

IN THE SUPREME COURT OF OHIO

STATE OF OHIO <i>EX REL.</i>	)	CASE NO. 2024-1075
LEADINGAGE OHIO, <i>et al.</i> ,	)	
	)	
Plaintiffs/Relators,	)	ORIGINAL ACTION
	)	IN MANDAMUS
	)	
v.	)	
	)	
THE OHIO DEPARTMENT OF	)	
MEDICAID, <i>et al.</i> ,	)	
	)	
Defendants/Respondents.	)	

**RELATORS' RESPONSE IN OPPOSITION TO RESPONDENTS'
MOTION FOR RECONSIDERATION**

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This Court’s rules of practice expressly provide: “A motion for reconsideration shall not constitute a reargument of the case....” S.Ct.Prac.R. 18.02(A)(2). For this reason alone, Respondents’ Motion for Reconsideration should be denied, given that it simply repeats the same extra-textual arguments that this Court has already considered and rejected. Respondents’ accusation that this Court failed to consider certain evidence or the implications of its decision is belied by the Court’s thorough Opinion, which clearly and carefully analyzed the statutory language and mathematical calculations at play and expressly concluded that the quality-incentive pool for the state’s highest quality nursing homes has been “dramatically shortchange[d].” *Id.* at ¶ 30. As this Court has already explained, Respondents’ budgetary concerns do not provide justification for their refusal to perform statutorily mandated calculations as written. Ohio law anticipates and provides remedies for situations where an agency’s liabilities end up exceeding its initially budgeted projections, and outright refusal to follow the law is not one of them.

In short, Respondents’ Motion can easily be denied because it rests on points that are redundant, irrelevant, and incorrect. Likewise, given that Rule 18.02 provides only for a motion for reconsideration, and not a motion for clarification, Respondents’ request for the Court to provide further “clarification” as to how Respondents should perform their duties both prospectively and going back to July 1, 2023 is *per se* improper. For these reasons, and as explained further below, Respondents’ Motion should be denied.

A. The Court Was Correct in Refusing to Rewrite the Statute’s Unambiguous Language Based on Extraneous Evidence.

Respondents misstate the governing legal standard in asserting that this Court was required to consider extraneous evidence in determining whether R.C. 5165.26 is ambiguous. As this Court has made clear, repeatedly, ambiguity must be found in the statutory text itself—not in contextual evidence or policy concerns.

In *Dunbar v. State*, 2013-Ohio-2163, the Court rejected the notion that ambiguity can be inferred from factual circumstances, stating unequivocally that it would not “read ambiguity into the statute based on the facts and circumstances of [the] case. *Id.* at ¶ 16. The Court emphasized that “ambiguity in a statute exists only if *its language* is susceptible of more than one reasonable interpretation.” *Id.* (emphasis in original). Accordingly, “inquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors...is inappropriate absent an initial finding that the language of the statute is, itself, capable of bearing more than one meaning.” *Id.*; see also *State ex rel. Cable News Network, Inc. v. Bellbrook-Sugarcreek Local Schools*, 2020-Ohio-5149; *Rockies Express Pipeline, L.L.C. v. McClain*, 2020-Ohio-410.

Consistent with that precedent, the Court in this case concluded that “[t]he statutory language at issue here is unambiguous.” ¶ 27. That ended the inquiry. Yet Respondents again urge the Court to rely on alleged legislative intent, budget estimates, and speculative policy implications—precisely the types of considerations this Court has held are out of bounds when interpreting unambiguous text. Respondents go so far as to fault the Court for allegedly failing to address “the ample evidence ODM presented supporting ambiguity in R.C. 5165.26 that would support reference to sources other than the statute to aid in its interpretation.” (Respondents’ Motion p. 7). But the Court did not ignore that evidence—it correctly recognized that such materials are irrelevant given the clarity of the statute’s language. Once the Court found no ambiguity, it had no reason—and no authority—to look beyond the text.

What Respondents now seek is not reconsideration, but re-argument of a position this Court has already considered and rejected. Their motion should be denied.

B. Contrary to Respondents’ Misleading Representations and Omissions, Compliance with the Law Is Possible.

Respondents’ reliance on already-rejected and legally irrelevant arguments is sufficient grounds for denying reconsideration. But their Motion also rests on a second, equally flawed premise: that compliance with this Court’s decision is “impossible” and would exceed available appropriations. That claim is both factually inaccurate and inconsistent with Ohio law.

1. The General Assembly Did Not Earmark Funds Specifically for Quality Incentive Payments.

Respondents contend that compliance with this Court’s decision would exceed amounts appropriated for Ohio Medicaid quality incentive payments to nursing facilities in fiscal years 2026 and 2027. That contention is demonstrably false.

The General Assembly did not appropriate funds specifically for quality incentive payments—or even for nursing facilities. As in every biennium, the General Assembly allocated funds to the Department of Medicaid on an agency-wide basis. Payments to nursing facilities, including quality incentive payments, are made from that general appropriation.

Nevertheless, Respondents cite the affidavit of ODM Deputy Director Patrick Beaty, who claims that House Bill 96 appropriated exactly \$169,922,242 for “Medicaid quality incentive payments to nursing facilities” in each of FY 2026 and FY 2027. (Beaty Affidavit, Exhibit B, ¶ 14; Respondents’ Motion p. 5). But that figure appears nowhere in House Bill 96, nor are there any specifically designated appropriations for “Medicaid quality incentive payments to nursing facilities.” The relevant section—§ 333.10—appropriates an overall biennial amount of \$43,173,123,734 for the Medicaid “General Reserve Fund” (\$29,940,907,572 of which is federally reimbursed), in addition to several dedicated purpose funds that are unrelated to this matter. The bill includes no line-item or earmark for nursing facility quality incentives. Respondents’ representation to this Court that complying with the law will cause them to exceed the amounts

allegedly “appropriated...for Ohio Medicaid quality incentive payments to nursing facilities” in FY 2026 and FY 2027 by \$348,528,720 and \$387,194,045, respectively, is therefore completely unfounded.

Respondents may have *internally* derived the \$169,922,242 figure as part of their own budget forecasting – presumably based on their misreading of the statute. But internal projections are not legislative appropriations. It is simply incorrect to suggest that the General Assembly earmarked any funds specifically for quality incentive payments or for specifically for nursing home reimbursements.

2. Respondents Mischaracterize the Fiscal Impact of This Court’s Ruling.

Respondents further claim that recalculating the quality incentive payments as required will cause the Department to exceed its budget for the Medicaid program—by \$572 million in the 2024–2025 biennium and \$735,722,765 in the 2026–2027 biennium. That assertion is misleading.

First, these projected “shortfalls” are not based on the total amounts appropriated by the General Assembly. Instead, they reflect Respondents’ own internal assumptions about what they expected to spend specifically on nursing facility reimbursements. As explained above, there is no line-item appropriation for nursing homes in the enacted budget; Medicaid receives an agency-wide appropriation, and the General Assembly does not pre-allocate funds by provider type. The fact that Medicaid may need to use more of its total appropriation for nursing home reimbursements—because of a statutory miscalculation of its own making—does not mean the agency has exceeded its overall budget.

Second, Respondents ignore the fact that Ohio’s Medicaid program ended both FY 2024 and FY 2025 with *significant* surpluses. This has been a consistent pattern over many years.¹ Any

¹ See https://medicaid.ohio.gov/wps/wcm/connect/gov/c110b092-1ebf-4987-b9d3-c1992713e20d/BV-6.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013H

suggestion of an unavoidable budget overrun is speculative at best—and incomplete without acknowledging these actual results.

Third, Respondents omit the fact that 64.6% of all Medicaid expenditures are federally reimbursed. Even if their projected overage of *precisely*² \$735,722,765 for the upcoming biennium were accurate (which it is not), Ohio’s share of that amount would be limited to approximately \$260 million (*i.e.*, 35.4% of that amount). The remaining balance would be funded by the federal government.

Taken together, these omissions and distortions undermine Respondents’ claim that compliance is “impossible.” The record demonstrates not only that compliance is possible, but that it can be achieved within the structure of the appropriations already enacted.

3. The Calculations that Informed the Budget Projections for Medicaid Came from Respondents.

Respondents also mischaracterize the budget process by failing to disclose that the calculations used in preparing the Medicaid appropriation request came entirely from

MOA06A2E16IV2082-c110b092-1ebf-4987-b9d3-c1992713e20d-pwPQ72o (\$137.2 million surplus for FYE June 2025);

https://medicaid.ohio.gov/wps/wcm/connect/gov/97c7b6e3-b5a4-47e9-be48-a071a7ca2bed/BV-6.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E16IV2082-97c7b6e3-b5a4-47e9-be48-a071a7ca2bed-p2x.UrJ (\$1.7 billion surplus for FYE June 2024);

https://medicaid.ohio.gov/wps/wcm/connect/gov/5540d49a-9177-48e3-b172-edc89bdf832/BV-06.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E16IV2082-5540d49a-9177-48e3-b172-edc89bdf832-oBUyTFW (\$702.3 million surplus for FYE June 2023);

https://medicaid.ohio.gov/wps/wcm/connect/gov/436a69cd-4f28-4136-b957-58a440ee6931/BV-6.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_79GCH8013HMOA06A2E16IV2082-436a69cd-4f28-4136-b957-58a440ee6931-ob6dooL (\$789.1 million surplus for FYE June 2022).

² Respondents’ projections are not only incomplete—they are inherently speculative. The amount ultimately spent on nursing facility care depends on multiple variables, including resident census, acuity, length of stay, and provider performance under quality metrics. These variables fluctuate and cannot be predicted with precision. Yet Respondents ask this Court to treat their internal estimate as if it were a statutory cap or definitive forecast. That is not how Medicaid budgeting works—and certainly not how legal duties are measured.

Respondents—not from the Legislative Budget Office, not from the General Assembly, and certainly not from Relators. *Respondents* projected the amounts they believed would be owed under the statute and used those internally generated figures to support their overall funding request.

In an effort to shift blame, Respondents suggest that Relators somehow contributed to the flawed estimates. But this is simply a rebranded version of their unclean hands argument, and it is factually incorrect. At no point prior to the enactment of the Budget Legislation did Respondents disclose to Relators the calculation methodology it was using. Respondents shared only top-line projections, which obscured the flawed interpretation that underpinned them.

It was not until on or around July 13, 2023—after the Budget had been signed into law and just two weeks before Respondents posted reimbursement rates to its online portal—that Respondents disclosed the atextual “formula ODM was using for allocating the 60/40 split in funding.” (Corcoran Affidavit, attached to Respondents’ Merit Brief, ¶ 30). As this Court has now confirmed, that formula conflicts with the plain language of R.C. 5165.26. Attempting to deflect responsibility onto others does not change that reality—or excuse Respondents’ ongoing refusal to follow the statute.

4. Respondents Ignore the Legal Mechanisms Available to Address Budget Shortfalls.

Even if compliance with R.C. 5165.26 were to result in expenditures that exceeded Respondents’ initial projections—or even Medicaid’s overall appropriation for a given fiscal year—that still would not excuse Respondents from performing their statutory duty. Ohio law provides multiple mechanisms for addressing agency funding shortfalls, none of which involve ignoring clear legal obligations.

Chapter 127 of the Revised Code establishes the state Controlling Board, which may authorize appropriation adjustments upon agency request. This includes authority to transfer funds within an agency, between fiscal years, or from excess cash balances to the general revenue fund. R.C. 127.14. Ohio also maintains a Budget Stabilization Fund (commonly known as the “rainy day fund”), currently valued at over \$3.8 billion. And if additional resources are needed beyond those avenues, ODM may request a supplemental appropriation from the General Assembly.

These options exist precisely because agency estimates do not always align with actual expenditures. The General Assembly has accounted for that reality through statutory flexibility—not by permitting agencies to disregard binding legal mandates. Even if a funding gap were to materialize—which remains speculative at best—Respondents would still be required to comply with the law and this Court’s Order.

5. Respondents Cannot Prioritize Discretionary Spending Over Statutory Obligations.

Even if ODM were to face a funding shortfall—which, as noted, remains speculative—it would not be permitted to prioritize discretionary expenditures over those mandated by law. The calculation and payment of nursing facility reimbursement rates, including quality incentive payments, are not optional. They are specifically required by Revised Code Chapter 5165. *See* R.C. 5165.26(B).

As Relators explained in their Merit Brief, this Court and others have consistently held that a government body cannot refuse to make a statutorily required expenditure on the grounds that it is allegedly “impossible” or may result in hardship to other, discretionary parts of its budget. (*See* Relators’ Merit Brief pp. 17-19); *State ex rel. Moorehead, v. Reed*, 177 Ohio St. 4, 6 (1964) (holding that required expenditures must be made even if “there are no unappropriated or unencumbered funds out of which the additional funds could be appropriated, and...to comply

with...[the court's] request would work an undue hardship and burden on other offices and agencies"); *State ex rel. Cottrill v. Meigs Cty. Bd. of Mental Retardation & Dev. Disabilities*, 86 Ohio App.3d 596, 603 (4th Dist. 1993) (“[A]lthough there are other programs on which ODMRDD might prefer to spend those funds, that spending is discretionary but the programs MRDD sought funds for were mandated programs.”).

Respondents’ assertion that complying with R.C. 5165.26 would divert resources from other parts of the Medicaid program is therefore no defense. Statutory duties must be fulfilled, regardless of competing budget priorities.

C. Respondents’ Request for Clarification as to FY 2024 – FY 2025 Is Procedurally Improper, Substantively Unnecessary, and Legally Meritless.

Respondents’ request for “clarification” regarding the effect of this Court’s decision on the FY 2024–25 biennium fails for three independent reasons.

First, it is procedurally improper. This Court’s Rules of Practice do not authorize motions for clarification, and Respondents do not identify any valid procedural basis for their request. The motion should be denied on this ground alone.

Second, it is unnecessary. The Court’s Opinion and Order make plain that Respondents’ legal duty to recalculate and pay quality incentive payments took effect on July 1, 2023, the effective date of the revised statute. In its Opinion, the Court expressly recognized:

The associations seek a writ of mandamus “ordering [the department] to calculate and pay all nursing facility quality incentive payments, dating from July 1, 2023 forward, as required pursuant to the plain, unambiguous language of Revised Code section 5165.26 as amended by the [2024-2025] Budget Legislation.” Put another way, the associations are asking this court to order the department to comply with the formula for reimbursement set forth in R.C. 5165.26.

(Opinion at ¶ 17). In its ruling, the Court did just that and ordered Respondents to recalculate the quality-incentive pool based on that formula. That directive necessarily includes payments due from July 1, 2023 through the present.

Respondents’ request for clarification rests on a fundamental misunderstanding of both the Court’s Order and the nature of mandamus relief. By asking whether the Court’s decision applies “retroactively” to the FY 2024–25 biennium, Respondents imply that the Court is enforcing a new legal obligation. But mandamus relief does not operate “retroactively;” rather, it enforces preexisting legal duties that a government agency has unlawfully failed to perform.

Here, ODM’s obligation to calculate and pay quality incentive payments in accordance with R.C. 5165.26 began on July 1, 2023, the effective date of the statute—not on the date of this Court’s ruling. The Court did not create a new obligation or impose a retroactive penalty; it simply compelled compliance with a statutory duty that had been in effect for close to two years. Respondents’ misunderstanding does not warrant clarification of an order that is already unambiguous.

Third, the underlying premise of Respondents’ request—that liabilities tied to a prior biennium somehow disappear at its expiration—is contrary to Ohio law. Revised Code 131.33(C) provides:

Legal liabilities from prior fiscal years for which there is no reappropriation authority shall be discharged from the unencumbered balances of current appropriations.

Id. The law is clear: Previously incurred liabilities do not vanish with the fiscal calendar. They are paid out of current appropriations. Respondents’ failure to account for this provision only underscores the baselessness of their request.

CONCLUSION

The text of R.C. 5165.26 is unambiguous, and the underlying reality is equally clear: Respondents miscalculated the funds they believed would be needed to comply with their statutory obligations. That is not extraordinary. Ohio law provides mechanisms—such as the Controlling Board—to address precisely this type of budgetary shortfall.

What Ohio law does not permit is for an agency to disregard a clear legal mandate simply because its internal projections proved inaccurate. Yet that is what Respondents have done here, and what they now ask this Court to excuse.

If anything is extraordinary in this case, it is Respondents' persistent effort to substitute their fiscal preferences for the plain instructions of the General Assembly—and now, for the binding order of this Court. The law does not allow it.

Respondents' Motion for Reconsideration is without merit and should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of September, 2025, a true and accurate copy of the foregoing was electronically filed with the Court and served on parties of record listed below via electronic mail:

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