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OPINION	:	No. 82-401
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of	:	<u>JULY 15, 1982</u>
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THE CALIFORNIA HEALTH FACILITIES COMMISSION requests an opinion on the following question:

Does the Appeals Committee of the California Health Facilities Commission have statutory authority to waive or reduce the civil penalty prescribed by Health and Safety Code section 442.3?

CONCLUSION

The Appeals Committee of the California Health Facilities Commission does not have statutory authority to waive or reduce the civil penalty prescribed by Health and Safety Code section 442.3.

ANALYSIS

Under the California Health Facilities Disclosure Act (Health & Saf. Code, §§ 440-442.12; hereafter "Act"),¹ the Legislature has established an elaborate scheme for the reporting of health care costs so as to encourage economy and efficiency in the providing of health care services throughout the state. The express purposes of the legislation are found in section 441:

"The Legislature hereby finds and declares:

"(a) It is the policy of this state, as declared and established in this part, to require all health facilities which operate in this state to file for public disclosure with the California Health Facilities Commission which is established by this part such uniform reports of health facility cost experience in the provision of health care services as are provided for under this part in accord with the systems of accounting approved under this part, for all of the following purposes:

"(1) Encouraging economy and efficiency in their provision of such services in this state.

"(2) Enabling public agencies of this state which purchase health care services under, or which have administrative responsibility for, publicly financed health care plans or programs to make informed decisions in such purchasing or administration.

"(3) Encouraging public and private third party payors for health facility services to take the information provided under this part into account in establishing reimbursement rates to assure health facilities of a fair and reasonable payment for such services rendered.

"(b) It is the policy of this state that in order to achieve uniform and equitable statewide implementation of the policies of this part and to allow for comparisons of the performance of particular health facilities subject to its provisions, it is necessary to require that every person, political subdivision of the state, or any governmental agency within the state, that establishes, conducts, operates, manages, maintains, or controls in this state any health facility complies with the provisions of this part.

¹ All section references hereafter are to the Health and Safety Code unless otherwise indicated

"(c) It is the policy of this state to have health facilities make available to the public the highest capabilities of health science in an effective, efficient manner. It is the policy of this state to provide reasonable and appropriate safeguards to insure that the total cost of health facility services is reasonably related to the total services offered by health facilities, that the aggregate rates of health facilities are reasonably related to the aggregate costs of health facilities, and that the rates charged by health facilities are uniform for all purchasers of health facility services, because the state has an obligation to assure access and availability of high quality, efficiently provided, economical health facility services for all persons in this state and because the expenditure of public funds of this state for providing health facility services to many persons has a large financial impact on the public funds of this state. Therefore, it is the declared policy of this state that health facilities are affected with the public interest, involved in the distribution of essential services, and obliged to furnish services to the general public at fair, equal, and nondiscriminatory rates."

The Act is administered by the California Health Facilities Commission of the State of California (§ 441.1, subd. (a); hereafter "Commission"), an independent state commission comprised of 15 members appointed by the Governor (§§ 441.3, 441.5). The Commission has appointed and delegated various duties to an executive director. (See § 441.8.)

The primary requirements of the Act are found in section 441.18:

"Every organization which operates, conducts, or maintains a health facility and the officers thereof, shall make and file with the commission, within four months after the close of the organization's calendar or fiscal year for all annual accounting periods to which the systems of accounting and uniform reporting approved under Section 441.17 are made applicable thereby, all of the following reports on forms specified by the commission which shall be in accord with such systems of accounting and uniform reporting"

Additionally, section 441.185 requires that "summary financial and utilization data shall be reported by each hospital within 45 days of the end of every calendar quarter."

The question presented for analysis concerns the penalty imposed under section 442.3 for the delinquent filing of the required disclosure reports. The statute states in part:

"Any health facility which does not file any report required by Sections 441.18 and 441.185 with the commission as provided therein is liable for a civil penalty of one hundred dollars (\$100) a day to be assessed and recovered in a civil action brought in the name of the people of the State of California by the commission for each day the filing of such report with the commission is delayed, unless an extension is granted in accord with the guidelines and procedures established by the commission pursuant to Section 442.4. Any money which is received by the commission pursuant to this section shall be paid into the commission's operating fund which is established by Section 442.10."

We are asked whether the \$100-a-day penalty of section 442.3 may be waived or reduced by an appeals committee of the Commission. We conclude that it may not.

Section 442.4 states in part:

"The Commission shall, by regulation, establish guidelines and procedures to enable all health facilities subject to the provisions of this part to request reasonable extensions of time in which to file any or all of the reports required by Sections 441.18 and 441.185. The regulations shall provide for the grant of such extensions by the executive director in cases where the health facility requesting them can show good and sufficient cause for the extension.

"Any health facility denied an extension under this section may petition the commission for a hearing on appeal to review the action of the executive director in refusing its request for the extension in accord with the provisions of Section 442.5; but the filing of a petition pursuant to that section shall not, unless the appeals committee reverses the executive director, limit the continued accrual of the charges levied under this section against a health facility which fails to meet the deadline for filing reports established by Sections 441.18 and 441.185."

Section 442.5 sets forth the appeals procedure as follows:

"A petition requesting a hearing to review any action taken by the commission or the executive director pursuant to this part shall be filed with the commission within 15 days of the date on which the health facility or person aggrieved was notified of the action with respect to which the petitioner bases his appeal. A hearing on the petition, at which the petitioner

may be represented by counsel, shall be held within 45 days of the date on which the petition for appeal was filed, before an appeals committee composed of three members of the commission chosen by the chairman for such purpose. The decision of a majority of the committee, which shall be rendered in the form of a written memorandum of decision filed in the commission's office, shall be final, subject to the right of review by a court of competent jurisdiction in accordance with the provisions of Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure."

In implementing the provisions of section 442.4 regarding requests for extensions of time, the Commission has adopted the following regulation:

"Any health facility may file with the Director requests for reasonable extensions of time to file any or all of the required reports. Health facilities are encouraged to file extension requests as soon as it is apparent that the required reports will not be completed for submission on or before their due date. The requests for extension shall be postmarked on or before the required report due date and supported by justification which may provide good and sufficient cause for the approval of the extension requests. To provide good and sufficient cause, the letter of justification shall include a factual statement indicating (1) the actions taken by the health facility to produce the disclosure reports by the required deadline, (2) those factors which prevent completion of the reports by the deadline, and (3) those actions and the time (days) needed to accommodate those factors.

"The Director shall respond within 10 days of receipt of the request by either granting what he determines to be a reasonable extension or disapproving the request. If disapproved, the Director shall set forth the basis for a denial in a notice to the health facility sent by certified mail. The Director may seek additional information from the requesting health facility. The Director may grant extensions but not to exceed an accumulated total, for all extensions and corrections, of 90 days for annual reports required by Section 7040 and 30 days for quarterly reports required by Health and Safety Code Section 441.185. A health facility which wishes to contest any decision of the Director shall have the right to appeal in accordance with the provisions of Section 7052.

"The civil penalty of one hundred dollars (\$100) a day, provided for in Section 7045, shall commence the day after the report due date notwithstanding the filing of a petition to review the Executive Director's

denial of a request for an extension of time in which to file required reports or the filing of a request for an extension of time in which to file required reports." (Cal. Admin. Code, tit. 4, § 7051.)²

In interpreting the above legislative enactments, we are mindful of several well established principles of statutory construction. The primary rule of construction is to ""ascertain the intent of the Legislature so as to effectuate the purpose of the law."" (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698.) In ascertaining legislative intent, we turn first to the language used, giving the words their usual and ordinary meanings. (*People v. Bellici* (1979) 24 Cal.3d 879, 884.) Statutory provisions must be construed in context and "harmonized, both internally and with each other, to the extent possible." (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844.) Also, "where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195.)

Here, we believe these various statutory provisions concerning the late filing penalty may be construed in a reasonable manner and consistent with the legislative purpose.

The reports in question are of critical importance to the effectiveness of the legislative scheme as a whole. Timely reporting allows for dissemination of the information in a useful, systematic, and comprehensive manner. (See §§ 442-442.2.) The penalty provision is to help assure an effective statutory program.

The California Supreme Court has recently reaffirmed that the "state may impose reasonable penalties as a means of securing obedience to statutes validly enacted under the police power" without violating due process principles. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 398.) "There is no inhibition upon the state to impose such penalties for disregard of its police power as will insure prompt obedience to the requirements of such regulations." (*Shalz v. Union School Dist.* (1943) 58 Cal.2d 599, 606.) "Imposition of civil penalties has, increasingly in modern times, become a means by which legislatures implement statutory policy." (*Hale v. Morgan, supra*, 22 Cal.3d 388, 398; see *People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 42-44; *People v. Western Air Lines* (1954) 42 Cal.2d 621, 627-628; *People v. Superior Court (Olson)* (1979) 96 Cal.3d 181, 195-196; *State of California v. City and County of San Francisco* (1979) 94 Cal.3d 522, 531; *Developments in the Law--Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions* (1979) 92 Harv.L.Rev. 1227, 1369.)

² Although the civil penalty "shall commence," it becomes inapplicable while a duly granted extension of time is in effect. (§§ 442.3, 442.4; Cal. Admin. Code, tit. 4, §§ 7045, 7052.)

We view section 442.3 in mandatory terms (see 58 Ops.Cal.Atty.Gen. 203, 210 (1975)), with one specified exception as to its operative effect. The Legislature has declared that a health facility failing to file a required report "is liable for a civil penalty of one hundred dollars (\$100) a day to be assessed and recovered in a civil action brought in the name of the people of the State of California by the commission for each day the filing of such report with the commission is delayed." Assessment of the penalty is in unmistakable terms.

The Legislature, however, has expressly provided an exception to the otherwise mandatory penalty requirement of section 442.3. The statute's penalty imposition is inapplicable where "an extension is granted in accord with the guidelines and procedures established by the commission pursuant to Section 442.2." The latter statute directs the Commission to establish regulations under which "reasonable extensions of time" may be requested of and granted "by the executive director in cases where the health facility requesting them can show good and sufficient cause for the extension."

If a health facility files for an extension of time "postmarked on or before the required report due date and supported by justification" (Cal. Admin. Code, tit. 4, § 7051) and the executive director denies the request, then his administrative decision may be appealed by the health facility. "Any health facility denied an extension . . . may petition the commission for a hearing on appeal to review the action of the executive director in refusing its request for an extension" (§ 492.2.)

Merely filing the appeal, however, does not stop the imposition of the \$100 daily penalty. The appeals committee must reverse the decision of the executive director denying the extension request in order to prevent the otherwise mandatory imposition of the penalty. The Legislature has made this abundantly clear by stating that "the filing of a petition pursuant to [section 442.5] shall not, unless the appeals committee reverses the executive director limit the continued accrual of the charges levied" (§ 442.2.)

Consequently, without a properly filed request for an extension of time which is granted by the executive director or the appeals committee, the \$100 daily penalty must be "assessed and recovered in a civil action." (442.4.)³

Nevertheless, the Commission has adopted the contrary conclusion in the form of a regulation:

³ Under certain conditions, the Commission may be discharged of its responsibility to collect a penalty although it remains due and owing to the state. (See Gov. Code, §§ 13940-13943.2; 64 Ops.Cal.Atty.Gen. 750, 751-752 (1981); 58 Ops.Cal.Atty.Gen. 203, 210 (1975).)

"(a) Any health facility denied a modification to the accounting and/or reporting systems, and extension of time to file any or all of the required reports, or any other action taken by the Director pursuant to the Health Facilities Disclosure Act and these regulations may petition the Commission for a hearing on appeal to review the action of the Director. *Civil penalties assessed under the Health and Safety Code, Section 442.3, are actions of the Executive Director appealable pursuant to this section. The Appeals Committee may reduce or waive the penalty assessment upon the showing of good and sufficient cause.*" (Cal. Admin. Code, tit. 4, § 7052, subd. (a); italics added.)

It is of course true that an administrative regulation "implementing" a statutory provision is not to be overturned unless "arbitrary, capricious or had no reasonable or rational basis" and a regulation "interpreting" a statutory provision must be accorded "great weight unless it is clearly erroneous or unauthorized." (*International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 931; see also *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, 92-93; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 140.) On the other hand, "no regulation is valid if its issuance exceeds the scope of the enabling statute." (*Wildlife Alive v. Chickering, supra*, 18 Cal.3d 190, 205; see also *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419-420; *Cooper v. Swoap* (1974) 11 Cal.3d 856, 864.) "Administrative regulations that violate acts of the Legislature are void" (*Morris v. Williams* (1967) 67 Cal.2d 733, 737.)

Here, the Legislature has authorized the Commission to "adopt, promulgate, repeal, and amend rules and regulations consistent with law to carry out the provisions of this part." (§ 441.9.)

We view the Commission's regulation regarding the assessment of civil penalties as being inconsistent with section 442.3 and the statutory scheme as a whole. The \$100 daily penalty has been set by the Legislature and is to be collected in a civil suit. The appeals committee may not reduce or waive the penalty assessment but only reverse the decision of the executive director in denying an extension for time request, with reversal causing the \$100 daily penalty to be inapplicable. Hence, the Commission's regulation allowing the appeals committee to "reduce or waive the penalty assessment upon the showing of good and sufficient cause" is unauthorized.

We conclude that the appeals committee of the Commission does not have statutory authority to waive or reduce the civil penalty prescribed by section 442.3.
