

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUNRISE COMMUNITY, INC.,)
)
 Petitioner,)
)
 vs.) CASE NO. 95-6028
)
 AGENCY FOR HEALTH CARE)
 ADMINISTRATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On March 14-15, 1996, a formal administrative hearing was held in this case in Miami, Florida, before J. Lawrence Johnston, Hearing Officer, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Steven M. Weinger, Esquire
Kurzban, Kurzban, and Weinger
2650 Southwest 27th Avenue
Miami, Florida 33133

For Respondent: Steven A. Grigas, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Building 3
Tallahassee, Florida 32308-5403

STATEMENT OF THE ISSUE

The issue in this case is what rate the Agency for Health Care Administration (AHCA) should set for the 12-bed Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR-DD) facility being operated by the Petitioner, Sunrise Community, Inc. (Sunrise), at 1102 Krome Avenue in Homestead, Florida.

PRELIMINARY STATEMENT

On July 31, 1995, Sunrise requested that AHCA approve a total-budgeted interim rate of \$525 per diem (\$191,625 per year) per client for its 12-bed ICF/MR-DD facility at 1102 Krome Avenue in Homestead, Florida. By letter dated August 10, 1995, AHCA denied the request but invited Sunrise to provide additional information. On September 12, 1995, Sunrise submitted a response which maintained its original request but also submitted a revised "compromise" request for a rate of \$342 per diem (\$124,830 per year) per client. By letter dated November 8, 1995, AHCA denied both the original and the revised "compromise" request and instead granted Sunrise an interim component rate of \$226 per diem (\$82,490 per year) per client.

On December 4, 1995, Sunrise requested formal administrative proceedings. The matter was referred to the Division of Administrative Hearings (DOAH) on December 13, 1995. It was assigned to Hearing Officer Stuart M. Lerner and scheduled for final hearing on April 25-26, 1996; however, AHCA's Motion for Continuance was granted, and final hearing was continued to May 14-15, 1996. On the day before the hearing was scheduled to begin, the case was reassigned to the undersigned hearing officer.

At final hearing, Sunrise called three witnesses and had Petitioner's Exhibits 1 through 13 and 15 through 17 admitted in evidence (9-11 over objection) in its case-in-chief. (AHCA's objection that Petitioner's Exhibit 14 is irrelevant is sustained.) AHCA called five witnesses and had Respondent's Exhibits 1 through 3 admitted in evidence. Sunrise recalled one witnesses and called one additional witness in rebuttal.

After presentation of the evidence, AHCA ordered the preparation of a transcript of the final hearing, and the parties were given ten days from the filing of the transcript in which to file proposed recommended orders. The transcript was filed on June 10, 1996.

Explicit rulings on the proposed findings of fact contained in the parties' proposed recommended orders may be found in the Appendix to Recommended Order, Case Number 95-6028.

FINDINGS OF FACT

1. The Petitioner, Sunrise Community, Inc. (Sunrise), operates many Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled (ICF/MR-DD's) in Florida and other states. (Three-fourths of them are in Florida.) The aggregate of the operating budgets for these facilities is \$35 million a year. Of this total, approximately 15 percent appears to be attributable to administrative costs, including both local and central office administration; in addition, there is return on proprietors' capital and property costs.

A. The Replacement Facility

2. Sunrise operated a 12-bed ICF/MR-DD in Homestead, Florida, known as the "Corry Group Home" for approximately eight years, until it was destroyed by Hurricane Andrew. In response to the emergency, AHCA authorized Sunrise to move the 12 clients temporarily to two 6-bed homes in Kendall, Florida.

3. AHCA did not allow Sunrise to base its Medicaid reimbursement for the two 6-bed ICF/MR-DD homes in Kendall on the prospective rate that had been in effect at the Corry Group Home; instead, AHCA required Sunrise to request a new, total-budgeted interim rate for the Kendall facilities. Sunrise submitted a budget that exceeded the \$195 per diem cap that applied only to 6-bed facilities. (A different, higher cap applied to other facilities.) With inflationary adjustments, the cap increased to \$216 by 1994.

4. Meanwhile, the Florida Legislature, through Senate Bill 1802 (1993), directed AHCA's predecessor agency to "take all actions necessary to replace [the Corry Group Home] or cause [it] to be replaced." Section 32, Chapter 93-185, Laws of Florida (1993).

5. AHCA or its predecessor agency requested that the replacement facility be configured as a 12-bed quadriplex of four three-bed units. This

configuration was consistent with the current thinking of the agency (as well as professionals in the field) that smaller residential units affording more space per resident were more therapeutic than large group homes. Sunrise concurred and agreed to the configuration.

6. AHCA or its predecessor agency also requested that Sunrise not put the replacement facility on the old Corry Group Home site. The old Corry Group Home was located in an isolated rural area near Homestead, making it difficult for residents to take advantage of job, social, recreational, cultural, religious, transportation and daily living opportunities in Homestead. Sunrise concurred and chose a site at 1102 Krome Avenue, a location in Homestead that affords the residents all of those advantages.

7. When the new Krome Avenue facility approached readiness for occupancy, Sunrise requested that AHCA approve a total-budgeted interim rate of \$525 per diem (\$191,625 per year) per client. The request stated:

While trying to develop a cost structure for this facility, we determined that we would adopt the cost structure of a currently operating State owned and operated ICF/DD facility that is both larger than a 6-person IDF/DD facility and also has residents of the same Developmental/Institutional (7) level of care.

Included with the request was a FYE 6/30/94 cost report for the State's 40-bed Tacachale VIII facility near Gainesville, Florida, with the cost figures reduced proportionately to reflect a 12-bed facility.

8. Tacachale VIII is an ICF/MR-DD designed for the most difficult clients. Clients housed in Tacachale VIII have extreme behavior problems, including a propensity to injure themselves and others. The more difficult the clients, the more expensive the care.

9. The clients in the old Corry Group Home were not as difficult to manage as the Tacachale VIII clients; neither were the clients in the two 6-bed homes in Kendall. (It is disputed as to how many of the 12 clients transferred from the old Corry Group Home after Hurricane Andrew were still in the Kendall homes. But regardless whether the clients were identical, their profiles were substantially the same; they were not the kind of clients housed in Tacachale VIII.) If permitted to base its rate for the Krome Avenue facility on much more difficult clients than those previously served, Sunrise would be able to significantly increase the revenues generated at the facility.

10. Under the Florida Title XIX Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled Reimbursement Plan, Version VI, effective November 15, 1994, (the Reimbursement Plan), once a permanent rate is established for a facility, it cannot be increased as a result of a change in client mix. For that reason, Sunrise views the opening of the new Krome Avenue facility as its window of opportunity to base its reimbursement rate for the facility on Tacachale VIII-type clients.

B. Total-Budgeted or Component Interim Rate

11. According to Section IV.G. of the Reimbursement Plan, provisions for interim changes in component reimbursement rates are not applicable to "new providers' first year interim rates, which are addressed in sections H. and I.,

below." Sections H. and I. provide for interim rates for new providers based on budgeted costs. The requirement to "submit documentation showing that the changes made were necessary to meet existing state or federal requirements" is in Section IV.G.2 of the Reimbursement Plan and applies only to interim changes in component reimbursement rates.

12. Under the Reimbursement Plan, all interim rates are subject to revision based on subsequent audited cost reports. If actual costs are lower than projected, the provider must reimburse the interim overage, and a lower permanent rate will be established based on the lower actual costs. However, if actual costs are higher than projected, the lower budgeted rate would remain in effect and become the permanent rate.

13. If the new Krome Avenue facility is not treated as a "new provider," its reimbursement rate would be based on the \$216 6-bed cap for the two 6-bed temporary homes in Kendall, subject to an interim \$9 increase in the property component, for an interim reimbursement rate of \$226 per diem (\$82,490 per year) per client.

14. Based on the evidence, \$525 per diem per client would be a reasonable and necessary first year total-budgeted cost of serving 12 Tachachale VIII-type clients at the new Krome Avenue facility. Per diem costs would be expected to decline in the second and third years due to: (1) higher occupancy rates; (2) lower staff turnover; and (3) increased efficiency of a more experienced and better trained staff. The expected cost reductions would be reflected in the Cost Reports for those years and would be incorporated into the permanent rate established based on those cost reports.

15. Based on the evidence, \$342 per diem (\$124,830 per year) per client would be a reasonable and necessary first year total-budgeted cost of serving at the new Krome Avenue facility 12 clients similar to those previously served by Sunrise at the old Corry Group Home and the two 6-bed homes in Kendall. The \$342 per diem reflects higher costs than in the Kendall homes due primarily to: (1) higher rent and depreciation; (2) higher salary costs; and (3) increased staffing needs due to the quadriplex configuration. As with the \$525 budgeted rate, the \$342 budgeted rate would be expected to decline in the second and third years.

16. Salary costs at the new Krome Avenue facility are expected to be higher because the Homestead labor market is significantly different from the labor market in Kendall. The labor pool in Homestead always has been smaller, and the difference has become greater since Hurricane Andrew because the Homestead Air Force Base has closed, eliminating from the labor pool the spouses of service men and women stationed there. All staff from the Kendall homes were offered jobs in the Krome Avenue facility but none accepted. Higher salaries are expected to be required to attract qualified staff to work at the new Krome Avenue facility.

17. The \$342 per diem budget is derived in part from the Fiscal Year Ending (FYE) 6/30/94 Cost Report for the two temporary 6-bed homes in Kendall. No FYE 6/30/95 Cost Report was filed because the Kendall homes were closed before the FYE 6/30/95 Cost Report was due.

18. It is found that the new Krome Avenue facility should be treated as a "new provider" for purposes of establishing its interim rate.

19. The preceding finding is consistent with AHCA's past practice. According to the evidence, AHCA or its predecessor agency always has established a total-budgeted interim rate whenever a provider has changed the physical location of its clients. AHCA also has established a total-budgeted interim rate whenever new beds are added and whenever the ownership of a provider changes.

20. The same legislation that directed AHCA's predecessor agency to replace the old Corry Group Home also directed the replacement of two other Sunrise ICF/MR-DD's called Ambrose and Naranja that also were severely damaged by Hurricane Andrew. Under the authority of Senate Bill 1802 (1993), Sunrise reconstructed Ambrose and Naranja on their old footprints, and AHCA authorized Sunrise to temporarily move the clients during reconstruction. When reconstruction was completed, AHCA established a total-budgeted interim rate for both Ambrose and Naranja.

21. AHCA attempted to explain that the new Krome Avenue facility should be treated differently because it was a "consolidation" from two locations to one. That explanation is rejected.

22. Sunrise was entitled to rely on the terms of the Reimbursement Plan and the past practice of AHCA and its predecessor agency under it. In reliance on the past practice, Sunrise proceeded with the construction of the facility at 1102 Krome Avenue.

23. Finding 18, above, also is consistent with AHCA's treatment of the Krome Avenue facility. Treating the new Krome Avenue facility as a new provider, AHCA did not allow Sunrise to be reimbursed for serving clients in the new Krome Avenue facility until Sunrise obtained a separate license to operate the newly constructed facility, enrolled it in the Medicaid reimbursement system, and obtained a new provider agreement. (When Sunrise took those steps, the Medicaid provider number assigned to the new facility apparently was the same number assigned to the Old Corry Group Home and the two 6-bed temporary homes in Kendall.)

CONCLUSIONS OF LAW

24. Florida Senate Bill 1802 (1993) directed AHCA's predecessor agency to "take all actions necessary to replace [the Corry Group Home] or cause [it] to be replaced." Section 32, Chapter 93-185, Laws of Florida (1993).

25. Without Senate Bill 1802 (1993), Sunrise would have had to obtain a certificate of need to replace the old Corry Group Home. Cf. Section 408.045, Fla. Stat. (1995).

26. If there had been no Hurricane Andrew, Sunrise would not have been able to justify a request for a total-budgeted interim rate by changing the client mix at the old Corry Group Home to resemble the Tacachale VIII clientele. It is concluded that, when the Legislature authorized the replacement of the old Corry Group Home outside the certificate of need process, it did not intend to authorize Sunrise to change the client mix. AHCA is not estopped from taking the position that Senate Bill 1802 only authorized Sunrise to replace the old Corry Group Home, not to change the client mix.

27. AHCA's Reimbursement Plan is adopted and incorporated by reference in F.A.C. Rule 59G-6.040. It has been found, and must be concluded, that the new Krome Avenue ICF/MR-DD is a "new provider" under the Reimbursement Plan. As a "new provider," it is entitled to a total-budgeted interim rate.

28. Under the federal Boren Amendment, 42 U.S.C. s. 1396a(a)(13)(A), ICF/MR-DD reimbursement must be "reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities . . ." Under the Reimbursement Plan, a new provider is entitled to an interim rate, based on a total budget, which is projected to be "reasonable and adequate."

29. As found, \$342 per diem per client would be a reasonable and necessary first year total-budgeted cost of serving at the new Krome Avenue facility 12 clients similar to those previously served by Sunrise at the old Corry Group Home and the two 6-bed homes in Kendall. It is concluded that the interim rate for the facility should be set at \$342.

30. It having been found and concluded that Sunrise is entitled to a total-budgeted interim rate, Sunrise's estoppel and other arguments are moot.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Agency for Health Care Administration enter a final order establishing the interim rate for Sunrise's new Krome Avenue ICF/MR-DD at \$342 per diem (\$124,830 per year) per client.

DONE and ENTERED this 11th day of July, 1996, in Tallahassee, Florida.

J. LAWRENCE JOHNSTON, 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 11th day of July, 1996.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 95-6028

To comply with the requirements of Section 120.59(2), Florida Statutes (1995), the following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact.

- A. General Findings
 - 1.-.25. Cumulative. Duplicate Specific Findings.
- B. Specific Findings
 - 1. Leech
 - a.-o. Accepted and incorporated to the extent not subordinate or unnecessary.

p. Accepted and incorporated. However, approximately 15 percent appears to be attributable to administrative costs, including both local and central office administration; in addition, there is return on proprietors' capital and property costs.

q. Accepted and incorporated to the extent not subordinate or unnecessary.

r. First sentence, cumulative; second, accepted but irrelevant; third, accepted and incorporated (Tacachale VIII); fourth, rejected as unintelligible; last, accepted and incorporated.

s. Accepted and incorporated to the extent not subordinate or unnecessary.

2. Childs

a. First sentence, accepted but subordinate and unnecessary; rest, accepted and incorporated to the extent not subordinate or unnecessary.

b. Rejected as not proven that it was not treated as a "replacement"; otherwise, accepted and incorporated.

c. Accepted but subordinate and unnecessary.

d. First two sentences, rejected that none of this was "relevant"; otherwise, accepted and incorporated.

e. First sentence, rejected as not proven that the license "does not relate in any manner" to the Corry home; otherwise, accepted and incorporated.

f. First sentence, rejected as not proven that this specific advice was given. Last sentence, rejected as not proven that "there was not any relevance." Otherwise, accepted and incorporated to the extent not subordinate or unnecessary.

g. Rejected as not proven that there "was no relevance whatsoever." Otherwise, accepted and incorporated to the extent not subordinate or unnecessary.

h. Accepted and incorporated to the extent not subordinate or unnecessary. However, although "low," Sunrise proved that it was "reasonable and adequate."

i. Accepted but subordinate and unnecessary. (There has been no significant change in the general profiles of the clients.)

j. Rejected as unintelligible.

k. Accepted and incorporated to the extent not subordinate or unnecessary. (Although some may be "low," Sunrise proved that they were "reasonable and adequate.")

l. Accepted but subordinate and unnecessary.

m. Accepted and incorporated to the extent not subordinate or unnecessary. (In other words, if Sunrise were authorized to change its client mix for the replacement facility, it would have been able to claim an interim reimbursement rate of \$191,625 per year for each of the 12 clients served.)

n. Rejected as not proven. Proven that they are "reasonable and adequate" for the first year of operation. Costs are expected to decline in subsequent years.

o. First sentence, rejected as not proven in that it was both. Second sentence, accepted and incorporated.

3. Weeks

a. Accepted but subordinate and unnecessary.

b. See 2.m., above.

c. Third sentence, rejected as incomplete and therefore unintelligible. (Accepted and incorporated if the completed proposed finding would have said the \$342 per diem budget is "reasonable and adequate" for clients like those being served.) Otherwise, accepted and incorporated to the extent not subordinate or unnecessary.

d. Rejected as not proven as to the \$525 budget, which essentially was the Tacachale VIII budget reduced in proportion to the number of clients served. Otherwise, accepted and incorporated to the extent not subordinate or unnecessary.

e. Rejected as not proven that the Sunrise budget was "significantly more generous." The cost of any additional nursing care was not quantified; and, while the off-site day program that is considered mandatory for a provider like Sunrise costs approximately \$40 per day per client, the practical feasibility (and cost-benefits) of such a program would be questionable for clients like those at Tacachale VIII.

f. Accepted and incorporated.

g.-j. Accepted; subordinate to facts found.

k. Conclusion of law.

l. Rejected as not proven.

m. Accepted but unnecessary.

n. Rejected as not proven that the facts were "just like the Corry Group Home." Otherwise, accepted but subordinate to facts found.

o. Accepted; subordinate to facts found.

p. First sentence, accepted but unnecessary; second, unintelligible.

q. Accepted; subordinate to facts found.

r. Accepted and incorporated.

s. Accepted; subordinate to facts found.

t. Rejected as not proven that AHCA did not request additional information; otherwise, accepted and incorporated to the extent not subordinate or unnecessary.

u. Cumulative.

v. Unintelligible.

w.-x. Cumulative.

y. First sentence, unintelligible; second, conclusion of law; rest, accepted and incorporated to the extent not subordinate or unnecessary.

z. Accepted and incorporated.

aa. Rejected as not proven.

bb. Rejected as not proven as to the provider number; accepted and incorporated as to the license.

cc. First sentence, unintelligible, subordinate and unnecessary; second, cumulative.

dd. First sentence, accepted and incorporated; second, rejected as not proven that it is "appropriate" for Sunrise to serve those clients at the new Krome Avenue facility but otherwise accepted and incorporated; third, rejected as not proven that they are the "easiest clients" but accepted and incorporated as to the budget for them.

ee. Introductory clause, accepted and incorporated; conclusion, rejected as not proven.

4. McCormick

a.-b. Accepted but subordinate and unnecessary.

5. Moore

a. First sentence, accepted but subordinate and unnecessary. Second, unintelligible. (Accepted as to "direct care staff" but subordinate and unnecessary.

b.-c. Rejected as not proven.

d. Rejected as not proven that all of them can, or that any of them can at all times.

e.-h. Accepted but subordinate and unnecessary.

6. Burroughs

a.-c. Accepted but subordinate and unnecessary.

7. Hughes

a. First sentence, accepted but subordinate and unnecessary; rest, conclusions of law.

b. Accepted but subordinate to facts found, and unnecessary.

c. Conclusion of law, subordinate and unnecessary.

d. Rejected as not proven.

- e. Accepted and incorporated.
- f. Accepted and incorporated. (In this context, "new provider" does not mean a "replacement" under Senate Bill 1802.)
- g. Subordinate and cumulative. ("Perspective" is a typo.)
- h. Unintelligible.
- i. Accepted but subordinate and unnecessary.
- j.-k. Cumulative, subordinate and unnecessary.
- l. Accepted and incorporated.
- m. Accepted but subordinate and unnecessary.
- n.-o. Cumulative, subordinate and unnecessary.
- 8. Allen
 - a. Accepted but subordinate and unnecessary.
 - b. Accepted; subordinate to facts found.
 - c. Accepted but subordinate and unnecessary.
 - d. Except to the extent conclusion of law, accepted but subordinate and unnecessary.
 - e.-g. Accepted but subordinate and unnecessary.
 - h. Conclusion of law, subordinate and unnecessary.
 - i. Accepted but subordinate and unnecessary.
- 9. Lussier
 - a.-c. Accepted but subordinate and unnecessary.
- 10. Weeks Rebuttal
 - a. Last sentence, rejected as not proven; otherwise, accepted and incorporated to the extent not subordinate or unnecessary.
 - b. Accepted and incorporated to the extent not subordinate or unnecessary.
 - c. Accepted and incorporated. ("Expect" is a typo.)

Respondent's Proposed Findings of Fact.

- 1. Accepted and incorporated.
- 2.-4. Conclusions of law.
- 5.-6. Accepted and incorporated.
- 7. Accepted. Sunrise's intent is subordinate and unnecessary; the rest is incorporated.
- 8. Rejected as contrary to the greater weight of the evidence, but irrelevant as there has been no significant change in the general profiles of the clients.
- 9.-10. Accepted and incorporated.
- 11. Rejected as contrary to the greater weight of the evidence. Its present status is the issue in this case; in addition, the basis of the current payments is the 6-bed cap, adjusted for an increased property component.
- 12.-15. Accepted and incorporated. ("August 190" in 15 is a typo.)
- 16. Rejected as contrary to the greater weight of the evidence that it was an "amended interim rate request." (Sunrise maintained the original request but also submitted a revised "compromise" request.)
- 17. Accepted and incorporated.
- 18. To the extent not conclusion of law, rejected as contrary to the greater weight of the evidence.
- 19. Accepted and incorporated.
- 20. Rejected as contrary to the greater weight of the evidence.
- 21. Accepted ("1996" is a typo) but subordinate and unnecessary.
- 22. First sentence, rejected as contrary to the greater weight of the evidence; second, accepted but subordinate and unnecessary.
- 23. Accepted but subordinate and unnecessary.
- 24. Rejected as contrary to the greater weight of the evidence.

25. First and third sentence, rejected as contrary to the greater weight of the evidence; second, accepted and incorporated. (As to the first, it was invalid because it sought to base the rate on a different client mix.)

26. Testimony accepted as accurate, but rejected that it further supports the finding. See 25., above.

27. Accepted and incorporated.

28. First sentence, accepted but subordinate to facts contrary to those found (i.e., that it was not an interim change in component reimbursement rate request.)

29. First and second sentences, rejected as contrary to the greater weight of the evidence. (Sunrise is a new provider at the Krome Avenue facility, but Senate Bill 1802 did not entitle it to a new rate based on a different client mix.) Third sentence, rejected as being argument of counsel.

30. First sentence, rejected; second, accepted (in accordance with Senate Bill 1802); rest, accepted but subordinate to facts found.

31.-32. Accepted and incorporated that the same Medicaid provider number seems to apply to the Krome Avenue facility. But rejected as contrary to the greater weight of the evidence that it should not be treated as a new provider for purposes of establishing a reimbursement rate.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit to the Agency for Health Care Administration written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should consult with the Agency for Health Care Administration concerning its rules on the deadline for filing exceptions to this Recommended Order.

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AGENCY FINAL ORDER

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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

SUNRISE COMMUNITY, INC.,

Petitioner,

vs.

CASE NO.: 95-6028
RENDITION NO.: AHCA-96-1346-FOF-MDR

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

_____ /

FINAL ORDER

PRELIMINARY STATEMENT

Sunrise owns and operates ICF/DD facilities. Three of its facilities were severely damaged by Hurricane Andrew. At issue in this case is one of the three facilities, the Corry Group Home; specifically, the Medicaid per diem rate to be paid for each Medicaid resident of the facility built to replace Corry. Sunrise's immediate response to the emergency was to move its Corry residents to two six person facilities north of the disaster area. The agency's response to the emergency relocation was to give Sunrise a new per diem rate based on a budget (anticipated costs) for the emergency facilities rather than a rate based on the cost experience at the Corry Home.

The Legislature authorized Sunrise to replace its three ICF/DD facilities which were severely damaged by the hurricane. See Section 32 of Chapter 93-185, Laws of Florida. The Corry Group Home, a 12 bed facility, was not restored; instead, Sunrise built a new 12 bed facility on a new site on Krome Avenue. This rate dispute arises from the agency's denying Sunrise's request for a rate based on a budget, and instead approving a rate based on the cost experience at the two emergency facilities with an upward adjustment only for increased property costs at the new facility. The per diem rate sought by Sunrise is \$342; the rate initially approved by the agency is \$225.88.

RULING ON EXCEPTIONS

Counsel excepts to the finding in paragraphs 3 and 13 that the per diem rate approved for the two emergency facilities was subject to a dollar cap applicable to 6 bed facilities. Several allusions to such a cap are found in reviewing the testimony given at the final hearing, but a review of Petitioner's composite exhibit 8 is more helpful in addressing the exception. Sunrise's letter of December 9, 1992, to Medicaid notes that Sunrise was being reimbursed at the rate for the destroyed Corry facility, \$134.45, and urgently requested that a 45.07 percent increase (an additional \$60.60 for a total rate of \$195.05) be approved because Sunrise was incurring higher costs of care at the emergency

facilities. The agency's response was a letter of January 21, 1993, to Sunrise approving the requested rate of \$195.05. Neither letter indicated that the rate was limited by a cap. The substantial increase requested by Sunrise was approved. The exceptions are granted.

Counsel excepts to the findings in paragraphs 5 and 6 that AHCA or HRS "requested" that the replacement facility be designed as a quadriplex (four three-bed units) and that the new facility not be placed on the Corry site. The exception is granted and the finding is modified as follows. Having reviewed the record, it is clear that the decisions on site and design were Sunrise's. The decision on design was made after discussions with staff at the agencies. See the transcript of the final hearing at pages 34, 38, 39, 53, 468, and 469. The enabling legislation provided that the department "shall authorize Sunrise to build three twelve person ICF/DD facilities through private financing on sites selected [by Sunrise]." [emphasis added]. Section 32 of Chapter 93-185, Laws of Florida.

Counsel excepts to the hearing officer's comment in paragraph 9 that if Sunrise served much more difficult residents than it previously served its revenues would significantly increase. It should be noted that the hearing officer found that the profile of the residents served after the hurricane did not change. The challenged comment is supported by competent, substantial evidence; thus, the exception is denied. *Heifetz vs. Department of Business Regulation*, 475 So2d 1277, 1281 (Fla. 1st DCA 1985).

Counsel excepts to the conclusion of law in paragraph 10 that once a permanent rate is established for a facility, it cannot be increased as a result of a change in client mix. The exception is granted. If the state requires a facility to serve a different profile of residents, the rate may be adjusted.

Counsel excepts to the finding in paragraphs 15 and 29 that Sunrise's proposed per diem rate of \$342 reflects a reasonable level of costs for the new facility. Sunrise presented testimony regarding the reasonableness of the proposed rate. This testimony was not contradicted. The agency's witness, Frank Hughes, conceded the reasonableness of the \$342 proposed rate for a new provider. The challenged finding is supported by competent, substantial evidence; therefore, the exception is denied. Likewise, the exception to the finding in paragraph 16 that higher salary costs could be anticipated at the new facility is denied.

Counsel excepts to the implication of paragraph 17 that no cost report was required for fiscal year 1995 because the two emergency homes closed before the due date of the cost report. The applicable plan, Respondent's Exhibit 2 does not excuse the filing of a cost report under this circumstance. The exception is granted.

Counsel excepts to the hearing officer's conclusion in paragraphs 18 and 27 that the new facility should be treated as a new provider for purposes of establishing its per diem rate. I find no statute or rule to support the treatment of the new facility differently from the other two facilities restored by Sunrise pursuant to Section 32 of Chapter 93-185, Laws of Florida. I concur with the hearing officer; thus, the exception is denied.

Counsel's exceptions regarding estoppel are not addressed as the hearing officer's recommendations are not based on estoppel. See paragraph 30 of the Recommended Order.

FINDINGS OF FACT

The agency hereby adopts and incorporates by reference the findings of fact set forth in the Recommended Order excepts as modified by the rulings on the exceptions.

CONCLUSIONS OF LAW

The agency hereby adopts and incorporates by reference the conclusions of law set forth in the Recommended Order except as modified by the rulings on the exceptions.

Based upon the foregoing, it is

ADJUDGED, that a per diem rate of \$342 as recommended be established for Sunrise's new Krome Avenue ICF/DD.

DONE and ORDERED this 1st day of December, 1996, in Tallahassee, Florida.

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION

Douglas M. Cook, Director

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:

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Fort Knox Building III	Tallahassee, Florida 32399-1550
Tallahassee, Florida 32308-5403	

Steven M. Weinger, Esquire
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2650 SW 27th Avenue, 2nd Floor
Miami, Florida 33133

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the above named addresses by U.S. Mail this 2nd day of December, 1996.

R. S. Power, Agency Clerk
State of Florida, Agency for
Health Care Administration
2727 Mahan Drive
Fort Knox 3, Suite 3431
Tallahassee, Florida 32308-5403
(904) 922-3808