



## Decision favors accused agency

By [Deborah Baker / Journal Staff Writer](#)

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SANTA FE – An Alamogordo behavioral health agency accused by the state of overbilling Medicaid has won a round in its court challenge to the Human Services Department.

A state District Court judge in Santa Fe last week reversed the department's ruling that The Counseling Center in Alamogordo owed \$379,000 to the state.

It's the first such court decision in the wake of the 2013 crackdown on 15 providers that put most of them out of the behavioral health business and threw the system that provides services to the mentally ill and addicted into turmoil.

And it could set a precedent for other such appeals that may be filed, according to North Carolina lawyer Knicole Emanuel, who represented The Counseling Center.

The Counseling Center was the first of the 15 providers to be cleared of fraud by the state attorney general. The Human Services Department then concluded the agency had been overpaid \$379,000, and an administrative law judge for the department agreed, following a hearing.

But state District Judge Francis Mathew in his ruling said the department's decision was "arbitrary, capricious or otherwise not in accordance with law."

One of the key issues in the Alamogordo nonprofit's appeal was whether – as the department said – it was up to The Counseling Center to prove that it hadn't overbilled, by submitting an audit of all its billings.

The judge rejected that conclusion, saying it was unreasonable to require the nonprofit to do such an audit in order to pursue its rights at a hearing.

"We disagree with the judge's ruling and believe that it directly conflicts with federal law," said Human Services Department spokesman Matt Kennicott. He cited a 1982 federal court opinion from Illinois in which a judge said there was nothing wrong with requiring a doctor – rather than a state agency – to conduct an audit if she wanted to rebut a finding of Medicaid overpayments.

The HSD could appeal Mathew's ruling, and Secretary Brent Earnest told legislators Tuesday the agency was considering its options.

One other nonprofit cleared by the attorney general, Easter Seals El Mirador, has a pending appeal before a different judge to the department's decision that it owes \$127,000 because of overbilling.

The Counseling Center was one of a dozen behavioral health agencies the department replaced with Arizona companies.

"We're still out of business. We still lost a lot," said Jim Kerlin, CEO of The Counseling Center.

Ten of the providers are suing the department in federal court, alleging their civil rights were violated.