

Appellate Division Upholds Gross Receipts Tax on Ambulatory Care Centers

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The New Jersey Appellate Division handed New Jersey doctors yet another loss with a recent decision rejecting a plea by Ambulatory Care Facilities (ACF's) to exclude from the gross receipts tax "pass-through" payments which are monies received from insurers which are then paid to independent contractor professionals. In doing so, the Court rejected the ACFs argument that the inclusion of these payments, which do not flow into an ACF's income stream, is "unfair, irrational and a violation of due process.

The statute which created the gross receipts tax on ACFs defined "Gross receipts" as the payments received by a covered facility for all health care services rendered in the facility. Gross receipts are . . . not net of the costs of providing services, payments of taxes, or other costs." The Department of Health and Senior Services (DHSS) promulgated regulations to implement this statutory assessment and included in an ACF's annual gross receipts "pass-through" payments made to independent contractors and revenue generated from services other than those listed in the statute.

Finding that the legislative purpose in imposing the assessment was to broaden the availability of charity care contributors and to equitably assess hospitals and non-hospital facilities that perform the same type of surgery and patient care, the Court found DHSS's interpretation of the statute valid.

In reaching its decision the Appellate Division made clear that its role in reviewing agency action is restricted to four inquiries:

1. Whether the agency's decision offends the State or Federal Constitution;
2. Whether the agency's action violates express or implied legislative policies;
3. Whether the record contains substantial evidence to support the findings on which the agency based its action; and
4. Whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

If there is no violation of the New Jersey or United States Constitution, if the agency did not violate express or implied legislative policies, if the record made by the agency in promulgating the regulation contains substantial evidence to support the findings on which the agency based upon its action, and if the agency did not clearly err in applying legislative policies, the agency's rule will be upheld.

Does this decision provide insight into the plight of the Department of Banking and Insurance's new regulation creating a new fee schedule for PIP cases? Will this decision impact upon the Court's decision in that case and lead the Court to uphold that fee schedule? Time will tell.

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