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THE SUPREME COURT OF NEW HAMPSHIRE

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Department of Health and Human Services  
Case No. 2025-0064  
Citation: Petition of Metro Treatment of N.H., 2026 N.H. 20

PETITION OF METRO TREATMENT OF NEW HAMPSHIRE, L.P.  
(New Hampshire Department of Health and Human Services)

Argued: February 10, 2026  
Opinion Issued: April 29, 2026

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Wadleigh, Starr & Peters, PLLC, of Manchester (Michael J. Tierney and Elizabeth E. Ewing on the brief, and Michael J. Tierney orally), for the respondent.

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Mary A. Triick, senior assistant attorney general, on the memorandum of law and orally), for the State.

DONOVAN, J.

[¶1] This case arises from a payment dispute between the petitioner, Metro Treatment of New Hampshire, L.P. (Metro), a healthcare provider, and

the respondent, AmeriHealth Caritas New Hampshire (AmeriHealth), a Medicaid Managed Care Organization (MCO). Metro seeks review of a decision in which the Administrative Appeals Unit (AAU) of the New Hampshire Department of Health and Human Services (DHHS) determined that it has subject matter jurisdiction over the parties' dispute under RSA 126-A:5, VIII (2021). We affirm the AAU's decision and remand.

## I. Facts

[¶2] The AAU found, or the record supports, the following facts. Metro operates DHHS-licensed outpatient opioid treatment clinics. AmeriHealth is an MCO in which some of Metro's Medicaid-eligible patients are enrolled. RSA 126-A:5, XIX(c)(3) (2021) defines an MCO as "an entity that is authorized by law to provide covered health services on a capitated risk basis and arranges for the provision of medical assistance services and supplies and coordinates the care of Medicaid recipients residing in all areas of the state." The parties' relationship is governed by an ancillary services agreement. The agreement provides that AmeriHealth "is responsible for providing or arranging for the provision of health care services to its Members." AmeriHealth makes payments to Metro on claims for "Covered Services provided to Members."

[¶3] After conducting an audit of Metro's patients' records, AmeriHealth informed Metro that it sought to recoup \$36,722.27 in alleged overpayments on Metro's claims. AmeriHealth sought to recoup these payments as a result of Metro's alleged violation of New Hampshire Administrative Rules, He-A chapter 304, which governs opioid treatment programs. Metro appealed AmeriHealth's determination in accordance with the procedures set forth in the parties' agreement. AmeriHealth accepted Metro's appeal and reduced the overpayment it sought to recoup by \$556.13. AmeriHealth also informed Metro that it had the right to dispute the overpayment determination by "pursu[ing] a State Fair Hearing, in accordance with RSA 126-A:5, VIII."

[¶4] Metro thereafter filed an appeal with the AAU, although it maintained that the AAU lacked jurisdiction over payment disputes between Medicaid MCOs and healthcare providers. The AAU issued a written decision concluding that it has jurisdiction under RSA 126-A:5, VIII "to hear appeals arising from a determination that Medicaid payments were inappropriately made and should be recouped." The AAU thereafter denied Metro's motion for reconsideration and stayed the proceedings pending Metro's filing of a petition for a writ of certiorari in this court. We accepted the petition for a writ of certiorari to determine whether the AAU has jurisdiction in this matter.

## II. Analysis

[¶5] A petition for a writ of certiorari is the only mechanism for review of a decision issued by the AAU. Petition of Mason, 177 N.H. 112, 120 (2024),

2024 N.H. 67, ¶17. Review on certiorari is an extraordinary remedy, usually available only in the absence of a right to appeal, and only at the discretion of the court. *Id.* Our review of an AAU decision on a petition for a writ of certiorari entails an examination of whether the AAU acted illegally with respect to jurisdiction, authority, or observance of the law or has unsustainably exercised its discretion or acted arbitrarily, unreasonably, or capriciously. *Id.* We exercise our power to grant such writs sparingly and only when to do otherwise would result in substantial injustice. *Id.*

[¶6] The question in this case is whether the AAU has jurisdiction over a payment dispute in which an MCO seeks to recoup alleged overpayments of Medicaid funds that were made to a healthcare provider. Metro maintains that RSA 126-A:5, VIII “does not grant jurisdiction to hear a dispute between an MCO and one of its contracted providers, in the absence of any action or decision by DHHS.” AmeriHealth counters that because the administration of the State’s Medicaid program is within DHHS’s jurisdiction, the AAU has jurisdiction over matters concerning the alleged overpayment of Medicaid funds.

[¶7] We review the AAU’s statutory and regulatory interpretation *de novo*. *Id.* at 121, 2024 N.H. 67, ¶20. We use the same principles of construction when interpreting both statutes and regulations. *Id.* When possible, we ascribe the plain and ordinary meaning to the words used. *Id.* We interpret the statute or rule as written and will not consider what the legislature or administrative agency might have said or add language that the legislature or administrative agency did not see fit to include. *Id.* We construe all parts of a statute or regulation together to effectuate their overall purposes and avoid absurd or unjust results. *Id.* Thus, we assess the regulatory or statutory scheme as a whole, and we do not consider words and phrases in isolation, but rather within the context of the statute or regulation. *Id.* When the language of a statute or regulation is plain and unambiguous, we need not look beyond the statute or regulation itself. *Id.*

[¶8] “Administrative agencies are granted only limited and special subject matter jurisdiction.” *Appeal of Campaign for Ratepayers’ Rights*, 162 N.H. 245, 250 (2011). “That jurisdiction is dependent entirely upon the statutes vesting the agency with power and the agency cannot confer jurisdiction upon itself.” *Id.* (quotation and brackets omitted). “Furthermore, a tribunal that exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation.” *Id.* (quotation omitted).

[¶9] The introductory language of RSA 126-A:5, VIII provides:

The commissioner shall establish an appeals process for any individual applying for or receiving services from the department or

its contract service providers, any providers, programs, services, or facilities which are licensed or certified by the department, or with regard to actions related to employees of the department or any other matter within the jurisdiction of the department.

The parties construe paragraph VIII as providing for the AAU's jurisdiction over appeals relating to: (1) "any individual applying for or receiving services from the department or its contract service providers"; (2) "any providers, programs, services, or facilities which are licensed or certified by the department"; (3) "actions related to employees of the department"; and (4) "any other matter within the jurisdiction of the department." Id.

[¶10] We agree that paragraph VIII provides for four categories of appeals. Although the first and second categories could be construed as allowing for only one class of appellants — by "any individual applying for or receiving services" from DHHS, its contract service providers, or its licensees — it is more likely, in our view, that the legislature intended to create two classes: one class of individuals applying for or receiving services, and the other of DHHS licensees. Id.

[¶11] The grammatical structure of paragraph VIII supports this construction. First, paragraph VIII repeats the word "any" before both "individual applying for or receiving services" and "providers, programs, services, or facilities." Id. Thus, the text itself suggests two discrete classes of appellants — individuals and licensees — because the second "any" would be superfluous if the legislature's intent was to create only one class of appellants. Second, paragraph VIII uses the disjunctive "or" between "the department" and "contract service providers" but does not disjoin "contract service providers" from "any providers, programs, services, or facilities which are licensed or certified by the department." Id. Had the legislature intended to create a single class of appellants for both the first and second categories of appeal, it presumably would have listed together the department, its contract service providers, and its licensees. See id.

[¶12] Because we construe all parts of a statute together to effectuate its overall purpose, Petition of Mason, 177 N.H. at 121, 2024 N.H. 67, ¶20, we also look to the subparagraphs of paragraph VIII to discern the legislature's intent. Those provisions support the conclusion that paragraph VIII provides for a category of appeals by individuals applying for or receiving services and a discrete category of appeals by licensees. Subparagraph (a) requires a "jurisdictional review" to determine whether "a denial or change in services, benefits, or a license is automatic due entirely to a change in state or federal law." RSA 126-A:5, VIII(a) (emphasis added). Subparagraph (d) contemplates proposed decisions that may be "adverse to the individual applying for or receiving services, facility or employee who made the appeal." RSA 126-A:5, VIII(d) (emphasis added). These subparagraphs provide additional context to

the introductory language of paragraph VIII and indicate that the legislature intended to create a right of appeal for “any providers, programs, services, or facilities which are licensed or certified by the department.” RSA 126-A:5, VIII.

[¶13] In its written decision, the AAU determined that it had jurisdiction in this matter under the second and fourth categories of paragraph VIII. *Id.* Regarding the second category, the AAU reasoned that “RSA 126-A:5, VIII . . . requires [DHHS] to establish an appeal process” so that “Medicaid providers, such as [the petitioner], have the ability to appeal an adverse determination.” In addition, regarding the fourth category, the AAU concluded that state and federal law “make clear that the administration of the Medicaid program, and assurance that Medicaid funds are appropriately utilized, are matters squarely within the jurisdiction” of DHHS. *See generally* RSA ch. 161 (2023 & Supp. 2025); RSA ch. 167 (2023 & Supp. 2025); 42 C.F.R. § 438 subpt. F (2016). It further noted that “[t]his case involves the alleged violation of portions of Administrative Rule He-A 304 and [an MCO’s] decision to recoup payments based upon such a violation,” which constituted “an action over which [DHHS] retains ultimate jurisdiction.”

[¶14] Paragraph VIII’s second category directs DHHS to establish an appeals process for “any providers, programs, services, or facilities which are licensed or certified by the department.” There is no dispute in this case that Metro’s clinics in New Hampshire are providers of “addiction treatment services” that are licensed by DHHS. Therefore, because Metro is a provider “which [is] licensed or certified by” DHHS, the AAU has jurisdiction to decide the petitioner’s appeal. RSA 126-A:5, VIII.

[¶15] Nevertheless, Metro argues that “the AAU’s rules limit appeals to those involving department actions or decisions.” (Capitalization and italics omitted.) Therefore, it asserts, “the AAU’s jurisdictional grant [is] limited to reviewing departmental decisions, not third-party, MCO decisions” such as AmeriHealth’s decision here. Metro also claims that the administrative rules provide that only “members” can appeal decisions by MCOs, and providers cannot. AmeriHealth acknowledges that this case turns on the meaning of DHHS’s rules but counters that because this dispute “relates to a departmental action” — specifically, “the investigation and overpayment demand for the return of the public Medicaid funds” — the AAU has jurisdiction. We agree.

[¶16] As a threshold matter, it is well established that “[r]ules adopted by State boards and agencies may not add to, detract from, or in any way modify statutory law.” *Appeal of Campaign for Ratepayers’ Rights*, 162 N.H. at 252. The plain language of RSA 126-A:5, VIII does not restrict DHHS’s jurisdiction to hear appeals filed by “providers . . . licensed or certified by the department” only when decisions or actions of the department are involved. Adopting Metro’s reasoning that the administrative rules further limit DHHS’s jurisdiction would therefore “modify statutory law.” *Id.*

[¶17] Metro is correct that many of DHHS’s administrative rules concern appeals from “decisions made by the department” or from a “department decision or action.” For example, the rules define “[a]ppeal” as “a request by a person adversely affected by a department decision or action to review that decision or action in accordance with the provisions of RSA 126-A:5, VIII.” N.H. Admin. R., He-C 201.02(b). The rules also provide that “[w]hen a written notice of decision or action is issued by the department, the department shall notify any person aggrieved by the decision or action that the person is entitled to request a hearing.” N.H. Admin. R., He-C 203.02. Another rule requires that “[t]he department shall prove its case by a preponderance of the evidence” in a hearing that addresses “[a]ny action taken by the department to recoup benefits.” N.H. Admin. R., He-C 203.14(f)(3).

[¶18] Moreover, the rules also provide that “[r]eferences to the department in He-C 200 shall include the department’s contract service providers when they are participating in appeal proceedings affecting any individual applying for or receiving services.” N.H. Admin. R., He-C 201.13(a). We are not persuaded by Metro’s argument that this provision applies only when the appealing party is an “individual applying for or receiving services.” Id. Rather, we agree with the State that the category of proceedings “affecting any individual applying for or receiving services,” id., extends beyond proceedings “brought directly by such individuals.”

[¶19] This appeal concerns whether AmeriHealth, which contracts with DHHS to provide Medicaid-managed-care services, is entitled to recoup payments from Metro based upon Metro’s alleged failure to comply with DHHS’s administrative rules relating to patient examinations, drug screening, counseling, and treatment plans. The alleged overpayments arise directly from Metro’s provision of services to individuals. We therefore conclude that the AAU has jurisdiction under RSA 126-A:5, VIII. Given our conclusion, we need not address Metro’s argument that the AAU erroneously interpreted DHHS’s contract with AmeriHealth as “creat[ing] jurisdiction beyond the AAU’s enabling legislation.”

### III. Conclusion

[¶20] In sum, because DHHS has jurisdiction over appeals filed by “providers . . . which are licensed or certified by the department,” and because Metro is a provider that is licensed by DHHS, we conclude that the AAU has jurisdiction in this matter. RSA 126-A:5, VIII. We therefore need not determine whether this case falls within the other categories contemplated by RSA 126-A:5, VIII. Because the AAU properly determined that it has jurisdiction in this matter, we affirm its decision and remand for further

proceedings. We note in closing that because the issue is not before us, we express no opinion as to whether the AAU's jurisdiction is exclusive.

Affirmed and remanded.

MACDONALD, C.J., and COUNTWAY and GOULD, JJ., concurred.