STATE OF FLORIDA
DEPARTMENT OF HEALTH

BAYFRONT HMA MEDICAL CENTER, LLC, d/b/a BAYFRONT HEALTH-ST. PETERSBURG,

Petitioner,

v.

Rendition No.: DOH-17-0790-FOF-HO
DOAH Case No.: 17-2302

DEPARTMENT OF HEALTH,

Respondent,

and

GALENCARE, INC., d/b/a NORTHSIDE HOSPITAL,

Intervenor.
_____/

FINAL ORDER OF DISMISSAL

THIS MATTER came before the Department of Health ("Department") for the consideration of a Recommended Order of Dismissal and entry of a Final Order. On June 9, 2017, Administrative Law Judge John D. C. Newton, II ("ALJ") issued a Recommended Order of Dismissal, attached as Exhibit A. The Petitioner, Bayfront HMA Medical Center, LLC d/b/a Bayfront Health-St. Petersburg ("Bayfront") timely filed exceptions which are attached as Exhibit B. The Intervenor, Galencare, Inc. d/b/a Northside Hospital ("Northside") filed responses, attached as Exhibit C.

After review of the entire record, the Department makes the following findings and conclusions:

STANDARD OF REVIEW FOR RULING ON EXCEPTIONS TO A RECOMMENDED ORDER

Section 120.57(1)(k), Florida Statutes, directs an agency to include in its final order 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.

An agency may not reject or modify findings of fact in a recommended order 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. See § 120.57(1)(l), Fla. Stat.

An agency may reject or modify the conclusions of law over which the agency has substantive jurisdiction and interpretation of administrative rules over which the agency 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. See § 120.57(1)(l), Fla. Stat.

RULING ON EXCEPTIONS

Ruling on Bayfront's Exception #1.

Bayfront takes exception to the ALJ's findings, alleging that the ALJ did not take the factual allegations in Bayfront's petition as true. Bayfront does not specify in detail

which findings in the Recommended Order of Dismissal ("RO") are inconsistent with its petition, aside from referencing page 4 of the RO. The first full paragraph on page 4 of the RO summarizes the substantial interests raised in Bayfront's petition and states:

> The petition describes significant harm that would befall Bayfront from Northside's operation of a trauma center. The harm includes severe reduction in the number of trauma cases treated at Bayfront and significant financial losses. Bayfront's petition also asserts that Area 9 does not need another trauma center and that Northside cannot satisfy the requirements for approval as a trauma center. All of the claimed harm can only come from Northside operating as a trauma center. Bayfront does not identify any harm that would follow from the Department accepting Northside's letter of intent or reviewing its application.

In review of Bayfront's Petition for Formal Administrative Hearing, the potential harms raised in Bayfront's petition would only occur if Northside's application were approved. Bayfront does not identify harms that are caused by the Department's acceptance of Northside's letter of intent or review of Northside's application. The ALJ did not fail to take those substantial interests as true, instead finding that Bayfront's substantial interests are not impacted by the Department's action that was challenged in Bayfront's petition. The ALJ was correct that, based on the allegations in Bayfront's petition taken as true, Bayfront does not have standing.

Bayfront's exception #1 is denied.

Ruling on Bayfront's Exception #2.

Bayfront takes exception to the ALJ's ultimate conclusion of law that Bayfront lacked standing in this proceeding and the finding that all of Bayfront's claimed harms can only come from Northside operating as a trauma center.

Bayfront argues that it has standing and its substantial interests are impacted by the Department's acceptance of Northside's letter of intent because once a trauma center applicant is approved it can begin operating, making Bayfront's alleged injuries

imminent. In other words, Bayfront is arguing that the Department's action of accepting a letter of intent from Northside (the only event that Bayfront challenged at the time of its petition) resulted in the subsequent receipt of Northside's application, the Department's review of the application, denial of the application, notice to Northside of its hearing rights, and the filing of the petition by Northside challenging the Department's decision. At the point of the letter of intent, there are far too many intervening steps before the result Bayfront fears could occur and in fact, the result Bayfront fears has not occurred and might not occur. The ALJ was correct that Bayfront does not have standing under Agrico Chem. Co. v. Dep't of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

With regard to Bayfront's interests in the potential outcome of Northside's petition challenging the Department's denial of Northside's application, Bayfront has filed a motion to intervene in that proceeding.[1] See Fla. Admin. Code R. 28-106.205(1).

Bayfront argues that section 395.4025(7), Florida Statutes, grants Bayfront standing to challenge the Department's acceptance of a letter of intent. Section 395.4025(7), Florida Statutes, states: "Any hospital that wishes to protest a decision made by the department based on the department's preliminary or in-depth review of applications or on the recommendations of the site visit review team pursuant to this section shall proceed as provided in chapter 120." (Emphasis added). The statute provides that a hospital may protest the Department's decision, not the steps that occur prior to that decision. The statute does not provide for challenging the receipt of a letter of intent.

[1] Northside's challenge is currently before the Division of Administrative Hearings, DOAH case 2017-2754, and Bayfront's motion to intervene has been granted.

Bayfront's exception #2 is denied.

Ruling on Bayfront's Exception #3.

In Bayfront's exception #3, Bayfront does not identify the specific finding in the RO to which it takes exception, but again takes exception to the ALJ's conclusion that Bayfront lacks standing. In this exception, Bayfront argues that the ALJ failed to follow binding precedent, arguing that the acceptance of Northside's letter of intent and the consideration Northside's trauma application violated the Department's own rules.

Contrary to Bayfront's assertions, rule, 64E-2.012(1)(a) of the Florida Administrative Code, directs that the Department "shall accept a letter of intent, DH Form 1840, January 2010, 'Trauma Center Letter of Intent', . . . from any acute care general or pediatric hospital." Likewise, the trauma statute directs the Department to accept letters of intent. See § 395.4025(2)(a), Fla. Stat. (directing that the Department shall notify each acute care hospital in the state that it is accepting letters of intent).

Bayfront's exception #3 is denied.

Ruling on Bayfront's Exception #4.

Bayfront takes exception to the ALJ's conclusion that the Department's action of accepting a letter of intent was not a decision. Bayfront argues that where an affirmative decision is communicated to a party by an agency, the communication has been considered agency action. Bayfront cites to cases where an agency communicated, by telephone or in writing, an action it intended to take that impacted a party's substantial interests. Bayfront asserts that the "letter accepting the [letters of intent]" was a communication from the Department indicating it would accept and process trauma center applications.

Unlike the cases that Bayfront cites, the Department's statutorily required notice to acute care hospitals that it is accepting letters of intent does not communicate an intended action on any potential applications. The acceptance of a letter of intent is not a decision following one of the review stages outlined in section 395.4025(7), Florida Statutes. The ALJ was correct that accepting a letter of intent was not a decision or Department action that impacted Bayfront's substantial interests.

Bayfront's exception #4 is denied.

ORDER

The findings of fact, conclusions of law and recommendation set forth in the Recommended Order of Dismissal, attached as Exhibit A, are adopted and incorporated by reference in this Final Order. Bayfront's Petition for Formal Administrative Hearing is dismissed.

DONE AND ORDERED in Tallahassee, Leon County, Florida this 23rd day of August 2017.

Celeste M. Philip, MD, MPH
State Surgeon General & Secretary

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been sent by electronic mail and regular U.S. mail and/or by inter-office mail to each of the above-named persons this 24th day of August 2017.

Shanna Reed

Agency Clerk
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS ORDER.