STATE OF FLORIDA
DEPARTMENT OF HEALTH

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

Petitioner,

v.

Case No.: 2017-0135
DOAH Case No.: 17-2754

FLORIDA DEPARTMENT OF HEALTH,

Respondent,

and,

BAYFRONT HMA MEDICAL CENTER, LLC, d/b/a/ BAYFRONT HEALTH - ST. PETERSBURG; and ST. JOSEPH'S HOSPITAL, INC., d/b/a ST. JOSEPH'S HOSPITAL,

Intervenors.
_____/

FINAL ORDER

A Recommended Order having been received, this matter is before the Department of Health (Department) for entry of a final order. Having reviewed the Recommended Order, and the exceptions filed by Bayfront Health, St. Petersburg, the Department finds:

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.

SUMMARY OF THE APPROVAL PROCESS FOR TRAUMA CENTERS

The approval of applications submitted by hospitals that desire to be trauma centers spans over a 21 month timeframe. *See* § 395.4025, Fla. Stat., and Fla. Admin. Code R. 64J-2.012. The application approval occurs in stages and includes the invitation to submit letters of intent, the submission of letters of intent, the submission of applications, a provisional review, an in-depth review, an on-site visit and final selection. *See* § 395.4025, Fla. Stat.; Fla. Admin. Code R. 64J-2.012 and R. 64J-2.016.

The Department shall annually notify each acute care hospital that the Department is accepting letters of intent from hospitals interested in becoming trauma centers. *See* § 395.4025(2)(a), Fla. Stat. Hospitals must submit letters of intent postmarked no later than midnight on October 1. *See id.* By October 15, the Department shall send to all hospitals that submitted a letter of intent an application package with instructions. *See* § 395.4025(2)(b), Fla. Stat. Applications from hospitals seeking selection as trauma centers must be submitted no later than April 1. *See* § 395.4025(2)(c), Fla. Stat.

Provisional Review

The Department "shall conduct a provisional review of each application to determine if the hospital has the critical elements of a trauma center" including the equipment, facilities, personnel in sufficient number with proper qualifications, and an effective quality assurance process. *See* § 395.4025(2)(c), Fla. Stat. (emphasis added)

After April 30, "any hospital that submitted an application found acceptable by the Department based on the provisional review shall be eligible to operate as a provisional trauma center." § 395.4025(3), Fla. Stat. (emphasis added)

For each step described above, section 395.4025, Florida Statutes, uses the term "shall," a mandatory term that normally creates an obligation impervious to judicial discretion. *See City of St. Petersburg v. Remia,* 41 So. 3d 322, 326 (Fla. 2d DCA 2010).

The description of the letters of intent, application submission and provisional review in sections 395.4025(2) and (3), Florida Statutes, does not make any reference to the consideration of need for trauma centers in the applicable TSA. *State of Florida, Dep't of Health v. Bayfront HMA Medical Center, LLC, et al,* and *Galencare Inc. d/b/a Northside Hospital v. Bayfront HMA Medical Center, LLC,* Case Nos. 1D17-2174 and

1D17-2229 (consol.) Florida 1st DCA January 2, 2018) (statutory framework and trauma center application process); *see also The Public Health Trust of Miami-Dade County v. Dep't of Health and Kendall Healthcare Group,* Case No. 16-3370, 16-3372 (DOAH Oct. 6, 2016) (Order Granting Motion to Partially Dismiss Petition for Administrative Hearing); see also. At the provisional review stage, the statute only describes the categories of critical elements that the hospital must meet, directing that "any hospital found acceptable... shall be eligible to operate as a provisional trauma center." *See* § 395.4025(3), Fla. Stat. (emphasis added)

Between May 1 and October 1 of each year, the Department shall conduct an in-depth evaluation of all the applications found acceptable in the provisional review. *See* § 395.4025(4), Fla. Stat.

Beginning October 1 of each year and ending no later than June 1 of the following year, a review team of out-of-state experts, assembled by the Department, shall make on-site visits to all provisional trauma centers. *See* § 395.4025(5), Fla. Stat. Final selection of trauma centers occurs after the on-site review. *See* § 395.4025(6), Fla. Stat. At this point, the statute requires the Department to take need into consideration stating that "[t]he hospitals being considered as provisional trauma centers shall meet all the requirements of a trauma center and shall be located in a TSA that has a need for such a trauma center." § 395.4025(5), Fla. Stat. Because the requirement to consider need is located in the portion of the statute that discusses the final stage of the review, not the provisional review stage, the need requirement cannot be interjected into the provisional review. In addition, the sentence concerning need in section 395.4025(5) clarifies that it is not referring to the provisional review, stating that hospitals being considered "as provisional trauma centers shall meet all the requirements of a trauma

center . . . ." *Id.* (emphasis added). The provisional review does not require a hospital to meet all the requirements of a trauma center, but only the standards involving the critical elements. *See* § 395.4025(2)(c), Fla. Stat.

Final Review

The plain language of the statute must be followed unless it leads to an unreasonable result or a result contrary to legislative intent. *See Daniels v. Fla. Dep't of Health,* 898 So. 2d 61, 64 (Fla. 2005). Considering need at the final review stage, rather than at the front end of the application review, does not lead to an unreasonable result or a result contrary to legislative intent. The Department's duty, based on the structure of the trauma statutes and the legislative intent expressed, is to establish and maintain, on a yearly basis, an inclusive, current, and effective trauma system that provides quality trauma care to all Florida residents and visitors. It is reasonable to allow any applicant hospital that meets the critical elements to operate as a provisional trauma center because this provides the Department with additional important information about the impact and effectiveness of adding trauma centers to a TSA.[1]

RULINGS ON EXCEPTIONS

Exception 1: The June 9, 2017 order limited Bayfront's intervention [Conclusion of Law #63]. Bayfront takes exception the limitations on its intervention, saying it was prevented from raising "other substantive issues including . . . whether the DOH may process and approve Northside's application in the absence of need or an available position in TSA 9."

[1] All trauma centers, including provisional trauma centers, must provide data to the trauma registry for the purpose of monitoring patient outcome and ensuring compliance with the standards of approval. *See* § 395.404, Fla. Stat.

The Department has substantive jurisdiction in matters governed by the trauma statutes and rules. However, the Department has no substantive jurisdiction over the decisional authority of administrative law judges shared equally with every other state agency, and therefore is absent authority to reject this Conclusions of Law in relation to the limitations placed upon Bayfront's intervention. For this reason, Bayfront's **Exception 1 is DENIED**.

Exception 2: Bayfront takes exception to the ALJ's finding that Northside had until May 1, 2017 – rather than April 22, 2017 – to cure deficiencies in its application [Findings of Fact ##33, 34, 36-42; Conclusions of Law 65-67, 71, 76-79, 84]. The Department lacks jurisdiction to reverse Findings of Fact entered by an Administrative Law Judge when those findings are based on competent substantial evidence, nor may it reweigh the evidence. The Department has substantive jurisdiction in matters governed by the trauma statutes and rules. The Administrative Law Judge, however, exercised *de novo* review of the Department's denial of Northside's application and the deadlines for Northside to demonstrate critical elements of a provisional trauma approval, based on his Section 120.57(1), Fla. Stat. authority. The Department has no substantive jurisdiction over the decisional authority of administrative law judges not shared equally with every other state agency, and therefore is absent authority to reject his Conclusions of Law regarding compliance with those timelines, based on the facts determined in the case. Bayfront's **Exception 2 is DENIED**.

WHEREFORE, the Recommended Order entered in this proceeding on December 20, 2017 is adopted and incorporated by reference.

Based on the foregoing, Galencare, Inc., d/b/a Northside Hospital is **APPROVED** as a provisional Level II trauma center.

DONE and **ENTERED** this 23rd day of August, 2018 in Tallahassee, Leon County, Florida.

Celeste M. Philip, MD, MPH
State Surgeon General & Secretary
Florida Department of Health

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.

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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 2018.

Shannon Revels
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