

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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November 3, 2006

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
Hawaii Medical Center, LLC)	NO. 06-15
)	
Applicant)	
)	DECISION ON THE MERITS
_____)	

DECISION ON THE MERITS

The State Health Planning and Development Agency (hereinafter "Agency"), having taken into consideration all of the records pertaining to Certificate of Need Application No. 06-15 on file with the Agency, including the written and oral testimony and exhibits submitted by the applicant and other affected persons, the recommendations of the Oahuwide Certificate of Need Review Committee, Certificate of Need Review Panel and the Statewide Health Coordinating Council, the Agency hereby makes its Decision on the Merits, including findings of fact, conclusions of law, order, and written notice on Certificate of Need Application No. 06-15.

BACKGROUND

1. This is an application by Hawaii Medical Center, LLC for approval under Part VII of Chapter 323D, Hawaii Revised Statutes (HRS) and for a Certificate of Need ("Cert.") in regard to the proposed acquisition of St. Francis Medical Centers Liliha/West; acquisition of St. Francis' interest in joint ventures providing CT, MRI, outpatient cardiac catheterization and outpatient endoscopy services at St. Francis Medical Center Liliha, at a capital cost of \$34,721,855.

2. The applicant, Hawaii Medical Center, LLC, ("HMC") is a Hawaii limited liability corporation.
3. The Agency administers the State of Hawaii's Certificate Program, pursuant to Chapter 323D, Hawaii Revised Statutes (HRS), and Title 11, Chapter 186, Hawaii Administrative Rules (HAR).
4. On May 4, 2006, the applicant filed with the Agency an application for a Certificate of Need and for Part VII, Chapter 323D, HRS approval of the acquisition of St. Francis Medical Centers Liliha/West; acquisition of St. Francis' interest in joint ventures providing CT, MRI, outpatient cardiac catheterization and outpatient endoscopy services at St. Francis Medical Center Liliha, at a capital cost of \$34,721,855 (the "Proposal"). On July 28, 2006, and August 21, 2006, the applicant submitted additional information. On September 7, 2006, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #06-15.
5. The period for Agency review of the application commenced on September 8, 2006, the day notice was provided to the public pursuant to 11-186-39 HAR and 323D-73, HRS.
6. The application was reviewed by the Oahuwide Certificate of Need Review Committee at a public meeting held September 15, 2006. The Council voted 4 to 0 in favor of recommending approval of the application.
7. The application was reviewed by the Certificate of Need Review Panel at a public meeting held September 21, 2006. The Panel voted 6 to 1 in favor of recommending approval of the application.
8. The application was reviewed by the Statewide Health Coordinating Council at a public meeting held September 28, 2006. The Council voted 9 to 0 in favor of recommending approval of the application.
9. This application was reviewed in accordance with Section 11-186-15, HAR and 323D-77 HRS.
10. Burden of proof. Section 11-186-42, HAR, provides:

"The applicant for a certificate of need or for an exemption from certificate of need requirements shall have the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence."

II

FINDINGS OF FACT

A. REGARDING THE RELATION OF THE PROPOSAL TO THE STATE HEALTH SERVICES AND FACILITIES PLAN (HAWAII HEALTH PERFORMANCE PLAN) OR "H2P2"

11. The applicant states that "As noted in the Executive Summary, St. Francis has encountered increasingly serious financial problems in recent years...We have now reached the point where the only alternatives remaining are the assumption of the facilities and services by HMC, as proposed in this CON application, or the closing of the facilities. The status quo, i.e., the continued provision of the services by St. Francis, is no longer an alternative."

12. The applicant states that the apparent alternative to this change of ownership is the closing of the facilities and services, which would have a serious negative impact on the visions and goals of H2P2.

13. With respect to the goals of H2P2, the applicant states that potential health disparities among Hawaii's residents will be avoided by maintaining the existing services under HMC.

14. With respect to the objectives of H2P2, the applicant states that maintaining the outpatient and inpatient services at the two facilities, especially their diagnostic imaging and laboratory services, will contribute to the early detection and diagnoses of treatable diseases.

15. The applicant states that morbidity, pain and the effects of chronic disease will be reduced through the continuation of the existing diagnostic and treatment services at the facilities.

16. The Agency finds that this criterion has been met.

B. REGARDING NEED AND ACCESSIBILITY CRITERIA

17. The applicant states that "This proposal is for a change in ownership of existing facilities and is not an application for any change or addition of beds or services. The facilities' beds and services are already included in the supply of services available to meet the needs of the community."

18. The applicant states that "HMC estimates that it will continue to provide the same inpatient and outpatient services at essentially the same level, but with slight increases in the coming years."

19. The applicant states that "The St. Francis facilities currently provide care to all those in need, regardless of income level, race, ethnicity, sex, age or disability. In fact, St. Francis is known for its commitment to service to the elderly and disadvantaged. This commitment will be continued by HMC. ... HMC is aware of concerns that the change in ownership from a not-for-profit to a for-profit corporation will somehow make services less accessible. We make the following commitments.

Service to the poor. As stated above, HMC will continue the St. Francis mission of serving the poor. Patients will be admitted without regard to their income.

Range of services. HMC will continue to provide all the services now being provided, including services that lose money.

Physician staff to continue. All physicians that are currently on the staff at the facilities will continue to have privileges, and therefore all the patients of these physicians will have continued access. Physicians will not need to be members of HPG to have privileges."

20. The Agency finds that the need and accessibility criteria have been met.

C. REGARDING QUALITY AND LICENSURE CRITERIA

21. The applicant states that "The acquisition and operation by HMC of the two St. Francis facilities will enable them to continue to provide needed primary, specialty, emergency and tertiary care services...The acquisition by HMC will also allow opportunities for continued improvement in the quality of care at the facilities. The existing medical staff, employees and policies will remain, together with the quality of service they now provide. In addition, the combined clinical and operational expertise and financial resources of HPG and CHA will enable opportunities such as capital for facility and equipment needs, acquisition of new technologies, and improved patient care coordination."

22. The applicant states that "As required by law, both facilities have State licensure and Medicare/Medicaid certification. These will be maintained. In addition, both facilities are certified by JCAHO, and this certification will be maintained."

23. The applicant states that "As facilities certified by Medicare and accredited by JCAHO, the facilities have existing policies and procedures to monitor and evaluate the quality of care. These policies and procedures will be maintained and updated to incorporate advances from CHA."

24. The applicant states that "The existing staff will be retained. All new staff will be appropriately trained, licensed and qualified to provide their services, and they meet or exceed qualifications required by law and regulatory agencies."

25. The applicant states that "... there is no anticipated immediate change in patient care staffing levels. The ratio of patient care staff to patients will remain at current levels. We assume an increase in the number of patients, and staff will be added as necessary to meet the demand."

26. The Agency finds that quality and licensure criteria have been met.

D. REGARDING THE COST AND FINANCIAL CRITERIA

27. The applicant states that "Exhibits D-2-a through D-2-d show separate projections of revenues and expenses for the entire HMC operation... These projections show that revenue will exceed expenses by the end of the first year. Thus, the resources exist to successfully implement the project."

28. The applicant states that "The change in ownership should have no or little impact on overall health care costs in the community. As shown in the D-3 exhibits, HMC projects that under the new ownership there will be an increase in admissions at the facilities. However, HMC is also projecting a slight decrease in the average length of stay, so that the total number of patient days from 2007 to 2009 is only projected to increase by about 3%... As noted earlier, this increase in utilization and revenue at HMC will probably be offset by a slight decrease in utilization and revenue at other O'ahu acute facilities. The impact on any other particular facility should be small and only temporary as the aging and growing population of Hawai'i requires more services. There should be no impact on the overall health care system, since increases and decreases should offset each other."

29. The applicant states that there are two safeguards to be implemented by HMC to avoid conflict of interest in patient referral to the facilities:

"1. Provisions of HRS 431:10C-308.7

HRS 431-10C-308.7 provides in pertinent part: 'No health care provider shall refer, for any service or treatment authorized under this chapter, a

patient to any entity in which the referring provider has a financial interest unless the referring provider has disclosed that financial interest to the patient.' Further, 'The health care provider shall make the disclosure required by this section in advance and in writing, and shall obtain the signature of the patient and retain the disclosure form for a period of two years. The health care provider shall include in the disclosure a statement indicating that the patient is free to choose a different health care provider'... All our physician owners have been notified of this law as part of the offering for participation in Hawaii Physician Group, LLC, and HMC policy will be that all physician owners must observe this requirement. We will also establish a monitoring procedure to assure compliance, and document physicians' participation in this procedure.

2. Commitment to the best interest of the patient

HMC medical staff bylaws will include the following provision or words to similar effect:

Responsibility to Patients. All physicians with medical staff privileges shall observe the highest level of duty of care in a prudent clinical matter consistent with the best interest of the patient in all medical decisions with regard to such physician's patients. Physicians who are Members of Hawaii Physicians Group, LLC shall not consider such physician's interest in the Hospital in exercising his or her responsibility to his or her patients."

30. The Agency finds that cost and financial criteria have been met.

E. REGARDING THE RELATIONSHIP OF THE PROPOSAL TO THE EXISTING HEALTH CARE SYSTEM OF THE AREA

31. The applicant states that "This change in ownership will maintain the community's existing accessibility to health care services. HMC will maintain the services currently provided by St. Francis, and will maintain the same accessibility policies. That is, there will be no financial, cultural or other barriers. Again, without this project, the existing facilities risk going out of business entirely, thus making the existing services totally inaccessible. This would be especially disastrous for the people of West O'ahu, where SFMC-West is the only hospital. "

32. The applicant states that "After the change of ownership, HMC will continue to provide the same services and serve the same patients now being served by St. Francis... Thus, there will be no impact on other providers from changes in the range of services provided at HMC."

33. The applicant states that "The project may result in a slight decrease in the utilization rates at other providers. HMC anticipates that it will have a slight increase in its utilization under the new ownership and management, and some of this increase will necessarily come from other facilities... Any decrease in utilization at any other particular facility should be minimal, since the overall impact will be spread out amongst several large facilities. Further, any decrease should be a temporary phenomenon, since population increases and the aging of the population will soon increase utilization at all facilities. Again, the alternative of the St. Francis facilities being forced to close because of financial problems would have a serious and negative impact on the other facilities as they struggled to absorb the total load of the St. Francis patients."

34. The Agency finds that this criterion has been met.

F. REGARDING THE AVAILABILITY OF RESOURCES

35. The applicant states "As provided in the Asset Purchase Agreement ... HMC will retain the existing employees and honor the existing collective bargaining agreements. Thus, the human resources are available."

36. The applicant states that the "The change in ownership will be accomplished at a capital cost of \$67,900,000. \$40,200,000 will be financed through a loan from St. Francis Health System while the balance of \$17,700,000 represents a land lease. HMC will lease the land from St. Francis for a 25-year term, at the end of which HMC will purchase the land for \$1.00. \$10,000,000 in cash will be provided by the members of the LLC, with \$1,162,500 already paid with the signing of the agreement, and the balance to be paid at closing. 49% of the cash will be provided by HPG, and 51% by CHA Hawaii."

37. The applicant states "To date, CHAH has signed subscriptions for the full \$5.1 million... HPG has signed subscriptions for \$3.35 million from physicians... HPG is holding the remaining subscriptions for physicians, but as closing approaches, HPG will allow non-physicians to subscribe or will obtain bank financing for the shortfall. Finally, CHAH has been authorized by its majority owner, CHA to make up the shortfall."

38. The Agency finds that this criterion has been met.

III

CONCLUSIONS OF LAW

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 06-15 on file with the Agency, including the written and oral testimony and exhibits submitted by the applicant and other affected persons, the recommendations of the Oahuwide Certificate of Need Review Committee, the Certificate of Need Review Panel and the Statewide Health Coordinating Council, and based upon the findings of fact contained herein, the Agency concludes as follows:

The applicant has met the requisite burden of proof and has shown by a preponderance of the evidence that the Proposal meets the criteria established in Section 11-186-15, HAR.

Accordingly, the Agency hereby determines that, pursuant to Chapter 323D-43(b):

- (1) There is a public need for this proposal; and
- (2) The cost of the proposal will not be unreasonable in light of the benefits it will provide and its impact on health care costs.

ORDER

Pursuant to the findings of fact and conclusions of law contained herein, IT IS HEREBY DECIDED AND ORDERED THAT:

The State Health Planning and Development Agency hereby APPROVES of the proposed acquisition herein under Part VII of Chapter 323D, HRS and ISSUES a certificate of need to Hawaii Medical Center, LLC for the proposal described in Application No. 06-15. The maximum capital expenditure allowed under this approval is \$34,721,855.

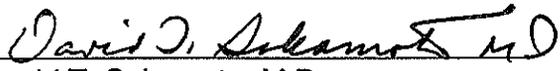
WRITTEN NOTICE

Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

The decision on the merits is not a final decision of the Agency when it is filed. Any person may request a public hearing for reconsideration of the decision pursuant to Section 11-186-82 of the Agency's Certificate of Need Program rules. The decision shall become final if no person makes a timely request for a public hearing for reconsideration of the decision. If there is a timely request for a public hearing for reconsideration of the decision and after the Agency's final action on the reconsideration, the decision shall become final.

DATED: November 3, 2006
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY


David T. Sakamoto, M.D.
Administrator

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Decision on the Merits, including findings of fact, conclusions of law, order, and written notice, was duly served upon the applicant by sending it by certified mail, return receipt requested, in the United States Postal Service addressed as follows on November 3, 2006.

Danelo Canete, M.D.
President and Chief Executive Officer
Hawaii Medical Center, LLC
2228 Liliha Street, #305
Honolulu, Hawaii 96817

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

A handwritten signature in black ink, appearing to read "David T. Sakamoto", is written over a horizontal line.

David T. Sakamoto, M.D.
Administrator