STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

IN THE MATTER OF

ALASKA CARE ASSISTED LIVING, LLC.

Case No. H 19-02

Proposed Decision

Introduction

The dispute concerns the governing classification of Alaska Care Assisted Living, LLC (Alaska Care). Alaska Care was assigned Code 8824, Retirement Living Centers — Health Care Employees as its governing classification. Alaska Care believes that is should be assigned Code 8829, Nursing or Convalescent Home — All Employees.

The classifications are similar and Alaska Care believes that Code 8829 more closely aligns with its business operations and is therefore the correct code.

Discussion

I. ISSUE PRESENTED

Did the Alaska Grievance Committee properly classify Alaska Care under rule 1.A taking into consideration the differences between Code 8824 and Code 8829?
II. BACKGROUND

Alaska's NCCI Basic Manual Rule 1 A. Classification System reads in the pertinent section:

1. The purpose of the classification system is to group employers with similar operations into classifications so that:
   • The assigned classification reflects the exposures common to those employers
   • The rate charged reflects the exposure to loss common to those employers

2. Subject to certain exceptions, it is the business of the employer within a state that is classified, not separate employments, occupations or operations within the business.

Code 8824 provides that:

SCOPE Retirement living centers (RLCs) are housing establishments that cater to the elderly population and offer a continuum of health care services. These facilities may also be referred to as Adult Congregate Living Facilities (ACLFs). RLCs (or ACLFs) may vary from sprawling one-story to multi-story buildings or to cottages surrounding a central facility. The health care services offered typically include congregate, personal and nursing or medical care services. Congregate services include, but are not limited to, meal service, linen service, housekeeping and transportation. Personal care services, sometimes referred to as assisted living care, include assistance with daily living activities such as, but not limited to, ambulation, bathing and dressing. Nursing or medical care includes physical therapy as well as the administration of drugs, preparations or medications.

Additionally, the descriptions of Code 8824 and Code 8829 provide that:
Retirement living centers (RLCs) are distinguished from Code 8829 risks by the fact that RLCs are similar to typical rental or condominium-type housing complexes with the exception that medical and other personal assistance is available for those in residence. Risks classified to Code 8829 provide living conditions typically found in a dormitory or hospital-like environment. Stated differently, the RLC provides a “home-type” environment as opposed to the “institutional-type” environment of the risk classified to Code 8829. As a group, RLC residents will generally require less care or personal services than those occupants of convalescent or nursing homes classified to Code 8829. RLCs are further distinguished from convalescent homes by the fact that RLCs are not expected to provide twenty-four-hour nursing care to individual building residents as is typically found in convalescent or nursing home operations.

Code 8829 provides that:

Insureds classified to Code 8829 provide various levels of health care depending on the patients’ needs. The extent of professional or medical services provided by these health care providers includes complete medical care for postoperative patients and patients requiring extensive nursing care due to various illnesses such as terminal cancer, kidney disorders and heart disease as well as facilities where the patients require only minimal medical or professional care.

These health care facilities usually do not employ resident physicians, although they usually have arrangements wherein physicians are on call for emergencies. In some states, the licensing authority requires registered nurses to be on duty. Generally, these homes will primarily employ therapists, practical nurses, nurses’ aides and orderlies to
afford the necessary medical care to their patients. The homes also may employ cooks, waitresses, maids, maintenance personnel, social workers and recreational directors. Homes for the aged are assigned to the convalescent or nursing homes classification because of the operational similarity to convalescent or nursing homes. These homes function primarily to care for people who, due to illness, physical infirmity or advanced age, are unable to care for themselves and therefore require health care.

III. FACTS AND PROCEEDINGS

A. Initial Facts and Proceedings

Alaska Care Assisted Living, LLC received a quote from Alaska National Insurance for a worker’s compensation policy. The policy was classified under code 8824 as they believed a different code, 8842, was incorrect. At no time was Alaska Care informed of code 8829 as a possibility. Alaska Care requested a hearing to change the assigned classification as well as to change the classification for the policy period of January 7, 2016 to January 6, 2017.

The hearing was held January 17, 2019. The committee reviewed the documents and testimony presented during the hearing. The committee found that the facilities operated by Alaska Care provide 24-hour care but that licensed medical professionals are not on the staff. They also found that the care attendants assist the residents in daily living activities and that the facilities are a “home-type” environment rather than an institutional environment. Based on their findings, the committee held that code 8824 was properly assigned to Alaska Care. Alaska Care appealed the decision.

B. Hearing Officer Proceedings
On March 4, 2019 the Division of Insurance received a letter from Alaska Care notifying the Director of Insurance that they would be appealing the decision of the committee.

On May 8, 2019, a prehearing teleconference was held. The parties agreed to submit briefs regarding their respective positions.

On June 13, 2019, Alaska Care’s brief was received. In their brief, Alaska Care discusses the five reasons the Alaska Grievance Council gave for their ruling and explains why the decision should be reversed based on those reasons.

The first reason discussed is that the Basic Rule 1-A states that its purpose is to group similar employers in the same category that reflects the common exposure to the employers. Alaska Care states that this is a fair reading of the rule. Alaska Care notes that under the rule the size of the facilities may vary. Alaska Care then describes the differences between the level of care for Code 8824 and 8829 and notes that its residents must qualify for a nursing home level of care. Lastly for this point, Alaska Care notes that the homes under 8829 are primarily for people who are unable to care for themselves and require 24 hours of care, similar to what Alaska Care provides.

The second reason discussed is that the Alaska Grievance Committee found that the facilities operated by the policy holder do provide 24-hour care but there are not licensed medical professionals on staff. Alaska Care disputes this stating that they follow all legal requirements, both state and federal. Alaska Care notes that one of the differences between code 8824 and 8829 is that employers under 8824 are not expected to provide 24-hour nursing care to residents. Alaska Care states that it is required by state and federal law to provide 24-hour nursing level of care to its residents and is required to have a nurse on call.
The third reason discussed is that the care attendants assist with daily living activities. Alaska Care notes that in code 8829 it states that convalescent homes provide different levels of care depending on the patient needs.

The fourth reason discussed is that some of Alaska Care’s clients are able to participate in activities away from the facility. Alaska Care states that the facilities that the clients visit are staffed with medical professionals and typically offer nursing level of care for their clients while they visit. Alaska Care feels that this should not affect their classification.

The final reason discussed is that Alaska Care was found to have a home-type environment rather than an institutional environment. Alaska Care refutes this. First, Alaska Care notes that in the definition that the facilities can vary greatly under the definitions. Second, Alaska Care notes that facilities under 8824 are distinguished from code 8829 because under code 8824 facilities are similar to a rental or condo type of complex while under 8829 they are dormitory or hospital like. Alaska Care states that it operates out of a five-bedroom house that was converted to a convalescent home. They state that the residents have their own or a shared bedroom and that the bathrooms, living room, and kitchen are common areas. Alaska Care states that most of their residents are not ambulatory and reside in a hospital bed in their room. Because of these reasons, Alaska Care feels that it is a dormitory-like environment.

Alaska Care argues that because of these reasons the previous ruling was incorrect and should be reversed based on their arguments.

On June 24, 2019, Alaska National Insurance’s brief was received. Alaska National gives five arguments as to why the ruling of the Alaska Grievance Committee should be upheld.
First, Alaska National notes that the Basic Manual Rule 1-D’s purpose is to provide one basic classification that describes the business of the employer. They acknowledge that Alaska National classified Alaska Care as an RLC. Alaska National notes that in the description of code 8824 that RLCs are described as housing establishments that offer health services for the elderly. They note that Alaska Care is operating out of a five-bedroom home. Alaska National then acknowledges the differences between facilities under code 8824 and 8829 outlined in the Basic Manual regarding the different risks for facilities in a “home like” environment as compared to a “hospital like” environment. Then, Alaska National discusses the differences between the level of care outlined in the Basic Manual, regarding the need for licensed medical staff for employers classified under code 8829, and notes that Alaska Care does not have licensed medical professionals on staff.

Alaska National states that they don’t believe that Alaska Care provides the level of care that requires a medical professional on staff. Alaska National notes that code 8824 includes personal care employees that assist with bathing, dressing, and administration of medication. Alaska National notes that some of Alaska Care’s clients are ambulatory and leave the facility for activities, which they feel shows that they do not need as intense monitoring as would be required of a convalescent home under code 8829. Lastly, they note that the Basic Manual describes RLCs as similar to typical housing complexes as opposed to a “hospital like” environment.

Alaska National argues that because of these reasons the prior ruling by the Alaska Grievance Committee was correct and should be upheld.
Conclusion

I. ALASKA CARE IS PROPERLY CLASSIFIED UNDER CODE 8824 AS AN RLC

A. THE LEVEL OF CARE PROVIDED BY ALASKA CARE DOES NOT REACH THE STANDARDS DESCRIBED IN CODE 8829

While Alaska Care provides a high level of care to its residents and meets all legal requirements, it does not reach the standard level of care described in code 8829. In both code 8824 and 8829, the manual states that they are differentiated because RLCs under code 8824 are not expected to provide 24-hour nursing care to individual building residents, while under 8829 the residents are expected to require extensive nursing care. Furthermore, the description of code 8829 states that in some states “the licensing authority requires registered nurses to be on duty.” Code 8829 also states that physicians are usually on call for emergencies. This is the level of medical care expected of a convalescent home.

While Alaska Care provides 24-hour care to its residents, it is not 24-hour nursing care. Alaska Care states that it is a “nursing level” of care but that is a vast difference. They do not have a registered nurse on staff, but rather on call. They do not have a physician on call, which most convalescent homes have. Alaska Care’s 24-hour services are more in line with the activities described in code 8824, “assisted living care” including “ambulation, bathing and dressing.” Because the level of care provided by Alaska Care does not meet the higher standards required for code 8829, it is more properly categorized as an RLC under code 8824.

B. THE ENVIRONMENT PROVIDED BY ALASKA CARE IS A HOME TYPE ENVIRONMENT

Alaska Care argues that it provides a “dormitory like” environment as opposed to the “home type” environment of an RLC. This argument is unpersuasive. The actual wording in the
manual is that under code 8829 the facilities are a “dormitory or hospital-like environment.”
Alaska Care states that its facility is a converted five-bedroom home. While the residents are
typically non-ambulatory and tend to reside in a hospital bed, the facilities still don’t reach the
level of a “hospital like” environment. There are no licensed nurses on the staff, and no
physicians on call. It is similar to a “dormitory like” environment, but when combined with the
other factors of the medical care provided this does not necessitate the classification change.

II. HOLDING

I find

- Alaska Care’s level of service meets the required standard for an RLC under code 8824
  but does not meet the higher standard required under code 8829.

- While the environment provided by the facilities are somewhat similar to a dormitory, it
  is still similar to a “home type” environment rather than a “hospital like” environment.

- Because the level of care does not reach the standards required under 8829 and the
  facilities are “home like,” Alaska Care was properly classified under code 8824.

Therefore, I decline to grant the relief sought by Alaska Care and uphold the Committee's
decision in this case to the extent consistent herein.

Dated August 12, 2019.

Anna Latham
Hearing Officer
Adoption

The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 19-02 as the final administrative determination in this matter. Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this 12th day of August, 2019.

Lori Wing-Heier
Director

Non-Adoption Options

1. The undersigned director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 19-02 and instead orders that the case be returned to the hearing officer to

___ take additional evidence about ________________________________

___ make additional findings about ________________________________

___ conduct the following specific proceedings: ______________________

DATED this ____ day of ____________, 2019.

Lori Wing-Heier
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 19-02 as follows: ________________________________

Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.
DATED this ___ day of ____________, 2019.

Lori Wing-Heier
Director

I hereby certify that on the 13 day of August, 2019, I sent copies of this document to the following persons:

Victoria N. Dorsey, Esq.
NCCI Holdings, Inc.
901 Peninsula Corporate Circle
Boca Raton, FL 33487-1362
Vickie_Dorsey@ncci.com

Carmen Eder
Alaska National Insurance
7001 Jewel Lake Road
Anchorage, Alaska, 99502
ceder@alaskanational.com

Kyle Belk
Alaska Care Assisted Living LLC.
1298 N. Commerce Dr. C207
Saratoga Springs, UT, 84045
alaskacareassistedliving@gmail.com

Dan Wilkerson, AAG
Alaska Department of Law
Daniel.Wilkerson@alaska.gov

Jackson Willard, Regulations Specialist II
NOTICE OF FINAL ORDER
AND APPEAL RIGHTS
Case H19-02

The order signed by the Director of the Division of Insurance is the final order in this action.

Pursuant to AS 21.39.170(c), and the Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days.

AS 21.39.170(c) provides:

An order or decision of the director is subject to review by appeal to the superior court at the instance of a party in interest. The court shall determine whether the filing of the appeal will operate as a stay of an order or decision of the director. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the director in whole or in part.

Alaska Appellate Rule 602(a)(2) provides:

An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under, agency regulations, whichever is earlier. The 30 day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal.

For other applicable rules of court, see Alaska Appellate Rules 601-612.