See Veksler v. Board of Registration in Dentistry*, 429 Mass. 650, 652 (1999).

Setting Comm'n, 24 Mass. App. Ct. 495, 502 (1987). To avert that scenario, the case law has constructed a "jurisdictional test" that examines whether a facility's claim to adequate, fair, and reasonable rates rests on "special circumstances." *Salisbury Nursing & Rehab. Ctr., Inc. v. Division of Admin. L. Appeals*, 448 Mass. 365, 375 (2007). Contrast *Rate Setting Comm'n v. Baystate Med. Ctr.*, 422 Mass. 744, 749 (1996).

This case does not implicate the *Salisbury* test. MI Nursing is not seeking "adequate," "fair," "reasonable" rates, i.e., rates that depart from the "language of the regulation[s]," *Bottomley*, 22 Mass. App. Ct. at 657, on an "individual" basis, *Medi-Cab*, 401 Mass. at 364. The appeal presents a more conventional legal argument: that MI Nursing is entitled to new rates under a correct interpretation of "[EOHHS's] own regulations." *Bottomley*, 22 Mass. App. Ct. at 653. *See* Pet'r's Suppl. Subm. 3.

An argument of this nature poses no threat to the general force of a valid regulation. The appeal challenges "not . . . the relevant regulation itself, but, rather, how EOHHS applied the regulation to calculate [the rates]." *Linda Manor v. Executive Off. of Health and Hum. Servs.*, No. 2484CV01758, at *1 (Suffolk Super. May 1, 2025). It is part of DALA's assignment in rate-setting cases to authoritatively interpret EOHHS's regulations. *Cliff House Nursing Home, Inc. v. Rate Setting Comm'n*, 378 Mass. 189, 189, 192 (1979). This appeal is therefore within DALA's jurisdiction.

III. Merits

A. Positions

The interpretive dispute revolves around the passage of the regulations that says: "EOHHS will not adjust any High Medicaid Adjustment solely because a facility under-reported

Massachusetts Medicaid days in its quarterly User Fee Assessment Form." 101 C.M.R. § 206.06(14)(d). The parties agree that, if not for this provision, facilities *would* be allowed to update their Medicaid-coverage data for purposes of the high-Medicaid adjustment. EOHHS in fact allowed such updates under an earlier version of the regulations, which omitted the "EOHHS will not adjust . . ." language. *See* Suppl. Terpelets Aff. ¶ 5.

MI Nursing's interpretive theory is as follows. The situations that § 206.06(14)(d) describes as inadequate bases for changes to a facility's rates are "solely" those in which a facility "under-reported" its Medicaid days. MI Nursing reads the word "under-reported" as denoting an erroneously low count by the reporting facility. In this case, MI Nursing says, there was no error: the facility accurately reported its Medicaid days based on MassHealth's then-current approvals. MI Nursing extrapolates from the modifier "solely" that the regulation *does* allow facilities to update such non-erroneous data.

EOHHS reads § 206.06(14)(d) more expansively. In its view, the bar on updates to "under-reported" data covers any case in which a newer set of numbers is higher than those originally reported. By extension, EOHHS does not envision *any* circumstances in which new data would justify an updated high-Medicaid adjustment. EOHHS's position is reflected in the bulletin discussed earlier, which states: "For rate setting . . . [EOHHS] will rely on the data reported in the facility's original quarterly User Fee Assessment Form and will not consider resubmissions." Administrative Bulletin 24-20, *supra*.

B. Analysis

In this interpretive dispute, EOHHS enjoys a built-in advantage: it is not only a reader of 101 C.M.R. § 206.06(14)(d), but also the author of that text. A promulgating agency's

"reasonable" interpretation of its own "ambiguous" regulations is entitled to deference. *DeCosmo v. Blue Tarp Redevelopment, LLC*, 487 Mass. 690, 698-704 (2021). *See also Sullivan v. Board of Appeal on Motor Vehicle Liab. Pol'ys & Bonds*, 97 Mass. App. Ct. 818, 821 n.7 (2020).

Although the question is close, § 206.06(14)(d) is best viewed as ambiguous. The parties have identified no case law analyzing the precise meaning of the word "under-report." According to a dictionary definition, to under-report is to "report to be less than is actually the case." *Merriam Webster's Collegiate Dictionary* 1363 (10th ed. 1994). *See also* The American Heritage Dictionary of the English Language (5th ed. 2022). It probably is typical for the term to be invoked when even at the time of the report, higher numbers or larger amounts were "actually the case." But the ordinary-language definition is also capable of covering situations in which a report *turned out* to reflect "less than is actually the case" based on new information or events. It may be only hindsight that causes a report to be seen as an under-report, as in the analogous sentiment, "our concerns have turned out to be overstated." *Smith v. City of Hemet*, 394 F.3d 689, 706 (9th Cir. 2005).

In terms of the reasonableness of EOHHS's interpretation (on scores other than ordinary language), MI Nursing questions whether EOHHS attributes any meaning to the word "solely" ("EOHHS will not adjust . . . solely because a facility under-reported"). *See Plymouth Ret. Bd. v. Contributory Ret. Appeal Bd.*, 483 Mass. 600, 607 (2019). On balance, the answer is yes. From EOHHS's perspective, no modifications to high-Medicaid adjustments will result from updated "reports"; but modifications may remain possible in other situations, perhaps including computational errors by EOHHS. *See also Stanley v. City of Sanford*, 606 U.S. 46, 56 (2025); *Public Citizen, Inc. v. Rubber Manufacturers Ass'n*, 533 F.3d 810, 818 (D.C. Cir. 2008).

The reasonableness of a regulatory interpretation may also draw on the regulations' underlying purposes. *See Friends & Fishers of Edgartown Great Pond, Inc. v. Department of Envtl. Prot.*, 446 Mass. 830, 837 (2006); *Kisor v. Wilkie*, 588 U.S. 558, 576 (2019). The obvious policy goal of § 206.06(14)(d) is to support nursing facilities that care for the underprivileged. That goal favors MI Nursing's construction, which would award the upward rate adjustment to additional facilities who actually treated the hoped-for share of Medicaid patients. On the other hand, rate setting involves voluminous paperwork and prodigiously detailed calculations. The case law has recognized that EOHHS's regulations are designed in part to streamline the process. *See Emerson Hosp. v. Rate Setting Comm'n*, 408 Mass. 785, 789-90 (1990). EOHHS's interpretation of § 206.06(14)(d) serves that goal by allowing the rate-setting personnel to rely on a single set of preexisting forms, without needing to retrace their work in the case of new developments. That interpretation may be viewed as reflecting a permissible balancing among competing concerns. *Emerson Hosp.*, 408 Mass. at 789-90.

Certain circumstances further increase the weight of a promulgating agency's interpretation: where the interpretation is an "official or authoritative position," where it "draws on the agency's technical and substantive expertise," and where it reflects a "fair and considered judgment." *DeCosmo*, 487 Mass. at 699. These factors are present here at least to some degree. EOHHS takes the same view that it announced in Administrative Bulletin 24-20, a formal expression of agency policy not apparently prompted by litigation. *See Mullally v. Waste Mgmt. of Massachusetts, Inc.*, 452 Mass. 526, 533 n.13 (2008); *Auer v. Robbins*, 519 U.S. 452, 453 (1997). And EOHHS possesses at least some technical expertise about the updated data that would encumber its work.

C. Recap

It is important to reiterate that the playing field is tilted. In order to prevail, EOHHS's interpretive position does not need to be superior to the alternatives. The non-agency party bears a "formidable" burden to refute the "reasonableness" of the agency's view. *DeCosmo*, 487 Mass. at 700-01. *See Flemings v. Contributory Ret. Appeal Bd.*, 431 Mass. 374, 375 (2000).

In the end, MI Nursing does not carry that burden. The upshot of its arguments is that a skilled and vigilant draftsperson might have had good reason to rewrite 101 C.M.R. § 206.06(14)(d) by replacing the word "under-reported," omitting the word "solely," or both. But it is not quite unreasonable to believe that the regulation as written intends to communicate the message the EOHHS discerns there, namely that "[EOHHS] will rely on the data reported in the facility's original quarterly User Fee Assessment Form." Administrative Bulletin 24-20, *supra*.

IV. Order

On the facts established beyond genuine dispute, the claim presented by MI Nursing is incapable of entitling the facility to relief. Accordingly, EOHHS's motion for summary decision is ALLOWED. Summary decision is hereby entered to the effect that the rates of reimbursement challenged in this appeal are AFFIRMED.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals