

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ASSOCIATED HOME HEALTH)
INDUSTRIES OF FLORIDA, INC.,)
)
Petitioner,)
)
vs.) CASE NO. 95-4232RP
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION,)
)
Respondent,)
and)
)
FLORIDA NURSES ASSOCIATION,)
PRIVATE CARE ASSOCIATION OF)
FLORIDA, FLORIDA ASSOCIATION OF)
SPEECH-LANGUAGE PATHOLOGISTS AND)
AUDIOLOGISTS; FLORIDA)
OCCUPATIONAL THERAPY ASSOCIATION;)
FLORIDA DEPARTMENT OF ELDER)
AFFAIRS; FLORIDA PHYSICAL)
THERAPY ASSOCIATION, INC.,)
)
Intervenors.)
_____)

FINAL ORDER

This cause came on for final hearing before Diane Cleavinger, a designated Hearing Officer of the Division of Administrative Hearings, on September 18, 1995, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Gene J. Tischer, Esquire
Associated Home Health
Industries of Florida
820 East Park Avenue, Building H
Tallahassee, Florida 32301

For Respondent: Moses E. Williams, Esquire and
Richard M. Ellis, Esquire
Agency for Health Care Administration
2728 Mahan Drive
Tallahassee, Florida 32308

For Intervenors: Donald D. Slesnick, II, Esquire
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(Physical Therapy Assoc.)	Barbara D. Auger, Esquire 215 South Monroe Street Tallahassee, Florida 32302
(Elder Affairs)	William H. Roberts, Esquire Office of Attorney General PL-01, The Capitol Tallahassee, Florida 32399-1050
(Speech-Language Pathologists and Audiologists)	Harold F.X. Purnell, Esquire Post Office Box 551 Tallahassee, Florida 32302

STATEMENT OF THE ISSUES

Whether Proposed Rule 59G-8.200 is valid.

PRELIMINARY STATEMENT

Petitioner, Associated Home Health Industries of Florida, Inc. (Home Health Industries), filed a Petition for Administrative Determination of the Invalidity of a Proposed Rule challenging the validity of Respondent's Agency for Health Care Administration (AHCA), proposed Rule 59G-8.200. Specifically, the Petition challenged AHCA's authority to promulgate the proposed rule and alleged that the proposed rule was invalid because it did not comply with the economic impact statement requirements of Chapter 120, Florida Statutes or did not comply with any notice requirements regarding workshops held in developing the proposed rule.

The proposed rule was published by AHCA in the Florida Administrative Weekly, Volume 21, Number 32, August 11, 1995, at pages 5319-5329.

Prior to the final hearing, AHCA filed a Motion for Final Summary Order and Petitioner filed a Motion for Final Summary Order and In Opposition to Motion for Summary Order by Respondent.

At the final hearing, neither party submitted any evidence. The hearing proceeded solely on the parties legal arguments and the issues raised in the parties' motions for final summary order.

After the final hearing, Respondent filed a proposed final order on September 21, 1995. Petitioner elected not to file a proposed final order. Respondent's proposed order was considered and utilized in the preparation of this final order. However, Respondent's proposed order did not contain separate findings of fact on which rulings could be made.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Section 120.54, Florida Statutes.

2. Petitioner has the burden to prove by a preponderance of the evidence that the proposed rule is invalid because it exceeds the authority of the agency or does not comply with the rulemaking requirements of Chapter 120, Florida Statutes.

3. Petitioner offered no evidence regarding the necessity of the proposed rule's compliance with the economic impact statement provisions or rulemaking workshop notification provisions of Chapter 120, Florida Statutes. Therefore, the portions of the Petition related to the economic impact statement and rulemaking workshop notification are dismissed.

4. Proposed Rule 59G-8.200 establishes criteria for Medicaid reimbursement for health and community based services provided in a person's home or home-like setting. The proposed rule also establishes qualifications for various types of Medicaid providers of such services.

5. The statutory authority for the proposed rule is Chapter 409, Florida Statutes. Chapter 409, Florida Statutes, establishes the Medicaid program in Florida and application for certain federal waivers which authorize modification of federal Medicaid requirements. The proposed rule operates under the federal waiver for Florida's home and community based services program.

6. The services in question are described in paragraph (3)(a) through (ff) of the proposed rule. The waivers are listed in paragraph (9) of the proposed rule, and the waiver programs themselves are described in detail in paragraphs (10) through (14).

7. The services described in the proposed rule include services which may be characterized as health and medical services. For example, the proposed rule at paragraph (3)(y) states as follows:

Skilled Nursing and Skilled Care are skilled nursing services provided to assure the client's safety and to achieve the objectives of the physician authorized treatment plan. This care may also include the services of a licensed respiratory therapist. These skilled services may be provided in the client's home.

8. Paragraph (7) of the proposed rule requires participating service providers to comply with the provisions of Chapter 59G-5, Florida Administrative Code, and requires providers to meet any additional requirements imposed by a given waiver program as described in paragraphs (10) through (14). For example, nursing providers wishing to participate in the Developmental Services Waiver program must comply with paragraph (12)(b)12., of the proposed rule which states as follows:

Private Duty Nursing. Providers must be licensed and Medicaid-participating home health agencies or licensed nurses. Individual nurses must be licensed in accordance with Chapter 464, F.S.; home health agencies must be licensed under Chapter 400, F.S.

9. The proposed rule generally requires that providers rendering a health or caretaker service in an area which requires a state license must hold a current and valid license for the providers area of practice, e.g. nurses must

be licensed nurses under Chapter 464, Florida Statutes. In particular, the proposed rule requires home health agencies to be licensed as such under Chapter 400, Florida Statutes and Rule 59G-5, Florida Administrative Code. The proposed rule does not require that any person performing a health or caretaker service in a Medicaid recipient's home must be a licensed home health agency or employed by a licensed home health agency. For example a licensed nurse may perform nursing services in a Medicaid recipient's home without also being licensed as a home health agency, employed by a home health agency or affiliated with a nurse registry.

10. Petitioner's objection to the proposed rule is based on the fact that not all persons individually rendering health or caretaker services in a Medicaid recipient's home are required to be licensed home health agencies or employed by a home health agency. 1/ The same issues arise for nurse registeries, which operate as brokerage houses for nursing services.

11. "Home health agency" is defined at Section 400.462(4), Florida Statutes as "an organization that provides home health services and staffing services for health care facilities." (Emphasis added) Section 400.462(6), Florida Statutes defines

"Home health services" as "health and medical services and medical supplies furnished to an individual by home health agency personnel or by others under arrangements with the agency, on a visiting basis, in the individual's home or place of residence. The term includes but is not limited to . . . [n]ursing care" (Emphasis added)

In short, not all health and medical services rendered in a person's home are home health services under Chapter 400, Florida Statutes. Only health and medical services rendered by home health agency personnel constitute home health services. Therefore, a home health agency is an organization which through its employees or others under contract with the agency provide services in an individual's home.

12. Section 400.464, Florida Statutes requires home health agencies to be licensed, and at paragraph (5)(a) states that "It is unlawful for any person to offer or advertise home health services to the public unless he has a valid license under this part" (Emphasis added)

13. The peculiar definition of home health services again serves to limit the scope of Section 400.464, Florida Statutes. The prohibited "offer" under Section 400.464(5)(a), is [health and medical services] furnished to an individual by home health agency personnel or by others under arrangements with the agency. Accordingly, what is prohibited is offering services furnished to an individual by home health agency personnel or by others under arrangements with the agency, unless the offeror is licensed as home health agency.

14. When the statutory definition of "home health services" is given its plain meaning, Section 400.464(5)(a) does not apply to health and medical service providers who are not home health agency personnel and who are not providing service under arrangements with a home health agency.

15. The term "home health agency personnel" is defined at Section 400.462(5) as "persons who are employed by or under contract with a home health

agency and enter the home or place of residence of patients at any time in the course of their employment or contract." The definition of "home health agency personnel" does not enlarge the definition of "home health services" and, therefore, is not helpful to Petitioner's interpretation of the law in this case. In short Section 400.462(6) and Section 400.464(5)(a) provide no basis for Petitioner's requested invalidation of proposed rule 59G-8.200. The proposed rule does not contravene those statutes.

16. Statutes are to be given their plain and unambiguous meaning. *Weber v. Dobbins*, 616 So. 2d 956, 958 (Fla. 1993); *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992); *Zuckerman v. Alter*, 615 So. 2d 661, 663 (Fla. 1993). Likewise every word and phrase in a statute must be recognized and given meaning. If the Florida Legislature had intended to require all health services provided in an individual's residence to be provided through home health agencies, the Legislature could have given a very different definition of "home health services" than the definition found in Section 400.462(6), Florida Statutes by leaving out the phrase "by agency personnel or under arrangements with the agency." However, since the above phrase was included by the Legislature in the definition of home health services it must be presumed to have meaning in the definition of home health services and home health agencies.

17. Finally great weight is to be accorded to an agency's interpretation of the law it administers *Daniel v. Florida State Turnpike Authority*, 213 So. 2d 585 (Fla. 1968); later app. 237 So. 2d 222 (Fla. 1st DCA). AHCA has jurisdiction over the licensure of home health agencies under Chapter 400, Florida Statutes. AHCA's interpretation of Section 400.462(6) and Section 400.464(5)(a) are in accord with this Final Order.

ORDER

Based on the foregoing Conclusions of Law, it is

ORDERED that Proposed Rule 59G-8.200 is valid and the Motion for Summary Final Order filed by Respondent is granted for the reasons stated above.

DONE and ORDERED this 27th day of October, 1995, at Tallahassee, Florida.

DIANE CLEAVINGER
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of October, 1995.

ENDNOTE

1/ Petitioner also objected to the proposed rule on the grounds that certain services required "supervision" by another provider. However, Petitioner offered no evidence that these requirements constituted an "organization

providing home health services" as that term is defined in Chapter 400, Florida Statutes, and the variety of relationships precludes such a determination without some evidentiary facts. In short the requirement of "supervision in the rule does not cause this rule to be facially invalid since persons functioning as a home health organization as defined in Chapter 400, Florida Statutes, and its accompanying rule are required to be so licensed.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

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DISTRICT COURT OPINION

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ASSOCIATED HOME HEALTH
INC.,

Appellant,

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Appellee.

_____ /

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

CASE NO. 95-4232RP
DOAH CASE NO. 95-4232RP

Opinion filed July 12, 1996.

An appeal from an order of the Division of Administrative Hearings.

Gene J. Tischer, Tallahassee, for Appellant.

Richard M. Ellis, Tallahassee, for Appellee.

Davis, J.

Associated Home Health Industries of Florida, Inc. (AHHI) appeals a final order from the Division of Administrative Hearings denying a challenge to Proposed Rule 59G-8.200, Fla. Admin. Code. As the Hearing Officer found, the rule is consistent with the plain and unambiguous language of section 400.462(6), Florida Statutes (1995), which defines "home health services" as service supplied "by home health agency personnel or by others under arrangement with the agency." The Hearing Officer found that the statute did not make all health services provided in a private residence "home health services" governed by chapter 400. Rather, the hearing officer concluded, the Legislature imposed the obligations of chapter 400 only on those providing home health services who hold themselves out to the public as licensed home health agency personnel. AHHI argues that this court should ignore the clear meaning of the statute because applying the plain and unambiguous language of the law would not effectuate the legislative intent to protect those in need of home health services. We disagree. The Hearing Officer was correct in concluding that the rule comports with the statute, and was therefore not an invalid exercise of delegated legislative authority or arbitrary and capricious.

Accordingly, we AFFIRM.

ERVIN, J., and SMITH, Senior Judge, CONCUR.

MANDATE
From
DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable Diane Cleavinger, Hearing Officer
Division of Administrative Hearings

WHEREAS, in that certain cause filed in this Court styled:

ASSOCIATED HOME HEALTH
INDUSTRIES OF FLORIDA, INC.

vs.

Case No. 95-4089
Your Case No. 95-4232RP

AGENCY FOR HEALTH CARE
ADMINISTRATION and
FLORIDA NURSES ASSOCIATION,
PRIVATE CARE ASSOCIATION OF
FLORIDA, FLORIDA ASSOCIATION OF
SPEECH-LANGUAGE PATHOLOGISTS, ET AL.

The attached opinion was rendered on July 12, 1996.

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable Edward T. Barfield

Chief Judge of the District Court of Appeal of Florida, First District and
the Seal of said court at Tallahassee, the Capitol, on this 30th day of July,
1996.

(seal)

Jon S. Wheeler
Clerk, District Court of Appeal of Florida,
First District