

Administrative Law Judge (Judge) resolving unfair labor practice allegations.

A. Summary of Current Authority Precedent

To assist interested persons in responding, the Authority offers the following summary of current Authority precedent. The cases cited below are not intended as a complete description of Authority precedent in this area, and amici are encouraged to address any federal or private sector precedent deemed applicable.

Under section 7116(a)(1) and (5) of the Statute, prior to implementing a change in conditions of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice of the change and the opportunity to bargain over those aspects of the change that are within the duty to bargain. *U.S. Army Corps of Eng'rs, Memphis Dist.*, 53 FLRA 79, 81 (1997). Where an agency institutes a change in a condition of employment and the change is itself negotiable, the extent of the impact of the change on unit employees has not been a factor or element in the analysis of whether an agency is obligated to bargain. *92 Bomb Wing, Fairchild Air Force Base, Spokane, Wash.*, 50 FLRA 701, 704 (1995). Conversely, where the substance of a change is not itself negotiable, an agency must nonetheless give the exclusive representative an opportunity to bargain over the impact and implementation of the change, provided that the change has more than a *de minimis* effect on unit employees' conditions of employment. *AFGE, Local 940*, 52 FLRA 1429, 1436 (1997).

B. The Judge's Decision

The Judge found that the agency violated section 7116(a)(1) and (5) of the Statute by refusing to bargain with the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO (Union) over the Agency's reduction in the number of reserved parking spaces for the Administrative Law Judges (ALJs) from 6 to 2. Relying on Authority precedent, the Judge found that providing all 6 ALJs at its Charleston location with reserved, assigned parking was a condition of employment, and that the Agency was obligated to give the Union notice and an opportunity to negotiate the substance of any proposed change of this established condition of employment. In addition, the Judge stated that since the issue of employee parking is substantively negotiable, it was unnecessary to decide whether the

impact of the change was more than *de minimis*. However, the Judge noted that if the agency were only obligated to bargain over impact and implementation, "there might be grave doubt that the impact was more than *de minimis*." Judge's Decision at 12. The Judge found that the record did not show any difficulty by employees finding non-reserved parking in the building after the change was implemented. As a remedy, the Judge recommended that the agency restore the *status quo ante* by providing 6 reserved parking spaces to the ALJs.

C. Agency's Exceptions

The Agency filed exceptions, contending in part that the Authority should apply the *de minimis* doctrine that has been used for impact and implementation bargaining to changes that are substantively negotiable. The Agency asserts that the Authority adopted the *de minimis* doctrine in line with the mandate of section 7101 of the Statute that the Statute should be interpreted consistent with the requirement of an effective and efficient Government, and that this same mandate should apply to substantive as well as impact and implementation bargaining.

D. General Counsel's Opposition

The General Counsel requests the Authority to reject the Agency's request to apply the *de minimis* standard to substantively negotiable issues, such as the one in this case. The General Counsel maintains that the Judge's decision is consistent with Authority precedent addressing changes in parking as substantively negotiable.

E. Questions on Which Briefs are Solicited

Since the issue raised by the Agency in this case is likely to be of concern to the federal sector labor-management relations community in general, the Authority finds it appropriate to provide for the filing of amicus briefs addressing the following questions:

What standard should the Authority apply in determining an agency's statutory obligation to bargain when an agency institutes changes in conditions of employment that are substantively negotiable? Why? Should the Authority eliminate the distinction between substantively negotiable changes, where the *de minimis* standard has not been applied, and changes that are not substantively negotiable, where the *de minimis* standard has been applied? Why?

For the Authority.

Dated: June 12, 2003.

Gail D. Reinhart,

Director, Case Control Office.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Temporary Increase of Federal Matching Shares for Medicaid for the Last 2 Calendar Quarters of Fiscal Year 2003 and the First 3 Quarters of Fiscal Year 2004

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The revised Medicaid "Federal Medical Assistance Percentages" (FMAP) for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004 have been calculated pursuant to Title IV of the Jobs and Growth Tax Relief Reconciliation Act of 2003. These revised Federal Medical Assistance Percentages replace the percentages previously published for the applicable quarters during Fiscal Year 2003 (**Federal Register**, November 30, 2001) and Fiscal Year 2004 (**Federal Register**, November 15, 2002). This notice announces the revised Federal Medical Assistance Percentages that we will use in determining the amount of Federal matching for State medical assistance (Medicaid) expenditures under Title XIX, effective only for the 2 calendar quarters from April 1 through September 30, 2003, and the 3 quarters from October 1, 2003 through June 30, 2004. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Programs under Title XIX of the Act exist in each jurisdiction. The percentages in this notice apply to State expenditures for most medical services only for the last 2 quarters of Fiscal Year 2003 and the first 3 quarters of Fiscal Year 2004.

Federal Medical Assistance Percentages are normally used to determine the amount of Federal matching for State expenditures for assistance payments for certain social services including Temporary Assistance for Needy Families (TANF) Contingency Funds, the federal share of Child Support Enforcement collections, Child Care Mandatory and Matching Funds for the Child Care and

Development Fund, Foster Care Title IV-E Maintenance payments, and Adoption Assistance payments, and State medical and medical insurance expenditures for Medicaid and the State Children's Health Insurance Program (SCHIP). However, the temporary increases in the Federal Medical Assistance Percentages under the Jobs and Growth Tax Relief Reconciliation Act of 2003 affect only Medicaid medical expenditure payments under Title XIX. The percentages in this notice do not apply to disproportionate share hospital payments, payments under Title IV or XXI of the Act, or any payments under Title XIX that are based on the enhanced FMAP described in section 2105(b) of such Act. In addition, the statute provides separately for Federal matching of administrative costs, which is not affected by the Jobs and Growth Tax Relief Reconciliation Act of 2003.

Section 401 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 provides for a temporary increase of the Medicaid FMAP. The provisions permit a maintenance of Fiscal Year 2002 FMAP for the last 2 calendar quarters of Fiscal Year 2003 for a State whose 2003 FMAP as calculated pursuant to section 1905(b) of the Act is less than its 2002 FMAP, and a maintenance of Fiscal Year 2003 FMAP for the first 3 calendar quarters of Fiscal Year 2004 for a State whose 2004 FMAP as calculated pursuant to section 1905(b) of the Act is less than its 2003 FMAP. In addition, after adjusting FMAP due to the maintenance of the 2002 or 2003 FMAP where applicable, each State is eligible to receive a 2.95 percentage point increase for each of the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004.

There are conditions that a State must meet in order to receive the 2.95 percentage point FMAP increase for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004. Eligibility under its Medicaid State plan (including any waiver under title XIX of the Social Security Act or under section 1115 of the Act) can be no more restrictive than the eligibility under such plan or waiver as in effect on September 2, 2003. If any State has restricted eligibility under its Medicaid State plan (including any waiver under title XIX of the Social Security Act or under section 1115 of the Act) after September 2, 2003, it will become eligible for the 2.95 percentage point increase in its FMAP in the first calendar quarter (and subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility in effect

on September 2, 2003. These rules do not affect States' flexibility with respect to benefits offered under their Medicaid State plan (including any waiver under title XIX of the Social Security Act or under section 1115 of the Act).

In addition, in order to receive the 2.95 percentage point FMAP increase, in the case of a State that requires political subdivisions within the State to contribute toward the non-Federal share of expenditures under the State Medicaid plan, the State cannot require that such political subdivisions pay a greater percentage of the non-Federal share of such expenditures for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004, than the percentage that was required by the State under such plan on April 1, 2003.

In addition to the increases in FMAP, Title IV of the Jobs and Growth Tax Relief Reconciliation Act of 2003 increases the amounts of Medicaid payments to territories pursuant to section 1108 of the Social Security Act by 5.90 percent of such amounts, for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 also provides \$10 billion for other temporary state fiscal relief payments based on population. These payments are under the jurisdiction of the Secretary of the Treasury, and are not reflected in the Federal Medical Assistance Percentages.

EFFECTIVE DATES: The percentages listed will be effective only for the last 2 calendar quarters of Fiscal Year 2003 and the first 3 calendar quarters of Fiscal Year 2004.

FOR FURTHER INFORMATION CONTACT: Adelle Simmons or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 442E, Washington, DC 20201, (202) 690-6870.

(Catalog of Federal Domestic Assistance Program No. 93.778: Medical Assistance Program)

Dated: June 12, 2003.

Tommy G. Thompson,
Secretary of Health and Human Services.

REVISED FEDERAL MEDICAL ASSISTANCE PERCENTAGE (TITLE IV OF JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003)

[Temporary Increase in Medicaid FMAP for the last 2 Quarters of FY 2003 and First 3 Quarters of FY 2004]

	2003 Qtrs	2004 Qtrs
Alabama	73.55	73.70
Alaska	61.22	61.34
American Samoa	52.95	52.95
Arizona	70.20	70.21
Arkansas	77.23	77.62
California	54.35	52.95
Colorado	52.95	52.95
Connecticut	52.95	52.95
Delaware	52.95	52.95
District of Columbia	72.95	72.95
Florida	61.78	61.88
Georgia	62.55	62.55
Guam	52.95	52.95
Hawaii	61.72	61.85
Idaho	73.97	73.91
Illinois	52.95	52.95
Indiana	64.99	65.27
Iowa	66.45	66.88
Kansas	63.15	63.77
Kentucky	72.89	73.04
Louisiana	74.23	74.58
Maine	69.53	69.17
Maryland	52.95	52.95
Massachusetts	52.95	52.95
Michigan	59.31	58.84
Minnesota	52.95	52.95
Mississippi	79.57	80.03
Missouri	64.18	64.42
Montana	75.91	75.91
Nebraska	62.50	62.84
Nevada	55.34	57.88
New Hampshire	52.95	52.95
New Jersey	52.95	52.95
New Mexico	77.51	77.80
New York	52.95	52.95
North Carolina	65.51	65.80
North Dakota	72.82	71.31
Northern Mariana Islands	52.95	52.95
Ohio	61.78	62.18
Oklahoma	73.51	73.51
Oregon	63.11	63.76
Pennsylvania	57.64	57.71
Puerto Rico	52.95	52.95
Rhode Island	58.35	58.98
South Carolina	72.76	72.81
South Dakota	68.88	68.62
Tennessee	67.54	67.54
Texas	63.12	63.17
Utah	74.19	74.67
Vermont	66.01	65.36
Virgin Islands	52.95	52.95
Virginia	54.40	53.48
Washington	53.32	52.95
West Virginia	78.22	78.14
Wisconsin	61.52	61.38
Wyoming	64.92	64.27