

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
P.O. BOX 110805  
JUNEAU, ALASKA 99811-0805  
PHONE: (907) 465-2515 • FAX: (907) 465-3422  
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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?

1 II. BACKGROUND

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

4 1. The purpose of the classification system is to group employers with similar  
5 operations into classifications so that:

- 6 • The assigned classification reflects the exposures common to those employers
- 7 • The rate charged reflects the exposure to loss common to those employers

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

10 Code 8824 provides that:

11 SCOPE Retirement living centers (RLCs) are housing establishments that cater to the  
12 elderly population and offer a continuum of health care services. These facilities may  
13 also be referred to as Adult Congregate Living Facilities (ACLFs). RLCs (or ACLFs)  
14 may vary from sprawling one-story to multi-story buildings or to cottages surrounding a  
15 central facility. The health care services offered typically include congregate, personal  
16 and nursing or medical care services. Congregate services include, but are not limited  
17 to, meal service, linen service, housekeeping and transportation. Personal care services,  
18 sometimes referred to as assisted living care, include assistance with daily living  
19 activities such as, but not limited to, ambulation, bathing and dressing. Nursing or  
20 medical care includes physical therapy as well as the administration of drugs,  
21 preparations or medications.  
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23 Additionally, the descriptions of Code 8824 and Code 8829 provide that:  
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1 Retirement living centers (RLCs) are distinguished from Code 8829 risks by the fact  
2 that RLCs are similar to typical rental or condominium-type housing complexes with  
3 the exception that medical and other personal assistance is available for those in  
4 residence. Risks classified to Code 8829 provide living conditions typically found in a  
5 dormitory or hospital-like environment. Stated differently, the RLC provides a “home-  
6 type” environment as opposed to the “institutional-type” environment of the risk  
7 classified to Code 8829. As a group, RLC residents will generally require less care or  
8 personal services than those occupants of convalescent or nursing homes classified to  
9 Code 8829. RLCs are further distinguished from convalescent homes by the fact that  
10 RLCs are not expected to provide twenty-four-hour nursing care to individual building  
11 residents as is typically found in convalescent or nursing home operations.

12 Code 8829 provides that:

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

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

7  
8 III. FACTS AND PROCEEDINGS

9 A. Initial Facts and Proceedings

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

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

22  
23 B. Hearing Officer Proceedings

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

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

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

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

16 The second reason discussed is that the Alaska Grievance Committee found that the  
17 facilities operated by the policy holder do provide 24-hour care but there are not licensed  
18 medical professionals on staff. Alaska Care disputes this stating that they follow all legal  
19 requirements, both state and federal. Alaska Care notes that one of the differences between  
20 code 8824 and 8829 is that employers under 8824 are not expected to provide 24-hour nursing  
21 care to residents. Alaska Care states that it is required by state and federal law to provide 24-  
22 hour nursing level of care to its residents and is required to have a nurse on call.  
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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.

1 First, Alaska National notes that the Basic Manual Rule 1-D's purpose is to provide one  
2 basic classification that describes the business of the employer. They acknowledge that Alaska  
3 National classified Alaska Care as an RLC. Alaska National notes that in the description of  
4 code 8824 that RLCs are described as housing establishments that offer health services for the  
5 elderly. They note that Alaska Care is operating out of a five-bedroom home. Alaska National  
6 then acknowledges the differences between facilities under code 8824 and 8829 outlined in the  
7 Basic Manual regarding the different risks for facilities in a "home like" environment as  
8 compared to a "hospital like" environment. Then, Alaska National discusses the differences  
9 between the level of care outlined in the Basic Manual, regarding the need for licensed medical  
10 staff for employers classified under code 8829, and notes that Alaska Care does not have  
11 licensed medical professionals on staff.

12 Alaska National states that they don't believe that Alaska Care provides the level of  
13 care that requires a medical professional on staff. Alaska National notes that code 8824  
14 includes personal care employees that assist with bathing, dressing, and administration of  
15 medication. Alaska National notes that some of Alaska Care's clients are ambulatory and leave  
16 the facility for activities, which they feel shows that they do not need as intense monitoring as  
17 would be required of a convalescent home under code 8829. Lastly, they note that the Basic  
18 Manual describes RLCs as similar to typical housing complexes as opposed to a "hospital like"  
19 environment.  
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21 Alaska National argues that because of these reasons the prior ruling by the Alaska  
22 Grievance Committee was correct and should be upheld.  
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1 **Conclusion**

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

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

5 While Alaska Care provides a high level of care to its residents and meets all legal  
6 requirements, it does not reach the standard level of care described in code 8829. In both code  
7 8824 and 8829, the manual states that they are differentiated because RLCs under code 8824  
8 are not expected to provide 24-hour nursing care to individual building residents, while under  
9 8829 the residents are expected to require extensive nursing care. Furthermore, the description  
10 of code 8829 states that in some states “the licensing authority requires registered nurses to be  
11 on duty.” Code 8829 also states that physicians are usually on call for emergencies. This is the  
12 level of medical care expected of a convalescent home.

13 While Alaska Care provides 24-hour care to its residents, it is not 24-hour nursing care.  
14 Alaska Care states that it is a “nursing level” of care but that is a vast difference. They do not  
15 have a registered nurse on staff, but rather on call. They do not have a physician on call, which  
16 most convalescent homes have. Alaska Care’s 24-hour services are more in line with the  
17 activities described in code 8824, “assisted living care” including “ambulation, bathing and  
18 dressing.” Because the level of care provided by Alaska Care does not meet the higher  
19 standards required for code 8829, it is more properly categorized as an RLC under code 8824.  
20

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

23 Alaska Care argues that it provides a “dormitory like” environment as opposed to the  
24 “home type” environment of an RLC. This argument is unpersuasive. The actual wording in the  
25



1 manual is that under code 8829 the facilities are a “dormitory or hospital-like environment.”  
2 Alaska Care states that its facility is a converted five-bedroom home. While the residents are  
3 typically non-ambulatory and tend to reside in a hospital bed, the facilities still don’t reach the  
4 level of a “hospital like” environment. There are no licensed nurses on the staff, and no  
5 physicians on call. It is similar to a “dormitory like” environment, but when combined with the  
6 other factors of the medical care provided this does not necessitate the classification change.  
7


8 **II. HOLDING**

9 I find

- 10 • Alaska Care’s level of service meets the required standard for an RLC under code 8824  
11 but does not meet the higher standard required under code 8829.
- 12 • While the environment provided by the facilities are somewhat similar to a dormitory, it  
13 is still similar to a “home type” environment rather than a “hospital like” environment.
- 14 • Because the level of care does not reach the standards required under 8829 and the  
15 facilities are “home like,” Alaska Care was properly classified under code 8824.

16  
17 Therefore, I decline to grant the relief sought by Alaska Care and uphold the Committee's  
18 decision in this case to the extent consistent herein.

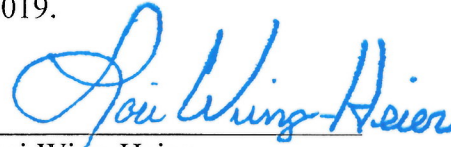
19  
20 Dated August 12, 2019.

21   
22 Anna Latham  
23 Hearing Officer  
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**Adoption**

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

5 DATED this 12<sup>th</sup> day of August, 2019.



6  
7 Lori Wing-Heier  
Director

8  
9 **Non-Adoption Options**

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

13 \_\_\_ take additional evidence about \_\_\_\_\_

14 \_\_\_ make additional findings about \_\_\_\_\_

15 \_\_\_ conduct the following specific proceedings: \_\_\_\_\_

16  
17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

18  
19 \_\_\_\_\_  
Lori Wing-Heier  
Director

20  
21 2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case  
22 No. H 19-02 as follows: \_\_\_\_\_

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

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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

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

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

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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.