STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SEASONS HOSPICE AND PALLIATIVE CARE OF PINELLAS COUNTY, LLC,

Petitioner,

vs. Case No. 21-0888CON

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent,

and

CORNERSTONE HOSPICE & PALLIATIVE CARE, INC.; VITAS HEALTHCARE CORPORATION OF FLORIDA; AND HERNANDO-PASCO HOSPICE, INC.,

Intervenors.
_______________________________________/

THE HOSPICE OF FLORIDA SUNCOAST, INC.,

Petitioner,

vs. Case No. 21-0889CON

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent,

and

CORNERSTONE HOSPICE & PALLIATIVE CARE, INC.; VITAS HEALTHCARE CORPORATION OF FLORIDA; AND HERNANDO-PASCO HOSPICE, INC.,

Intervenors.
_______________________________________/

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in these cases on May 3 and 4, 2021, before W. David Watkins, a duly designated Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner The Hospice of the Florida Suncoast, Inc.:

Seann M. Frazier, Esquire
Kristen Bond Dobson, Esquire
Parker, Hudson, Rainer & Dobbs, LLP
215 South Monroe Street, Suite 750
Tallahassee, Florida 32301

For Petitioner Seasons Hospice and Palliative Care of Pinellas County, Inc.:

Stephen C. Emmanuel, Esquire
Eugene Dylan Rivers, Esquire
Ausley & McMullen
123 South Calhoun Street
Tallahassee, Florida 32301

For Respondent Agency for Health Care Administration:

Julia Elizabeth Smith, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

For Intervenor Cornerstone Hospice and Palliative Care, Inc.:

D. Ty Jackson, Esquire
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189
Tallahassee, Florida 32302

Karl David Acuff, Esquire
Law Offices of Karl David Acuff, P.A.
1615 Village Square Boulevard, Suite 2
Tallahassee, Florida 32309-2770

For Intervenor VITAS Healthcare Corporation of Florida:

Stephen A. Ecenia, Esquire
Gabriel F. V. Warren, Esquire
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Post Office Box 551
Tallahassee, Florida 32301

For Intervenor Hernando-Pasco Hospice, Inc.:

David C. Ashburn, Esquire
Michael J. Cherniga, Esquire
Greenberg Traurig, P.A.
101 East College Avenue
Post Office Drawer 1838
Tallahassee, Florida 32301

Statement of The Issue

Whether there is "an error in the Fixed Need Pool numbers" for hospice as calculated by the Agency for Health Care Administration ("AHCA") pursuant to Florida Administrative Code Rule 59C-1.0355(4)(a), and as published by AHCA on February 5, 2021, pursuant to rule 59C-1.008(2)(a).

Preliminary Statement

On February 5, 2021, AHCA published a fixed need pool ("FNP") for one new hospice program in AHCA Hospice Service Area ("HSA") 5B, Pinellas County.

On February 15, 2021, pursuant to rule 59C-1.008(2)(a)2., The Hospice of the Florida Suncoast, Inc. ("Suncoast"), and Seasons Hospice and Palliative

Care of Pinellas County, LLC ("Seasons Pinellas") (collectively, "Petitioners"), timely advised AHCA in writing of errors in the FNP numbers for HSA 5B. On February 17, 2021, AHCA notified both Suncoast and Seasons Pinellas that it had reviewed the information provided and concluded that the published need was correct, and a revision to the FNP was not warranted.

Suncoast and Seasons Pinellas filed Petitions for Formal Administrative Proceeding challenging AHCA's preliminary determination that there was no error in the FNP numbers, pursuant to sections 120.569 and 120.57(1), Florida Statutes, and Florida Administrative Code Rules 28-106.201 and 59C-1.008(2)(a)2. AHCA referred the petitions to DOAH on March 9, 2021. Cornerstone Hospice & Palliative Care, Inc. ("Cornerstone"), VITAS Healthcare Corporation of Florida ("VITAS"), and Hernando-Pasco Hospice, Inc. ("HPH") (collectively "Intervenors"), were each granted intervention. On March 23, 2021, these matters were consolidated and noticed for hearing.

On March 25, 2021, Intervenors filed a Joint Motion to Relinquish Jurisdiction in which AHCA joined. The motion sought an order relinquishing jurisdiction on the grounds that there were no disputed issues of material fact to resolve, and the relief requested in the petitions was not relief that could be granted in the error notification provision contained in rule 59C-1.008(2)(a).

On March 26, 2021, AHCA filed a Motion to Dismiss for Failure to State a Cause of Action Upon which Relief May Be Granted, and incorporated memorandum of law. This motion was again based on the assertion that there were no material facts in dispute, and the argument that the relief Petitioners sought, use of an alternate methodology or an order forcing AHCA to use discretion to cancel the application cycle, was not available in an FNP challenge proceeding. On March 31, 2021, Petitioners sought an extension of

time to respond to both motions (to April 5, 2021), which was granted by Order dated April 1, 2021. On April 5, 2021, Petitioners filed joint responses to each of the potentially dispositive motions.

During the pendency of the above motions, Suncoast filed a Petition to Determine the Invalidity of Existing Rule 59C-1.0355(4)(a), Florida Administrative Code ("rule challenge"), alleging that AHCA's hospice need methodology should include admissions to programs designated as "hospice" that are run by the federal Veterans Administration ("VA") hospitals in calculating need. *The Hospice of the Florida Suncoast, Inc. v. Ag. for Health Care Admin.*, Case No. 21-1250RX Petition to Determine Invalidity of Existing Rule 59C1.0355(4)(a) (Apr. 7, 2021). On April 8, 2021, Suncoast filed a Notice of Related Case with respect to its rule challenge and the matter *sub judice*.

On April 8, 2021, a motion hearing was held on the Motion to Relinquish Jurisdiction and on the Motion to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted. During the hearing, Suncoast stated its intent to seek consolidation of its rule challenge with this case. At the close of the motion hearing, AHCA and Intervenors were granted until April 13, 2021, to file written argument in opposition to consolidation with Suncoast's rule challenge.

On April 9, 2021, Suncoast filed its motion to consolidate the instant case with the rule challenge. Also, on April 9, 2021, Cornerstone filed a motion to intervene in the rule challenge. On April 12, 2021, Hospice of the Treasure Coast and Hospice of Martin & St. Lucie, Inc., each moved to intervene in the rule challenge. Also, on April 12, 2021, Suncoast filed a notice of voluntary dismissal pursuant to which the rule challenge was closed without hearing. *See The Hospice of the Florida Suncoast v. Ag. For Health Care Admin.*,

Case No. 21-1250RX, Notice of Voluntary Dismissal (Apr. 12, 2021), and Order Closing Case File (Apr. 13, 2021).

On April 12, 2021, an Order Denying Intervenors' Joint Motion to Relinquish Jurisdiction was entered. Also, on April 12, 2021, an Order was entered denying AHCA's Motion to Dismiss.

On April 29, 2021, the parties filed their Joint Pre-hearing Stipulation, which included several stipulated facts. To the extent relevant, those stipulated facts have been incorporated in this Recommended Order.

The final hearing convened on May 3 and 4, 2021. Suncoast presented testimony from: James McLemore; Kerry Hoerner; and Armand Balsano, accepted as an expert in health care planning. Suncoast also presented the testimony of two witnesses who testified in video-taped preservation depositions: Shaun Hilzman, Acting Assistant Chief for Health Administration Service, Bay Pines VA Healthcare System ("Bay Pines"); and, Laura Fowkes, Government Information Specialist and designated Privacy/FOIA Officer for Bay Pines. Suncoast's Exhibit Nos. 1 through 30, 32, 33, and 38 through 40 were admitted into evidence.

Seasons Pinellas did not present testimony from any additional witnesses. Seasons Pinellas's Exhibit No. 1 was admitted into evidence.

AHCA did not present testimony from any additional witnesses. AHCA's Exhibit Nos. 20 and 21 were admitted into evidence.

Intervenors did not present testimony from any additional witnesses. Intervenors provided one set of exhibits, which they referred to as

"Intervenors' Joint Exhibit List." Intervenors' Exhibit Nos. 1 and 2 were admitted into evidence.

In addition to the above-referenced exhibits, the parties offered several joint exhibits. Joint Exhibit Nos. 1 through 8 were admitted into evidence.

The final hearing Transcript, consisting of three volumes and 327 pages, was filed with DOAH on May 10, 2021.

While the hearing concluded on May 4, 2021, the record was kept open to address evidentiary rulings on the deposition testimony and exhibits of Shaun Hilzman and Laura Fowkes. On May 14, 2021, the undersigned issued an Order On Intervenors' Joint Objections to Deposition Testimony and Exhibits Concerning "Hospice Admissions" to Bay Pines Healthcare System.

The filing deadline for proposed recommended orders was set for May 18, 2021, so, at the request of Petitioners, the undersigned's Recommended Order would be due before AHCA issued its initial decisions in the Hospital Facilities and Hospice: 1st Batching Cycle – 2021. All parties timely filed Proposed Recommended Orders, each of which has been carefully considered in the preparation of this Recommended Order.

Unless otherwise noted, all statutory references are to the 2020 version of the Florida Statutes.

FINDINGS OF FACT

Based upon the credibility of the witnesses and evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

The Parties

1. AHCA is designated as the single state agency for the issuance, denial and revocation of certificates of need ("CONs"), including exemptions and exceptions in accordance with present and future federal and state statutes.

2. Suncoast is a licensed hospice program serving HSA 5B, which is comprised entirely of Pinellas County. As an existing hospice provider in HSA 5B, Suncoast is substantially affected by the publication of the FNP at issue in this proceeding and has standing to challenge "an error in the Fixed Need Pool numbers" as set forth in rule 59C-1.008(2)(a)2.

3. Seasons is also a licensed hospice program serving HSA 5B. As an existing hospice provider in HSA 5B, Seasons is substantially affected by the publication of the FNP at issue in this proceeding and has standing to challenge "an error in the Fixed Need Pool numbers" as set forth in rule 59C-1.008(2)(a)2.

4. Cornerstone is an applicant for a CON for a new hospice program in HSA 5B predicated, at least in part, on the publication of the FNP under challenge in this proceeding. Cornerstone is substantially and adversely affected by the potential change of the FNP from a determination of need for a new hospice program to no need for a new hospice program in HSA 5B, and therefore has standing to intervene in this proceeding.

5. HPH is an applicant for a CON for a new hospice program in HSA 5B predicated, at least in part, on the publication of the FNP under challenge in this proceeding. HPH is substantially and adversely affected by the potential change of the FNP from a determination of need for a new hospice program to no need for a new hospice program in HSA 5B, and therefore has standing to intervene in this proceeding.

6. VITAS is an applicant for a CON for a new hospice program in HSA 5B predicated, at least in part, on the publication of the FNP under challenge in this proceeding. VITAS is substantially and adversely affected by the

potential change of the FNP from a determination of need for a new hospice program to no need for a new hospice program in HSA 5B, and therefore has standing to intervene in this proceeding.

AHCA's Calculation and Publication of the Fixed Need Pool

7. As part of its responsibilities under the CON laws, AHCA is required to establish, by rule, uniform need methodologies for CON-regulated health facilities and services. Those need methodologies must take into account "the demographic characteristics of the population, the health status of the population, service use patterns, standards and trends, geographic accessibility, and market economics." § 408.034(3), Fla. Stat.

8. Rule 59C-1.0355 codifies the uniform need methodology that applies to hospice programs. The rule defines twenty-seven (27) service areas, and AHCA uses the need methodology in rule 59C-1.0355(4)(a) to calculate numeric need for hospice programs for each of the 27 HSAs. The results of those calculations determine whether there is an FNP of one, or zero, in each of the 27 HSAs.

9. Typically, AHCA publishes need projections for hospice programs twice per year in "batching cycles." *See* Fla. Admin. Code R. 59C-1.008(1)(g), (2)(a).[1],[2]

10. Rule 59C-1.008(2)(a) allows parties to identify purported "errors" in the FNP numbers published by AHCA:

> 2. Any person who identifies an error in the Fixed Need Pool numbers must advise the Agency of the error within 10 days of the date the Fixed Need

---

[1] As explained below, AHCA cancelled the CON Hospital Facilities and Hospice 2nd Batching Cycle for 2020.

[2] Although AHCA typically publishes need projections for hospice programs twice per year, Florida law requires only one FNP publication per year. *See* § 408.039(1), Fla. Stat. ("The agency by rule shall provide for applications to be submitted on a timetable or cycle basis; provide for review on a timely basis; and provide for all completed applications pertaining to similar types of services or facilities affecting the same service district to be considered in relation to each other *no less often than annually*."). (emphasis added).

> Pool was published in the Florida Administrative Register. If the Agency concurs in the error, the Fixed Need Pool number will be adjusted and re-published in the first available edition of the Florida Administrative Register. Failure to notify the Agency of the error during this time period will result in no adjustment to the Fixed Need Pool number for that batching cycle.
>
> 3. Except as provided in subparagraph 2. above, the batching cycle specific Fixed Need Pools shall not be changed or adjusted in the future regardless of any future changes in need methodologies, population estimates, bed inventories, or other factors which would lead to different projections of need, if retroactively applied.

Fla. Admin. Code R. 59C-1.008(2)(a)2. and 3.

11. It is undisputed that AHCA's rules do not define "error" as that term is used in rule 59C-1.008(2)(a)2. Although there is no definition of the word "error," AHCA limits its interpretation of the word to only "mathematical" errors or late-filed hospice admissions by Florida licensed hospice programs pursuant to rule 59C-1.0355(8).

Petitioners' Fixed Need Pool Challenge

12. On February 5, 2021, AHCA published an FNP for one new hospice program in HSA 5B. Suncoast timely advised AHCA in writing of two purported errors it had identified in the FNP. Specifically, Suncoast asserted that: (1) AHCA's calculations incorrectly predict future need based upon a spike in admissions caused by the COVID-19 pandemic that will not exist when the planning horizon arrives[3]; and (2) AHCA has not accounted for actual hospice admissions by VA hospitals that provide hospice care in Pinellas County.

[3] Even before AHCA's publication on February 5, 2021, Suncoast requested that AHCA suspend the Hospital Facilities and Hospice 1st Batching Cycle for 2021, citing the COVID-19 pandemic.

13. Seasons Pinellas also timely advised AHCA in writing of the same two purported errors in the FNP.

14. On February 17, 2021, AHCA issued separate but identical responses to Suncoast and Seasons Pinellas, stating that "the published need is correct and a revision to the fixed need pool is not warranted."

The Hospice Need Methodology

15. Under AHCA's hospice need methodology, numeric need for an additional hospice program is demonstrated if the projected number of unserved patients who would elect a hospice program is 350 or greater.

16. The net need for a new hospice program in an HSA is calculated as follows:

Numeric Need for a New Hospice Program. Numeric need for an additional Hospice program is demonstrated if the projected number of unserved patients who would elect a Hospice program is 350 or greater. The net need for a new Hospice program in a service area is calculated as follows:

> (HPH) -- (HP) ≥ 350
>
> where:
>
> (HPH) is the projected number of patients electing a Hospice program in the service area during the 12-month period beginning at the planning horizon. (HPH) is the sum of (U65C x P1) + (65C x P2) + (U65NC x P3) + (65NC x P4)
>
> where:
>
> U65C is the projected number of service area resident cancer deaths under age 65, and P1 is the projected proportion of U65C electing a Hospice program.
>
> 65C is the projected number of service area resident cancer deaths age 65 and over, and P2 is

the projected proportion of 65C electing a Hospice program.

U65NC is the projected number of service area resident deaths under age 65 from all causes except cancer, and P3 is the projected proportion of U65NC electing a Hospice program.

65NC is the projected number of service area resident deaths age 65 and over from all causes except cancer, and P4 is the projected proportion of 65NC electing a Hospice program.

The projections of U65C, 65C, U65NC, and 65NC for a service area are calculated as follows:

U65C = (u65c/CT) x PT

65C = (65c/CT) x PT

U65NC = (u65nc/CT) x PT

65NC = (65nc/CT) x PT

where:

u65c, 65c, u65nc, and 65nc are the service area's current number of resident cancer deaths under age 65, cancer deaths age 65 and over, deaths under age 65 from all causes except cancer, and deaths age 65 and over from all causes except cancer.

CT is the service area's current total of resident deaths, excluding deaths with age unknown, and is the sum of u65c, 65c, u65nc, and 65nc.

PT is the service area's projected total of resident deaths for the 12-month period beginning at the planning horizon.

“Current” deaths means the number of deaths during the most recent calendar year for which data are available from the Department of Health,

Office of Vital Statistics at least 3 months prior to publication of the Fixed Need Pool.

"Projected" deaths means the number derived by first calculating a 3-year average resident death rate, which is the sum of the service area resident deaths for the three most recent calendar years available from the Department of Health, Office of Vital Statistics at least 3 months prior to publication of the Fixed Need Pool, divided by the sum of the July 1 estimates of the service area population for the same 3 years. The resulting average death rate is then multiplied by the projected total population for the service area at the mid-point of the 12-month period which begins with the applicable planning horizon. Population estimates for each year will be the most recent population estimates from the Office of the Governor at least 3 months prior to publication of the Fixed Need Pool.

The projected values of P1, P2, P3, and P4 are equal to current statewide proportions calculated as follows:

P1 = (Hu65c/Tu65c)

P2 = (H65c/T65c)

P3 = (Hu65nc/Tu65nc)

P4 = (H65nc/T65nc)

where:

Hu65c, H65c, Hu65nc, and H65nc are the current 12-month statewide total admissions of Hospice cancer patients under age 65, Hospice cancer patients age 65 and over, Hospice patients under age 65 admitted with all other diagnoses, and Hospice patients age 65 and over admitted with all other diagnoses. The current totals are derived from reports submitted under subsection (8) of this rule.

> Tu65c, T65c, Tu65nc, and T65nc are the current 12-month statewide total resident deaths for the four categories used above.
>
> (HP) is the number of patients admitted to Hospice programs serving an area during the most recent 12-month period ending on June 30 or December 31. The number is derived from reports submitted under subsection (8) of this rule.
>
> 350 is the targeted minimum 12-month total of patients admitted to a Hospice program.

(Fla. Admin. Code R. 59C-1.0355(4)(a)).

17. While daunting in its length and complexity, the methodology can succinctly be summarized as follows: AHCA makes a projection of future hospice need in an HSA which is abbreviated as "(HPH)"; AHCA then subtracts from that projection the actual number of hospice admissions in the HSA, which is abbreviated "(HP)." If the result of that subtraction is 350 or greater, AHCA publishes an FNP for an additional program for that HSA.

18. (HPH) is calculated by determining the projected number of deaths in four categories—(1) cancer, 65 and older; (2) cancer, under 65; (3) non-cancer, 65 and older; and (4) non-cancer, under 65. The methodology then projects the percentage of people within those four categories that would elect hospice care, which is calculated by employing the statewide penetration rate for those four categories to a service area's community. These penetration rates or, P-values, are calculated by using the entire state's admissions in each of the four categories divided by the entire state's deaths in each of those four categories.

19. In calculating the number of deaths for (HPH), the rule calls for AHCA to use data from the most recent calendar year for which data are available from the Department of Health, Office of Vital Statistics, at least three months prior to publication of the FNP.

20. (HP) is calculated by using semi-annual utilization reports that are required to be completed by each licensed hospice program in the state on or before July 20 of each year and January 20 of the following year. "The July report shall indicate the number of new patients admitted during the 6-month period composed of the first and second quarters of the current year" and the "January report shall indicate the number of new patients admitted during the 6-month period composed of the third and fourth quarters of the prior year."

21. Using this need methodology, the net need for HSA 5B for the July 2022 hospice planning horizon was 414, resulting in a need of one (1) new hospice program in the service area.

22. Because the rule requires death data from the most recent calendar year that was available at least three months prior to the publication of the FNP, AHCA used the final death reports from 2019 in calculating need for the July 2022 hospice planning horizon. However, because the rule requires admissions data from the most recent 12-month period ending on June 30 or December 31, AHCA used admissions from 2020 in calculating need for the July 2022 hospice planning horizon.

23. As pointed out by Petitioners, just 65 more hospice admissions in HSA 5B in 2020 would have resulted in a net need of zero (0) new hospice programs in that HSA for the July 2022 planning horizon.

<u>Legal Presumption Created by FNP Determination</u>

24. A positive FNP determination will establish a rebuttable presumption of need. *Balsam v. Dep't of HRS*, 486 So. 2d 1341, 1349 (Fla. 1st DCA 1986); *VITAS Healthcare Corp. of Cent. Fla., Inc. v. Ag. for Health Care Admin.*, Case No. 04-3858CON (Fla. DOAH June 14, 2005; Fla. AHCA July 7, 2005). The converse is also true that "[a] lack of numeric need under the rule formula establishes a rebuttable presumption of no need." *Beverly Enter.-*

Fla., Inc. v. Ag. for Health Care Admin., Case Nos. 92-6656, 92-6659-6662, 92-6669 (Fla. DOAH July 24, 1994; Fla. AHCA Oct. 17, 1994).

25. In a hospice CON case, the absence of numeric need prohibits the approval of a new hospice program unless special circumstances found in the hospice need rule are present, or applicable criteria outweigh the lack of need. *See* Fla. Admin. Code R. 59C-1.0355(3)(b), (4)(d); *Compassionate Care Hospice of the Gulf Coast, Inc. v. State, Ag. for Health Care Admin.*, 247 So. 3d 99, 101-02 (Fla. 1st DCA 2018). In most cases, the establishment of a positive FNP nearly always results in the approval of a new hospice program, and the determination of zero need results in a denial of all applications. Thus, AHCA's calculation of hospice need as reflected in its FNP determination will substantially affect each of the parties in this case.

26. Suncoast and Seasons Pinellas have identified two purported errors in AHCA's need determination: (1) the challenged FNP is based on data that was skewed by the COVID-19 pandemic; and (2) the FNP numbers fail to account for hospice admissions to Bay Pines. Petitioners contend that, in light of these factors, AHCA's calculation of a net need for one new hospice program in HSA 5B for the July 2022 planning horizon is not accurate. While both of these arguments are cognizable within an FNP challenge, neither is persuasive in this instance, as explained below.

Does the Impact of the Pandemic Warrant Use of Updated Deaths Data?

27. In March 2020, a worldwide pandemic erupted due to the outbreak of the novel coronavirus ("COVID-19"). (Office of the Governor, Executive Order No. 20-52 ("E.O. 20-52")). COVID-19 is "a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza." E.O. 20-52.

28. On March 9, 2020, Florida Governor Ron DeSantis declared a state of emergency due to the outbreak of COVID-19. E.O. 20-52. The Governor noted

that, as of March 9, 2020, "eight counties in Florida have positive cases for COVID-19, and COVID-19 poses a risk to the entire state of Florida." *Id.*

29. Upon the Governor's direction, on March 1, 2020, the State Surgeon General "declared a Public Health Emergency exists in the State of Florida as a result of COVID-19." E.O. 20-52. The World Health Organization also "declared COVID-19 a Public Health Emergency of International Concern." *Id.*

30. On March 15, 2020, the Florida Division of Emergency Management issued an Emergency Order "prohibiting all individuals from visiting facilities within the State of Florida," including nursing homes, long-term care hospitals, and assisted living facilities. (Div. of Emerg. Mgmt., *In Re: Suspension of Statutes, Rules, and Orders, Pursuant to Executive Order Number 20-52, Made Necessary By the COVID-19 Public Health Emergency*, DEM Order. No. 20-006 (Mar. 15, 2020)).

31. The CON Hospital Facilities and Hospice 2nd Batching Cycle was scheduled to begin on the third Friday in July 2020. (Fla. Admin. Code R. 59C-1.008(1)(g) (2019).[4] However, due to the outbreak of the COVID-19 pandemic, and under the authority of the Governor's Executive Order, AHCA issued an Emergency Order cancelling the Hospital Facilities and Hospice 2nd Batching Cycle. (AHCA, *In Re: Temporary Suspension of Certificate of Need Batching Cycle*, AHCA 20-004 (July 17, 2020)).

32. In that Emergency Order, AHCA noted that "all counties in Florida have confirmed cases of COVID-19 that are growing in number daily and straining virtually every health care resource available within the State." *Id.*

33. AHCA also considered cancelling the Hospital Facilities and Hospice 1st Batching Cycle – 2021 (the batching cycle at issue here). Although the

---

[4] In December 2020, the Agency issued a new Final Rule changing the dates of the hospice batching cycles. (See Fla. Admin. Code R. 59C-1.008(1)(g) (2020). Under the new Rule, the Hospital Facilities and Hospice 2nd Batching Cycle will begin on the first Friday in August.

State of Florida was still under a state of emergency when AHCA announced need for an additional hospice program in HSA 5B, AHCA decided to move forward with the batch because, according to AHCA's representative, James McLemore, it was "trying to get to a normal."

34. In deciding not to change or adjust the FNP at issue, AHCA did not compare hospice penetration rates from this batch with any other batch. In other words, AHCA did not compare previous hospice penetration rates to see if the need predictions made in this batching cycle were unusual in any way. Suncoast's health planning expert, Armand Balsano, testified that if AHCA had examined the hospice penetration rates for this batching cycle with previous batching cycles, it would have noticed a significant anomaly in the FNP numbers used to calculate hospice need for the July 2022 planning horizon for HSA 5B.

35. According to Mr. Balsano, typically, overall hospice penetration rates are very consistent year over year, hovering around .67 or .68 (meaning that 67% - 68% of recorded deaths received hospice care before passing). However, for the February 2021 batching cycle, AHCA calculated that the overall penetration rate had dramatically increased to .727, which Mr. Balsano considered to have a "profound" effect on the FNP calculation. According to Petitioners, because AHCA's need projections relied on 2020 hospice admissions, which included COVID-19-related hospice admissions, and 2019 deaths, which necessarily excluded COVID-19-related deaths, the data showed a larger spike in hospice admissions than deaths, which caused the overall penetration rate to increase dramatically from prior years.

36. To illustrate the effect caused by using hospice admissions during a year in which Florida (and the rest of the world) was battling a highly contagious virus (2020) and deaths from a year in which the world was not (2019), Mr. Balsano recast the overall penetration rates using 2020 hospice admissions and 2020 deaths. According to Mr. Balsano, when using 2020

hospice admissions and 2020 hospice deaths, the penetration rate actually decreases from AHCA's overall penetration rate of .727 to .629.

37. When 2020 deaths were substituted for 2019 deaths, and AHCA's calculated penetration rate of .727 was substituted with the recast penetration rate of .629, the rule need methodology would result in a negative numeric need, and thus, no need for an additional hospice program, according to Mr. Balsano.

38. Mr. Balsano acknowledged that AHCA's use of deaths from one year and hospice admissions from another year to predict need is not inherently unreliable in projecting future need. Petitioners also conceded that AHCA complied with its rules when it used 2019 death data to calculate the FNP numbers at issue.

39. The parties stipulated that when performing its FNP calculation at issue, AHCA used the number of "current deaths" as defined in, and required by, rule 59C-1.0355(4)(a). The parties further stipulated that when performing the FNP calculation, AHCA used the number of patients admitted to hospice programs serving HSA 5B during the most recent 12-month period ending December 31, 2020, as derived from the reports submitted under rule 59C-1.0355(8), as required by rule 59C-1.0355(4)(a).

40. Petitioners' alternative FNP calculation is not permitted by rule 59C-1.0355(4). Rather, it is uncontroverted that when performing its FNP calculations, AHCA used the number of "current deaths" as defined in and required by rule 59C-1.0355(4)(a). Likewise, AHCA used the number of patients admitted to Hospice Programs serving HSA 5B during the most recent 12-month period ending December 31, 2020, as derived from the reports submitted under rule 59C-1.0355(8), as required by rule 59C-1.0355(4)(a).

41. Moreover, Petitioners' alternative need calculation is based on provisional death data for calendar year 2020 from the Office of Vital Statistics as of April 3, 2021. This data could not have been available three

months prior to the February 5, 2021, publication of the FNP numbers, since calendar year 2020 did not conclude three months prior to February 5, 2021. Despite advocating for the use of 2020 death data, Suncoast's expert witness did not know whether any 2020 death data, even provisional data, were available from the Office of Vital Statistics by February 5, 2021. Additionally, Mr. Balsano conceded that he did not know if the provisional data he used for his alternative FNP calculation were different from any death data available from the Office of Vital Statistics as of the date of the final hearing.

42. Had AHCA used the provisional death data used by Suncoast's expert witness in creating Suncoast Exhibits 11 through 20, then AHCA would have violated rule 59C-1.0355(4), and its calculation of the FNP numbers would have been erroneous.

43. While the impacts of the COVID-19 pandemic have been profound and devastating, particularly in the number of individuals who have succumbed to the disease, the effects of the pandemic will, fortunately, be transitory. As of the time of the final hearing, a number of vaccines had become available to protect individuals from COVID-19. AHCA's witness acknowledged that vaccines developed by Pfizer and Moderna (as well as Johnson and Johnson) have been reported to be very effective in reducing the number of deaths among individuals who have been vaccinated. AHCA further acknowledged that, in part, due to the availability of these vaccines, Florida has seen a significant decline in COVID-19 deaths.

<u>Inclusion of VA Hospital Hospice Admissions in the FNP Calculation?</u>

44. Petitioners further argue that AHCA's failure to consider hospice admissions to VA hospitals has led to an incorrect projection of need under the rule formula.

45. In making FNP calculations for hospice, AHCA only considers admissions to hospice programs licensed by AHCA. Thus, VA admissions are not considered because AHCA does not license VA facilities or programs.

However, all deaths are factored into the FNP calculation, including deaths in a VA facility. Petitioners argue that this is an additional error, and created a flawed and unreliable calculation of need in HSA 5B, where there is a significant population of veterans.

46. There are multiple VA hospitals in Florida that operate inpatient hospice units, including Bay Pines. The main facility of the Bay Pines VA system is the C.W. Bill Young Department of Veterans Affairs Medical Center ("CWBY VA Medical Center") located in Bay Pines, Pinellas County, Florida.

47. The CWBY VA Medical Center is part of the Department of Veterans Affairs, a federal agency. The CWBY VA Medical Center holds no type of health care facility or health services license issued by the State of Florida. The CWBY VA Medical Center is not a "Hospice Program" as that term is defined in rule 59C-1.0355(2)(f).

48. The CWBY VA Medical Center does not report utilization information to AHCA pursuant to rule 59C-1.0355(8). Nor is it required to do so. At hearing, AHCA's representative confirmed that AHCA lacks jurisdiction over the CWBY VA Medical Center to require it to submit any report to AHCA.

49. It was not clear from the testimony at final hearing what hospice services the CWBY VA Medical Center provides. At most, the facility only provides inpatient end of life services. For example, Suncoast's Exhibit 6 purported to depict Suncoast discharges to CWBY VA Medical Center during 2020. But Suncoast's Care Navigator was asked whether she knew "what services specifically any of these patients received while they were at the VA" and she admitted, "I do not."

50. For "outpatient" or "community" hospice services, the CWBY VA Medical Center refers veterans to a local hospice for admission for hospice services.

51. Although Suncoast tracks patient referrals from the CWBY VA Medical Center, Suncoast did not present any evidence demonstrating that those patients received hospice care at the VA.

52. Suncoast's expert witness conceded that AHCA followed the requirements of rule 59C-1.0355, by not including VA patient data, and that including such data would be contrary to the rule.

53. Suncoast's expert witness stated that Suncoast's argument that AHCA should include any patients receiving hospice services at the VA in the FNP calculation was simply a "conceptual issue," and that he could not obtain useable data from other VA centers in Florida to create an exhibit that could be introduced into evidence.

54. This "conceptual issue," which forms a significant part of Suncoast's allegation that there is an error in the FNP numbers, is essentially the claim that hospice admissions at VA facilities were not counted, while deaths of patients in VA facilities under the VA's inpatient hospice care were being counted as Florida resident deaths. Suncoast's expert conceded that he did not know whether these patients had been reported to AHCA as hospice admissions as a result of care they may have received at a state-licensed hospice program, or whether the patients admitted to VA facilities actually died, much less whether they were counted as Florida resident deaths.

55. Indeed, Suncoast's evidence made clear that it admits patients referred from the CWBY VA Medical Center, and that those patients are included in utilization reports submitted to AHCA under rule 59C-1.0355(8).

56. Suncoast also presented evidence that its hospice patients are frequently discharged for acute care services at the CWBY VA Medical Center, and that Suncoast reports such patients as separate admissions if the patient returns to Suncoast. Suncoast's witness acknowledged that this results in a single patient being counted as multiple admissions in its utilization reports.

57. Suncoast's witnesses acknowledged that this discharge and re-admission pattern only occurred with VA patients and would not be the case for patients who were placed on inpatient hospice care in a Suncoast hospice house, or in a hospital or skilled nursing facility.

58. Suncoast's expert acknowledged that accounting for any VA admissions would change the penetration rate statewide, and as a result, any VA admissions identified in HSA 5B could not simply be subtracted from the total number of projected hospice admissions to recalculate the FNP for HSA 5B.

59. Ultimately, Mr. Balsano could not opine on what the correct need number would have been, and had no idea what the calculated result would have been if the purported VA admissions were counted. Absent reliable data in this regard, there is no basis to deviate from the data source utilized by AHCA in its FNP calculation, even if such deviation was permissible by rule.

60. The existence of potential alternatives to the FNP calculation in rule 59C-1.0355, and in particular the use of different death and admissions data than that used by AHCA, as advocated by Petitioners, is not warranted for the reasons discussed above. Petitioners have failed to carry their burden to establish that the FNP calculations that AHCA made using the rule-required data was in error.

CONCLUSIONS OF LAW

Jurisdiction and Standing

61. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. AHCA's preliminary FNP determination for HSA 5B, timely challenged by Suncoast and Seasons Pinellas, is the proposed action at issue in this proceeding.

62. As existing providers of hospice services in HSA 5B, Suncoast and Seasons Pinellas have standing to challenge AHCA's preliminary

determination of need because they are substantially affected by AHCA's need determination. §§ 408.039(5)(c), Fla. Stat. (conferring standing to substantially affected existing providers in certificate of need proceedings).

63. As potential applicants for a hospice CON, Cornerstone, HPH, and VITAS each have standing to participate in this proceeding. Additionally, the parties have stipulated to standing.

Burden of Proof and Fixed Need Pool Challenge Procedure

64. Suncoast and Seasons have the burden of proving by a preponderance of the evidence that AHCA made an error in the FNP determination for HSA 5B for the first batching cycle of 2021. *See generally Balino v. Dep't of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977); § 120.57(1)(j), Fla. Stat.

65. AHCA announced the need for an additional hospice program in HSA 5B for the July 2022 planning horizon in the February 5, 2021, edition of the Florida Administrative Register, in accordance with rule 59C-1.008(2)(a)1. While the parties agree that Suncoast and Seasons Pinellas filed timely challenges to AHCA's publication of the FNP, as contemplated in the remainder of the rule, the parties sharply disagree about the scope and nature of permitted challenges to the FNP.

66. The FNP concept was developed to address problems sorting out comparative review rights, which were described in *Gulf Court Nursing Center v. Department of Health and Rehabilitative Services*, 483 So. 2d 700 (Fla. 1st DCA 1985). *See also Hernando-Pasco Hospice, Inc. v. Ag. for Health Care Admin.*, Case No. 14-5121 (Fla. DOAH Mar. 11, 2015; Fla. AHCA May 7, 2015). In *Gulf Court*, Florida's First District Court of Appeal held that in order to stay true to the right to comparative review, HRS (AHCA's predecessor agency) should require that CON applications filed in a batching cycle address the same, specific need projection, which would be the "fixed" need pool applicable to the batching cycle. In other words, after a period made available for challenge, the need pool should become "fixed" and free

from challenge based upon future developments, as those future developments should be addressed in a subsequent batching cycle, which may involve other applicants whose rights might be affected if late developed "need" is used by applicants from an earlier batching cycle.[5] AHCA's rule 59C-1.008 formalized this process, creating a 10-day window in which parties may identify an error in the FNP numbers, advise AHCA of the error, and in doing so, provide a chance for AHCA to correct any error before the need became fixed.

Errors That May Be Brought in a Fixed Need Pool Challenge

67. Rule 59C-1.008(2)(a)2. clearly codifies the right to identify an "error" in the FNP numbers. However, neither that subparagraph nor any other provision in chapter 59C provides any definition of the "error" that may be challenged.

68. AHCA and Intervenors insist that challengeable errors are limited to only: (1) mathematical errors in AHCA's calculations; or (2) disputes regarding the count of self-reported admissions from AHCA-licensed hospice

---

[5] Additionally, as ALJ McArthur has explained:

> Prior to fixed need pools, HRS calculated numeric need under the applicable rule methodology at the time of its initial review of CON applications, plugging into the calculations data available at that time. But if HRS's initial decisions were challenged, as they often were, numeric need would be recalculated in subsequent administrative hearings based on new data admitted as evidence. Hearings were frequently delayed at the request of parties hoping for new favorable data, which could be used as evidence. The problem tackled by *Gulf Court* was how to sort out comparative review rights when numeric need is the product of new data issued after HRS's initial decisions, when several batching cycles might be pending at DOAH, with later batches sometimes going to hearing before earlier batches.

Hernando-Pasco Hospice, Inc. v. Ag. for Health Care Admin., Case No. 14-2151, ¶ 6 n.2 (Fla. DOAH Mar. 11, 2015; Fla. AHCA May 12, 2015).

providers. AHCA and Intervenors do not cite to any rule for authority for this position, other than the language in rule 59C-1.008(2)(a)2. which requires a potential challenger to identify an "error in the Fixed Need Pool numbers." AHCA and Intervenors insist that the advocated limitation of what is meant by "error" is based upon AHCA's interpretation of its own rule and past AHCA precedent.

69. Historically, AHCA's interpretation of its own rules would have been entitled to great weight and would not be disregarded unless clearly erroneous, even if the interpretation was not the most reasonable or logical one. *See Orange Park Kennel Club, Inc. v. State, Dep't of Bus. Reg.*, 644 So. 2d 574, 576 (Fla. 1st DCA 1994); *State, Bd. of Optometry v. Fla. Society of Ophthalmology*, 538 So. 2d 878, 885 (Fla. 1st DCA 1988). This deference permitted AHCA to use its limited interpretation of the word "error" to preclude consideration of certain FNP challenges so long as an ALJ agreed that AHCA's interpretation was not unreasonable. *See, e.g., Hospice of Lake and Sumter, Inc. et al. v. Ag. for Health Care Admin.,* Case No. 08-6215, et al., Order Relinquishing Jurisdiction (Fla. DOAH Feb. 2, 2009).

70. However, the days of deference to state agency interpretation of statutes and rules are over. *See Sch. Bd. of Volusia Cty. v. Fla. E. Coast Charter Sch.*, 312 So. 3d 158, 160 (Fla. 5th DCA 2021); *MB Doral, LLC v. Dep't of Bus. & Prof'l Reg., Div. of Alcoholic Beverages & Tobacco*, 295 So. 3d 850, 853 (Fla. 1st DCA 2020). After an amendment to Florida's Constitution approved by Florida voters, AHCA's interpretation of its rule is no longer entitled to any deference. See Art. V, § 21, Fla. Const. ("In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such state or rule de novo."). Thus, the arguments raised by Petitioners must be reviewed *de novo*, with no deference given to AHCA's interpretation.

71. The rule's use of the word "error" must be given its plain and ordinary meaning. *See W. Fla Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 8-9 (Fla. 2012). When a term is undefined, dictionary definitions can provide useful guidance. *See Id.* at 9; *see also Hospice of Lake and Sumter, Inc. et al. v. Ag. for Health Care Admin.*, Case No. 08-6215, et al., Order Relinquishing Jurisdiction (Fla. DOAH Feb. 2, 2009) (turning to Black's Law Dictionary to define "error"). Additionally, rule 59C-1.008(2)(a)2. cannot be considered in isolation, but instead must be read in *pari materia* with the entire provision. *See Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265-66 (citing *Fla. State Racing Comm'n v. McLaughlin*, 102 So. 2d 574, 575-76 (Fla. 1958)).

72. Merriam-Webster defines "error" as "an act involving an unintentional deviation from truth or accuracy." Merriam-Webster, https://www.merriam-webster.com/dictionary/error (last visited June 3, 2021). Merriam-Webster offers an additional definition of "error" as "an act that through ignorance, deficiency, or accident departs from or fails to achieve what should be done." *Id.* These definitions of "error" are clearly broader than mathematical or calculation errors.

73. Additionally, while subparagraph (2)(a)2. refers to the ability to identify an error in the FNP, subparagraph (2)(a)3. goes on to provide as follows:

> 3. Except as provided in subparagraph 2. above, the batching cycle specific Fixed Need Pools shall not be changed or adjusted in the future regardless of any future changes in need methodologies, population estimates, bed inventories, or other factors which would lead to different projections of need, if retroactively applied.

Fla. Admin. Code R. 59C-1.008(2)(a)3.

74. By using the phrase "except as provided in subparagraph 2.," the rule specifically delineates the types of errors that are cognizable within an FNP

challenge. Such challenges specifically include those based upon changes in need methodologies, population estimates, bed inventories, or other factors. Thus, rather than arbitrarily limiting the types of error that may be raised in FNP challenges as AHCA and Intervenors contend, subparagraph (2)(a)3. expressly broadens the scope of FNP challenges to include "other factors" that would lead to a different projection of need. This interpretation is consistent with the dictionary definitions noted above, and is consistent with the concept of batched review, as it only involves information available at the time for challenging FNPs (just like newly discovered admissions unreported when need calculations are made but cited in the midst of a timely filed FNP challenge).

75. When read in its entirety, rule 59C-1.008(2)(a)2.-3. makes clear that while "changes in need methodologies, population estimates, bed inventories, or other factors" cannot be raised in subsequent proceedings, they can be identified as errors in AHCA's need determination and, thus, can be the subject of an FNP challenge such as this one. AHCA and Intervenors offer no other plausible explanation for what is meant by rule 59C-1.008(2)(a)3.'s reference to "except as otherwise provided" in subparagraph (2)(a)2.

76. AHCA and Intervenors have argued consistently and vehemently that the proper scope of an FNP challenge is only as to the calculation and use of the data required by the rule formula, and not as to other factors, citing, *inter alia, Hope Hospice and Community Services, Inc. v. Agency for Health Care Administration, et al.*, DOAH Case No. 08-6218 (2009), per curiam affirmed *Hope Hospice and Community Services, Inc. v. Agency For Health Care Administration*, 23 So. 3d 1185 (Fla. 1st DCA, 2009). According to AHCA and Intervenors, the errors asserted by Petitioners do not fall within this scope of a calculation or data error, and therefore would not be contemplated as a proper challenge to the FNP numbers, according to AHCA's precedent.

77. If AHCA and Intervenors are correct regarding the limited scope of an FNP proceeding, no challenge could be brought to an FNP that is based upon

changes in need methodologies, population estimates, bed inventories, or other factors which would lead to different projections of need. In addition to an inability to raise such arguments in the context of an FNP challenge, AHCA and Intervenors also will undoubtedly argue that those same prohibitions apply in future litigation concerning the approval or denial of CON applications. If they are correct, the FNP rule is infallible and the opportunity to file a meaningful FNP challenge is illusory.

78. AHCA and Intervenors have insisted throughout this proceeding that AHCA must follow its rules. However, in making this argument they seem to ignore that AHCA's rules very clearly allow for the identification of errors in the FNP numbers and provide a broad scope for such challenges in subsection (2)(a)3.

79. Reading rule 59C-1.008(2)(a) in its entirety, as the undersigned must, and based on AHCA's rules and applicable authority and precedent, the undersigned concludes that the errors identified by Petitioners are challengeable errors under rule 59C-1.008(2)(a), and that this is the proper forum to address the errors raised by Petitioners.

Petitioners Have Failed to Carry Their Burden of Proof

80. The premise of Petitioners' challenge to the FNP numbers is that AHCA followed its duly promulgated rules 59C-1.008 and 59C-1.0355, when instead it should have deviated from the requirements of those rules (1) as a result of the impacts of the COVID-19 pandemic, and (2) because some services not clearly identified, but purportedly provided by Bay Pines, should be counted as "hospice admissions" for purposes of the calculation of the FNP.

81. The parties stipulated that when performing its FNP calculation at issue, AHCA used the number of "current deaths" as defined in and required by rule 59C-1.0355(4)(a). Under the formula in subparagraph (4)(a), AHCA considers current deaths under the need methodology to be limited to those available from the Department of Health, Office of Vital Statistics, at least

three months prior to the publication of the FNP. While the rule does not expressly specify that the report of deaths must be final, it would be unreasonable and impractical for AHCA to use deaths data that are unverified and provisional, rather than waiting for verified final data. Indeed, the use of provisional data, subject to future revision after the FNP is published, would have the potential to result in erroneous FNP publications, and the corresponding approval of unneeded new hospice programs, or worse still, the denial of needed hospice programs. Petitioners did not carry their burden to establish that different deaths data should have been used in the calculation of the FNP under challenge.

82. A "Hospice Program" that would provide an admissions report or "Semi-Annual Utilization Report" to be used within the need formula is defined as:

> A program described in [s]ections 400.601(3), 400.602(1), 400.609, and 400.6095 (1), F.S., that provides a continuum of palliative and supportive care for the terminally ill patient and his family. ....

Fla. Admin. Code R. 59C-1.0355(2)(f).[6] Indisputably, Chapter 400, Florida Statutes, by its plain terms, governs the licensure of Florida Hospice Programs.

83. Section 400.601(3) defines a "hospice" as "a centrally administered corporation or a limited liability company that provides a continuum of palliative and supportive care for the terminally ill patient and his or her family." Bay Pines does not meet this definition, as it was not shown to be a corporation or a limited liability company. Rather Bay Pines is owned and operated by the Department of Veterans Affairs, a federal agency. Nor was it

---

[6] "Approved Hospice Program" is defined as a "Hospice Program for which the Agency has issued an intent to grant a Certificate of Need, or has issued a Certificate of Need, and that is not yet licensed as of three weeks prior to publication of the Fixed Need Pool." Fla. Admin. Code R. 59C-1.0355(2)(b). The two definitions comprise the entirety of the "Inventory" applicable to hospice for purposes of rule 59C-1.008(2)(b).

established that Bay Pines "provides a continuum of palliative and supportive care for the terminally ill patient and his or her family." Rather, the testimony and evidence demonstrated that Bay Pines, at most, provides only inpatient end of life services.

84. AHCA has no legal authority to regulate VA facilities. Nor does AHCA have the authority to compel VA facilities to submit reports to AHCA, including hospice utilization reports. Moreover, absent the ability to regulate VA-operated hospice programs, there is no ability to control what is considered a "hospice admission" at a VA facility, and ensure uniformity in the way admissions are counted statewide.

85. Bay Pines does not qualify under the statutory requirements to be a "hospice," and by rule or interpretation, AHCA may not expand its statutory authority to include Bay Pines admissions within the FNP calculation. § 120.52(8), Fla. Stat. Therefore, the Bay Pines hospice inpatient unit admissions could not properly be included and counted under rule 59C-1.0355.

86. For the reasons described above, VA hospice admissions that stay within the VA system (as opposed to being referred to a state-regulated "hospice program"), are admissions that are properly excluded by AHCA in its FNP calculation.

87. Petitioners have failed to demonstrate that the FNP determination under challenge herein is in error.[7]

---

[7] The issue determined in this proceeding is narrow. This Order does not determine what issues may be raised or relief afforded in a subsequent administrative proceeding involving a challenge to AHCA's preliminary decision to approve or deny a hospice CON application for the current batching cycle based in part on the positive FNP.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered determining that there is no error in the Fixed Need Pool numbers for Hospice Service Area 5B and that there is a calculated net need for one additional hospice program in Hospice Service Area 5B as published by AHCA on February 5, 2021.

DONE AND ENTERED this 16th day of June, 2021, in Tallahassee, Leon County, Florida.

W. DAVID WATKINS
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of June, 2021.

COPIES FURNISHED:

Stephen C. Emmanuel, Esquire
Ausley & McMullen
123 South Calhoun Street
Tallahassee, Florida 32301

D. Ty Jackson, Esquire
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Post Office Box 11189
Tallahassee, Florida 32302

Julia Elizabeth Smith, Esquire
Agency for Health Care Administration
Mail Stop 3
2727 Mahan Drive
Tallahassee, Florida 32308

Eugene Dylan Rivers, Esquire
Ausley & McMullen, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301

Gabriel F.V. Warren, Esquire
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Post Office Box 551
Tallahassee, Florida 32301

David C. Ashburn, Esquire
Greenberg Traurig, P.A.
101 East College Avenue
Post Office Drawer 1838
Tallahassee, Florida 32301

Kristen Bond Dobson, Esquire
Parker, Hudson, Rainer & Dobbs, LLP
Suite 750
215 South Monroe Street
Tallahassee, Florida 32301

Karl David Acuff, Esquire
Law Offices of Karl David Acuff, P.A.
Suite 2
1615 Village Square Boulevard
Tallahassee, Florida 32309-2770

Amanda Marci Hessein, Esquire
Rutledge Ecenia, P.A.
Suite 202
119 South Monroe Street
Tallahassee, Florida 32301

Simone Marstiller, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Building 3
Tallahassee, Florida 32308-5407

Shena L. Grantham, Esquire
Agency for Health Care Administration
Building 3, Room 3407B
2727 Mahan Drive
Tallahassee, Florida 32308

Michael J. Cherniga, Esquire
Greenberg Traurig, P.A.
101 East College Avenue
Post Office Drawer 1838
Tallahassee, Florida 32301

Marc Ito, Esquire
Law Office of Marc Ito, PLLC
411 Wilson Ave.
Tallahassee, Florida 32303

Seann M. Frazier, Esquire
Parker, Hudson, Rainer & Dobbs, LLP
Suite 750
215 South Monroe Street
Tallahassee, Florida 32301

Christoper E. Gottfried, Esquire
Greenberg Traurig
101 East College Avenue
Tallahassee, Florida 32301

Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

Stephen A. Ecenia, Esquire
Rutledge Ecenia, P.A.
119 South Monroe Street, Suite 202
Post Office Box 551
Tallahassee, Florida 32301

James D. Varnado, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

Thomas M. Hoeler, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.