

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MY FRIEND HOME CARE, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 10-2657RU
	)	
AGENCY FOR HEALTH CARE	)	
ADMINISTRATION,	)	
	)	
Respondent.	)	
_____	)	

SUMMARY FINAL ORDER

On May 19, 2010, the Respondent filed a Motion for Summary Final Order pursuant to Section 120.57(1)(h), Florida Statutes (2009). After having been granted several extensions of time, the Petitioner filed its response in opposition to the motion on June 30, 2010.

APPEARANCES

For Petitioner:	Julie Gallagher, Esquire Akerman Senterfitt 106 East College Avenue, Suite 1200 Tallahassee, Florida 32301
For Respondent:	Richard Joseph Saliba, Esquire Agency for Health Care Administration 2727 Mahan Drive, Building 3, Mail Station 3 Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

Whether the Respondent's decision to deny the Petitioner's application for a renewal license for a home health agency on

the basis of Section 400.471(10), Florida Statutes (2009),<sup>1</sup> constitutes an agency statement of general applicability that has not been adopted as a rule pursuant to Section 120.54, Florida Statutes, and, therefore, violates Section 120.54(1)(a), Florida Statutes.

#### PRELIMINARY STATEMENT

On May 10, 2010, My Friend Home Care, Inc., filed a Petition for Determination of Invalidity of Non-Rule Policy. In the Petition, My Friend Home Care asserted that the Agency for Health Care Administration ("AHCA") applied a non-rule policy when it announced in a Notice of Intent to Deny that it had preliminarily decided to deny My Friend Home Care's application for a renewal license as a home health agency pursuant to Section 400.471(10), Florida Statutes (2009). My Friend Home Care alleged:

AHCA's decision to deny My Friend's licensure renewal application on the basis of §400.471(10), Fla. Stat., represents a non-rule policy, because it is a rule as defined by §120.52(16), Fla. Stat. to retroactively apply a new law, §400.471(10), Fla. Stat. which by its terms, became effective July 1, 2009.

AHCA responded to the Petition by filing its Motion for Summary Final Order. Having reviewed the Petition, AHCA's motion, and My Friend Home Care's response in opposition to the motion, it has been determined that there are no disputed issues of

material fact, and this matter is decided on the written submissions of the parties.

#### FINDINGS OF FACT

Based on the entire record of this proceeding, the following facts are undisputed and found to be true:

1. My Friend Home Care submitted its application to renew its home health license on or about November 7, 2009.

2. On January 11, 2010, AHCA issued a Notice of Intent to Deny My Friend Home Care's application for a renewal license pursuant to Section 400.471(10)(d), Florida Statutes, which became effective on July 1, 2009.

3. Section 400.471(10), Florida Statutes, provides in pertinent part:

The agency may not issue a renewal license for a home health agency in any county having at least one licensed home health agency and that has more than one home health agency per 5,000 persons, as indicated by the most recent population estimates published by the Legislature's Office of Economic and Demographic Research, if the applicant or any controlling interest has been administratively sanctioned by the agency during the 2 years prior to the submission of the licensure renewal application for one or more of the following acts:

\* \* \*

(d) Failing to provide at least one service directly to a patient for a period of 60 days.

4. On May 13, 2009, a Final Order was entered by AHCA finding that My Friend Home Care failed ensure that at least one service was directly provided to a patient in a 60-day period. An administrative fine of \$1,000.00 was assessed against My Friend Home Care, which paid the fine.

5. My Friend Home Care operates a home health agency in Miami, Florida, and is subject to the provisions of Section 400.471, Florida Statutes.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.56, 120.569 and 120.57(1), Florida Statutes.

7. A "rule" is defined in Section 120.52(16), Florida Statutes, as follows:

"Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

8. The plain language of Section 400.471(10), Florida Statutes, prohibits AHCA from issuing a renewal license to any home health agency that falls within the demographic criteria set forth in the statute and that "has been administratively

sanctioned by the agency during the 2 years prior to the submission of the licensure renewal application." The legislature, thus, clearly expressed its intent in Section 400.471(10), Florida Statutes, that the prohibition on the renewal of home health licenses apply to conduct that occurred before the enactment of the statute.<sup>2</sup>

9. Consequently, when AHCA denies an application for a renewal license to a home health agency based on conduct occurring during the two years prior to submission of the application, it is basing its action on a requirement specifically included in Section 400.471(10), Florida Statutes. AHCA is not "implement[ing], interpret[ing], or prescrib[ing] law or policy" by adding to or modifying the plain requirements of the statute. § 120.52(16), Fla. Stat. It is axiomatic that an agency's interpretation of a statute that gives the statute a meaning readily apparent from its literal reading and does not purport to create rights, require compliance, or otherwise have the direct and consistent effect of law is not a rule. Cf. e.g. Beverly Enterprises-Florida, Inc. v. Department of Health, 573 So. 2d 19, 20 (Fla. 1st DCA 1990); St. Francis Hospital v. Department of Health & Rehabilitative Services, 553 So. 2d 1351, 1354 (Fla. 1st DCA 1989); Department of Transp. v. Blackhawk Quarry Co., 528 So. 2d 447, 449 (Fla. 5th DCA 1988). AHCA's application of the clear and unambiguous language of

Section 400.471(10), Florida Statutes, therefore, does not constitute a rule pursuant to Section 120.54, Florida Statutes.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Petition for Determination of Invalidity of Non-Rule Policy is dismissed.

DONE AND ORDERED this 6th day of July, 2010, in Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of July, 2010.

ENDNOTES

<sup>1/</sup> All references to the Florida Statutes are to the 2009 edition unless otherwise indicated.

<sup>2/</sup> In its Petition and its response in opposition to the Motion for Summary Final Order, My Friend Home Care relies on the holding in Middlebrooks v. Department of State, 565 So. 2d 727 (Fla. 1st DCA 1990), for its argument that the application of Section 400.471(10), Florida Statutes, to conduct that occurred before the effective date of the statute constitutes an impermissible retroactive application of the statute in that it

has the effect of increasing the penalty for, and the adverse consequences arising out of, the conduct. The issue in this case is, however, whether AHCA's application of the statute to deny renewal license applications for conduct occurring prior to the effective date of the statute constitutes an unadopted rule; the issue is not whether the statute impermissibly punishes applicants for conduct occurring prior to the effective date of the statute.

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 Administrative 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.