IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
October 5, 2022 Session

EMERGENCY MEDICAL CARE FACILITIES, P.C. v. DIVISION OF TENNCARE ET AL.

Appeal by Permission from the Court of Appeals
Chancery Court for Davidson County
No. 18-1017-II Anne C. Martin, Chancellor

No. M2020-01358-SC-R11-CV

Article II of Tennessee's Constitution vests legislative authority in the General Assembly. We have held, however, that the General Assembly may "grant an administrative agency the power to promulgate rules and regulations which have the effect of law in the agency's area of operation." *Bean v. McWherter*, 953 S.W.2d 197, 199 (Tenn. 1997). The General Assembly frequently has done so. But it also established important guardrails for administrative agencies by enacting the Uniform Administrative Procedures Act. One of those guardrails is the requirement that agencies engage in notice-and-comment rulemaking: a process that gives the public and other affected parties an opportunity to weigh in. Here, we consider whether a reimbursement cap imposed by TennCare is a "rule" within the meaning of the Uniform Administrative Procedures Act that should have been promulgated through the notice-and-comment process. We hold that it is and reverse the Court of Appeals' contrary decision.

Tenn. R. App. P. 11 Appeal by Permission;
Judgment of the Court of Appeals Reversed

SARAH K. CAMPBELL, J., delivered the opinion of the court, in which ROGER A. PAGE, C.J., and SHARON G. LEE, JEFFREY S. BIVINS, and HOLLY KIRBY, JJ., joined.

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OPINION

I.

A.

The issues in this case are governed by the Tennessee Uniform Administrative Procedures Act, or UAPA. *See* Tenn. Code Ann. §§ 4-5-101 to -325 (2011). Because that law was modeled in part on the federal Administrative Procedure Act, or APA, *see* 5 U.S.C. §§ 551–59, we begin by briefly describing the circumstances that led to the passage of the APA in 1946.

During the first half of the twentieth century, federal administrative agencies multiplied and their functions expanded. *See Wong Yang Sung v. McGrath*, 339 U.S. 33, 36–37, *modified*, 339 U.S. 908 (1950). As time went on, "[t]he conviction developed" that "this power was not sufficiently safeguarded and sometimes was put to arbitrary and biased use." *Id.* at 37. Against this backdrop "of rapid expansion of the administrative process," Congress passed the APA to serve as "a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *U.S. v. Morton Salt Co.*, 338 U.S. 632, 644 (1950). The APA sought to "introduce greater uniformity of procedure and standardization of administrative practice among the diverse agencies whose customs had departed widely from each other." *Wong Yang Sung*, 339 U.S. at 41. And it "created safeguards even narrower than the constitutional ones, against arbitrary official encroachment on private rights." *Morton Salt Co.*, 338 U.S. at 644.

One of those safeguards is the APA's requirement of notice-and-comment rulemaking. "Before an agency makes a rule, it normally must notify the public of the proposal, invite them to comment on its shortcomings, consider and respond to their arguments, and explain its final decision in a statement of the rule's basis and purpose." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 109 (2015) (Scalia, J., concurring in the judgment) (citing 5 U.S.C. § 553(b)–(c)). The "essential purpose" of this requirement is to "reintroduce public participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies." *Batterton v. Marshall*, 648 F.2d 694, 703 (D.C. Cir. 1980); *see also Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1044 (D.C. Cir. 1987).

In the years following the APA's passage, States passed similar legislation governing the procedures of their own administrative agencies and "adopted many of the general concepts embodied in the [APA]." Arthur Earl Bonfield, *The Federal APA and State Administrative Law*, 72 Va. L. Rev. 297, 297 (1986). While States drew general inspiration from the APA, they often relied more heavily on state-focused model legislation that was drafted around the same time, especially versions of the National Conference of

Commissioners on Uniform State Laws' Model State Administrative Procedure Act. *See id.* at 297, 299 (observing that by 1986, "more than half of the states ha[d] APAs that [we]re based in whole or in part on the 1946 or the 1961 [model act]").

Tennessee was no exception. The General Assembly enacted the UAPA in 1974. *See* Tennessee Uniform Administrative Procedures Act, ch. 725, 1974 Tenn. Pub. Acts 945 (codified at Tenn. Code Ann. §§ 4-5-101 to -325 (1974)). Like similar acts in many other States, the UAPA was "patterned after the Model State Uniform Administrative Procedures Act promulgated in 1961." *Mandela v. Campbell*, No. 01A01-9607-CH-00332, 1996 WL 730289, at *3 (Tenn. Ct. App. Dec. 20, 1996) (Koch, J., dissenting); *see also* Valerius Sanford, *The Development of the Tennessee Uniform Administrative Procedures Act*, 6 Mem. St. U. L. Rev. 151, 152 (1976) (noting that the 1961 Model Act "served as the immediate model for the Tennessee [UAPA]"). At the same time, the UAPA embraced many of the broader principles that animated the federal APA, and its enactment was spurred on by near-identical concerns: the "growth in the number of agencies had created an 'incoherent, and indeed incomprehensible hodgepodge' of procedures and a 'very fragmented' judicial review process." *Mid-S. Indoor Horse Racing, Inc. v. Tenn. State Racing Comm'n*, 798 S.W.2d 531, 536 (Tenn. Ct. App. 1990) (quoting Sanford, *supra*, at 157).

Like its federal counterpart, the UAPA requires agencies to promulgate rules in accordance with its "uniform procedures," *Abdur'Rahman v. Bredesen*, 181 S.W.3d 292, 311 (Tenn. 2005)—namely, public notice, a public hearing, an opportunity for public comment, approval by the Attorney General, and filing with the Secretary of State, Tenn. Code Ann. §§ 4-5-202, -203, -204, -206, -211 (2011). "Any agency rule not adopted in compliance" with these procedures "shall be void and of no effect." *Id.* § 4-5-216.

A "rule" under the UAPA is an "agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency." *Id.* § 4-5-102(12) (2011).[1] But the UAPA also enumerates certain exceptions to this definition. At issue here is the so-called "internal-management exception," which excludes from the definition of "rule" any "[s]tatements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public." *Id.* § 4-5-102(12)(A). Agency statements that fall within that exception need not be promulgated through the rulemaking process. *See id.*

[1] The UAPA's definition of "rule" has since been amended, but because TennCare implemented the $50 cap in 2011, all citations to the UAPA are to the version in effect at that time unless otherwise indicated.

B.

The Tennessee Department of Finance and Administration's Division of TennCare is the state agency tasked with administering the federal Medicaid program in Tennessee. Through a combination of state and federal funding, TennCare operates a program (itself known as TennCare) that enables enrolled, low-income Tennesseans to obtain necessary medical treatment.

TennCare operates the program as a "managed care" model. Under that model, TennCare contracts with privately run intermediaries—known as Managed Care Organizations, or MCOs. These MCOs, in turn, contract with the healthcare providers, including individual physicians, who provide healthcare services to TennCare enrollees. Healthcare providers who choose to contract with MCOs are referred to as "in-network providers." Those healthcare providers who do not contract with MCOs, but still provide healthcare services to TennCare enrollees, are referred to as "out-of-network providers."

Both in-network and out-of-network providers must sign a contract with the State—a Provider Participation Agreement, or PPA—if they wish to be reimbursed for treating TennCare enrollees. By signing a PPA, a healthcare provider agrees to treat TennCare enrollees and to "accept the Medicaid payment as payment in full." And unless a healthcare provider signs a PPA, he or she cannot receive *any* reimbursement for treatment provided to TennCare enrollees. This reality leaves emergency-department physicians—who are legally obligated to provide certain care to all patients who walk through the door regardless of their insurance status, *see* 42 U.S.C. § 1395dd—little choice but to sign a PPA.

Emergency Medical Care Facilities, P.C. is a professional corporation made up of private healthcare professionals who provide emergency-department services to TennCare enrollees. Emergency Medical thus has multiple contractual relationships. It has contracts with MCOs, intermediaries between it and TennCare. And it has a contract directly with TennCare itself: a PPA that enables it to receive reimbursements for healthcare services provided to TennCare enrollees.

C.

The dispute between these parties stems from TennCare's decision to impose a $50 cap on the amount that healthcare professionals and entities like Emergency Medical can recover from TennCare for certain treatment they provide to TennCare enrollees. In the early 2010s, TennCare had a problem: it was facing a budget shortfall of well over $100 million and was directed to find ways to reduce its spending. The $50 cap was part of TennCare's solution. TennCare submitted a proposed budget that reduced the agency's spending by, among other things, cutting reimbursements to emergency-department physicians for non-emergent services provided in emergency departments.

When TennCare first informed its MCOs that the cap was part of its proposed budget, it told the MCOs that it would "promulgate emergency rules . . . requiring that these cuts be made thereby making it State law and regulation."[2] But once the State finalized the budget and the General Assembly passed the year's appropriations act, TennCare opted for a simpler path. Rather than promulgate rules, it sent an email to all MCOs announcing that, "[f]or non-emergent [emergency-department] visits, professional claims that would otherwise have been reimbursed at rates higher than $50 will be paid at a rate of $50."[3]

Emergency Medical sued TennCare in Davidson County Chancery Court. Its complaint alleged that the $50 cap was a "rule" as defined by the UAPA and that TennCare thus violated the UAPA by implementing the cap without rulemaking. Emergency Medical sought a judgment declaring that the $50 cap was void and of no effect under the UAPA. The parties engaged in discovery and eventually filed competing summary-judgment motions.

The Chancery Court granted summary judgment in favor of Emergency Medical, determining that the $50 cap was a "rule" under the UAPA. First, the court reasoned that the $50 cap was "a statement by TennCare of general applicability, not only because it applies to all MCOs, but also [because] it potentially affects all providers." The court went on to conclude that the internal-management exception did not apply to the $50 cap because it "does not regard only the internal management of state government, but rather does affect private rights, privileges and procedures available to the public."

TennCare appealed, and the Court of Appeals reversed. *See Emergency Med. Care Facilities, P.C. v. Div. of TennCare*, No. M2020-01358-COA-R3-CV, 2021 WL 4641485, at *1 (Tenn. Ct. App. Oct. 7, 2021), *perm. app. granted*, (Apr. 14, 2022). The Court of Appeals agreed with the Chancery Court that the $50 cap was generally applicable, reasoning that it "applies to all emergency room physicians across the state who provide care to TennCare patients." *Id.* at *7. But the Court of Appeals reached a different conclusion about the internal-management exception. It concluded that the $50 cap fell within that exception because it "does not address or bear on procedures available to the public [or] affect entities other than those under contract with TennCare." *Id.* at *8. The court reasoned that if a generally applicable agency statement affects only those "entities

[2] The UAPA gives agencies authority to promulgate emergency rules in certain enumerated circumstances. *See* Tenn. Code Ann. § 4-5-208. Emergency rules "become effective immediately" but lapse after 180 days. *Id.* § 4-5-208(b). To make the rule permanent, the agency must promulgate the rule through ordinary rulemaking procedures. *See id.*

[3] The day after TennCare sent this email, it sent a "correction," stating that "[r]eimbursement for professional claims for non-emergency [emergency-department] visits will be *capped* at $50," and clarifying that "[i]f the contracted rate is *lower* than $50 for the service billed, the MCO is to pay the contracted rate."

in privity with TennCare," then the statement concerns only the internal management of state government and need not be implemented through rulemaking. *See id.* at *8–9.

We granted Emergency Medical's application for permission to appeal.

II.

The central question before us is whether TennCare was required to promulgate the $50 cap through the UAPA's rulemaking process. Emergency Medical says "yes." It argues that the $50 cap is a "rule," and that the internal-management exception does not apply because the cap does not concern "only the internal management of state government."[4] TennCare takes the opposite view, for two reasons. First, it contends that the $50 cap is not a "rule" under the UAPA because it is not a statement of general applicability and because it concerns only the internal management of state government. Second, it argues in the alternative that even if the $50 cap is a "rule" that ordinarily should have been promulgated under the UAPA, another statute—Tennessee Code Annotated section 71-5-102(d)—exempts the cap from that requirement.

The first question we must consider is whether the $50 cap is a "rule" that should have been promulgated under the UAPA. If it is, then we must also determine whether section 71-5-102(d) exempts the $50 cap from the UAPA's rulemaking requirements.

Because these are questions of statutory interpretation, our review is de novo with no presumption of correctness. *State v. Deberry*, 651 S.W.3d 918, 924 (Tenn. 2022). "This Court's role in statutory interpretation is 'to determine what a statute means.'" *Id.* (quoting *Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 175 (Tenn. 2008)). We consider "how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued." *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012)). We "give the words of a statute their 'natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose.'" *Id.* at 925 (quoting *Ellithorpe v. Weismark*, 479 S.W.3d 818, 827 (Tenn. 2015)). And "[i]n the absence of statutory definitions, we look to authoritative dictionaries published around the time of a statute's enactment." *Id.*

A.

We begin by determining whether the $50 cap falls within the UAPA's definition of "rule." When TennCare implemented the $50 cap, the UAPA defined "rule" as an

[4] Emergency Medical also argues that Tennessee Code Annotated section 71-5-105(a)(3)(A), which provides that TennCare "shall [e]stablish . . . rules and regulations for the determination of payment" for contracting healthcare providers, independently required TennCare to implement the $50 cap through the rulemaking process. Our resolution of other issues in this case, however, obviates any need to reach this argument.

"agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency." Tenn. Code Ann. § 4-5-102(12). But the UAPA further provided that the term "rule" does not include, among other things, "[s]tatements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public." *Id.* § 4-5-102(12)(A). To decide whether the $50 cap is a "rule" under the UAPA, we must determine first whether the cap is an "agency statement of general applicability," and second, whether it "concern[s] only the internal management of state government" or "affects private rights, privileges or procedures available to the public."

i.

We start with the first question: whether the $50 cap is a statement of "general applicability." *Id.* § 4-5-102(12). We give these statutory terms "their 'natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose.'" *Deberry*, 651 S.W.3d at 925 (quoting *Ellithorpe*, 479 S.W.3d at 827). And because neither "general" nor "applicable" is defined by the UAPA, "we look to authoritative dictionaries published around the time of [its] enactment" in 1974. *Id.*

The word "general," when used as an adjective, means "[r]elating to, concerned with, or applicable to the whole, or every member of a class or category." *General*, The American Heritage Dictionary of the English Language 548 (1969); *see also General*, 6 The Oxford English Dictionary 429 (2d ed. 1989) ("Including, participated in by, involving, or affecting, all, or nearly all, the parts of a specified whole, or the persons or things to which there is an implied reference; completely or approximately universal within implied limits; opposed to partial or particular."). It follows from these definitions that an agency statement need not be universally applicable to qualify as "general." It is enough that it is applicable to all members of a class or category—that is, a group sharing common attributes, *see Class*, The American Heritage Dictionary of the English Language 248 (1969)—including those who become members of that class or category in the future.

The adjective "applicable" means "[c]apable of being applied; appropriate." *Applicable*, The American Heritage Dictionary of the English Language 63 (1969); *see also Applicable*, 1 The Oxford English Dictionary 575 (2d ed. 1989) ("Capable of being applied; having reference."); *Applicable*, Black's Law Dictionary 127 (4th rev. ed. 1968) ("Fit, suitable, pertinent, or appropriate.").

An agency statement is "of general applicability," then, when it is capable of being applied or is relevant to an entire class or category. The $50 cap easily checks these boxes. The cap applies to every member of a class—all emergency-department physicians who have signed PPAs and treat TennCare enrollees. And as TennCare acknowledged at oral argument, that class is open, so any emergency-department physicians who sign PPAs and

begin treating TennCare enrollees in the future likewise will be subject to the $50 cap if they seek reimbursement for non-emergent care they provide to those enrollees.

Two other sources of authority reinforce this conclusion. First, the official comments to the Model State Administrative Procedures Act—the precursor to the UAPA—explain that "rules, like statutory provisions, may be of 'general applicability' even though they may be of immediate concern to only a single person or corporation, provided the form is general and others who may qualify in the future will fall within its provisions." Model State Admin. Proc. Act § 1 cmt. (Nat'l Conf. of Comm'rs on Unif. State L. 1961).

Second, other state high courts have agreed that agency statements are generally applicable when they apply to all members of a class or group. *See, e.g.*, *NME Hosps., Inc. v. Dep't of Soc. Servs., Div. of Med. Servs.*, 850 S.W.2d 71, 74 (Mo. 1993) (rejecting Missouri's argument that a policy change was not a statement of general applicability "because it govern[ed] only Medicaid participants, rather than all hospitals in Missouri," reasoning that the policy "applie[d] generally to all participants in the Medicaid program"); *Failor's Pharmacy v. Dep't of Soc. & Health Servs.*, 886 P.2d 147, 151 (Wash. 1994) (observing that "where the challenge is to a policy applicable to all participants in a program, not its implementation under a single contract . . . , the action is of general applicability within the definition of a rule").

We thus hold that the $50 cap is a statement of "general applicability" as that phrase is commonly understood.

ii.

We now turn to the second question: whether the $50 cap falls within the internal-management exception. An agency statement that is generally applicable is excused from the UAPA's rulemaking requirements if it "concern[s] only the internal management of state government" and does not "affect[] private rights, privileges or procedures available to the public." Tenn. Code Ann. § 4-5-102(12)(A). Both requirements must be met for the exception to apply. *See Mandela v. Campbell*, 978 S.W.2d 531, 534 (Tenn. 1998) (explaining that an agency statement "is not a rule under the UAPA if [it] concerns internal management of state government *and* if [it] does not affect the private rights, privileges, or procedures available to the public").

Because the first requirement is dispositive in this case, we start and end our analysis there. To fall within the internal-management exception, an agency statement must "concern[] only the internal management of state government." Once again, the statutory terms at issue are not defined, so we "look to authoritative dictionaries published around the time of [the UAPA's] enactment" to determine what they mean. *Deberry*, 651 S.W.3d at 925.

The term "concern," when used as a verb, means "[t]o pertain or relate to; be of interest or importance to; affect." *Concern*, The American Heritage Dictionary of the English Language 275 (1969); *see also Concern*, 3 The Oxford English Dictionary 655 (2d ed. 1989) ("[t]o have relation or reference to; to refer to, relate to; to be about"; "[t]o affect (things, or persons passively); to have a bearing or influence on; to involve").

As used here, the adjective "internal" means "[o]f, relating to, or located within the limits or surface of something; inner; interior." *Internal*, The American Heritage Dictionary of the English Language 684 (1969); *see also Internal*, 7 The Oxford English Dictionary 1121 (2d ed. 1989) ("Pertaining to the inner nature or relations of anything, as distinguished from its relations to things external to itself; belonging to the thing or subject in itself; intrinsic.").

Finally, "management" means "[t]he act, manner, or practice of managing, handling, or controlling something." *Management*, The American Heritage Dictionary of the English Language 792 (1969); *see also Management*, 9 The Oxford English Dictionary 293 (2d ed. 1989) ("The action or manner of managing . . . ; the application of skill or care in the manipulation, use, treatment, or control (of things or persons), or in the conduct (of an enterprise, operation, etc.).").

An agency statement "concerns only the internal management of state government," then, when it relates only to the management or control of the State itself rather than to external parties or relationships with external parties. So interpreted, the exception does not encompass the $50 cap. The only matter the cap manages is reimbursements to private emergency-department physicians. Those physicians cannot be considered "internal" to state government. They are not state employees, and they are not engaged in any activities that could be described as internal functions. Their only connection to the State is a short, barebones contract entitling them to reimbursement for services they are legally obligated to provide to emergency-room patients. To conclude that this sort of arm's-length contractual relationship somehow renders privately employed physicians "internal" to state government would be to rewrite the statute—something courts "are not at liberty to" do. *Maxwell v. State*, 647 S.W.3d 593, 595 (Tenn. 2019).

The Court of Appeals' conclusion that the internal-management exception applied rested on an incomplete analysis. The court rightly recognized that the exception has two requirements—it observed that it applies to an agency statement when it "concerns internal management of state government *and* . . . does not affect the private rights, privileges, or procedures available to the public." *Emergency Med.*, 2021 WL 4641485, at *7 (quoting *Mandela*, 978 S.W.2d at 534). But in determining whether the $50 cap fell within the internal-management exception, the Court of Appeals gave little attention to the first requirement; it focused solely on whether the cap affected "procedures available to the public." *See id.* at *8. The court reasoned that, because "the $50 Cap only applies to entities

in privity with TennCare, such as [Emergency Medical] under the [PPA][,] there is nothing to indicate it affects the 'public.'" *Id.*

The Court of Appeals overlooked that the cap must also "concern[] only the internal management of state government." *Mandela*, 978 S.W.2d at 534. The Court of Appeals made no attempt to interpret "internal management." It instead assumed, based on its earlier decision in *Tennessee Community Organizations v. Tennessee Department of Intellectual & Developmental Disabilities*, No. M2017-00991-COA-R3-CV, 2018 WL 2175818 (Tenn. Ct. App. May 11, 2018), that the exception applies because the $50 cap does not "affect entities other than those under contract with TennCare." *Emergency Med.*, 2021 WL 4641485, at *8. But the internal-management exception makes no mention of contracts. Nor has this Court ever suggested that the mere existence of a contractual relationship with regulated entities frees agencies from the UAPA's rulemaking requirements. And for good reason—this approach would permit agencies to evade rulemaking based on nothing more than contractual privity: a result that would undermine the UAPA's goal of "clarify[ing] and bring[ing] uniformity to the procedure of state administrative agencies," Tenn. Code Ann. § 4-5-103(a), and one that courts in other states have "uniformly" rejected, *NME Hosps., Inc.*, 850 S.W.2d at 75 (observing that "courts in other states have uniformly held that state agencies may not evade rulemaking by contract"); *see also Failor's Pharmacy*, 886 P.2d at 151 (same) (collecting cases).

We hold that the $50 cap does not "concern[] only the internal management of state government" and therefore does not fall within the internal-management exception. And because we have already held that the $50 cap is a statement of general applicability, it follows that the cap is a "rule" under the UAPA.

iii.

TennCare's contrary arguments are unpersuasive.

First, TennCare argues that the $50 cap is not a statement of general applicability. TennCare claims that the cap "applies *only* to emergency-room providers that have entered into [PPAs] with TennCare and that render non-emergent services in emergency rooms." This means, TennCare insists, that the cap "cannot be a statement of general applicability because it does *not* apply to providers of services *outside* of emergency rooms; it does *not* apply to providers *without* [PPAs]; and it does *not* apply to providers rendering *emergency* services in emergency rooms." In other words, TennCare's position is that so long as an agency statement applies to a small enough subset of the population, it will not be a "statement of general applicability."

To support this position, TennCare relies on two decisions from the Court of Appeals. TennCare claims that those decisions—*Crawford v. Tennessee Consolidated Retirement System*, 732 S.W.2d 293 (Tenn. Ct. App. 1987), and *Heritage Early Childhood*

Development Center, Inc. v. Tennessee Department of Human Services, No. M2008-02134-COA-R3-CV, 2009 WL 3029595 (Tenn. Ct. App. Sept. 22, 2009)—demonstrate that a statement is generally applicable only when it applies broadly, not just to a small subgroup. In *Crawford*, as TennCare reads it, "a policy establishing retirement-system calculations for public employees was held to be generally applicable, and therefore a 'rule' under the UAPA, because it 'directly affect[ed] the benefits accruing to *all* public employees' enrolled in the retirement system." And in *Heritage*, TennCare asserts, the Court of Appeals "held that a policy manual for child-care centers was generally applicable, and therefore a rule under the UAPA, because *all* child-care facility providers were required to comply with the policy as a condition of participation in the government program." TennCare contends that, "[u]nlike the policies" in these cases, "the $50 Cap does not apply to *all* healthcare providers, or even to *all* emergency healthcare providers."

But the $50 cap is not "[u]nlike the policies in *Crawford* and *Heritage*"—far from it. The policy in *Crawford*, for instance, did not apply to "all public employees," but only to those "public employees subject to the Consolidated Retirement System," 732 S.W.3d at 296—surely a small subset of the general population. And the policy in *Heritage* similarly did not apply to "all child-care facility providers," which would already be a fairly small group, but instead only to child-care providers enrolled in the State's Child Care Certificate Program, an even smaller group. *See* 2009 WL 3029595, at *8 (observing that by implementing the policy at issue, the agency "established rules that . . . all child care centers . . . must comply with *in order to enroll and participate in the federally funded program*" (emphasis added)). In short, the policies at issue in *Crawford* and *Heritage*, just like the $50 cap, applied to defined, but open, classes; they did not apply broadly to all Tennesseans.

TennCare also maintains that we must not interpret "general applicability" so broadly that it sweeps in virtually all agency statements. True enough. But the interpretation we adopt today—that a statement is generally applicable when it is capable of being applied to or relevant to an entire class or category—does not have that effect. An agency decision that implements law or policy as to only a single regulated party, for example, would not be generally applicable under our interpretation. And the UAPA's definition of "rule" excludes a host of other agency statements, including "[g]eneral policy statements that are substantially repetitious of existing law." Tenn. Code Ann. § 4-5-102(12)(D). In any event, TennCare offers no alternative interpretation. When pressed at oral argument to offer a workable standard for determining when an agency statement is generally applicable, TennCare declined and insisted that there can be no "one-size-fits-all test." That approach is directly counter to the UAPA's goals of clarity and uniformity. *See* Tenn. Code Ann. § 4-5-103(a).

Second, TennCare contends that the $50 cap concerns only the internal management of state government because it applies only to contracting parties. This argument relies heavily on *Tennessee Community*, the same unpublished decision the Court of Appeals

found persuasive. There, TennCare points out, "the court held that an agency policy—instituting various sanctions for violations of other policies—that applied only to '[agency] employees and *contracted entities*' concerned only internal management of the agency." TennCare contends that the $50 cap is "decidedly similar to the sanction policies at issue in *Tennessee Community*" because it "applies only to providers that have [PPAs] with TennCare" and "does not 'affect entities other than those under contract with TennCare.'"

As we explained above, agencies cannot skirt the UAPA's rulemaking requirements by entering into contracts with regulated parties. And *Tennessee Community* is distinguishable in any event. In that case, a separate statute—Tennessee Code Annotated section 33-1-309(b)—expressly authorized the Department of Intellectual and Developmental Disabilities to promulgate the policy at issue. *See Tenn. Cmty.*, 2018 WL 2175818, at *12. That statute enables the Department to implement "operating guidelines"—defined as "instructions to service providers that the department deems or intends to be mandatory upon such providers," Tenn. Code Ann. § 33-1-309(b) (Supp. 2013)—through more streamlined procedures than those required under the UAPA, *see id.* § 33-1-309(b)(1)–(4) (Supp. 2013). And the Court of Appeals in *Tennessee Community* concluded that the policy was "an operating guideline, as opposed to a Rule," meaning that it did not need to be promulgated in accordance with the UAPA's rulemaking procedures. 2018 WL 2175818, at *13.

In a final attempt to shoehorn the $50 cap into the internal-management exception, TennCare invokes our decision in *Abdur'Rahman*. There, TennCare says, this Court "concluded that the State's lethal-injection protocol for carrying out . . . death sentences 'fit[] squarely' within the exception for 'statements concerning only the internal management of state government and not affecting private rights privileges or procedures available to the public.'"

Abdur'Rahman is easily distinguished. The State's lethal-injection protocol established procedures that the State's *own employees* were to follow in carrying out an execution on an inmate *in the State's custody*. That situation is worlds apart from the one presented here—a cap on reimbursement rates for *private parties* that merely contract with the government to receive payment for services provided to *private citizens* enrolled in TennCare. Moreover, at the time *Abdur'Rahman* was decided, this Court had already recognized "a legislative intent to grant considerable deference to those best suited and most familiar with the prison setting when constructing inmate disciplinary policies and procedures" and had therefore concluded that "the legislature did not intend the UAPA to govern the [Department of Correction's] disciplinary policies and procedures" at all. *Mandela*, 978 S.W.2d at 535.

B.

Our conclusion that the $50 cap is a "rule" under the UAPA does not end our analysis. TennCare also argues that even if the $50 cap is a "rule," it need not have been promulgated under the UAPA because a separate statute exempts TennCare's cost-control measures from the UAPA's rulemaking requirements. That statute—Tennessee Code Annotated section 71-5-102(d)—provides, in full:

> The bureau of TennCare shall have the authority to develop and implement initiatives or program modifications to control the costs of the TennCare program to the extent permitted under federal law and the TennCare waiver. Such cost-saving measures may include, but are not limited to, the elimination of covered benefits or limitations on the scope, intensity, or duration of such benefits; implementation of cost sharing requirements for enrollees, including the medicaid population; increases in cost sharing requirements for the expansion population; enforcement of cost sharing requirements through denial of service for failure to meet co-payment requirements with alternative access to medically necessary care through established safety net providers; enforcement of collection of required co-payments by providers; reassignment of enrollees into different eligibility categories; restrictions on eligibility for non-mandatory medicaid or waiver expansion categories; and the elimination from TennCare eligibility of some or all of the non-mandatory medicaid or waiver expansion categories. The bureau of TennCare may implement a premium-assistance initiative for persons disenrolled from TennCare. The bureau of TennCare shall also be authorized, in establishing or modifying benefits or cost sharing requirements, to define, through rules and regulations, categories of eligible enrollees who may be exempted from some or all benefit limits or cost sharing requirements, along with any requirements that must be met by such enrollees to prove or maintain exempted status. The bureau of TennCare shall have all such authority to control costs notwithstanding any other state law to the contrary.

Tenn. Code Ann. § 71-5-102(d) (2004).

As TennCare reads it, this provision—specifically its first sentence—gives it "the authority to implement cost-control measures, i.e., 'to develop and implement initiatives or program modifications to control the costs of the TennCare program.'" TennCare points out that nowhere in the first sentence of the provision is there a "mention of any rulemaking requirement." "By contrast," TennCare continues, "in the fourth sentence . . . , the statute makes express mention of rulemaking" for "enrollee exemptions relative to cost-control measures." TennCare reasons that "[b]y including the need to promulgate rules for enrollee exemptions in this fourth sentence, while not including it in the first sentence, the

legislature made clear that TennCare has authority to implement all cost-control measures aimed at *providers . . . , without* formal rulemaking."

TennCare reads too much into the statutory text. Nothing in the provision says that the UAPA does not apply. And a legislature "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). The rulemaking exemption TennCare envisions would be nothing if not elephantine. As TennCare reads it, section 71-5-102(d) created a sweeping exemption from rulemaking for *any* measure that cuts costs. If the legislature had intended section 71-5-102(d) to operate in this way, it undoubtedly would have said so. Other statutes confirm that the legislature knows how to create exemptions from the UAPA's rulemaking requirements. *See, e.g.*, Tenn. Code Ann. § 71-5-149 (directing TennCare to "adopt a state disease management program" and clarifying that the "adoption of a disease management program is not an agency action and does not require rulemaking"); *id.* § 71-5-199 (providing that "TennCare may, in its sole discretion, adopt or amend a state preferred drug list," and that "[t]he adoption or amendment" of such a list is "not agency action[] and do[es] not require rulemaking"). But the legislature did no such thing here.

Nor is TennCare's reading saved by the statute's "notwithstanding" clause. It is true, of course, that section 71-5-102(d) provides that it should prevail over "any other state law to the contrary." Tenn. Code Ann. § 71-5-102(d). But nothing about the UAPA's rulemaking requirements is "contrary" to section 71-5-102(d). The statutes are in fact easily reconciled: section 71-5-102(d) grants TennCare the authority to implement cost-control measures, and the UAPA provides the means of implementing those measures to the extent they constitute "rules" under the UAPA.

This sort of statutory interplay is not unusual. The UAPA itself does not confer rulemaking authority, *see id.* § 4-5-103(a)(2) ("Administrative agencies shall have no inherent or common law powers, and shall only exercise the powers conferred on them by statute or by the federal or state constitutions."); it simply establishes the procedures for the rulemaking process, *see id.* § 4-5-103(a)(1) (providing that the UAPA shall be construed "as remedial legislation designed to clarify and bring uniformity to the procedure of state administrative agencies"). That is why rulemaking authority traditionally comes from other sources, just as it does here. *See, e.g.*, *id.* § 71-5-105(a)(2) (authorizing TennCare to "[m]ake uniform rules and regulations . . . for implementing, administering and enforcing this part in an efficient, economical and impartial manner"); *id.* § 71-5-304(2) (authorizing the Department of Human Services to "[m]ake uniform rules and regulations . . . to the end that the food stamp or food assistance program may be administered uniformly").

We thus reject TennCare's reading of section 71-5-102(d) as a broad exemption from the UAPA's rulemaking requirements for cost-control measures.

* * *

We hold that the $50 cap is a statement of general applicability that does not concern only the internal management of state government. The cap therefore is a "rule" as defined by the UAPA, and should have been promulgated through notice-and-comment rulemaking. We further hold that section 71-5-102(d) does not exempt cost-control measures from the UAPA's otherwise applicable rulemaking requirements. We reverse the judgment of the Court of Appeals and tax the costs of this appeal to TennCare.

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SARAH K. CAMPBELL, JUSTICE