

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

FILED
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CMCP-PINECASTLE, LLC,

Petitioner,

DOAH NO. 15-1963CON
AHCA NO. 2015003324
CON NO. 10255

vs.

CON APP MARION, LLC, AND
MARION COUNTY HRC, LLC AND
STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondents.

FINAL ORDER

THIS CAUSE is before the State of Florida, Agency for Health Care Administration (“the Agency”) concerning certificate of need (“CON”) to establish new community nursing homes in Marion County, Agency District 3, Sub-district 4.

1. For that cycle, the Agency’s published fixed need pool projected a need for 140 community nursing home beds in Marion County. The Agency also published a projected need for 43 beds in Putnam County, which is Agency District 3, Sub-District 3, and is adjacent to Marion County. Chapter 14-110, Section 1, Laws of Florida, created subsection (6) for section 408.034, Florida Statutes authorizing an applicant to aggregate the subdistricts’ need for a new community nursing home in one of the subdistricts.

2. CMCP-Pinecastle, LLC (“Pinecastle”), sought approval for a 32-bed nursing home. Pinecastle’s CON Application No. 10255 invoked Section 1 of Chapter 14-110 and proposed aggregating the bed need from Putnam County for its proposed Marion County nursing home. The Agency approved Pinecastle’s application.

3. Marion County Development, LLC (“Marion Development”), applied for a 140-bed nursing home CON. The Agency approved Marion Development's application.

4. Marion County HRC, LLC (“Marion HRC”) sought approval for a 140-bed nursing home. The Agency denied the application. Marion HRC challenged the denial of its application and sought a formal administrative hearing. The prayer for relief in DOAH Case No. 15-1967 CON, in the petition of Marion HRC sought approval of its CON Application number 10258 and denial of “all co-batched applications.”

5. CON App Marion, LLC (CON App Marion), applied for a 120-bed CON. The Agency denied the application. CON App Marion challenged this decision and sought a formal administrative hearing.

6. The Agency referred the Petitions to the Division of Administrative Hearings and an Administrative Law Judge (“ALJ”) was assigned.

7. On April 30, 2015, Marion HRC filed a Notice of Partial Voluntary Dismissal as to Pinecastle’s CON Application 10255 only.

8. On May 22, 2015, Pinecastle filed a Motion for Severance and Motion to Relinquish Jurisdiction of its CON 10255.

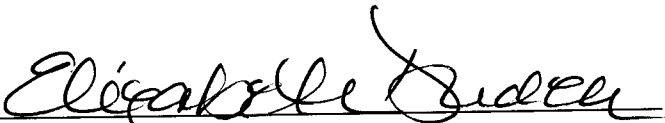
9. On June 2, 2015, CON App Marion filed a Motion for Leave to Amend Petition seeking to challenge Pinecastle’s CON Application 10255.

10. On July 15, 2015, the Administrative Law Judge entered the attached order (Exhibit 1) denying CON App Marion’s Motion for Leave to Amend, granting Pinecastle’s Motion for Severance and Motion to Relinquish Jurisdiction, accepting Marion HRC’s Notice of Partial Voluntary Dismissal, and recommending that Pinecastle’s application be approved.

It is therefore **ORDERED:**

1. The approval of PCON application number 10255 is upheld. The Agency shall issue CON 10255 to Pinecastle.

ORDERED in Tallahassee, Florida, on this 6 day of November, 2015.

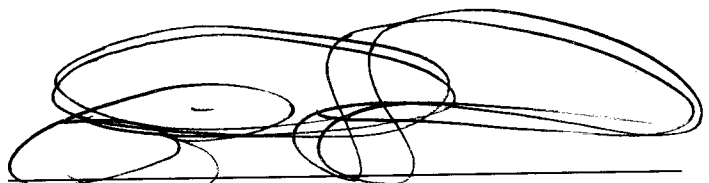

Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing the original Notice of Appeal with the Agency Clerk of AHCA, and a copy along with the filing fee 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 of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of the rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Final Order has been furnished by the method designated to the persons named below on this 9th day of November, 2015.



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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CMCP-PINECASTLE, LLC,

Petitioner,

vs.

Case No. 15-1963CON

CON APP MARION, LLC, AND MARION
COUNTY HRC, LLC, AND AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondents.

MARION COUNTY DEVELOPMENT, LLC,

Petitioner,

vs.

Case No. 15-1966CON

MARION COUNTY HRC, LLC AND CON
APP MARION, LLC, AND AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondents.

MARION COUNTY HRC, LLC,

Petitioner,

vs.

Case No. 15-1967CON

CMCP-PINECASTLE, LLC, MARION
COUNTY DEVELOPMENT, LLC, AND
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondents.

CON APP MARION, LLC,

Petitioner,

vs.

Case No. 15-1970CON

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

ORDER ON NOTICE OF PARTIAL VOLUNTARY DISMISSAL,
MOTION TO AMEND PETITION, AND MOTION TO SEVER
AND RELINQUISH JURISDICTION

The parties to this proceeding dispute who should receive certificates of need (CON) from the Agency for Health Care Administration (Agency) to establish new community nursing homes in Marion County, Agency District 3, Subdistrict 4. All applied in the November 2014 batching cycle. The Agency conducted a comparative review of the applications. For that cycle, the Agency's published fixed need pool projected a need for 140 community nursing home beds in Marion County. The Agency also published a projected need for 43 beds in Putnam County, which is Agency District 3, Subdistrict 3. It is adjacent to Marion County. This is significant because chapter 14-110, section 1, Laws of Florida, created subsection (6) for section 408.034, Florida Statutes, the law requiring the Agency to establish uniform need methodologies for health care services.

The new subsection provides:

If nursing home bed need is determined to exist in geographically contiguous subdistricts within a district, an applicant may aggregate the subdistricts' need for a new community nursing home in one of the subdistricts. If need is aggregated from two subdistricts, the proposed nursing home site must be located in the subdistrict with the greater need as published by the agency in the Florida Administrative Register. However, if need is aggregated from more than two

subdistricts, the location of the proposed nursing home site must provide reasonable geographic access for residents in the respective subdistricts given the relative bed need in each subdistrict.

CMCP-Pinecastle, LLC (Pinecastle), sought approval for a 32-bed nursing home. Pinecastle's application invoked section 1 of chapter 14-110 and proposed aggregating the bed need from Putnam County for its proposed Marion County nursing home. The Agency approved Pinecastle's application. The Agency's State Agency Action Report contains two statements about aggregating need and quotes the statute. The first statement appears in the project summary for Pinecastle's application. It says: "The reviewer notes that the applicant does not specifically cite how many beds it is aggregating from the 43 bed need that was published for nursing home Subdistrict 3-3 (Putnam County)." The second statement appears in the final summary of the State Agency Action Report. It reads: "The applicant states that it intends to aggregate available bed need from Subdistrict 3-3, Putnam County, with published need from 3-4 in order to accommodate the proposed project. The applicant does not specify how many beds it would aggregate from Putnam County to accomplish the proposed project."

Marion County Development, LLC (Marion Development), applied for a 140-bed nursing home CON. The Agency approved Marion Development's application. The Petition of Marion Development in DOAH Case No. 15-1966CON asked for approval of its CON Application 10257 and denial of CON applications 10256 (CON App Marion) and 10258 (Marion HRC).

Marion HRC, LLC (Marion HRC), sought approval for a 140-bed nursing home. The Agency denied the application. Marion HRC challenged this decision and sought a formal administrative hearing. The prayer for relief in DOAH Case No. 15-1967CON, in the petition of Marion HRC, sought approval of its CON Application number 10258 and denial of the applications of "all co-batched applications."

CON App Marion, LLC (CON App Marion), applied for a 120-bed CON. The Agency denied the application. CON App Marion challenged this decision and sought a formal administrative

hearing. CON App Marion's petition in DOAH Case No. 15-1970CON offered the following conditional position on the approval of Pinecastle's application. "It appears from the State Agency Action Report that CCMP-Pinecastle, LLC's application was approved in its entirety with beds from the fixed bed need pool in an adjoining county. If this is correct, Petitioner is not adversely affected [sic] by the issuance of CON 10255. If that is incorrect, Petitioner contests the award of CON 10255 to CMSP [sic] - Pinecastle, LLC." But CON App Marion's Petition's prayer for relief asked that: "A Final Order be entered awarding Certificate of Need 10256 to Petitioner and denying all other applications listed in Paragraph 4, above." Paragraph 4 listed the applications of Pinecastle, Marion Development, and Marion HRC.

CON App Marion offers a proposed amended petition that takes the position that Pinecastle's application should not have been approved relying simply upon the 43-bed need projected for Putnam County.

The following pend in this proceeding.

1. CON App Marion's Motion for Leave to Amend Petition.
2. Pinecastle's Motion for Severance and Motion to Relinquish Jurisdiction.
3. Marion HRC's Notice of Partial Voluntary Dismissal as to Pinecastle's application.

They all depend upon the interpretation and application of the "aggregation" opportunity created by chapter 110, section 1, Laws of Florida. The Legislature did not define "aggregate." If a statute does not define a word, it should be given its plain, ordinary meaning. Sch. Bd. v. Survivors Charter Sch., Inc., 3 So. 3d 1220, 1233 (Fla. 2009) ("Where, as here, the legislature has not defined the words used in a [statute], the language should be given its plain and ordinary meaning." Fla. Birth-Related Neurological Injury Comp. Ass'n v. Fla. Div. of Admin. Hearings, 686 So. 2d 1349, 1354 (Fla. 1997)."). The dictionary is the authority courts turn to for the plain and ordinary meaning of a word. Town of Longboat Key v. Islandside Prop. Owners Coalition, LLC, 95 So. 3d 1037, 1041 (Fla. 2d DCA 2012), citing Baker Cnty.

Med. Servs., Inc. v. Aetna Health Mgmt., LLC, 31 So. 3d 842, 845 (Fla. 1st DCA 2010), review den., 44 So. 3d 1177 (Fla. 2010).

The Merriam-Webster Dictionary defines "aggregate" as a collection of units into a whole. <http://www.merriam-webster.com/dictionary/aggregate>. That definition applied to the "aggregation" provision requires the conclusion that once Pinecastle invoked the statute, the 140-bed need in Marion County and the 43-bed need in Putnam County are combined into a need of 183 community home nursing beds in Marion County for the batching cycle. CON App Marion advances the argument that the 43-bed need of Putnam County may be divided in some fashion that results in one or more of Pinecastle's 32 awarded beds coming from the non-aggregated Marion County need thus making it impossible to approve the 140-bed applications of Marion Development and Marion HRC. The argument is not consistent with the plain meaning of the statute.

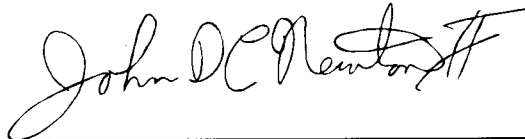
CON App Marion's argument arises from the fact that the Agency's recently published Background Information for Use With the January 2018 Planning Horizon Florida Nursing Home Bed Need Projections by District and Subdistrict, in a section titled, "Facility Changes Identified Since October 2014," states Pinecastle's "Intent to Approve to Establish a 32-Bed Community Nursing Home Using 20 beds from the Fixed Need Pool and Aggregating 12 beds from Subdistrict 3-3." Understandably, CON App Marion seized upon the Agency's indication that it does not think "aggregate" means "aggregate." But this is an issue for challenges under Florida Administrative Code Rule 59C-1.008(2)(c) to the Agency's need projections. It will not be an issue in this proceeding.

The aggregate need pool for this proceeding is 183 community nursing home beds. This means approval of Pinecastle's application for 32 beds cannot substantially affect the applications of CON App Marion, Marion Development, and Marion HRC. It follows that none of the three are at risk for an injury of sufficient immediacy to satisfy the first prong of the standing test articulated in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).^{1/}

For the foregoing reasons:

1. Marion LLC's Motion for Leave to Amend Petition is denied.
2. Pinecastle's Motion for Severance and Motion to Relinquish Jurisdiction is granted.
3. Marion HRC's Notice of Partial Voluntary Dismissal as to Pinecastle's application is accepted.
4. The challenges in DOAH Case Nos. 15-1967CON and 15-1970CON to approve of CON application number 10255 of Pinecastle are severed, and jurisdiction over those challenges is relinquished to the Agency for Health Care Administration for entry of a final order approving the application.
5. DOAH Case No. 15-1963CON is severed from these consolidated cases. The file in DOAH Case No. 15-1963CON of the Division of Administrative Hearings is closed, and jurisdiction is relinquished to the Agency for Health Care Administration for entry of a final order approving the application of Pinecastle.

DONE AND ORDERED this 15th day of July, 2015, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of July, 2015.

ENDNOTE

^{1/} If there were a substantial injury, it would be the type or nature which the proceeding was designed to protect, the second "zone of interest" prong of the Agrico test. § 408.039(5)(c), Fla. Stat. (2014). ("In administrative proceedings challenging the issuance or denial of a certificate of need, only applicants considered by the agency in the same batching cycle are entitled to a comparative hearing on their applications.")

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