

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

SARASOTA COUNTY PUBLIC  
HOSPITAL DISTRICT d/b/a  
SARASOTA MEMORIAL  
HOSPITAL and SARASOTA  
MEMORIAL HEALTH CARE  
SYSTEM,

CASE NO.: 1D16-5013

and

LEE MEMORIAL HEALTH  
SYSTEM and CAPE MEMORIAL  
HOSPITAL, INC.,

CASE NO.: 1D16-5014

Appellants,

v.

FLORIDA AGENCY FOR  
HEALTH CARE  
ADMINISTRATION,

Appellee.

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Lawrence J. Hamilton II, Jacksonville, and Tiffany A. Roddenberry, Tallahassee,  
of Holland & Knight LLP, for Appellants.

Joseph M. Goldstein and Dan P. Daley, Fort Lauderdale, Stephen T. Maher,  
Miami, Daniel E. Nordby and Amber Stoner, Tallahassee, of Shutts & Bowen  
LLP; Stefan R. Grow, General Counsel, and Tracy Cooper George, Chief  
Appellate Counsel for Florida Agency for Health Care Administration,

Tallahassee, for Appellee.

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THE PUBLIC HEALTH TRUST  
OF MIAMI-DADE COUNTY,  
FLORIDA,

CASE NO.: 1D16-5070

Appellant,

v.

AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Appellee.

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Christopher Charles Kokoruda, Laura E. Wade, and Abigail Price-Williams,  
Miami-Dade County Attorneys, Miami, for Appellant.

Joseph M. Goldstein and Dan P. Daley, Fort Lauderdale, Stephen T. Maher,  
Miami, Daniel E. Nordby and Amber Stoner, Tallahassee, of Shutts & Bowen  
LLP; Stefan R. Grow, General Counsel, and Tracy Cooper George, Chief  
Appellate Counsel for Agency for Health Care Administration, Tallahassee, for  
Appellee.

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MOUNT SINAI MEDICAL  
CENTER OF FLORIDA, INC.,

CASE NO.: 1D16-5077

and

SHANDS JACKSONVILLE  
MEDICAL CENTER, INC., d/b/a  
UF HEALTH JACKSONVILLE,

CASE NO.: 1D16-5078

and

BAPTIST HOSPITAL, INC.,

CASE NO.: 1D16-5082

and

INDIAN RIVER MEMORIAL  
HOSPITAL, INC., d/b/a INDIAN  
RIVER MEDICAL CENTER,

CASE NO.: 1D16-5083

and

LAKELAND REGIONAL  
MEDICAL CENTER, INC.,

CASE NO.: 1D16-5084

and

SHANDS TEACHING HOSPITAL  
AND CLINICS, INC., d/b/a UF HEALTH  
SHANDS HOSPITAL,

CASE NO.: 1D16-5086

Appellants,

v.

STATE OF FLORIDA,  
AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Appellee.

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Seann M. Frazier and Marc Ito, Tallahassee, and Jonathan L. Rue, Atlanta,  
Georgia, of Parker, Hudson, Ranier & Dobbs, for Appellants.

Joseph M. Goldstein and Dan P. Daley, Fort Lauderdale, Stephen T. Maher,  
Miami, Daniel E. Nordby and Amber Stoner, Tallahassee, of Shutts & Bowen  
LLP; Stefan R. Grow, General Counsel, and Tracy Cooper George, Chief  
Appellate Counsel for State of Florida, Agency for Health Care Administration,  
Tallahassee, for Appellee.

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MIAMI BEACH HEALTHCARE  
GROUP, LTD., d/b/a AVENTURA

CASE NO.: 1D16-5092

HOSPITAL AND MEDICAL CENTER; HCA HEALTH SERVICES OF FLORIDA, INC., d/b/a BLAKE MEDICAL CENTER; GALENCARE, INC., d/b/a BRANDON REGIONAL HOSPITAL; TALLAHASSEE MEDICAL CENTER, INC., d/b/a CAPITAL REGIONAL MEDICAL CENTER; CENTRAL FLORIDA REGIONAL HOSPITAL, INC., d/b/a CENTRAL FLORIDA REGIONAL HOSPITAL; CITRUS MEMORIAL HOSPITAL, INC., d/b/a CITRUS MEMORIAL HOSPITAL; SARASOTA DOCTORS HOSPITAL, INC., d/b/a DOCTORS HOSPITAL OF SARASOTA; ENGLEWOOD COMMUNITY HOSPITAL, INC., d/b/a ENGLEWOOD COMMUNITY HOSPITAL; FAWCETT MEMORIAL HOSPITAL, INC., d/b/a FAWCETT MEMORIAL HOSPITAL; FORT WALTON BEACH MEDICAL CENTER, INC., d/b/a FORT WALTON BEACH MEDICAL CENTER; BAY HOSPITAL, INC., d/b/a GULF COAST MEDICAL CENTER; JFK MEDICAL CENTER LIMITED PARTNERSHIP, d/b/a JFK MEDICAL CENTER; JFK MEDICAL CENTER LIMITED PARTNERSHIP, d/b/a JFK MEDICAL CENTER-NORTH CAMPUS; KENDALL HEALTHCARE GROUP, LTD., d/b/a KENDALL REGIONAL MEDICAL CENTER; NOTAMI HOSPITALS OF FLORIDA, INC., d/b/a LAKE CITY MEDICAL CENTER; LARGO MEDICAL CENTER, INC., d/b/a LARGO MEDICAL CENTER; LARGO MEDICAL CENTER, INC., d/b/a LARGO MEDICAL CENTER-INDIAN ROCKS; LAWNWOOD

MEDICAL CENTER, INC., d/b/a  
LAWNWOOD REGIONAL MEDICAL  
CENTER & HEART INSTITUTE; NEW  
PORT RICHEY HOSPITAL, INC., d/b/a  
MEDICAL CENTER OF TRINITY; NEW  
PORT RICHEY HOSPITAL, INC., d/b/a  
MEDICAL CENTER OF TRINITY  
WEST PASCO CAMPUS; MEMORIAL  
HEALTHCARE GROUP, INC., d/b/a  
MEMORIAL HOSPITAL JACKSONVILLE;  
WEST FLORIDA - MHT, LLC, d/b/a  
MEMORIAL HOSPITAL OF TAMPA;  
PLANTATION GENERAL HOSPITAL  
LIMITED PARTNERSHIP, d/b/a MERCY  
HOSPITAL, A CAMPUS OF PLANTATION  
GENERAL HOSPITAL; NORTH  
FLORIDA REGIONAL MEDICAL CENTER,  
INC., d/b/a NORTH FLORIDA REGIONAL  
MEDICAL CENTER; GALENCARE, INC.,  
d/b/a NORTHSIDE HOSPITAL; NORTHWEST  
MEDICAL CENTER, INC., d/b/a  
NORTHWEST MEDICAL CENTER;  
HCA HEALTH SERVICES OF FLORIDA,  
INC., d/b/a OAK HILL HOSPITAL;  
MARION COMMUNITY HOSPITAL,  
INC., d/b/a OCALA REGIONAL MEDICAL  
CENTER; MARION COMMUNITY  
HOSPITAL, INC., d/b/a WEST MARION  
COMMUNITY HOSPITAL; ORANGE PARK  
MEDICAL CENTER, INC., d/b/a ORANGE  
PARK MEDICAL CENTER; OSCEOLA  
REGIONAL HOSPITAL, INC., d/b/a  
OSCEOLA REGIONAL MEDICAL CENTER;  
WEST FLORIDA - PPH, LLC, d/b/a PALMS  
OF PASADENA HOSPITAL; PALMS WEST  
HOSPITAL LIMITED PARTNERSHIP, d/b/a  
PALMS WEST HOSPITAL; PLANTATION  
GENERAL HOSPITAL LIMITED  
PARTNERSHIP, d/b/a PLANTATION  
GENERAL HOSPITAL; POINCIANA

MEDICAL CENTER, INC., d/b/a POINCIANA  
MEDICAL CENTER; PUTNAM  
COMMUNITY MEDICAL CENTER OF  
NORTH FLORIDA, LLC, d/b/a PUTNAM  
COMMUNITY MEDICAL CENTER;  
OKEECHOBEE HOSPITAL, INC., d/b/a  
RAULERSON HOSPITAL; HCA HEALTH  
SERVICES OF FLORIDA, INC., d/b/a  
REGIONAL MEDICAL CENTER BAYONET  
POINT; HCA LONG TERM HEALTH  
SERVICES OF MIAMI, INC., d/b/a SISTER  
EMMANUEL HOSPITAL; SUN CITY  
HOSPITAL, INC., d/b/a SOUTH BAY  
HOSPITAL; MEMORIAL HEALTHCARE  
GROUP, INC., d/b/a SPECIALTY HOSPITAL  
JACKSONVILLE; HCA HEALTH SERVICES  
OF FLORIDA, INC., d/b/a ST. LUCIE  
MEDICAL CENTER; GALEN OF FLORIDA,  
INC., d/b/a ST. PETERSBURG GENERAL  
HOSPITAL; WEST FLORIDA - TCH, LLC,  
d/b/a TAMPA COMMUNITY HOSPITAL;  
OKALOOSA HOSPITAL, INC., d/b/a  
TWIN CITIES HOSPITAL; UNIVERSITY  
HOSPITAL, LTD., d/b/a UNIVERSITY  
HOSPITAL AND MEDICAL CENTER;  
WEST FLORIDA REGIONAL MEDICAL  
CENTER, INC., d/b/a WEST FLORIDA  
HOSPITAL; and COLUMBIA HOSPITAL  
CORPORATION OF SOUTH BROWARD,  
d/b/a WESTSIDE REGIONAL MEDICAL  
CENTER,

Appellants,

v.

AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Appellee.

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Stephen A. Ecenia, David M. Maloney, J. Stephen Menton, and Gabriel F. V. Warren of Rutledge Ecenia, Tallahassee, for Appellants.

Joseph M. Goldstein and Dan P. Daley, Fort Lauderdale, Stephen T. Maher, Miami, Daniel E. Nordby and Amber Stoner, Tallahassee, of Shutts & Bowen LLP; Stefan R. Grow, General Counsel, and Tracy Cooper George, Chief Appellate Counsel for State of Florida, Agency for Health Care Administration, Tallahassee, for Appellee.

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ST. VINCENT'S MEDICAL  
CENTER, INC. d/b/a ST.  
VINCENT'S MEDICAL CENTER  
RIVERSIDE, ST LUKE'S-ST.  
VINCENT'S HEALTHCARE,  
INC. d/b/a ST. VINCENT'S  
MEDICAL CENTER  
SOUTHSIDE and ST.  
VINCENT'S MEDICAL CENTER-  
CLAY COUNTY, INC. d/b/a  
ST. VINCENT'S MEDICAL  
CENTER-CLAY COUNTY,

CASE NO.: 1D16-5135

and

SACRED HEART HEALTH  
SYSTEM, INC. d/b/a SACRED  
HEART HOSPITAL OF  
PENSACOLA, SACRED HEART  
HOSPITAL ON THE EMERALD  
COAST and SACRED HEART  
HOSPITAL ON THE GULF,

CASE NO.: 1D16-5136

and

CGH HOSPITAL, LTD d/b/a  
CORAL GABLES HOSPITAL,  
DELRAY MEDICAL CENTER,

CASE NO.: 1D16-5258

INC. d/b/a DELRAY MEDICAL CENTER, GOOD SAMARITAN MEDICAL CENTER, INC. d/b/a GOOD SAMARITAN MEDICAL CENTER, HIALEAH HOSPITAL, INC. d/b/a HIALEAH HOSPITAL, NORTH SHORE MEDICAL CENTER, INC. d/b/a NORTH SHORE MEDICAL CENTER, NORTH SHORE MEDICAL CENTER, INC. d/b/a FLORIDA MEDICAL CENTER- A CAMPUS OF NORTH SHORE, PALM BEACH GARDENS COMMUNITY HOSPITAL, INC. d/b/a PALM BEACH GARDENS MEDICAL CENTER, LIFEMARK HOSPITALS OF FLORIDA, INC. d/b/a PALMETTO GENERAL HOSPITAL, ST. MARY'S MEDICAL CENTER, INC. d/b/a ST. MARY'S MEDICAL CENTER and WEST BOCA MEDICAL CENTER, INC. d/b/a WEST BOCA MEDICAL CENTER,

Appellants,

v.

AGENCY FOR HEALTH CARE ADMINISTRATION,

Appellee.

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Michael J. Glazer and E. Dylan Rivers of Ausley McMullen, Tallahassee, for Appellants.

Joseph M. Goldstein and Dan P. Daley, Fort Lauderdale, Stephen T. Maher, Miami, Daniel E. Nordby and Amber Stoner, Tallahassee, of Shutts & Bowen



LLP; Stefan R. Grow, General Counsel, and Tracy Cooper George, Chief Appellate Counsel for State of Florida, Agency for Health Care Administration, Tallahassee, for Appellee.

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HOLMES REGIONAL  
MEDICAL CENTER, INC.,

CASE NO.: 1D16-5274

and

HOLMES REGIONAL MEDICAL  
CENTER, INC. d/b/a PALM BAY  
HOSPITAL,

CASE NO.: 1D16-5275

and

VIERA HOSPITAL, INC.,

CASE NO.: 1D16-5276

and

CAPE CANAVERAL  
HOSPITAL, INC.,

CASE NO.: 1D16-5277

and

HERNANDO HMA, LLC,

CASE NO.: 1D16-5366

and

PASCO REGIONAL MEDICAL  
CENTER, LLC d/b/a BAYFRONT  
HEALTH DADE CITY,

CASE NO.: 1D16-5367

and

PORT CHARLOTTE HMA, LLC  
d/b/a BAYFRONT HEALTH-  
PORT CHARLOTTE,

CASE NO.: 1D16-5368

and

PUNTA GORDA HMA, LLC  
d/b/a BAYFRONT HEALTH-  
PUNTA GORDA,

CASE NO.: 1D16-5369

and

BAYFRONT HMA MEDICAL  
CENTER, LLC d/b/a BAYFRONT  
HEALTH-ST. PETERSBURG,

CASE NO.: 1D16-5370

and

HAINES CITY HMA, LLC  
d/b/a HEART OF FLORIDA  
REGIONAL MEDICAL  
CENTER,

CASE NO.: 1D16-5371

and

SEBRING HOSPITAL  
MANAGEMENT ASSOCIATES  
LLC, d/b/a HIGHLANDS  
REGIONAL MEDICAL  
CENTER,

CASE NO.: 1D16-5372

and

LAKE WALES HOSPITAL  
CORPORATION d/b/a  
LAKE WALES MEDICAL  
CENTER,

CASE NO.: 1D16-5373

and

KEY WEST HMA, LLC  
d/b/a LOWER KEYS  
MEDICAL CENTER,

CASE NO.: 1D16-5374

and

MUNROE HMA HOSPITAL,  
LLC d/b/a MUNROE  
REGIONAL MEDICAL  
CENTER,

CASE NO.: 1D16-5375

and

NAPLES HMA, LLC,

CASE NO.: 1D16-5376

and

CRESTVIEW HOSPITAL  
CORPORATION d/b/a  
NORTH OKALOOSA  
MEDICAL CENTER,

CASE NO.: 1D16-5377

and

HMA SANTA ROSA  
MEDICAL CENTER, LLC,

CASE NO.: 1D16-5378

and

SEBASTIAN HOSPITAL,  
LLC d/b/a SEBASTIAN  
RIVER MEDICAL  
CENTER,

CASE NO.: 1D16-5380

and

CITRUS HMA, LLC d/b/a  
SEVEN RIVERS REGIONAL  
MEDICAL CENTER,

CASE NO.: 1D16-5381

and

LIVE OAK HMA, LLC d/b/a  
SHANDS LIVE OAK  
REGIONAL MEDICAL

CASE NO.: 1D16-5382

CENTER,

and

LAKE SHORE HMA, LLC  
d/b/a SHANDS LAKE  
SHORE REGIONAL  
MEDICAL CENTER,

CASE NO.: 1D16-5383

and

STARKE HMA, LLC d/b/a  
SHANDS STARKE  
REGIONAL MEDICAL  
CENTER,

CASE NO.: 1D16-5384

and

OSCEOLA SC, LLC d/b/a  
SAINT CLOUD REGIONAL  
MEDICAL CENTER,

CASE NO.: 1D16-5385

and

VENICE HMA, LLC d/b/a  
VENICE REGIONAL  
BAYFRONT HEALTH,

CASE NO.: 1D16-5386

and

MELBOURNE HMA, LLC,

CASE NO.: 1D16-5387

and

ROCKLEDGE HMA, LLC,

CASE NO.: 1D16-5388

and

UNIVERSITY COMMUNITY  
HOSPITAL, INC.,

CASE NOS.: 1D16-5427 &  
1D16-5429

and

MEMORIAL HOSPITAL-  
WEST VOLUSIA, INC.,

CASE NO.: 1D16-5432

and

SOUTHWEST VOLUSIA  
HEALTHCARE CORPORATION,

CASE NO.: 1D16-5433

and

MEMORIAL HOSPITAL  
FLAGLER, INC.,

CASE NO.: 1D16-5434

and

ADVENTIST HEALTH  
SYSTEM/SUNBELT, INC.,

CASE NOS.: 1D16-5435,  
1D16-5439 & 1D16-5442

and

MEMORIAL HEALTH  
SYSTEMS, INC.,

CASE NO.: 1D16-5436

and

SOUTHEAST VOLUSIA  
HEALTHCARE CORPORATION,

CASE NO.: 1D16-5437

and

TARPON SPRINGS HOSPITAL  
FOUNDATION, INC.,

CASE NO.: 1D16-5438

and

UNIVERSITY COMMUNITY  
HOSPITAL, INC.,

CASE NO.: 1D16-5440

and

FLORIDA HOSPITAL  
WATERMAN, INC.,

CASE NO.: 1D16-5441

and

PASCO-PINELLAS  
HILLSBOROUGH COMMUNITY  
HEALTH SYSTEM, INC.,

CASE NO.: 1D16-5443

and

FLORIDA HOSPITAL  
ZEPHYRHILLS, INC.,

CASE NO.: 1D16-5444

and

GENESIS REHABILITATION  
HOSPITAL, INC. d/b/a  
BROOKS REHABILITATION  
HOSPITAL, INC.,

CASE NO.: 1D16-5453

and

THE VILLAGES TRI-COUNTY  
MEDICAL CENTER, INC.  
d/b/a THE VILLAGES  
REGIONAL HOSPITAL,

CASE NO.: 1D16-5454

and

LEESBURG REGIONAL  
MEDICAL CENTER, INC.,

CASE NO.: 1D16-5455

Appellants,

v.

AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Appellee.

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Kyle L. Kemper and Steven Mindlin of Sunstrom & Mindlin, LLP, Tallahassee,  
for Appellants.

Joseph M. Goldstein and Dan P. Daley, Fort Lauderdale, Stephen T. Maher,  
Miami, Daniel E. Nordby and Amber Stoner, Tallahassee, of Shutts & Bowen  
LLP; Stefan R. Grow, General Counsel, and Tracy Cooper George, Chief  
Appellate Counsel for Florida Agency for Health Care Administration,  
Tallahassee, for Appellee.

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LARKIN COMMUNITY  
HOSPITAL,

CASE NO.: 1D16-5469

and

MARTIN MEMORIAL  
MEDICAL CENTER,

CASE NO.: 1D16-5470

and

NAPLES COMMUNITY  
HOSPITAL, INC.,

CASE NO.: 1D16-5471

and

SOUTH LAKE HOSPITAL,

CASE NO.: 1D16-5472

and

LARKIN COMMUNITY  
HOSPITAL PALM  
SPRINGS CAMPUS,

CASE NO.: 1D16-5473

and

ORLANDO HEALTH, INC.,  
d/b/a ORLANDO HEALTH,

CASE NO.: 1D16-5474

and

SOUTHERN BAPTIST  
HOSPITAL OF FLORIDA  
d/b/a BAPTIST MEDICAL  
CENTER OF THE BEACHES,

CASE NO.: 1D16-5475

and

SOUTHERN BAPTIST  
HOSPITAL OF FLORIDA  
d/b/a BAPTIST MEDICAL  
CENTER,

CASE NO.: 1D16-5476

ORLANDO HEALTH CENTRAL,  
INC. d/b/a HEALTH CENTRAL,

CASE NO.: 1D16-5477

and

SOUTHERN BAPTIST  
HOSPITAL OF FLORIDA  
d/b/a BAPTIST MEDICAL  
CENTER NASSAU,

CASE NO.: 1D16-5478

Appellants,

v.

AGENCY FOR HEALTH  
CARE ADMINISTRATION,

Appellee.

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Joanne B. Erde and Donna Holshouser Stinson of Duane Morris LLP, Miami, for Appellants.

Joseph M. Goldstein and Dan P. Daley, Fort Lauderdale, Stephen T. Maher, Miami, Daniel E. Nordby and Amber Stoner, Tallahassee, of Shutts & Bowen LLP; Stefan R. Grow, General Counsel, and Tracy Cooper George, Chief Appellate Counsel for Florida Agency for Health Care Administration, Tallahassee, for Appellee.

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Opinion filed November 30, 2017.

A consolidated appeal from orders of the Agency for Health Care Administration.

**BILBREY, J.**

Sixty-seven Petitioners sought administrative hearings pursuant to section 120.57(1), Florida Statutes (2016), after the Agency for Health Care Administration (AHCA) announced its rates of reimbursement of Medicaid funds for services provided by hospitals for outpatient services for the 2016-2017 fiscal year. ACHA initially sought to dismiss the petitions as premature. Thereafter, AHCA argued the petitions were moot, for reasons which will be more fully set forth below. Eventually, the petitions were dismissed by identical orders. This consolidated appeal follows. We reverse and remand.

As this is an appeal of an order of dismissal, we must accept as true the allegations made in the petitions filed below. *See Herbits v. Bd. of Trs. of Internal Improvement Trust Fund*, 195 So. 3d 1149, 1153 (Fla. 1st DCA 2016). The

Amended Petition for Sarasota County Hospital District, the lead Appellant in this consolidated appeal, alleged in pertinent part:

7. For Fiscal Year 2016-17, the Legislature passed zero outpatient rate reductions and appropriated sufficient funds to reimburse Sarasota Memorial at a rate that is substantially higher than [AHCA's] posted reimbursement rates. The level of funding made available by the Legislature meant that AHCA was not required to make any outpatient reimbursement rate reductions beyond certain standing rate cuts. However, on its own initiative, AHCA elected to implement drastic rate reductions for Fiscal Year 2016-17 far beyond those authorized by the Legislature, resulting in a significant reduction of funding to Sarasota Memorial for Medicaid outpatient services.

8. [In the] rate letter applicable to Sarasota Memorial . . . though the Fiscal Year 2016-17 rates were not posted by AHCA until July 11, 2016 and then again revised and republished on August 10, 2016, AHCA has indicated that they took effect for all Medicaid outpatient hospital service providers on July 1, 2016. The hospital reimbursement rates released by AHCA reflect a significantly higher rate cut from previous years.

10. By way of background, as part of a recent overhaul of the state's Medicaid program, the Legislature mandated that AHCA implement a new statewide program to enroll the majority of Florida's Medicaid beneficiaries in Medicaid managed care plans. *See* § 409.971, Fla. Stat. Implementation of this Medicaid managed care program resulted in a dramatic shift of Florida's Medicaid beneficiaries—as well as state funding—from [fee for services programs or "FFS"] to managed care. Consequently, there has been a substantial reduction in the number of Medicaid FFS claims.

Sarasota County further alleged that as a Medicaid provider of outpatient services, it will be paid using the challenged rates and that these rates are severely reduced from those of previous years; thus, its substantial interests are affected, it has alleged. The rates “took effect for all Medicaid outpatient hospital service providers on July 1, 2016,” it also alleged. The arguments made by the other Petitioners in their respective petitions are substantially the same as those made by Sarasota County Hospital District.

AHCA moved to dismiss the petitions on the ground that the rates of reimbursement were not “final agency action,” and thus, the requested administrative proceeding was premature. ACHA asserted that only after it had audited the requested reimbursements, which would be filed in the future, would final agency action have occurred. As authority for this argument, AHCA cited section 409.908(1)(f)1., Florida Statutes (2016). AHCA argued below and continues to argue here that this statute gives a meaningful point of entry upon the release of audited rates and to allow an earlier point of entry would render the statute meaningless.

The Petitioners opposed dismissal by AHCA arguing that section 409.908(1)(f)1. did not preclude a challenge on the rates prior to auditing. The Petitioners claimed AHCA’s position could result in a denial of a meaningful point of entry to challenge the rates established. Petitioners maintain that argument here.

AHCA filed a Suggestion of Mootness on Nov. 3, 2016, arguing that per section 409.905(6)(b)1., Florida Statutes (2016), the pending petitions were moot. This statute provides that “[a]djustments may not be made [to unaudited reimbursement] rates after October 31 of the state fiscal year in which the rates take effect. . . .” In its Suggestion of Mootness, AHCA added, without citing specific authority, that “this is the last year that [it] will issue preliminary rates, AHCA [thus] has lost authority under the statute to make further adjustments going forward.”

By Final Order dated Nov. 4, 2016, ACHA dismissed the amended petitions with prejudice. AHCA held in pertinent part:

[S]ection 409.908(1)(f)1, Florida Statutes, gives a provider a point of entry “to correct or adjust the calculation of the **audited** hospital cost-based per diem reimbursement rate for inpatient and outpatient care.” (Emphasis added). Section 409.908(1), Florida Statutes, does not allow a provider like Petitioner[s] to challenge **unaudited** rates. This is because **unaudited** rates are preliminary in nature, and subject to change once the Agency has audited Petitioner[s’] cost report.

\* \* \*

Furthermore, even assuming arguendo Petitioners are entitled to challenge the unaudited rates as a substantially affected party under chapter 120, Florida Statutes, the Agency lacks the jurisdiction and authority to grant Petitioners the relief they seek, i.e. the adjustment of their rates. Section 409.905(6)(b)1., Florida Statutes, prohibits the Agency from making any adjustments to Petitioners’ rates “after October 31 of the

state fiscal year in which the rates take effect....” For the rates at issue, this date has already passed. Accordingly, the Agency must dismiss the Amended Petition because Petitioners are not entitled to an administrative hearing to dispute the unaudited rates and, even if they were, the Agency lacks the jurisdiction and authority to grant Petitioners the relief they seek.

(Footnotes omitted; emphasis in original).

As indicated, following the dismissal of a petition for an administrative hearing, a reviewing court must accept the allegations of the petition as true. *See Herbits*. Moreover, questions of statutory interpretation are reviewed by the appellate court de novo. *See Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186 (Fla. 2013); *Maggio v. Fla. Dep't of Labor & Emp't Sec.*, 899 So. 2d 1074 (Fla. 2005).

As this court explained almost 30 years ago, a party has standing to initiate a formal administrative hearing pursuant to section 120.57 when it has a “substantial interest that is directly affected by proposed agency action. . . .” *Florida Soc’y of Ophthalmology v. State Bd. of Optometry*, 532 So. 2d 1279, 1284 (Fla. 1st DCA 1988). But, as this court later made clear, “[t]o be entitled to a section 120.57 hearing, there must be final agency action affecting the petitioner’s substantial interests, coupled with a disputed issue of material fact.” *Friends of the Hatchineha, Inc. v. State, Dep’t of Env’tl. Reg.*, 580 So. 2d 267, 269 (Fla. 1st DCA 1991) (quoting *General Dev. Utils., Inc. v. Florida Dep’t of Env’tl. Reg.*, 417 So. 2d

1068, 1070 (Fla. 1st DCA 1982)).

As noted, AHCA has claimed that final agency action has not occurred simply by the posting of the unaudited rates. It does not argue that the substantial interests of the various petitioners have not been affected. Nor has the agency claimed that there are no disputed issues of material fact, a prerequisite for a hearing under section 120.57(1).<sup>1</sup>

Section 409.908(1)(f)1., the statute on which AHCA principally relies, provides:

Pursuant to chapter 120, the agency shall furnish to providers written notice of the **audited** hospital cost-based per diem reimbursement rate for inpatient and outpatient care established by the agency. **The written notice constitutes final agency action.** A substantially affected provider seeking to correct or adjust the calculation of the audited hospital cost-based per diem reimbursement rate for inpatient and outpatient care, **other than a challenge to the methodologies set forth in the rules of the agency and in reimbursement plans incorporated by reference therein used to calculate the reimbursement rate for inpatient and outpatient care**, may request an administrative hearing to challenge the final agency action by filing a petition with the agency within 180 days after receipt of the written notice by the provider. . . .

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<sup>1</sup> “As a general principle of administrative law, a person is entitled to a section 120.57 hearing when an agency takes a final action affecting that person’s interests and there is a disputed issue of material fact related to that action.” *Save Our Creeks v. State of Fla. Fish and Wildlife Conservation Comm’n*, 112 So. 3d 128, 130 (Fla. 1st DCA 2013) (citing *Friends of the Hatchineha, Inc. v. Dep’t of Env’tl. Reg.*, 580 So. 2d 267, 269 (Fla. 1st DCA 1991)).

(Emphasis added).

Given the passages emphasized above, the statute does not pertain to — and hence exempts from the declaration of what final agency action is — the “methodologies” used in determining the reimbursement amount. In other words, section 409.908(1)(f)1 authorizes formal administrative challenges “to correct or adjust” any “calculation[s]” made in audited reimbursement requests. By its plain terms then, the statute does not authorize formal administrative challenges to the “methodologies . . . used to calculate the reimbursement rate.” It was the methodology employed by AHCA (which treated the “Medicaid Trend Adjustment” or MTA differently than in years past) which resulted in the challenged reimbursement rates for FY 2016-2017. At the same time, the statute does not preclude, either explicitly or implicitly, formal administrative challenge to the Medicaid reimbursement rates set by AHCA prior to agency auditing. The statute simply does not speak to pre-audit period.

AHCA has argued that section 409.905(6)(b)1, provides that AHCA cannot change its reimbursement rate after October 31 of the fiscal year in which the rates take effect. It was on the basis of this statute that AHCA argued below that the petitions were moot after Oct. 31, 2016, even though the petitions were filed several months before that date and were still pending as of that date through no fault of the Petitioners. This statute was cited in the Final Order as an alternative

basis for denying the hearings sought by Petitioners. In part, the Final Order states:

Even assuming arguendo Petitioners are entitled to challenge the unaudited rates as a substantially affected party under chapter 120, Florida Statutes, the Agency lacks the jurisdiction and authority to grant Petitioners the relief they seek, i.e., the adjustment of their rates. Section 409.905(6)(b)1., Florida Statutes, prohibits the Agency from making any adjustments to Petitioners' rates 'after October 31 of the state fiscal year in which the rates take effect . . . [.]' For the rates at issue, this date has already passed. Accordingly, the Agency must determine the Amended Petition because the Petitioners are not entitled to an administrative hearing to dispute the unaudited rates and, even if they were, the Agency lacks the jurisdiction and authority to grant Petitioners the relief they seek.

An audit is unlikely to have been completed before October 31st of the fiscal year which commences July 1st. Therefore, any rate challenge made before October 31st, is necessarily a challenge of unaudited rates. Thus, in the Final Order, AHCA appears to take two incompatible positions with regard to the 2016 legislative scheme: (i) rates can only be challenged after an audit, and (ii) rate challenges can only occur before October 31st. Obviously, such contrary arguments are untenable, and result from a misreading of the statute.

Section 409.905(6)(b)1. provides in pertinent part:

(6) HOSPITAL OUTPATIENT SERVICES. –

(b) The agency shall implement a methodology for establishing base reimbursement rates for outpatient



services for each hospital based on allowable costs, as defined by the agency. Rates shall be calculated annually and take effect July 1 of each year based on the most recent complete and accurate cost report submitted by each hospital.

**1. Adjustments may not be made to the rates after October 31 of the state fiscal year in which the rates take effect**, except for cases of insufficient collections of intergovernmental transfers authorized under s. 409.908(1) or the General Appropriations Act. In such cases, the agency shall submit a budget amendment or amendments under chapter 216 requesting approval of rate reductions by amounts necessary for the aggregate reduction to equal the dollar amount of intergovernmental transfers not collected and the corresponding federal match. Notwithstanding the \$1 million limitation on increases to an approved operating budget under ss. 216.181(11) and 216.292(3), a budget amendment exceeding that dollar amount is subject to notice and objection procedures set forth in s. 216.177.

**2. Errors in source data or calculations discovered after October 31 must be reconciled in a subsequent rate period.**

(Emphasis added).

A plain reading of subsections 1 and 2 means that the correction of an error is to be made in the next fiscal year when that error is discovered after October 31st; it does not mean — nor could it fairly so provide — that no correction is ever to be made if an error is discovered after Oct. 31st.

Where possible, a court must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another. *Heart of*

*Adoptions, Inc. v. J.A.*, 963 So. 2d 189, 199 (Fla. 2007); *Woodham v. Blue Cross & Blue Shield of Fla., Inc.*, 829 So. 2d 891, 898 (Fla. 2002). Also, a court must consider the purpose behind a statute. *Raymond James*, 126 So. 3d at 192 (citing *W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 9 (Fla. 2012)). Further, it is true that an agency's interpretation of a statute it is charged with "enforcing is entitled to great deference." *Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906, 908 (Fla. 2002) (citing *BellSouth Telecommunications, Inc. v. Johnson*, 708 So. 2d 594, 596 (Fla. 1998)). But, it is also true that a reviewing court will not depart from "the contemporaneous construction of a statute by a state agency charged with its enforcement unless the construction is 'clearly erroneous.'" *Id.* (quoting *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 283 (Fla. 1988)). AHCA's interpretation of section 409.905(6)(b)1. is clearly erroneous.<sup>2</sup>

In sum, the substantial interest of a party entitled to a Medicaid reimbursement is affected at the time an unsatisfactory rate is announced as that rate takes effect immediately and reimbursements which are made prior to auditing are based on that rate. The Petitioners have alleged, and we must accept as fact per *Herbits*, that the methodologies used to set the reimbursement rates are not subject to change during the auditing process, and thus the rate becomes "final" at the time it is announced. Therefore, with regard to the amount of the reimbursement rates,

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<sup>2</sup> The 2016 version of the statute has been amended. See Ch. 16-65, Laws of Fla.

the agency's action has become final. Accordingly, we reverse the orders of dismissal and remand for the grant of formal hearings pursuant to section 120.57(1), Florida Statutes.

REVERSED and REMANDED.

ROBERTS and M.K. THOMAS, JJ., CONCUR.