

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2016 OCT 26 A 11: 35

PRUITTHEALTH-ALACHUA COUNTY,
LLC,

Petitioner,

DOAH CASE NO. 16-1696CON

AHCA CASE NO. 2016002456

vs.

RENDITION NO.: AHCA-16-0756 -FOF-OLC

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent,

and

ALACHUA COUNTY HRC, LLC,

Intervenor.

FINAL ORDER

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), R. Bruce McKibben, conducted a formal administrative hearing. At issue in this proceeding is which certificate of need (“CON”) application seeking to establish a new community nursing home in Alachua County, Florida, Agency for Health Care Administration (“Agency”) Nursing Home District 3, Subdistrict 2, best satisfies, on balance, the statutory and rule criteria for approval: Pruitthealth-Alachua County, LLC’s (“Pruitthealth”) CON Application No.10400; or Alachua County HRC, LLC’s (“Alachua HRC”) CON Application No. 10397. The Recommended Order entered on September 16, 2016 is attached to this final order and incorporated herein by reference, except where noted infra.

RULINGS ON EXCEPTIONS

The Agency filed exceptions to the Recommended Order, and Alachua County HRC, LLC filed a response to the Agency's exceptions.¹

In determining how to rule upon the Agency's exceptions and whether to adopt the ALJ's Recommended Order in whole or in part, the Agency must follow section 120.57(1)(I), Florida Statutes, which provides in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. . . .

§ 120.57(1)(I), Fla. Stat. Additionally, “[t]he final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

¹ In its Response to AHCA's Exception, Alachua HRC mentions Pruitthealth filed a response to the Agency's exception and a motion for remand on October 7, 2016. However, the Agency Clerk's Office has no record of Pruitthealth filing any documents on that date, and Pruitthealth, to date, has not filed any other documents with the Agency Clerk. It appears from the DOAH website that counsel for Pruitthealth filed its response to the Agency's exception and motion for remand with DOAH instead of the Agency Clerk. Rule 28-106.217, Florida Administrative Code, parties to file exceptions, and the responses thereto, with the Agency. Thus, because Pruitthealth's response to the Agency's exception and motion for remand are not properly before the Agency, the Agency will not consider them.

§ 120.57(1)(k), Fla. Stat. In accordance with these legal standards, the Agency makes the following rulings on the Agency's exceptions:

In its sole exception to the Recommended Order, the Agency takes exception to Paragraph 79 of the Recommended Order, arguing the findings of fact in the paragraph are neither supported by statute or rule nor the competent, substantial evidence of this matter. Paragraph 79 of the Recommended Order is actually a conclusion of law since it involves the ALJ's interpretation of law. In that regard, the ALJ's interpretation of section 408.040(1), Florida Statutes, and rule 59C-1.013(1), Florida Administrative Code, is not correct because both of them still allow the Agency to condition the approval of a CON on statements of intent by the applicant, including the provision of a certain percentage of Medicaid care. However, section 408.040(1)(b), Florida Statutes, was changed by the Legislature in 2012 to prohibit the Agency from sanctioning a provider for failing to abide by a CON condition of providing a certain percentage of Medicaid care. See § 408.040(1)(b), Fla. Stat. ("Effective July 1, 2012, the agency may not impose sanctions related to patient day utilization by patients eligible for care under Title XIX of the Social Security Act for nursing homes."). The testimony of the Agency's representative in this matter affirms that the Agency interprets both the statute and rule as allowing the Agency to still accept such CON conditions and will sometimes base its decision to grant or deny a CON application in part on such a condition. See Transcript, Volume X, Pages 1295-1296. Thus, the Agency finds that it has substantive jurisdiction over the conclusions of law in Paragraph 79 of the Recommended Order because they involve the interpretation of laws and rules governing the Agency's CON program, and finds that it can substitute conclusions of law that are as or more reasonable than those of the ALJ. Therefore, the Agency grants its own exception and modifies Paragraph 79 of the Recommended Order as follows:

79. AHCA ~~no longer accepts will still conditions on the award of a~~ CON ~~for~~ based on an applicant's intent to provide ~~of a~~ specified percentage of Medicaid care. However, Unlike days of yore, AHCA can no longer discipline applicants ~~are not granted~~ any special consideration on the basis of for failing to meet their Medicaid projections. See § 408.040(1)(b), Fla. Stat.

FINDINGS OF FACT

The Agency hereby adopts the findings of fact set forth in the Recommended Order.


CONCLUSIONS OF LAW

The Agency hereby adopts the conclusions of law set forth in the Recommended Order, except where noted supra.

ORDER

Based upon the foregoing, the Agency hereby approves Alachua HRC, LLC's CON Application No. 10397, and denies Pruitthealth-Alachua County, LLC's CON Application No. 10400. The parties shall govern themselves accordingly.

DONE and ORDERED this 26th day of October, 2016, in Tallahassee, Florida.



JUSTIN M. SENIOR, INTERIM SECRETARY
AGENCY FOR HEALTH CARE ADMINISTRATION

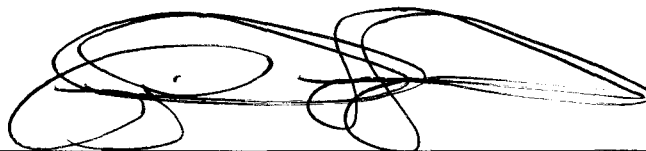
NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO 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 THE 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by the method indicated to the persons named below on this 26th day of

October, 2016.



RICHARD J. SHOOP, Agency Clerk
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2727 Mahan Drive, MS #3
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