



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

LINDA LINGLE
GOVERNOR OF HAWAII
CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH
RONALD E. TERRY
ADMINISTRATOR

1177 Alakea St. #402, Honolulu, HI 96813 Phone: 587-0788 Fax: 587-0783 www.shpda.org

August 14, 2009

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
)	NO. 08-12
B.C.P., Inc. dba Nursefinders of Maui)	
)	
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. 08-12 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 Trilsle Subarea Health Planning Council and the Certificate of Need Review Panel 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. 08-12.

I

BACKGROUND

1. This is an application for a Certificate of Need ("Cert.") for the establishment certified Home Health Agency services at 2200 Main Street, Suite 650, Wailuku Hawaii, at a capital cost of \$125,000.
2. The applicant, B.C.P., Inc. dba Nursefinders of Maui, is a for-profit 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 June 6, 2008, the applicant filed with the Agency a Certificate of Need application for the establishment certified Home Health Agency services at 2200 Main Street, Suite 650, Wailuku Hawaii, at a capital cost of \$125,000. (the "Proposal"). On August 25, 2008, December 19, 2008 and February 4, 2009, the applicant submitted additional information. On February 11, 2009, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #08-12. On March 24, 2009, April 20, 2009, April 26, 2009, April 30, 2009, June 29, 2009 and July 10, 2009, the applicant submitted additional information.

5. The period for Agency review of the application commenced on March 10, 2009, the day notice was provided to the public pursuant to 11-186-39 HAR.

6. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on March 24, 2009. There were no recommendations to the agency as there were three motions for recommendations to the agency which failed.

7. The application was reviewed by the Certificate of Need Review Panel at a public meeting on April 30, 2009. The Panel voted 5 to 0 in favor of recommending disapproval of the application.

8. The application was reviewed by the Trilsle Subarea Health Planning Council at a public meeting on June 26, 2009. The Council voted 4 to 1 in favor of recommending conditional approval of the application. The condition was that the applicant be required to submit a detailed, feasible plan to the Agency showing that it is ready, willing, and able to provide home health agency services to Lanai, Molokai, and Hana.

9. This application was reviewed in accordance with Section 11-186-15, HAR.

10. Section 323D-43(b), HRS states:

"(b) No certificate of need shall be issued unless the state agency has determined that:

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

11. 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"

12. With respect to the goals of H2P2, the applicant states that its proposal "...will enable *'older adults to maintain good health and independent personal functioning'* (H2P2, Ch II, C.1. Goals, p. II-2). Home care is the care of choice for older adults who desire to remain well and preserve their independence of living in their own home."

13. With respect to the objectives of H2P2, the applicant states that its proposal "...relates to the objective of *'reducing the effects of chronic disease and prolonging health related quality of life'* (H2P2, Ch II, C.2. Objectives, p. II-2)."

14. The applicant states that "The Nursefinders proposal relates to the basic principles of a health care delivery system that is **comprehensive, cost effective, well coordinated and responsive to community/regional needs.** (H2P2, Ch II, D, p. II-2)... Nursefinders believes that home care is an essential, effective and efficient component of the comprehensive health care delivery system... According to the National Association for Home Care and Hospice (NAHC), it is more cost effective to provide care for patients in their home as opposed to a hospital or skilled nursing facility."

15. The applicant states that "The Nursefinders of Maui CON project has a significant relationship with the statewide Values and Priorities (H2P2, Ch III, A, p. III-1) and with Maui Counties 'Tri-Isle' (Maui, Moloka'i, Lana'i) Subarea Values and Priorities."

16. The applicant states that "Nursefinders of Maui embraces the statewide values of *Accountability, Compassion, Comprehensiveness* and *Community*."

17. The applicant states that "Nursefinders also embraces the Tri-Isle values of *Accessibility/Easy Access, Competent, Respectful/Culturally Respectful, Accountable/Responsible, Effective, Appropriate, Efficient, and Caring*."

18. The applicant states that "The Maui Health Initiative Task Force (2007) findings in Section: Home and Community Based Services *Priorities, Findings, and Recommendations*, page 77, under the heading Home Health Services states, 'There are no skilled, Medicare certified home health services for residents in Hana, Lana'i and Moloka'i.' The population group in these areas who participate in Medicare & Medicaid systems would have access to Nursefinders' home health agency."

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

B. REGARDING NEED AND ACCESSIBILITY CRITERIA

20. The State of Hawaii and Maui County have established forecasts that clearly detail the growing aging population on Maui... From 1990 to 2000 Maui County experienced the largest population growth in the state: a 39.8% increase... The elderly population on Maui has grown to be 11.5% of the total county population in 2005 and is projected to grow to 20% by year 2030..."

21. The applicant states that the population on Maui is 141,320 (US Census Bureau) X 11.6% (65 & older) = 16,393. Of this, 7.6% (NAHC) are Home Care Medicare eligible = 1,246 of the Home Care Medicare eligible."

22. The applicant states that "According to providers, Hale Makua has 83 patients and Kaiser has 60 patients for a total of 143 patients."

23. -The applicant states that "When we subtract the current patients receiving services from those eligible (1246-143) we have 1,103 still in need of services."

24. The applicant states that "The Maui estimated eligible Medicare Home Care patient population is 1,246. When you multiply this patient population with the national average visits per year per patient according to NAHC, you get the estimated need on Maui. $1,246 \times 31.5 = \underline{39,249}$..."

25. The applicant states that "The National Association for Home Care and Hospice (NAHC) estimates that there are 17.2 Medicare Home Care visits per patient per year in Hawaii. Therefore, we can estimate the Maui visits by multiplying the number of patients by the average visit. $143 \times 17.2 = \underline{2,460}$ visits per year (NAHC, 2008)."

26. The applicant states that the current visit need is 36,789 Medicare home care visits per year. $39,249 - 2,460 = \underline{36,789}$.

27. The applicant states "Nursefinders estimates that there is a current need on Maui for Medicare Home Health Services... there are at least 1,103 patients who could receive services and 36,789 visits that could be completed each year based on current data and national average comparisons."

28. In his written testimony dated July 1, 2009, Tony Krieg, CEO, Hale Makua Health Services states "...**in 2008 our Home Health program admitted or served 465 patients and provided 7,238 visits to patients with Medicare.** In contrast, the statistics presented by Nursefinders states that 2,408 Medicare visits were provided to 1,246 patients."

29. The other Maui Medicare certified home health provider, Kaiser Permanente Home Health, did not provide written testimony regarding the number of Medicare certified home health visits that it performs in Maui County.

30. The applicant states that "The Maui Health Initiative Task Force (2007) findings in Section: Home and Community Based Services *Priorities, Findings, and Recommendations*, page 77, under the heading Home Health Services states, 'There are no skilled, Medicare certified home health services for residents in Hana, Lana'i and Moloka'i.' The population group in these areas who participate in Medicare & Medicaid systems would have access to Nursefinders' home health agency."

31. In his written testimony dated July 1, 2009, Tony Krieg, CEO, Hale Makua Health Services states "Finally, any plan by Nurse Finders to serve Lanai, Hana or Molokai should be carefully scrutinized. It should be noted that Care Resource Hawaii is a Medicare-certified, skilled home health agency which currently provides non-skilled services home health services on Molokai. If there were enough Medicare patients on Molokai that could be served given the strict eligibility requirements for skilled care, Care Resource would be providing that service. Home Health by Hale Makua struggled to provide skilled home health care to Hana a few years ago, and could not sustain the service due to the low numbers of clients and the high cost of providing skilled staff (RN, PT, OT and speech) in such a remote service area."

32. The applicant states "We are in a unique position to assure quality access to home health services on Maui, Molokai, and Lanai... Nursefinders is committed to the implementation of Home Health services for all of Maui County, especially Molokai, Lanai, and Hana. Upon certification, dedicated planning activities specifically for each area will be developed. Maui Branch Director, Doug Harr will assure that these plans are carried out and services are rendered."

33. The applicant states "We continue to serve the underserved throughout the Tri-Isle. We serve low-income/no income, mentally and behaviorally challenged individuals, which many agencies will not serve."

34. The applicant states that "Nursefinders will not, directly or through contractual arrangements, discriminate on the basis of race, color, national origin, age, or disability in admissions, access, treatment or employment."

35. The Agency finds that the applicant has met the burden of proof in 11-186-42, HAR to establish that there is a need for additional certified home health agency services on Maui Island, although the Agency is of the opinion that the need is not as significant as stated on pages B-7 and B-8 of the application.

36. The Agency finds that the applicant has met the burden of proof in 11-186-42, HAR to establish that there is a need for certified home health agency services on Lanai, Molokai and in Hana and finds that this need is significant as there is limited access to certified home health agency services in these areas.

37. The Agency finds that the applicant has not met the said burden of proof to establish the extent to which the residents of Lanai, Molokai and Hana are likely to have access to its proposed services.

38. The Agency finds that the Proposal, if modified in accordance with the condition on page 10 of this Decision on the Merits, would successfully meet the need and accessibility criteria.

C. REGARDING QUALITY AND LICENSURE CRITERIA

39. The applicant states that "The Quality Assurance program in place at Nursefinders encompasses caregiver hiring criteria, clinical assessments, clinical indicators measured quarterly, clinical record reviews, complaint resolution processes, and the Professional Advisory Committee (PAC)... Clinical indicators are measured quarterly in the Maui office (along with all Nursefinders offices) that include compliance with regulatory issues (such as MD orders for patient care),

case conferences and clinical record reviews. Patient progress and response to care is recorded and reported to physicians and state QIOs (quality improvement organizations) as required as evidence of patient outcomes. We conduct safety assessments on all admitted patients and at regular intervals with ongoing patients, and take proactive steps to correct identified problems."

40. The applicant states that "Nursefinders of Maui is seeking Medicare certification and will pursue OHCA certification to become a licensed home health agency."

41. The applicant states that "Nursefinders' Maui branch will comply with Medicare's quality reporting initiatives upon receiving certification."

42. The applicant states that "Nursefinders Hawaii currently has five offices in Hawaii including Maui, Oahu, Kauai, and two on the Big Island... Internal audits are conducted quarterly to assure a high quality of care."

43. The applicant states that "Nursefinders evaluates all licensed personnel's competency to perform needed skills and intervention at the time of hire... Competency is also verified through inservice attendance with documented employee re-demonstrations, verified recent competency through outside sources, observation of skills, and current credentialing as documented proof of additional education and training."

44. The applicant states that "Nursefinders requires all field employees to complete inservice education each year to strengthen employee competency and the quality of services and offers employees the opportunity to develop new skills."

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

D. REGARDING THE COST AND FINANCIAL CRITERIA

46. The applicant states that "With the availability of Medicare home health agency services through Nursefinders of Maui, residents on the island may be able to reduce their length of hospital stays and complete their recoveries at home. The result would be an overall cost reduction for comprehensive healthcare with increased continuity of care for the patient and their family caregivers."

47. The applicant states that "There are limited alternatives to adding Nursefinders of Maui to the Medicare treatment system. The probable alternative

would be an increase in the number of residential beds to meet the growing needs of the aging population. As the number of inpatient beds increases so will the cost. Providing care in skilled facilities and hospitals will far surpass the cost of providing in-home care..."

48. The applicant projects that the revenue for the first year of operation will be \$228,375 and that the net income for the first year will be \$33,823. The applicant projects that the revenue for the third year of operation will be \$681,250 and that the net income for the third year will be \$157,756.

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

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

50. The applicant states that "There are limited alternatives to adding Nursefinders of Maui to the Medicare treatment system. The probable alternative would be an increase in the number of residential beds to meet the growing needs of the aging population. As the number of inpatient beds increases so will the cost. Providing care in skilled facilities and hospitals will far surpass the cost of providing in-home care..."

51. The applicant states that "The Maui Health Initiative Task Force (2007) findings in Section: Home and Community Based Services *Priorities, Findings, and Recommendations*, page 77, under the heading Home Health Services states, 'There are no skilled, Medicare certified home health services for residents in Hana, Lana'i and Moloka'i.'"

52. The applicant states that "Nursefinders of Hawaii, Inc. has a proven record of having the capability to extend services to all parts of Maui to include rural areas, Hana, Molokai and Lanai. Home Care will bring the needed care to communities that have geographical barrier (sic) to accessing care on Maui."

53. The applicant states "We are in a unique position to assure quality access to home health services on Maui, Molokai, and Lanai... Nursefinders is committed to the implementation of Home Health services for all of Maui County, especially Molokai, Lanai, and Hana. Upon certification, dedicated planning activities specifically for each area will be developed. Maui Branch Director, Doug Harr will assure that these plans are carried out and services are rendered."

54. The Agency finds that the Proposal, if modified in accordance with the condition on page 10 of this Decision on the Merits, meets the relationship to the existing health care system criteria.

F. REGARDING THE AVAILABILITY OF RESOURCES

55. The applicant states that "Financing will not be required to expand current home care services to include Medicare services. B.C.P., Inc. will be providing the capital for the project costs of \$125,000."

56. The applicant states that "In addition to the current cash balance, B.C.P., Inc. has additional capital available from its parent company... Nursefinders, Inc., as the parent company, is committed to providing any additional capital for the project as needed."

57. The applicant states that "If granted the requested CON, Nursefinders of Maui will hire an experienced Client Service Representative and a Registered Nurse to support the patients and field staff. Existing field employees will provide direct care to the patients. When additional staff are needed, Nursefinders of Maui will recruit and hire locally. If necessary, Nursefinders has the capacity to recruit employees from outer island."

58. The Agency finds that the applicant has met this criterion.

III

CONCLUSIONS OF LAW

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 08-12 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 TriIsle Subarea Health Planning Council and the Certificate of Need Review Panel and based upon the findings of fact contained herein, the Agency concludes as follows:

1. The applicant has failed to show by a preponderance of the evidence that its Proposal, as it is currently written, meets the certificate of need criteria in Subsections 11-186-15(a) (1) and 11-186-15(a) (10), HAR.
2. The applicant's Proposal, if it were modified as specified in the Order below, would meet the criteria for the issuance of a certificate of need.

Conditional Certification

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 and ISSUES a CONDITIONAL certificate of need to B.C.P., Inc. dba Nursefinders of Maui, for the proposal described in Certificate of Need application No. 08-12 as modified herein.

The condition is that on or before November 6, 2009, the applicant shall submit to the Agency, for Agency approval:

- A detailed plan (the "Plan") for providing ongoing accessible certified home health agency services to each of the following: Molokai, Lanai and the Hana community. The detailed Plan shall include, without limitation, all information necessary to implement and maintain the said services to each of Molokai, Lanai and the Hana community and shall also include the following statements:

The applicant shall provide semi annual reports to the Agency, setting forth the efforts that the applicant is making to provide services and maintain certified home health agency services to each of the following: Molokai, Lanai and the Hana community. The report format and information required to be reported by the applicant shall be in the sole discretion of the Agency and may be amended by the Agency from time to time.

The applicant acknowledges and agrees that failure on the part of applicant to implement the Plan or any portion thereof, shall be deemed to be a substantial breach of Subsection 11-186-91(a) (2), Hawaii Administrative Rules (HAR) and upon such failure on the part of the applicant to implement the Plan or any portion thereof, the Agency may withdraw Certificate of Need #08-12 upon 60 days notice by the Agency to the applicant.

This modification is required for the application to successfully meet the criteria in Section 11-186-15, HAR.

As provided under Section 323D-46, HRS and Section 11-186-77 HAR, the Agency establishes Noon, September 2, 2009, as the date by which the applicant must certify, in writing, that it accepts this condition and that its application is

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thereby modified accordingly, otherwise this application shall be deemed to be DENIED as provided under Section 11-186-77 HAR.

As required under Section 323D-43(b), Hawaii Revised Statutes (HRS), the Agency finds that, if modified as specified in the above Order:

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

The maximum capital expenditure allowed under this conditional approval is \$125,000.

WRITTEN NOTICE

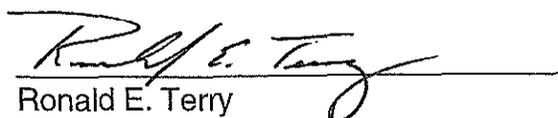
Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

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 HAR. 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.

(Note, pursuant to Chapter 323D-47, Hawaii Revised Statutes, a request for reconsideration shall be received by the Agency within ten working days of the state agency decision.)

DATED: August 14, 2009
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

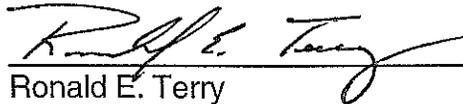

Ronald E. Terry
Administrator

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 August 14, 2009.

Robert E. Livonius
CEO
B.C.P., Inc. dba Nursefinders of Maui
524 E. Lamar Boulevard, #300
Arlington, Texas 76011

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



Ronald E. Terry
Administrator