

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

BEVERLY ENTERPRISES-MISSOURI INC D/B/A GLENNON PLACE
NURSING CENTER, ET AL.,
APPELLANT
BETHESDA LONG TERM CARE, INC.,
AMICUS CURIAE,
vs.

DEPARTMENT OF SOCIAL SERVICES, DIVISION OF MEDICAL SERVICES,
RESPONDENT.

DOCKET NUMBER WD69040

DATE: DECEMBER 22, 2009

Appeal from:

Cole County Circuit Court
The Honorable Clifford E. Hamilton, Jr., Judge

Appellate Judges:

Court En Banc: Lisa White Hardwick, Acting Chief Judge, James E. Smart, Jr., Judge,
Joseph M. Ellis, Judge, Victor C. Howard, Judge, James E. Welsh, Judge, Mark D.
Pfeiffer, Judge, Cynthia L. Martin, Judge
Karen King Mitchell, Judge recused

Attorneys:

Harvey M. Tettlebaum, Esq., Jefferson City, MO, **for appellant.**

Mark Long, Esq., Jefferson City, MO., **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS – WESTERN DISTRICT

BEVERLY ENTERPRISES – MISSOURI INC D/B/A GLENNON
PLACE NURSING CENTER, ET AL,

BETHESDA LONG TERM CARE, INC

APPELLANT,

AMICUS CURIAE,

V.

DEPARTMENT OF SOCIAL SERVICES, DIVISION OF
MEDICAL SERVICES,

RESPONDENT.

WD69040

Cole County

Before the Court en banc: Lisa White Hardwick, Acting Chief Judge, James E. Smart, Jr., Judge, Joseph M. Ellis, Judge, Victor C. Howard, Judge, James E. Welsh, Judge, Mark D. Pfeiffer, Judge, and Cynthia L. Martin, Judge. Karen King Mitchell, Judge, recused.

Beverly Enterprises-Missouri, Inc. and Commercial Management, Inc. (Beverly) appeal the judgment of the Cole County Circuit Court declaring valid emergency and proposed amendments to the regulation governing Medicaid reimbursement rates promulgated by the Missouri Department of Social Services, Division of Medical Services (Division). The Division cross-appeals from the judgment of the circuit court reversing the decision of the Administrative Hearing Commission (AHC). The AHC ruled that the Division incorrectly calculated the administration cost component ceiling of the Medicaid per diem reimbursement rates of seventeen nursing facilities operated by Beverly.

AFFIRMED.

The Court en banc holds:

- (1) Where the Federal Boren Amendment , previously codified at 42 U.S.C. § 1396a and requiring states to make findings and assurances that their Medicaid reimbursement rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities, was repealed by Congress in 1997, and where 13 CSR 70-10.015(3)(O), which reflects the procedural requirements of the repealed Boren Amendment, exceeds the Division's statutory authority under section 208.152.8 to reimburse providers of long-term care in accordance with 42 U.S.C. § 1396a, the challenged amendments adopted by the Division were not arbitrary, capricious, and unreasonable for failure of the Division to make such findings and assurances.

- (2) Where the Division's adoption of the challenged amendments was reasonable and consistent with the legislative objective to establish reasonable costs of Medicaid services as a basis for setting reimbursement rates and based upon reasonably available empirical data including a cost-benefit analysis, the Division did not violate section 536.016 in adopting the challenged amendments.
- (3) Where the Missouri Medicaid program was faced with a \$16 million shortfall and the Division would not have been able to pay nursing facilities in the state, thereby compromising patient care, an emergency existed for purposes of rulemaking, and the Division was not required to follow the notice and comment requirements of section 536.021.
- (4) Where the Division's calculation of the administration cost component ceiling using a median determined from the nursing facility administration per diems adjusted for minimum utilization rather than from raw cost data complied with the plain language of 13 CSR 70-10.015, the AHC erred in ruling that the Division incorrectly calculated the ceiling and in ordering it to recalculate it.

December 22, 2009

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.