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### **Saint Alphonsus Regional Medical Center v. Ada County Appellant's Reply Brief Dckt. 47867**

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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ST. ALPHONSUS REGIONAL MEDICAL CENTER, INC.,	)	
	)	
	)	<b>Supreme Court Docket No. 47867</b>
Petitioner/Respondent,	)	
	)	<b>Ada County Case No. CV01-19-09742</b>
vs.	)	
	)	
ADA COUNTY and THE BOARD OF ADA COUNTY COMMISSIONERS,	)	
	)	
Respondent/Appellant.	)	
	)	
In re: C.A.G. (Board Case 1804-071)	)	
	)	

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**REPLY BRIEF**

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Appeal from the District Court of the Fourth Judicial District  
Of the State of Idaho, in and for the County of Ada

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Hon. Peter G. Barton, District Judge, Presiding

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## ARGUMENT

Idaho Code § 31-3502 (18)A defines “necessary medical services.” Subsections a, b, and c restrict necessary medical services to recognized accepted treatment, appropriate treatment, and treatment consistent with the standard of care in the practice of medicine. Subsection d rejects as necessary medical services those services provided for convenience, and subsection e requires a cost benefit analysis of the services provided compared to the available services. This last subsection of the statute is the focus of the case before the Court.

### **I. The district court’s interpretation of the unambiguous statute was in error.**

The District Court overruled the Board’s denial of the services provided by Saint Alphonsus Regional Medical Center (St.Al’s) to the patient after October 10, 2017, holding that the services were necessary services. The District Court concluded that the services provided were the most-cost effective services under Idaho Code § 31-3502 (18)A(e).

The relevant statute states:

“Necessary medical services” means health services and supplies that:

(e) Are the most cost-effective service or sequence of services or supplies, and at least as likely to produce equivalent therapeutic or diagnostic results for the person’s illness, injury or disease.

*Id.* Determining the meaning of a statute is a matter of law. *Saint Alphonsus Reg’l Med. Ctr. v. Bd. of Comm’rs of Ada Cnty.*, 146 Idaho 51, 53, 190 P.3d 870, 872 (2008) quoting Idaho Code § 67-5279(3). The construction and application of a legislative act are pure questions of law as to which the Supreme Court exercises free review. *Jayo Dev., Inc. v. Ada Cnty. Bd. of Equalization*, 158 Idaho 148, 150, 345 P.3d 207, 210 (2015), citing *Ada Cnty. Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 205-06, 108 P.3d 349, 352-53 (2005). Statutory

construction begins with the literal language of the statute, giving words their plain, usual, and ordinary meaning. *State v. Burke*, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020).

The district court first considered the verb “are” and found, “[t]he present tense suggests a connection to a moment in time, the time of treatment, not to some future, past, or hypothetical time.... That a service may have been available or will be available is not suggested by the text of the statute. The service must be currently available.” A.R., p 12. The district court then found that “[u]navailable treatments have no effectiveness” when it examined the meaning of “the most cost-effective services.” A.R., p. 13. The district court’s analysis is flawed.

It is undisputed that a legislative body’s use of a verb tense holds significance in construing statutes. *Crown West Realty, LLC v. Pollution Control Hearings Board*, 7 Wash. App. 2d 710, 740, 435 P.3d 288, 318 (2019), citing *United States v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351, 117 L.2d.2d 593 (1992). It is correct that the use of the verb “to be” in the present tense, “are,” does not look to unidentified, possible future services. The use of the present tense demands that the services presently exist, which is evidenced by the inquiries St. Al’s reportedly made on the patient’s behalf. The record is replete with references to rehabilitative services that were services other than the acute, in-patient services St. Al’s was providing when the patient’s doctors determined the patient was ready to be discharged. Based on that evidence, the County’s Medical Advisor concluded that the services provided by St. Al’s after October 10 were not “necessary medical services” under the statute. It was error for the district court to find otherwise.

An examination of the “most cost-effective service” invites a comparison of the care provided by St. Al’s and the care that could be provided by a rehabilitation facility. It also invites a comparison of the cost of such care. The analysis of “most cost-effective service” is an

objective finding, not a subjective finding particular to any individual patient. Stated differently, the patient's indigency is not a factor in determining whether the services provided by St. Al's were the "most cost-effective service[s]" and therefore "necessary medical services" under the statute.

"If a statute is not ambiguous, this Court does not construe it but simply follows the law as written." *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) quoting *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003). For the district court to hold that the "most cost-effective services" are the services provided by St. Al's because sub-acute rehabilitation services were unavailable to this patient who had no funding is not in keeping with the words in context and not in accord with approved usage.

**II. The holding of *St. Joseph Regional Medical Center* does not support the district court's holding.**

The district court correctly cited the holding of *St. Joseph Reg'l Med. Ctr.*, 134 Idaho 486, 5 P.3d 466 (2000) that "only resources actually available should be considered for purposes of eligibility for medical indigency benefits." Following that holding, the district court concluded: "Only services available to a patient are considered for purposes of what services are most cost effective." Opinion at p.14. However, the district court's reliance thereon is misplaced.

The statute at issue in *Saint Joseph* was the definition of "medical indigency" as it appeared in Idaho Code § 31-3502<sup>1</sup>. "'Medically indigent' means any person who is in need of necessary medical services and who, if an adult... does not have income and other resources available to him from whatever source to pay for necessary medical services." (Emphasis added).

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<sup>1</sup> The section number has been renumbered and is now Section 17 of Idaho Code § 31-3502

The question of availability is therefore common to both cases: whether the patient is medically indigent (*St. Joseph*) and whether the services rendered are necessary services (the instant case). The availability of resources, for purposes of determining indigency, depends upon facts peculiar to an individual patient, that is, his income and assets over a statutory time period. On the other hand, the availability of services, for purposes of determining the most cost-effective services (necessary services) is not related to or linked to any individual patient's financial situation. The evidence in the former scenario would consist of facts from the patient himself about his peculiar financial situation; the evidence in the latter would be based on facts from experts, the treating doctors and the County's Medical Advisor, all of whom acknowledged the existence of a lower level of care. *St. Joseph* cannot be read to authorize the consideration of a patient's financial situation in the determination of necessary services.

#### CONCLUSION

The patient could have been treated at a lower level of care, as the Medical Advisor found. Thus, the Board held that the acute services provided by St. Al's after the patient was deemed ready for discharge are not necessary medical services and not compensable. The district court's reversal of the Board's decision injected the patient's inability to pay – a consideration that is outside of the statutory framework.

The County respectfully requests that the Court hold the services to be “not necessary services” and reverse the district court's decision.

**DATED** this 9<sup>th</sup> day of October, 2020.

**JAN M. BENNETTS**  
Ada County Prosecuting Attorney

By:   
\_\_\_\_\_  
Claire S. Tardiff  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 9<sup>th</sup> day of October, 2020, I served a true and correct copy of the foregoing REPLY BRIEF to the following person(s) by the following method:

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