CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons or entities have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. The Mississippi Methodist Hospital & Rehabilitation Center, Inc., d/b/a Methodist Rehabilitation Center (Appellant).

2. Thomas L. Kirkland, Jr., Allison C. Simpson, Esq., Andy Lowry, Esq., and Tammy M. Voynik, Esq., counsel for Appellant.

3. State of Mississippi, Division of Medicaid and Executive Director Robert L. Robinson (Appellees).

4. Charles P. Quarterman, Chief Counsel for the Division of Medicaid.

5. Suzanne S. Sharpe, Esq. (hearing officer).

6. The Honorable J. Dewayne Thomas, Chancellor.

Respectfully submitted,

Charles P. Quarterman
Counsel for Appellee

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I. Whether State Plan Amendment 2006-006 implemented by the Mississippi Division of Medicaid complies with state law.

II. Whether State Plan Amendment 2006-006 is void for failure to provide due process

STATEMENT OF THE CASE

I. Course of Proceedings Below

The Appellees, the Mississippi Division of Medicaid and Robert L. Robinson (hereinafter collectively referred to as "Medicaid"), agree with Appellant's description of the course of proceedings below, except for the following. Medicaid contends that the opinion and final judgment of the Hinds Chancery Court (Thomas, J.), should be affirmed. The Chancellor held that the rate calculated for Appellant (hereinafter "Methodist") is consistent with state and federal law and that it did comply with due process provisions regarding adequate notice and should be affirmed. Furthermore, Methodist filed a motion in this Court to expedite the present appeal, due to alleged severe hardship imposed by Medicaid's acts. Medicaid filed a response in opposition to said motion. This Court denied Methodist's motion on October 15, 2008.

II. Relevant Facts

This matter is before the Court on Methodist's appeal of the opinion and final judgment of the Hinds County Chancery Court (Thomas, J.). Methodist is a provider participant in the Mississippi Medicaid program. It is licensed by the Mississippi Department of Health and is classified as a Private Nursing Facility for the Severely Disabled ("PNFSD"), which is a type of long term care facility providing specialized nursing facility care to severely disabled patients. Similar to other nursing facilities, it submits cost reports to the Division of Medicaid in order that its per diem reimbursement rate may be determined.

In 1998, the Mississippi Legislature approved a certificate of need for Methodist to operate its facility to serve the severely disabled. In 2001, the Legislature passed House Bill 1000, which, among other things, allowed Medicaid to reimburse Methodist as a separate

category of nursing facility. Methodist was approved as a provider for Mississippi Medicaid effective February 27, 2004. Based upon Methodist's estimates to Medicaid, the interim rate calculations for Methodist were $487.74 for the following periods: February 27, 2004 through March 31, 2004, April 1, 2004, through June 30, 2004, and July 1, 2004, through September 30, 2004. R.224. Consistent with Medicaid reimbursement policies, this rate was calculated prior to Methodist submitting its initial cost report.

In January 2005, Methodist submitted its initial cost report. This cost report projected a rate of $1,106.68 per day. Of this amount, $454.42 was for administrative and operating costs. Methodist explained that the actual occupancy rate for the cost report period was 26.3%. This occupancy rate was much less than the projected occupancy rate of 97% that was used by Methodist and Medicaid to estimate its initial interim rate calculation. In other words, Methodist argued that its per diem costs were higher than expected because there were fewer patients to take care of. It is interesting to note that its rate for administrative and operating costs alone (which are comprised of items such as administrative salaries and other costs not related to the direct care of the patients) nearly exceeded the initial interim rate proposed by Methodist and agreed upon by Medicaid. R.172. Although recognizing that Methodist's direct care and care-related costs would be higher than a typical nursing facility due to the acute condition of its patients, Medicaid was concerned that the administrative and operating costs for a facility of this size were excessively high and represented reimbursement for an inefficiently operated facility and was not in the best interest of the program. R.172.

Pursuant to federal regulations, Medicaid payments are to be consistent with efficiency, economy, and quality of care. *See*, 42 CFR 447.200. Similarly, for long term care services Medicaid rates should be ". . . . reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers . . . . ". *See*, 42 CFR 447.253. During an

administrative hearing regarding the initial cost report rate requested by Methodist, Methodist testified that there were inefficiencies during the initial cost report period primarily on account of the low occupancy rate. Due to these inefficiencies, the initial per diem rate was much larger than the original estimate of $487.74. R.173. However, absent a policy describing "reasonableness" or comparing costs to like-sized facilities, Medicaid chose not to make a stand on this issue.

Rather, after the administrative hearing, Medicaid reviewed its State Plan and the state law regarding reimbursement for this facility. It was determined that by limiting the administrative and operating costs to the ceiling for similar sized nursing facilities, Medicaid would comply with state law. Medicaid's policy would still recognize the increased costs for Methodist to provide for the special patients that it serves and would still treat Methodist as a separate category of nursing facility not beholden to all of the ceilings in place for regular nursing facilities. By imposing a ceiling, Medicaid would also better conform its reimbursement policies to federal law which encourages efficiency. Effective October 1, 2006, the Centers for Medicare and Medicaid Services ("CMS") approved State Plan Amendment 2006-006 ("SPA 2006-006"). This Amendment to Attachment 4.19-D of the State Plan allowed Medicaid to place a ceiling on the administrative and operating costs of the Private Nursing Facility for the Severely Disabled, and to make a technical correction to remove the care related cost exception from the 80% occupancy rule. This Amendment was also promulgated through the Administrative Procedures Act and all notice requirements pertinent thereto were satisfied. R.174.

Medicaid applied the requirements of SPA 2006-006 to the rate calculations for Methodist for the period beginning January 1, 2007, through March 31, 2007. Based upon SPA 2006-006 and other provisions of its State Plan, Medicaid calculated a per diem rate of $511.01

for Methodist. Methodist has not proposed another rate; it simply contests the application of SPA 2006-006 to its rate calculation. However, it does contend that its per diem rate for administrative and operating costs was $319.24 and that by imposing a ceiling Medicaid has limited the per diem rate to $74.22. Adding the difference to the rate set by Medicaid, one might speculate that Methodist would contend that its per diem should be at least $756.03. R.174.

For illustrative purposes it is important to note that the average Medicaid per diem reimbursement rate for acute inpatient hospital care is $1093.32. For skilled nursing facility care, the average per diem reimbursement rate paid by Medicaid for the period in question, is $169.03. Based upon Methodist's argument, at $319.24, its administrative and operating costs alone (costs not directly related to patient care) are nearly double the average total per diem rate for skilled nursing facility care. R.174.

At a per diem rate of $511.01, Methodist's total rate as calculated by Medicaid is clearly distinguishable from the rates of other nursing facilities and proves the point that Methodist is being reimbursed as a separate category of nursing facility. In fact, Methodist's rate is nearly three times higher than the average rates for regular skilled nursing facilities. Not only has Medicaid complied with the plain meaning of the statute, but it has also complied with the intent of the Legislature that Methodist be reimbursed at a higher rate than regular skilled nursing facilities, based upon the type of patients served by Methodist. Methodist is obviously reimbursed as a separate category of nursing facility. R.175.

Medicaid argues that SPA 2006-006 is a reasonable interpretation of state law and complies with state and federal law. Medicaid also argues that it followed the state Administrative Procedures Law and that Methodist has been afforded all due process to which it is entitled. The Chancellor affirmed Medicaid's position and his decision is entitled to great deference.

SUMMARY OF THE ARGUMENT

Mississippi law allows for a Private Nursing Facility for the Severely Disabled to be reimbursed as a separate category of nursing facility. Just as the law provides and as the Chancellor recognized, Methodist is being reimbursed by Medicaid as a separate category of nursing facility- much different from other nursing facilities and at a much higher rate. Since Methodist handles patients with severely acute conditions, no ceilings are applied to items such as direct care and care-related costs. However, Medicaid's rule as set forth in SPA 2006-006 properly applies a ceiling on Methodist's administrative and operating costs, as it does with other nursing facilities. By imposing a ceiling only on the administrative and operating costs, Medicaid is still reimbursing Methodist as a separate category of nursing facility and therefore remains in full compliance with the law.

The Chancellor's ruling should be affirmed, as Methodist cannot overcome its burden to demonstrate how Medicaid's rule violates state law. The agency's rule is within the scope of its authority to promulgate, is supported by substantial evidence and is not arbitrary and capricious. Similarly, Medicaid satisfied all legal due process provisions regarding notice, and no constitutional right of the Plaintiff has been violated.

ARGUMENT

As there are no disputed facts in this appeal, the standard of review only applies to contested matters of law. Generally the "standard of review in chancery matters is well settled: This Court will not reverse a decision of a chancellor unless the chancellor's findings were clearly erroneous, manifestly wrong, or based upon an erroneous legal standard." *Hayes v. Hayes*, 994 So.2d 246 (¶4)(Miss.App.,2008)(*citing Pearson v. Pearson*, 761 So.2d 157, 162(¶ 14) (Miss.2000).

In the case of a review of an administrative law decision, the "[m]atters of law will be reviewed de novo... with great deference afforded an administrative agency's 'construction of its own rules and regulations and the statutes under which it operates'."*Hinds County School Dist. Bd. of Trustees v. R.B.*, 2008 WL 5174068, 5 (Miss.) (Miss.,2008).

Methodist offers no arguments or evidence to this Court which addresses the standard of review and cannot overcome its burden on appeal.

I. State Plan Amendment 2006-006 implemented by the Mississippi Division of Medicaid complies with state law.

Review of an administrative agency's findings and decisions is limited, and the agency's conclusions must remain undisturbed unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the agency's scope or power granted to the agency, or 4) violates one's constitutional rights. *See*, *Public Employees' Retirement System v. Howard*, 905 So.2d 1279 (Miss. 2005) and *Electronic Data Systems Inc. v. Miss. Div. of Medicaid*, 853 So.2d 1192 (Miss. 2003) (quoting *Tillmon v. Miss. State Dep't of Health*, 749 So.2d 1017, 1020-21 (Miss. 1999)).

The Hearing Officer and the Executive Director for the Division of Medicaid determined that SPA 2006-006 complies with state law, and the Chancellor affirmed those findings. In 2001, the Mississippi Legislature passed House Bill 1000, which allowed Medicaid to provide reimbursement for services rendered by a separate category of nursing facility called a Nursing Facility for the Severely Disabled ("NFSD"). The applicable language, codified in Section 43-13-117 of the Mississippi Code Annotated 1972, as amended, states:

> Medicaid as authorized by this article shall include payment of part of all of the costs, at the discretion of the division, with approval of the Governor, of the following types and care and services rendered to eligible applicants who have been determined to be eligible for that care and services, within the limits of state appropriations and federal matching funds:
>
> *******
>
> (44) Nursing Facility Services for the Severely Disabled.
>
> (a) Severe disabilities include, but are not limited to, spinal cord injuries, closed head injuries and ventilator dependent patients.
>
> (b) Those services must be provided in a long term care nursing facility dedicated to the care and treatment of persons with severe disabilities, and shall be reimbursed as a separate category of nursing facilities.
>
> *******

Medicaid only added a ceiling to administrative costs. It still reimburses Methodist at its costs for providing direct care and care related services. For treating the special patients Methodist treats, this makes sense Methodist is being reimbursed differently than any other nursing facility To suggest otherwise is misleading. Methodist can show absolutely no evidence that Medicaid ever treated severely disabled nursing facilities as anything other than a separate category.

The suggestion made by Methodist that the language does not allow any of Methodist's costs to be reimbursed the same way cuts both ways because the statute also does not forbid a ceiling nor does it require that every component of reimbursement be determined as a completely separate entity from all other nursing facilities. Had the Legislature intended for Methodist to receive such treatment, it could have stated such.

Furthermore, the original letter contains the phrase (Complaint Exhibit "B" letter dated Feb 28, 2002, R.9.) "Return on Equity would be paid at the same rate as nursing facilities." Methodist has made no objection to this as destroying their separate category status. Then how can Methodist with a straight face come to the Supreme Court of the State of Mississippi and say in good faith that a mere cap destroys this status? How can they make the assertion that they are not reimbursed as a separate category of nursing facility when their reimbursement is nearly three times that of a skilled nursing facility? They cannot and should be embarrassed.

Curiously, Methodist never discusses the components of administrative and operating charges upon which Medicaid has placed a ceiling. Administrative and operating costs include such items as the salaries and fringe of the administrator, assistant administrator, dietary, housekeeping, laundry, maintenance, medical records, owners, non-capital amortization, depreciation fees for vehicles and salaries for other administrative staff. Direct care and care related costs are comprised of such items as the salaries and fringe for nurses, nurse aids, medical supplies, other direct care supplies, activities, pharmacy, social services, raw food and food supplements. It is reasonable to expect that Methodist may have higher costs for direct care and care related services due the severely acute condition of its patients. Medicaid has allowed for this by allowing Methodist to be reimbursed at its costs for direct care and care related services. However, the administrative and operating costs for Methodist should not exceed a similar sized nursing facility. Similarly, the administrative salaries associated with the management of a small facility such as Methodist should not exceed a similar sized nursing facility. Methodist's administrators would argue that they should be able to set their salaries as high as they like and hand the taxpayers the bill. This result would be inequitable and unlawful.

Further, the Hearing Officer and the Chancellor found that SPA 2006-006 is consistent with state law, in that it still allows Medicaid to reimburse Methodist as "a separate category of nursing facilities". R.232, 236. The rate calculation for Methodist differs from the rate calculations for any other nursing facility. Methodist is not held to all of the same cost ceilings that are applicable to other nursing facilities. Again, Medicaid points out that a ceiling is imposed for direct care and care-related costs for other nursing facilities. No such ceilings apply to Methodist. Additionally, Methodist is allowed to recoup its costs related to the special facilities and equipment required to treat the acute needs of its patients. In fact, the rental value for Methodist was increased by 328.178% over the value used to pay other nursing facilities. In establishing the rate calculations for Methodist, Medicaid clearly takes into account the special acute needs of Methodist's patients. It is perfectly reasonable for Medicaid to impose a ceiling on administrative and operating costs for this class of facilities. Methodist presents no justification to support the necessity that its administrative and operating costs be reimbursed without a ceiling. Methodist does not explain why its administrative and operating costs are higher than similarly sized facilities.

It is interesting to note that in Methodist's previous arguments it contends that its reimbursement for its administrative and operating per diem should be based upon reasonable costs without the imposition of a ceiling. Medicaid agrees that Methodist should be reimbursed based upon its reasonable costs. The reasonable costs established by Medicaid for the administrative and operating costs are the same as those for similarly sized facilities. Medicaid's State Plan Amendment sets the standard for reasonableness.

One could understand that the direct care and care-related costs associated with treating more acute patients would be higher than the costs associated with treating those whose needs are less acute. Again, it is striking to note that Methodist has offered no reason at all, much less a

legitimate reason, to support its high rate of reimbursement for the administrative and operating costs If accepted, its rate for these costs alone would comprise nearly one-half of its total rate. . Unlike any other nursing facility, Methodist is reimbursed at its cost for its direct care and care-related services; but its administrative and operating costs are reimbursed using the same ceiling placed on other nursing facilities. Methodist is still being treated as a separate class of facility as required by the law.

SPA 2006-006 provides that Medicaid will impose a ceiling only for administrative and operating costs. It does not at all limit Medicaid's reimbursement to Methodist for the rendering of medical services.

In Methodist's case, because of its bed count, its ceiling (solely for the purpose of determining administrative and operating costs) was that for small nursing facilities. Again, no other cost ceilings were imposed on Methodist. Consistent with state law, Methodist is still being reimbursed as a separate, or special, category of nursing facility. In support of its position, Methodist attempts to rely on a letter between the parties from over five years ago. *See*, Plaintiff's Complaint Exhibit B. R.9. The letter represented a statement by Medicaid of its proposed methodology for reimbursement for Methodist. The letter represented an accurate description of Medicaid's proposed methodology at that point in time, but in no way bound the future actions of the agency. This letter has no bearing on the Division's current action. A letter written over five years ago by a previous administrator cannot forever bind an agency as Methodist would ask the Court to believe. Even so, this letter also states that Methodist's "return on equity" would be paid at the same rate as other nursing facilities. Methodist did not object to Medicaid treating it like other nursing facilities then and it is disingenuous for Methodist to not point out this statement, from the letter, to the court.

Methodist simply contends that Mississippi law requires that it be reimbursed at its full costs, with no ceilings applied. This position is clearly an erroneous interpretation of the law. A plain reading of the statute contains no requirement that Methodist be reimbursed for its full costs with no ceilings. Methodist would have this court re-write the plain language in the law.

SPA 2006-006 is a reasonable interpretation of state law, and Medicaid has the authority to adopt such reasonable regulations in its administration of the program. In pertinent part, Section 43-13-121 of the Mississippi Code 1972 Annotated, as amended, provides as follows:

> (1) The division shall administer the Medicaid program under the provisions of this article, and may do the following:
>
> (a) Adopt and promulgate reasonable rules, regulations and standards, with approval of the Governor, and in accordance with the Administrative Procedures Law . . . .
>
> ******

Medicaid carefully reviewed state law prior to implementation of SPA 2006-006. SPA 2006-006 is a reasonable interpretation of state law, in that it still allows Methodist to be reimbursed as a separate category of nursing facility. Absent any plain statutory language requiring Medicaid to reimburse Methodist at its full costs for every category, SPA 2006-006 does not conflict with state law and is clearly reasonable. The Mississippi Supreme Court has held that it will defer to the agency's interpretation of a statute which it is charged to enforce unless such interpretation is repugnant to the plain meaning of the statute. *Mississippi Gaming Commission v. Imperial Palace of Mississippi, Inc.*, 751 So. 2d 1025, 1029 (Miss. 1999).

Clearly, SPA 2006-006 is not repugnant to the plain meaning of the statute. Due to the particularly acute conditions of Methodist's patients, it is perfectly reasonable for Medicaid to place a ceiling on the administrative and operating costs, yet not apply ceilings for other expenses such as direct care and care-related services. Such action takes into account the special

needs of Methodist's patients relative to the care required to serve them. SPA 2006-006 does not conflict with state law and is a reasonable requirement promulgated by Medicaid.

The fact of the matter is that Methodist's rate is still calculated differently than any other nursing facility. This is absolutely consistent with the law's requirement that these facilities be reimbursed as a separate category of nursing facility. Ceilings for such items as direct care and care-related services apply to other nursing facilities, but do not apply to Methodist. Medicaid acted in a reasonable manner. The SPA is consistent with Mississippi law.

Appellant is right to cite *MS Valley Gas* that "an agency must either conform to its prior norms and decisions or explain the reason for its departure from such precedent."(*Miss. Valley Gas Co. v. Fed. Energy Reg. Comm'n*, 659 F.2d 488,506 (5th Cir. 1981) Methodist does a disservice to the court by not mentioning that Medicaid had a very good reason for limiting administrative and operating expenses, which reason is repeatedly stated in both the Provider hearing and the Chancery Trial Brief. The reason, simply stated, is that after Medicaid got back the report showing administrative expenses for the previous period provided by Methodist, those figures were grossly out of line with reasonable costs. Medicaid, in its initial offering, naively gave no ceiling to Methodist for administrative and operation costs, though it certainly could have done so. Instead of using the more than generous rate Medicaid offered to pay, Methodist wrongfully used the lack of ceiling to its advantage to, at best, offset its costs for having too many beds and at worst to improperly apply the law to enrich itself.. This is the reason Medicaid's hand was forced into changing its prior norms and decisions by adopting SPA 2006-006..

Methodist argues that Medicaid has acted both outside the scope of its authority and in an arbitrary and capricious manner. The clear and overwhelming evidence in this case demonstrates

that nothing could be farther from the truth. Medicaid clearly had the authority to implement the regulation. The regulation was and is a reasonable interpretation of the law and is not arbitrary and capricious. The truth of the matter is that Methodist is upset that Medicaid, by its reasonable actions, has stymied Methodist's attempt to fatten its coffers on the backs of the taxpayers.

Because Methodist has presented no evidence to support its claims, the order and final judgment of the Chancellor should not be reversed.

II. SPA 2006-006 satisfies the requirements of due process.

The assertion that Medicaid did not follow the procedures set forth in the Administrative Procedures Law ("APL") is patently wrong and the Supreme Court should reject it. In Appellant's brief, Methodist cites the APL and states that when an agency fails to comply with the APL, the proposed rule is invalid. It then proceeds in the next paragraph to talk about a related subject but a wholly different set of rules.

SPA 2006-006 was properly adopted under the APL. On June 28, 2006, Medicaid filed its proposed change with the Office of the Secretary of State. However, under federal regulations, the amendment cannot become effective until approved by the Centers for Medicare and Medicaid Services (hereinafter "CMS"). After receiving approval from CMS, Medicaid filed the final rule with the Office of the Secretary of State. CMS approved SPA 2006-006 to become effective October 1, 2006; however, Medicaid did not enforce it until the cost report period beginning January 1, 2007.

Medicaid is unclear as to what specific defects Methodist alleges in support of its position that Medicaid has violated the APL. Presumably, Methodist must believe that Medicaid never filed the proposed change with the Secretary of State. However, as both the Hearing Officer and the

Chancellor determined, that is simply not true. Both found that Medicaid complied with the APL.

By virtue of filing the rule through the APL process, Medicaid provided everyone with public notice of the proposed change. Pursuant to the APL, Medicaid was only required to provide Methodist with specific notice of the proposed change if Methodist had requested to be so notified. *See*, Miss. Code Ann. 1972 § 25-43-3.103(2), as amended. Methodist had not requested such notice. Under the APL, there was simply no legal obligation for Medicaid to provide Methodist with specific notice. Without knowing the specific defects raised by Methodist, it is difficult to address this allegation. Regardless, Medicaid satisfied the requirements of the APL.

Medicaid admits it did not provide a copy of the public notice to Methodist. But , there is no requirement in state or federal law that it do so. Indeed, Methodist cites no law in support of that position. Methodist fails to point out to the court that the inadvertent failure to mail notice of a proposed rule adoption does not invalidate the rule. *See* Miss. Code Ann. § 25-43-3.111(1). So even if Methodist was entitled to direct notice under the APL, which it was not, Methodist cannot carry its burden to invalidate the rule Further, the Chancellor found that Medicaid did not deny Methodist due process, because of its compliance with the APL requirements.

Methodist further argues the Supreme Court of the State of Mississippi should adopt the ruling in *Steck v. Jorling*, 631 N.Y.S.2d 737 (N.Y.A.D. 1995), and completely abrogate a plan amendment that fully follows the APL and has been approved by CMS, simply because Medicaid did not actually mail notice. *Steck* should not have an impact on This Court as it has had no impact in the opinion of any other state court and very little even in New York courts.

Medicaid's State Plan is the State of Mississippi's contract with the federal government, which describes how Medicaid will run its program. Medicaid has the power to make amendments to its State Plan, as it did in this instance with SPA 2006-006, in order to effectively administer this crucial program. Without conceding whether the amendment represents a significant change to the methods and standards for setting rates, Medicaid acknowledges that its State Plan provides that "[a]ll Nursing Facilities . . . will receive a copy of the public notice". Medicaid contends that the intent of this provision was satisfied by its compliance with the more thorough APL process and that any failure to notify Methodist directly should be considered harmless in light of the fact that Medicaid followed the APL process. Further, unlike the APL, there is no provision in the State Plan or in federal law whereby failure to follow this provision voids the plan amendment. There is no requirement that Medicaid must provide Methodist with direct notice in order to validate the proposed amendment, and Methodist offers no evidence in support of its contention that the amendment is somehow voided by Medicaid's failure to supply Methodist with direct notice. Methodist was afforded due process, as Medicaid provided sufficient legal notice.

In short, Medicaid complied with the requirements of the APL process. SPA 2006-006 was properly filed with the Secretary of State. Although Medicaid did not provide Methodist with direct notice of its plan amendment, Medicaid satisfied the more thorough process required by state law. Additionally, there is no provision to void the amendment for failure to follow this procedure in the State Plan. Methodist was not deprived of due process.

CONCLUSION

In conclusion, SPA 2006-006 does not violate Mississippi law. Specifically, it complies with and is consistent with Section 43-13-117(44) of the Mississippi Code 1972 Annotated, as

amended. Further, SPA 2006-006 is a reasonable interpretation of state law by the state agency which has been delegated the authority to enforce it.

The Honorable Chancellor below has found that Medicaid followed the law, which provides that Methodist shall be reimbursed as a separate category of nursing facility. In fact, no other nursing facility in the State of Mississippi is reimbursed like Methodist. In recognition of the severely acute condition of Methodist's patients, no ceilings are applied to items such as direct care and care-related costs. As the Chancellor held, by imposing a ceiling only on the administrative and operating costs, Medicaid is still reimbursing Methodist as a separate category of nursing facility and is therefore in full compliance with the law.

Methodist cannot overcome its burden to demonstrate how Medicaid's rule violates state law. The agency's rule is within the scope of its authority to promulgate, is supported by substantial evidence and is not arbitrary and capricious. Similarly, Medicaid satisfied all legal due process provisions regarding notice and no constitutional right of the Plaintiff has been violated. Methodist has not offered any evidence to show the rule should be invalidated for failure to mail direct notice or to substantially comply with the APL per Miss. Code Ann. § 25-43-3.111. There is no provision of law upon which to justify the voiding of the amendment. SPA 2006-006 and the per diem rate of $511.01 calculated by Medicaid for Methodist is reasonable and satisfied all notice requirements. This Court has held that the Chancellor's findings are entitled to the same deference as a jury verdict and will not be reversed upon appeal unless manifestly wrong. *R. C. Constr. Co., Inc. v. National Office Systems, Inc.*, 622 So.2d 1253

(Miss. 1993). Certainly, the well-reasoned opinion of the chancellor should be upheld. For the aforesaid reasons, the Order and Final Judgment of the Chancellor should be affirmed.

Respectfully submitted, this the 15th day of January, 2009.

MISSISSIPPI DIVISION OF MEDICAID and
ROBERT L. ROBINSON, in his official capacity as
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CERTIFICATE OF SERVICE

I, Charles P. Quarterman, Special Assistant Attorney General, Counsel for the Mississippi Division of Medicaid, do hereby certify that I have this day served a true and complete copy of the foregoing document, via U.S. mail, postage prepaid, to:

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So certified, this the 15TH day of January, 2009.

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