

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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

Petitioner,

vs.

CASE NO. _____

STATE OF FLORIDA,
DEPARTMENT OF HEALTH

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, Bayfront HMA Medical Center, LLC d/b/a Bayfront Health – St. Petersburg (“Bayfront”) pursuant to sections 120.569, 120.57(1), and 395.4025(7), Florida Statutes, and chapters 64J-2 and 28-106, Florida Administrative Code, hereby petitions the Florida Department of Health (the “Department” or “DOH”) for a formal administrative hearing to contest the Department's decision to accept a Letter of Intent and/or accept, process and approve a provisional trauma application by Galencare, Inc. d/b/a Northside Hospital (“Northside”), and/or authorize Northside to operate as a provisional Level II trauma center in TSA 9. In support of its Petition, Petitioner alleges the following:

I. Name, Address and Telephone Number of Petitioner

1. Petitioner is Bayfront HMA Medical Center, LLC d/b/a Bayfront Health – St. Petersburg, located at 701 Sixth Street South, St. Petersburg, Florida 33701. Petitioner’s phone number is (727) 893-6698. However, for purposes of this proceeding, Petitioner’s address and telephone number are that of its undersigned counsel.

II. Agency Affected and Agency's File Numbers

2. The affected agency is the Respondent, Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1701. The Department is the state agency charged with the regulation and approval of trauma centers. To Petitioner's knowledge, there is no applicable "agency file number."

III. The Applicant

3. Though not a party to this action, this proceeding involves a Letter of Intent (LOI) filed by Northside, and accepted by the Department of Health on September 30, 2016, to submit an application to become a Level II trauma center in TSA 9 (Pinellas and Pasco counties). Northside is located at 6000 49th Street North, St. Petersburg, Florida 33709. Upon information and belief, Northside is a subsidiary of Hospital Corporation of America ("HCA") an entity that owns and operates multiple hospitals throughout Florida.

IV. Receipt of Notice and Timely Petition

4. The Petitioner has not received notice from the Department of its processing and approval of Northside's application at the time of filing despite repeated (daily) public records requests for such documents. It has received a copy of Northside's LOI and the Department has acknowledged acceptance of the LOI from Northside on October 14, 2016, and invited Northside to submit an application. (Attached herein as Exhibits A and B.) Pursuant to section 395.4025(2), Florida Statutes, Northside has through April 1, 2017, to submit its application to the Department. Because this Petition challenges the Department's acceptance of Northside's LOI, as well as the acceptance, processing and preliminary approval of Northside's trauma application, this Petition is timely filed.

V. Petitioner's Special Expertise; Substantial Interests; and Standing

5. Bayfront has standing to file this Petition because it is challenging DOH's decision to accept a LOI, as well as accept, process and approve a Provisional Level II trauma center for Northside in the same Trauma Service Area (TSA 9) that Bayfront operates its Level II trauma center. In summary, and including for all the reasons indicated in this section, the acceptance, processing and approval of Northside's provisional application for a Level II trauma center will have a devastating impact on Bayfront's trauma operations and, as such, Bayfront has clear standing to file this Petition pursuant to Chapter 120, Florida Statutes. Additionally, section 395.4025(7), Florida Statutes, provides Bayfront with standing to challenge the Department's preliminary review of trauma applications.

6. Plaintiff, Bayfront Health, operates a 480-bed tertiary hospital in St. Petersburg, Florida. Bayfront Health is designated by the Department of Health as a Level II Trauma Center that serves a large, multi-county area that includes Manatee, Pasco, and Pinellas Counties. Bayfront Health is located in Trauma Service Area (TSA) 9.

7. The adverse impact of approval of Northside as a Level II trauma center will include: Bayfront's ability to continue to provide high quality health care services to trauma patients; the unnecessary duplication of trauma services in TSA 9; and a decrease in the volume of trauma patients served by Bayfront, resulting in a material loss of revenue.

8. As an existing trauma provider, Bayfront's interests are clearly and substantially affected by an approval of a Provisional Level II trauma center at Northside. The Florida Legislature expressly authorizes hospitals whose substantial interests are affected, like Bayfront, to challenge the Department's decisions on trauma center applications. In particular, section 395.4025(7), Florida Statutes, provides that "any hospital that wishes to protest a decision made

by the department based on the department's preliminary or in-depth review of applications...shall proceed as provided in chapter 120." See also Shands Jacksonville Medical Center, Inc. v. State, Dept. of Health, 123 So. 3d 86 (Fla. 1st DCA 2013) (hospitals economic interests were within the zone of interests protected by the trauma statutes; granting of a provisional license was subject to administrative challenge).

VI. Background of Trauma Centers and Application Process

9. Trauma centers are an integral part of the state's inclusive system of trauma care that is established and regulated under Part II of Chapter 395, Florida Statutes, and Rule 64J2.001, *et seq.*, Florida Administrative Code.

10. A trauma center serves as a resource facility to general hospitals and lower level trauma centers through shared outreach, education, and quality improvement activities. Trauma centers provide immediate attention and treatment to severely injured persons. To provide such care, a trauma center is required to have numerous different kinds of physician specialists, healthcare staff, and other staff physically present or on-call twenty-four hours per day. The requirements are extensive, but by way of just one example with respect to surgical services, a Level I trauma center must have a minimum of five qualified trauma surgeons assigned to the trauma service, with at least two trauma surgeons available to provide primary and backup trauma coverage 24 hours a day at the trauma center when summoned. Additionally, there shall be at least one qualified pediatric trauma surgeon for the trauma service.

11. A hospital that desires to apply for designation as a trauma center must first submit a Letter of Intent (LOI) to the Department no later than October 1. § 395.4025(2)(a), Fla. Stat. In order to be considered by the Department, a hospital that operates within the geographic are of a local or regional trauma agency must certify that its intent to operate as a trauma center is

consistent with the trauma services plan, as approved by the Department. § 395.4025(2)(a), Fla. Stat. Thereafter, the hospital, including those current verified trauma centers that seek a change or re-designation in approval status as a trauma center, must submit its trauma center application to the Department by April 1 of the following year.

12. However, even if an application is otherwise acceptable, the Department must deny the application unless the applicant hospital is located in a trauma service area that has a need for an additional trauma center. See 395.4025(5), Fla. Stat., which states:

In addition, hospitals being considered as provisional trauma centers shall meet all of the requirements of a trauma center and shall be located in a trauma service area that has a need for such a trauma center.

(emphasis added.)

IX. No Need for an Additional Level II Trauma Center in TSA 9

13. Section 395.402(2)(c), Florida Statutes, provides that the Department is tasked with establishing criteria for determining the number and level of trauma centers needed to serve the population in a defined trauma service area or region. In doing so, it must consider "the geographical composition of an area to ensure rapid access to trauma care by patients," the "[h]istorical composition of patient referral and transfer in an area," the "inventories of available trauma care resources, including professional medical staff," "population growth characteristics," and the "actual number of trauma victims currently being served by each trauma center," among others. See 395.402(3), Fla. Stat.

14. Section 395.402(2)(g), Fla. Stat. specifically requires the Department to take into consideration "the need to maintain effective trauma care in areas served by existing centers, with consideration for the volume of trauma patients served, and the amount of charity care provided."

15. Section 395.4025(1) specifically requires the Department to "establish the approximate number of trauma centers needed to ensure reasonable access to high-quality trauma services." See 395.4025(1), Fla. Stat.

16. Florida rules provide for a specific number of trauma centers in each trauma service area. Rule 64J-2.010 provides a determination of need for *two* trauma centers in TSA 9. However, the Department's acceptance and approval of Northside's application would result in *three* trauma centers in TSA 9: Bayfront, Bayonette Point, and Northside. Accordingly, the provisional acceptance, processing and approval of Northside's application violates the Department's own Rule 64J-2.010. Clearly there is no need for Northside to operate this additional Level II trauma center in TSA 9.

17. In sum, Northside's application must be denied as it clearly fails to satisfy the need requirements in TSA 9 and the applicable statutory and rule review criteria set forth in sections 395.4025, Florida Statutes, and Chapters 64J-2 and 28-106, Florida Administrative Code. For these and other reasons, Bayfront respectfully requests that the Department's decision to accept, process and approve Northside's application be overturned.

X. Statement of Disputed Issues of Material Fact

18. The disputed issues of material fact include, but are not limited to, the following¹:
- a. Whether the Department was authorized to accept Letter of Intent from Northside to apply for a provisional trauma center in TSA 9 absent an available position for a new trauma center;

¹Petitioner reserves the right to amend this petition to include additional disputed issues of material fact and law that may become apparent from outstanding public records request or during discovery in this case.

b. Whether the Department was authorized to accept and process a trauma application from Northside absent an available position for a new trauma center in TSA 9;

c. Whether the Department is permitted to approve the opening and operations of Northside's trauma application after April 30, 2017, while this administrative challenge is pending;

d. Whether Northside's application complies with all of the applicable criteria and standards set forth in Florida Statutes and Rules, including, whether there is a need for a new trauma center in TSA 9;

e. Whether Northside's application complies with the criteria and standards found in Chapter 395, Part II, Florida Statutes, and Chapters 64J-2 and 28-106, Florida Administrative Code;

f. Whether Northside's application is in substantial compliance with the Trauma Center Standards;

g. Whether Northside meets all the requirements for a Level II trauma center;

h. Whether the proposed approval of Northside's trauma application will cause a severe reduction in Bayfront's geographic service area;

i. Whether the approval of Northside will result in the unnecessary and unfair economic loss to Bayfront's trauma center;

j. Whether Northside lacks the required depth of special expertise, volume, and experience and, therefore, any approval of its application is contrary to the intent of the trauma statutes, rules and trauma system;

k. Whether the Department properly applied the appropriate statutory and rule criteria and trauma standards when evaluating Northside's application;

l. Whether the Department erred in accepting, processing and/or approving Northside's Provisional Level II trauma center;

m. Whether the approval of Northside will result in greatly increased competition for the limited supply of staff, professionals, specialists, and sub-specialists needed to support a trauma program, resulting in substantial loss of key staff of Bayfront;

n. Whether there is a need for an additional Level II trauma center in Trauma Service Area 9;

o. Whether the existing trauma centers, including Bayfront, satisfy the current need;

p. Whether the existing trauma centers, including Bayfront, would be substantially and adversely impacted by the operation of Northside's Provisional Level II trauma center.

q. Whether the information provided in and relied upon in Northside's application was a true and accurate reflection of current need and projections;

r. Such other matters relating to the merits of Northside's application as may be appropriate for consideration in a *de novo* formal administrative hearing.

XI. Concise Statement of Ultimate Facts and Law

19. The specific facts warranting denial of Northside's Application include, but are not limited to, the following:

a. The Department was not authorized to accept a Letter of Intent from Northside to apply for a provisional trauma center in TSA 9 absent an available position for a new trauma center;

- b. The Department was not authorized to accept and process a trauma application from Northside absent an available position for a new trauma center in TSA 9;
- c. The Department is not authorized to approve the opening and operations of Northside's trauma application after April 30, 2017, while this administrative challenge is pending;
- d. Northside's application failed to comply with all of the applicable criteria and standards set forth in Florida Statutes and Rules;
- e. Northside's application failed to comply with Chapter 395, Part II, Florida Statutes, and Chapters 64J-2 and 28-106, Florida Administrative Code;
- f. Northside's application failed to substantially comply with the Trauma Center Standards;
- g. Northside fails to meet all the requirements for a Level II trauma center;
- h. The proposed approval of Northside will cause a severe reduction in Bayfront's geographic service area, because it changes Bayfront's current geographic area service area to a greatly reduced area which will result in a greatly reduced number of trauma cases at Bayfront;
- i. The approval of Northside will result in a severe reduction in Bayfront's Trauma cases;
- j. The approval of Northside will result in the unnecessary and unfair economic loss to Bayfront;
- k. Northside lacks the required depth of special expertise, volume, and experience and, therefore, it's provisional approval to operate a Level II trauma center is contrary to the intent of the trauma statutes, rules and trauma system.

l. The Department erred in accepting, processing and/or approving Northside's application to operate a Provisional Level II trauma center;

m. The Department did not properly apply the appropriate statutory and rule criteria and trauma standards when evaluating Northside's application;

n. There is no need for an additional Level II trauma center in Trauma Service Area 9;

o. The existing trauma centers, including Bayfront, satisfy the current need;

p. The existing trauma centers, including Bayfront, will be substantially and adversely impacted by the operation of Northside's Provisional Level II trauma center.

q. Northside's Provisional Level II trauma center will substantially and adversely affect the interests of Bayfront and the trauma patients it cares for.

XII. Specific Statutes and Rules Requiring Reversal of Department's Proposed Action

20. The statutes and rules requiring reversal of the Department's approval of Northside's application for a Level 1 trauma center have been set forth above, and include, but are not limited to, Chapter 395, Part II, Florida Statutes, including specifically Section 395.4025; Chapter 64J-2, Florida Administrative Code, and Chapter 120, Florida Statutes, including sections 120.569, 120.57(1) and 120.60.

XIII. Relief Sought

WHEREFORE, Bayfront Health – St. Petersburg requests the following:

A. That the Department grant Bayfront's request for a formal administrative hearing to challenge the acceptance, processing and approval of Northside's application for a Provisional Level II trauma center;

B. That the Department reject Northside's Letter of Intent and provisional trauma application for TSA 9;

C. That the Department deny approval for the opening and operation of a new provisional trauma center in TSA 9 while this administrative challenge is pending;

D. The matter be referred to the Division of Administrative Hearings (DOAH) for a formal administrative hearing;

E. That a Recommended Order and Final Order be entered denying Northside's Level II trauma center application; and

F. Grant such further relief as may be deemed just and proper.

Respectfully submitted,

/S/ GEOFFREY D. SMITH

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Counsel for Bayfront Health—St. Petersburg

CERTIFICATE OF SERVICE

I hereby certify that the foregoing, on this 22nd day of March, 2017, has been filed by hand delivery to:

Agency Clerk
Office of the General Counsel
Florida Department of Health
2585 Merchant's Row Blvd,
Prather Building, Suite 110
Tallahassee, FL 32399

And was served upon by hand delivery and email to:

General Counsel
Office of the General Counsel
Florida Department of Health
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Tallahassee, FL 32399

A courtesy copy was also sent to Steve Ecenia, Rutledge Ecenia, PA, counsel for Northside Hospital, via email to Steve@rutledge-ecenia.com.

/S/ GEOFFREY D. SMITH

GEOFFREY D. SMITH