

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION

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SEASONS HOSPICE AND PALLIATIVE,  
CARE OF PINELLAS COUNTY, LLC,

Petitioner,

CASE NO. 21-0888CON

AHCA NO. 2021003222

v.

RENDITION NO.: AHCA-21 - 804 -FOF-CON

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent,

and

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

Intervenors.

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THE HOSPICE OF THE FLORIDA  
SUNCOAST, INC.,

Petitioner,

CASE NO. 21-0889CON

AHCA NO. 2021003178

v.

STATE OF FLORIDA, AGENCY FOR  
HEALTH CARE ADMINISTRATION,

Respondent,

and

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

Intervenors.

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## **FINAL ORDER**

This case was referred to the Division of Administrative Hearings (DOAH) where the assigned Administrative Law Judge (ALJ), W. David Watkins, conducted a formal administrative hearing. At issue in this proceeding is whether there is an error in the Fixed Need Pool (“FNP”) numbers for hospice as calculated by the Agency for Health Care Administration (“AHCA” or “Agency”) that were published on February 5, 2021. The Recommended Order entered on June 16, 2021 is attached to this final order and incorporated herein by reference.

### **RULINGS ON EXCEPTIONS**

Seasons Hospice & Palliative Care of Pinellas County, LLC (“Seasons”) and The Hospice of the Florida Suncoast, Inc. (“Suncoast”) filed exceptions to the Recommended Order, and Hernando-Pasco Hospice, Inc. (“HPH”) and Cornerstone Hospice & Palliative Care, Inc. (“Cornerstone”) filed joint exceptions to the Recommended Order. Seasons and Suncoast filed responses to HPH and Cornerstone’s exceptions, the Agency filed a response to all the exceptions, and HPH and Cornerstone filed a joint response to Seasons and Suncoast’s exceptions.

In determining how to rule upon the exceptions and whether to adopt the ALJ’s Recommended Order in whole or in part, the Agency must follow Section 120.57(1)(l), 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)(l), 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.”

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

#### **Seasons’ Exceptions**

In Exception Number One, Seasons takes exception to the last sentence of Paragraph 26 of the Recommended Order, arguing it is not based on competent, substantial record evidence. The last sentence of Paragraph 26 is a conclusion of law that is based on the ALJ’s weighing of the competent, substantial record evidence in this matter. See, e.g., Transcript, Volume I, Pages 57-70, 111, 152-153, 157-159, and 171-172; Transcript, Volume 2, Pages 228-229; Transcript, Volume 3, Pages 306-311. The Agency is not permitted to re-weigh the evidence to reach a different conclusion of law. See § 120.57(1)(l), Fla. Stat.; Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (“The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.”). Therefore, the Agency denies Exception Number One.

In Exception Number Two, Seasons takes exception to Paragraphs 40, 41, 42, 80, and 81 of the Recommended Order, arguing these paragraphs misstate the Petitioners’ case as being premised on the argument that the Agency should violate its rules and use an alternative fixed

need pool formula. To the extent these paragraphs are comprised of findings of fact, the findings of fact are all supported by competent, substantial record evidence. See Transcript, Volume 1, Pages 64-70, 83-84 and 86; Transcript, Volume 2, Pages 222-223, 227-231, 239 and 245-247; Transcript, Volume 3, Pages 301-306; Suncoast Exhibits 11-20. Thus, the Agency cannot reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. To the extent these paragraphs contain conclusions of law, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in these paragraphs, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, for all the reasons stated above, the Agency denies Exception Number Two.

In Exception Number Three, Seasons takes exception to Paragraph 81 of the Recommended Order, arguing it is not supported by competent, substantial evidence and misstates Petitioners' burden. To the extent Paragraph 81 is comprised of findings of fact, the findings of fact are all supported by competent, substantial record evidence. See Transcript, Volume 1, 64-70, 83-84 and 86; Transcript, Volume 2, Pages 245-247; Transcript, Volume 3, Pages 304-305; Suncoast Exhibits 11-20. Thus, the Agency is not at liberty to reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. To the extent Paragraph 81 contains conclusions of law, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 81, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, for all the reasons stated above, the Agency denies Exception Number Three.

In Exception Number Four, Seasons takes exception to Paragraph 87 of the Recommended Order, arguing it is not supported by any record evidence. As shown by the Agency's rulings on Seasons' Exception Numbers One through Three supra, which are hereby

incorporated by reference, Seasons and Suncoast did not prove there was an error in the Agency's fixed need pool numbers for Service Area 5B. Seasons is asking the Agency to re-weigh the evidence presented in this matter, but the Agency is prohibited from doing so. See Heifetz, 475 So. 2d at 1281. Therefore, the Agency must deny Exception Number Four.

In Exception Number Five, Seasons takes exception to the last sentence of Paragraph 26 and Paragraphs 40, 60, 81 and 87 of the Recommended Order, arguing these paragraphs are clearly inconsistent with the ALJ's ruling that "other factors" can be raised in a FNP challenge. To the extent these paragraphs are comprised of findings of fact, the findings of fact are all supported by competent, substantial record evidence. See Transcript, Volume 1, Pages 64-70, 83-84 and 86; Transcript, Volume 2, Pages 245-247 and 260-262; Transcript, Volume 3, Pages 301-306; Suncoast Exhibits 11-20. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(j), Fla. Stat.; Heifetz, 475 So. 2d at 1281. To the extent these paragraphs contain conclusions of law, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in these paragraphs, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, for all the reasons stated above, the Agency denies Exception Number Five.

In Exception Number Six, Seasons takes exception to the Recommended Order in general, arguing the ALJ failed to make a specific finding on one of the errors raised by Petitioners. First, the Agency need not rule on Exception Number Six because Seasons failed to "clearly identify the disputed portion of the recommended order by page number or paragraph" as required by section 120.57(1)(k), Florida Statutes. Second, even if Exception Number Six was a valid exception, Season's argument fails because the ALJ make specific findings on all the issues in dispute listed in the parties' Joint Prehearing Stipulation. Specifically, the ALJ found

Petitioners failed to prove there was an error in the Agency's fixed need pool. See Paragraph 60 of the Recommended Order. Therefore, for all the reasons stated above, the Agency denies Exception Number Six.

### **Suncoast's Exceptions**

In Exception No. 1, Suncoast takes exception to the last sentence of Paragraph 26 of the Recommended Order, arguing it is not based on competent, substantial evidence, is inconsistent with other findings of fact, and is not reasonable. Based on the Agency's ruling on Seasons' Exception Number One supra, which is hereby incorporated by reference, the Agency denies Suncoast's Exception No. 1.

In Exception No. 2, Suncoast takes exception to Paragraph 40 of the Recommended Order, arguing it is a mislabeled conclusion of law that is unreasonable and inconsistent with other conclusions of law in the Recommended Order. To the extent Paragraph 40 is comprised of findings of fact, the findings of fact are all supported by competent, substantial record evidence. See Transcript, Volume 1, Pages 64-70, 83-84, and 86; Transcript, Volume 3, Pages 305-306. Thus, the Agency cannot reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. To the extent Paragraph 40 contains conclusions of law, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 40, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, for all the reasons stated above, the Agency denies Exception No. 2.

In Exception No. 3, Suncoast takes exception to Paragraph 41 of the Recommended Order, arguing the findings of fact therein are not supported by competent, substantial evidence, are inconsistent with other findings of fact, and are not reasonable. Despite Suncoast's argument to the contrary, the findings of fact in Paragraph 41 of the Recommended Order are based on

competent, substantial record evidence. See Transcript, Volume 2, Pages 245-247; Suncoast Exhibits 11-20. Thus, the Agency is not at liberty to reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. Therefore, the Agency denies Exception No. 3.

In Exception No. 4, Suncoast takes exception to Paragraph 42 of the Recommended Order, arguing it is a mislabeled conclusion of law that is unreasonable and inconsistent with other conclusions of law in the Recommended Order. To the extent Paragraph 42 is comprised of findings of fact, the findings of fact are all supported by competent, substantial record evidence. See Transcript, Volume 2, Pages 222-223, 227-231 and 239. Thus, the Agency is prohibited from rejecting or modifying them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. To the extent Paragraph 42 contains conclusions of law, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 41, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, for all the reasons stated above, the Agency denies Exception No. 4.

In Exception No. 5, Suncoast takes exception to Paragraph 60 of the Recommended Order, arguing it is a mislabeled conclusion of law that is unreasonable, inconsistent with other conclusions of law in the Recommended Order, and not supported by competent, substantial evidence. To the extent Paragraph 60 is comprised of findings of fact, the findings of fact are all supported by competent, substantial record evidence. See; Transcript, Volume 1, Pages 64-70; Transcript, Volume 2, Pages 245-247 and 260-262; Suncoast Exhibits 11-20. Thus, the Agency cannot reject or modify them. See § 120.57(1)(I), Fla. Stat.; Heifetz, 475 So. 2d at 1281. To the extent Paragraph 60 contains conclusions of law, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 60, the ALJ's conclusions of law are

reasonable and should not be disturbed. Therefore, for all the reasons stated above, the Agency denies Exception No. 5.

In Exception No. 6, Suncoast takes exception to Paragraph 81 of the Recommended Order, arguing it is unreasonable, inconsistent with other conclusions of law in the Recommended Order, and not supported by competent, substantial evidence. Contrary to Suncoast's argument, the conclusions of law in Paragraph 81 of the Recommended Order are supported by competent, substantial record evidence. See Transcript, Volume 1, Pages 64-70, 84 and 86; Transcript, Volume 3, Pages 304-305. Thus, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 81, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, the Agency denies Exception No. 6.

In Exception No. 7, Suncoast takes exception to Paragraph 87 of the Recommended Order, arguing it is unreasonable, inconsistent with other conclusions of law in the Recommended Order, and not supported by competent, substantial evidence. Based on the Agency's rulings on Suncoast's Exception Nos. 1-6, which are hereby incorporated by reference, the Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraph 87, the ALJ's conclusions of law are reasonable and should not be disturbed. Therefore, the Agency denies Exception No. 7.

#### **HPH and Cornerstone's Joint Exceptions**

In their first joint exception, HPH and Cornerstone take exception to Paragraph 68 of the Recommended Order, arguing the ALJ erred in finding AHCA and them insisted that challengeable errors are only limited to mathematical errors in AHCA's calculations or disputes regarding the count of self-reported admissions from AHCA-licensed hospice providers. Paragraph 68 of the Recommended Order is an accurate reflection of AHCA, HPH, and



Cornerstone's position in this matter. It is also an accurate reflection of Paragraph 22 of HPH and Cornerstone's Proposed Recommended Order. Furthermore, the ALJ reiterated both AHCA, HPH and Cornerstone argued challengeable errors are limited to those two categories in Paragraph 76 of the Recommended Order, to which HPH and Cornerstone did not take exception. Therefore, the Agency denies HPH and Cornerstone's first joint exception.

In their second joint exception, HPH and Cornerstone take exception to the second sentence of Paragraph 69 of the Recommended Order, arguing it should not be construed to elevate a private litigant's interpretation of statutes and rules above an agency's interpretation. HPH and Cornerstone's argument does not constitute a valid reason for the Agency to reject or modify the conclusions of law in Paragraph 69 of the Recommended Order. In addition, the conclusions of law in Paragraph 69 of the Recommended Order are outside the Agency's substantive jurisdiction. See, e.g., Barfield v. Department of Health, 805 So. 2d 1008, 1011 (Fla. 1st DCA 2002) (conclusions of law concerning an evidentiary issue are outside an agency's substantive jurisdiction); and Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140, 1142 (Fla. 2d DCA 2001) (stating an agency does not have substantive jurisdiction to decide whether the doctrine of collateral estoppel applies to a particular case). Therefore, the Agency must deny HPH and Cornerstone's second joint exception.

In their third joint exception, HPH and Cornerstone take exception to Paragraphs 74 and 75 of the Recommended Order, arguing the ALJ's interpretation of "other factors" in rule 59C-1.002(2)(a)3., Florida Administrative Code, leads to illogical results. The Agency finds that, while it has substantive jurisdiction over the conclusions of law in Paragraphs 74 and 75 of the Recommended Order because they involve the interpretation of an Agency rule, the ALJ's

conclusions of law are reasonable and should not be disturbed. Therefore, the Agency denies HPH and Cornerstone's third joint exception.

In their fourth joint exception, HPH and Cornerstone take exception to Paragraphs 77, 78, and 79 of the Recommended Order, based on the arguments put forth in their third joint exception. Based on the Agency's ruling on HPH and Cornerstone's third joint exception supra, which is hereby incorporated by reference, the Agency denies HPH and Cornerstone's fourth joint exception.

**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.

**ORDER**

Based upon the foregoing, the Agency's Fixed Need Pool numbers for Hospice Service Area 5B are hereby upheld as final, and there is a net need for one additional hospice program in Hospice Service Area 5B. The parties shall govern themselves accordingly.

DONE and ORDERED this 22<sup>nd</sup> day of July, 2021, in Tallahassee, Florida.



SIMONE MARSTILLER, 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 23<sup>rd</sup> day of July, 2021.

  
\_\_\_\_\_  
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