



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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May 3, 2010

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
)	NO. 09-13
Rainbow Dialysis, LLC)	
)	
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. 09-13 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, the 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. 09-13.

I

BACKGROUND

1. This is an application for a Certificate of Need ("Cert.") for the establishment of Outpatient Chronic Renal Dialysis Facilities at 80 Mahalani Street, Wailuku, Hawaii and 305 Keawe Street, Lahaina, Hawaii, at a total capital cost of \$3,609,352.
2. The applicant, Rainbow Dialysis, LLC, is a limited liability corporation whose sole Member is Kaiser Foundation Health Plan Inc.

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 September 28, 2009, the applicant filed with the Agency a Certificate of Need application for the for the establishment of Outpatient Chronic Renal Dialysis Facilities at 80 Mahalani Street, Wailuku, Hawaii (10 hemodialysis stations plus one isolation station) and 305 Keawe Street, Lahaina, Hawaii (5 hemodialysis stations plus one isolation station), at a total capital cost of \$3,609,352. (the "Proposal"). On November 3, 2009, November 13, 2009, November 17, 2009, the applicant submitted additional information. On November 18, 2010, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #09-13.
5. The period for Agency review of the application commenced on November 25, 2009, the day notice was provided to the public pursuant to 11-186-39 HAR.
6. The application was reviewed by the Trilsle Subarea Health Planning Council at a public meeting on December 3, 2009. The Council voted 4 to 1 in favor of recommending approval of the application.
7. The application was reviewed by the Certificate of Need Review Panel at a public meeting on December 11, 2009. The Panel voted 5 to 0 in favor of recommending disapproval of the application.
8. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on December 17, 2009. The Council voted 7 to 4 in favor of recommending disapproval of the application.
9. In light of correspondence the Agency received from Liberty Dialysis-Hawaii, LLC (Liberty) dated December 14, 2009, the oral and written testimony received by the Agency as well as the discussions of the Agency's advisory councils at their review meetings indicating their desire to promote comprehensive collaboration in health care planning, the Agency extended its period of review for 60 days to April 23, 2010 in order to give the applicant and Liberty further opportunity to collaboratively explore and resolve dialysis planning issues between the parties for the benefit of Maui County pursuant to HAR 11-186-41. The said parties did not take the opportunity to collaboratively explore and resolve dialysis planning issues for the benefit of Maui County.
10. On April 22, 2010, the Agency requested the applicant to provide additional information pursuant to HAR 11-186-54.

11. On April 29, 2010, the additional information requested by the Agency was provided by the applicant.
12. This application was reviewed in accordance with Section 11-186-15, HAR.
13. 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.”
14. 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

15. With respect to the Statewide Health Coordinating Council priority of promoting and supporting the long-term viability of the health care delivery system, the applicant states that "This proposal promotes the long-term viability of the health-care system by allowing Kaiser, a well-established health care provider in Hawaii, to control the currently inflationary costs of dialysis services on Maui. Today... Kaiser spends 2.5 times more on average for dialysis treatments for Maui patients than it does for its Oahu patients... This proposal would also provide a cost-effective alternative to the sole dialysis provider on Maui whose costs continue to rise due to the lack of competition, which in turn undermines Kaiser's ability to keep insurance premiums reasonable."

16. With respect to the Statewide Health Coordinating Council priority of expanding and retaining the healthcare workforce to enable access to the appropriate level of care in a timely manner, the applicant states that "The Rainbow facilities will be managed by DaVita, introducing to Hawaii's healthcare workforce a Fortune 500 company known for its superior patient clinical

outcomes and employee training programs. DaVita was named in 2008 to *Modern Healthcare's* list of top 100 Best Places to Work in Healthcare, and in 2009, Training Magazine ranked DaVita the #1 national health care service provider for its employee training programs. DaVita has a nationally recognized training program for dialysis nurses and patient care technicians involving 400 hours of training and also has a well-established national corporate recruitment program, which will help to retain and expand Hawaii's healthcare workforce and provide specialized training in dialysis services."

17. With respect to the Statewide Health Coordinating Council priority of ensuring that any proposed service will at least maintain overall access to quality health care at a reasonable cost, the applicant states that "Patient access to quality services will be maintained and or improved as patients will receive treatments at Kaiser clinics where they receive other services. Superior clinical outcomes are a standard of care for Kaiser and DaVita and this will be achieved at an efficient cost structure. The cost of services at the Rainbow facilities will be significantly less than what is currently being charged by Liberty."

18. With respect to the Statewide Health Coordinating Council priority of striving for equitable access to health care services, the applicant states that "Although the Rainbow facilities will primarily serve Kaiser members due to the nature of its integrated care model, non-members will have access to the Rainbow facilities on an as-available basis."

19. The applicant states that "This project is appropriate for the regional and statewide continuum of care because dialysis is a life sustaining treatment for patients with ESRD and Hawaii statistics indicate a growing ESRD trend amongst our population."

20. The applicant states that "Improving health education, promotion and prevention initiatives are at the forefront of Kaiser's health care public initiatives for members and non-members as part of our community outreach on Maui."

21. The applicant states that "Kaiser Permanente is committed to investing in the long-term health of the communities we serve. Utilizing a portion of the realized savings from this proposal, Kaiser will be initiating new community benefit programs in Maui focused on diabetes prevention and screening."

22. With respect to the Maui County/Tri-Isle Subarea Council priorities, the applicant states that "In addition to patient and community outreach programs offered by Kaiser for prevention, detection, and education, on-site dieticians at the Rainbow facilities will counsel patients to take personal responsibility for their diet and lifestyle to manage and optimize their health."

23. The applicant states that "This proposal will expand programmatic resources on Maui for education and diseases prevention in a number of ways. A host of DaVita programs, resources and initiatives aimed at kidney care, education and disease prevention will be made available to the community... DaVita KEY Connections is a national program for kidney education that will be available to the community... DaVita Patient Citizens is dedicated to improving the quality of life for people with chronic kidney disease and those on dialysis."

24. The applicant states that "This proposal relates to the regional priority of increasing home and community-based services as, in addition to in-center hemodialysis, Rainbow Dialysis will offer patients the opportunity to receive dialysis treatments in their homes."

25. The applicant states that "The 2009 State Health Services and Facilities Plan (HSFP) at page 31 provides a recognition that sub-optimization may be required in the following instances:

'...Sub-optimum utilization may be proposed if the benefits clearly outweigh the costs to the community of duplicating or under-using services, facilities, or technologies. Benefits are defined as the form of improved access for the service area(s) population combined with significant improvement in quality and/or significant reduction in cost to the public. In addition, beyond regional factors, thresholds may be modified to:

- Incorporate current and best clinical practices;
- Allow for the cost-effective transition and capital investment in moving traditional inpatient services to outpatient modalities;
- Allow for the cost-effective introduction of modern technology to replace existing technology;
- Address the documented needs of an actual population rather than on statistical generalizations;
- Create opportunities for price reduction through competition, without sacrificing quality or cost-effectiveness of care; and
- Encourage innovation in improving health care services that contribute to enhancing a community's health status...' "

26. The applicant states that "Although the HSFP utilization thresholds are clearly met in this proposal ...sub-optimization of existing facilities in some service areas is permitted pursuant to the HSFP... under certain circumstances, which are present in the instant case. The benefits provided by this proposal given the significant reduction in the costs for dialysis services and improved

access to the comprehensive and integrated renal care program where patients' health can be monitored electronically, clearly outweigh the community cost of under-utilizing the full capacity authorized for Liberty's Maui facilities..."

27. The applicant states that "There are clearly measurable cost reductions attached to the dialysis treatment associated with this service internalization... Financial analysis for the proposed project indicates that dialysis services can be provided at the Rainbow Dialysis Wailuku and Lahaina locations at an estimated cost savings of more than \$4.5 million for 2011, the first full year of operations, with increased savings in subsequent years."

28. The applicant projects the net benefit from annual costs savings to be \$4,561,347 in 2011, \$5,215,458 in 2012, and \$5,891,576 in 2013.

29. The applicant states that "With responsibility for providing quality and affordable care to almost 40% of Maui's residents, Kaiser's proposal to internalize dialysis within its integrated health care delivery system will enhance access for a large part of the island's community to high quality integrated care and improved management of the continuum of renal care services. Non-Kaiser members and low income persons will have full access to Rainbow Dialysis Centers...Rainbow will provide 3% of its services for charity care, plus the services provided to Quest members. These services will also be available to all nonmembers residing or visiting the service area, including the elderly, low income persons, racial and ethnic minorities, women, persons with disabilities, and other under-served groups on an as-available basis in the Rainbow Dialysis clinics..."

30. The Hawaii State Health Services and Facilities Plan states that "In addition, beyond regional factors, thresholds may be modified to... Create opportunities for price reduction through competition, without sacrificing quality or cost-effectiveness of care..."

31. The applicant states that "The approval of this application will clearly provide an opportunity for lowering the cost of dialysis services on Maui where the lack of competition has allowed the sole provider, Liberty Dialysis Hawaii, to dictate the commercial rates for dialysis services at over twice the cost for these same services on Oahu where there are at least 2 providers. The provision of these services within Kaiser's existing managed care system and facilities makes the proposal cost-effective while also integrating the patients' treatments with Kaiser's continuum of quality renal care. This may also delay the onset of ESRD and reduce the frequency of hospitalization which impact both the patient's quality of life and the community costs of health care on Maui..."

32. The Agency finds that the application meets the applicable Statewide Health Coordinating Council and Maui County/Tri-Isle Subarea Council priorities of the State Health Services and Facilities Plan.

33. The Agency finds that the application, if modified in accordance with the conditions on pages 13 and 14 of this Decision on the Merits, will meet the sub-optimization utilization criteria in the State Health Services and Facilities Plan and the criteria in HAR 11-186-15(a)(9).

B. REGARDING NEED AND ACCESSIBILITY CRITERIA

34. The applicant states that "Total population on Maui is estimated to be 132,550 in 2008, and Kaiser membership as of the end of 2008 is 48,867."

35. The applicant states that "The area-wide demand for dialysis services will continue to grow over time as the ESRD population on Maui continues to grow. The average annual growth rate for ESRD on Maui has been 5.7% over the last five years. "

36. The applicant projects that it will perform 737 treatments per station at its proposed Wailuku facility and 780 treatments per station at its proposed Lahaina facility in 2011 and 823 treatments per station at its proposed Wailuku facility and 864 treatments per station at its proposed Lahaina facility in 2013.

37. The applicant states that "Utilization at Rainbow facilities is calculated from the annual treatment demand...associated with the patient census at the facility and dividing by the number of stations...at the facility... The starting patient census estimates are based on Kaiser's historical treatment data in Hawaii. Patient census is projected to grow at 5.7% per annum, which was the annual growth rate in Maui County ESRD patient census between 12/31/2003-6/30/2008 (projections are based upon the ESRD Network 17 census data reported for Maui.)"

38. The Hawaii State Health Services and Facilities Plan states:

"Capacity (utilization) thresholds for certain standard categories of health care services are established to guide the initial determination of need for a service area."

39. The Hawaii State Health Services and Facilities Plan further states:

"Sub-optimum utilization may be proposed if the benefits clearly outweigh the costs to the community of duplicating or under-using services,

facilities, or technologies. Benefits are defined as the form of improved access for the service area(s) population combined with significant improvement in quality and/or significant reduction in cost to the public. In addition, beyond regional factors, thresholds may be modified to:

- Incorporate current and best clinical practices;
- Allow for the cost-effective transition and capital investment in moving traditional inpatient services to outpatient modalities;
- Allow for the cost-effective introduction of modern technology to replace existing technology;
- Address the documented needs of an actual population rather than on statistical generalizations;
- Create opportunities for price reduction through competition, without sacrificing quality or cost-effectiveness of care; and
- Encourage innovation in improving health care services that contribute to enhancing a community's health status."

40. The applicant states that "Although the HSFP utilization thresholds are clearly met in this proposal ...sub-optimization of existing facilities in some service areas is permitted pursuant to the HSFP...under certain circumstances, which are present in the instant case. The benefits provided by this proposal given the significant reduction in the costs for dialysis services and improved access to the comprehensive and integrated renal care program where patients' health can be monitored electronically, clearly outweigh the community cost of under-utilizing the full capacity authorized for Liberty's Maui facilities..."

41. The applicant states that "There are clearly measurable cost reductions attached to the dialysis treatment associated with this service internalization... Financial analysis for the proposed project indicates that dialysis services can be provided at the Rainbow Dialysis Wailuku and Lahaina locations at an estimated cost savings of more than \$4.5 million for 2011, the first full year of operations, with increased savings in subsequent years."

42. The applicant projects the net benefit from annual costs savings to be \$4,561,347 in 2011, \$5,215,458 in 2012, and \$5,891,576 in 2013.

43. The Hawaii State Health Services and Facilities Plan states that "In addition, beyond regional factors, thresholds may be modified to... Create opportunities for price reduction through competition, without sacrificing quality or cost-effectiveness of care..."

44. The applicant states that "The approval of this application will clearly provide an opportunity for lowering the cost of dialysis services on Maui where the lack of competition has allowed the sole provider, Liberty Dialysis Hawaii, to dictate the commercial rates for dialysis services at over twice the cost for these same services on Oahu where there are at least 2 providers. The provision of these services within Kaiser's existing managed care system and facilities makes the proposal cost-effective while also integrating the patients' treatments with Kaiser's continuum of quality renal care. This may also delay the onset of ESRD and reduce the frequency of hospitalization which impact both the patient's quality of life and the community costs of health care on Maui..."

45. The applicant states that "The net capacity additions also bring a second provider and additional sites to serve the community as backup capacity when required to serve residents in the event of a power failure or emergency condition."

46. The applicant states that "With responsibility for providing quality and affordable care to almost 40% of Maui's residents, Kaiser's proposal to internalize dialysis within its integrated health care delivery system will enhance access for a large part of the island's community to high quality integrated care and improved management of the continuum of renal care services. Non-Kaiser members and low income persons will have full access to Rainbow Dialysis Centers...Rainbow will provide 3% of its services for charity care, plus the services provided to Quest members. These services will also be available to all nonmembers residing or visiting the service area, including the elderly, low income persons, racial and ethnic minorities, women, persons with disabilities, and other under-served groups on an as-available basis in the Rainbow Dialysis clinics..."

47. The Agency finds that the application meets the accessibility criterion and, if modified in accordance with the conditions on pages 13 and 14 of this Decision on the Merits, will fully meet the criteria in HAR 11-186-15(a)(1).

C. REGARDING QUALITY AND LICENSURE CRITERIA

48. The applicant states that "The Rainbow facilities will be managed by DaVita, introducing to Hawaii's healthcare workforce a Fortune 500 company known for its superior patient clinical outcomes and employee training programs."

49. The applicant states that "DaVita ...provides patient centric programs, life-style/nutrition education, and compassionate care, proven quality treatments and continues to set benchmarks for high quality clinical outcomes."

50. The applicant states that "The DaVita Continuous Quality Improvement (CQI) program incorporates all areas of the dialysis program ...The DaVita program monitors and evaluates all activities related to clinical outcomes, operations management and process flow... The single most important feature that improves with the internalization of dialysis patients is the increased the ability for physicians to monitor patients across multiple locations by accessing a patient's medical information electronically."

51. The applicant states that ESRD patients receiving dialysis treatments in DaVita dialysis facilities receive high quality dialysis services resulting in better or improved outcomes.

Table C1: Dialysis Industry Clinical Measures

Measure	Description	Impact of poor performance	DaVita	Other Providers*
KtV>1.2 (higher % is better)	Measures how well toxins were removed from the patient's blood (the main purpose of dialysis)	Increased hospitalizations resulting from toxin build-up Increased mortality	95%	92%
Albumin \geq 4.0 (higher % is better)	Measures the nutritional status of the patient	Increased mortality	42%	30%
Fistulas in use (higher % is better)	The preferred access to deliver the best dialysis treatment	Increased hospitalizations	53%	51%
CAxP < 55 (higher % is better)	Measures bone and mineral metabolism	Bone fractures; calcium deposits in blood vessels	72%	57%

*Other providers defined as the national average less Large Dialysis Organization
 Source: KtV and Albumin reported in 2007 CPM Report (2006 Data); Fistula data reported in January '09 Fistula First Outcomes Report; Calcium-phosphate product – avg from Planting a study

52. The applicant states that "Internalization of dialysis in Wailuku and Lahaina, allows patients to be more closely monitored by Kaiser Physicians to remediate patient issues more quickly and reduce avoidable hospitalizations...."

53. The applicant states that "All nurses and technicians will be licensed /certified to confirm competency in HD and PD care."

54. The applicant states that "State licensure and accreditation is not required for outpatient dialysis facilities in the State of Hawaii. However, to establish and maintain federal Medicare certification, each facility undergoes the process established by the state in which the facility operates. Medicare certification is established through surveys conducted by the Department of Health Facility and Licensing Division."

55. The Agency finds that the finds that the applicant has met the certificate of need criteria in HAR 11-186-15(a)(6) and (7).

D. REGARDING THE COST AND FINANCIAL CRITERIA

56. The applicant projects that the total operating revenue for the first full year of operations will be \$4,303,722 and that the net income from operations for the first full year will be \$21,008. The applicant projects that the total operating revenue for the third full year of operations will be \$5,293,374 and that the net income from operations for the third year will be \$414,047.

57. The applicant states that "There are clearly measurable cost reductions attached to the dialysis treatment associated with this service internalization... Financial analysis for the proposed project indicates that dialysis services can be provided at the Rainbow Dialysis Wailuku and Lahaina locations at an estimated cost savings of more than \$4.5 million for 2011, the first full year of operations, with increased savings in subsequent years."

58. The applicant projects the net benefit from annual costs savings to be \$4,561,347 in 2011, \$5,215,458 in 2012, and \$5,891,576 in 2013.

59. The applicant states that "The approval of this application will clearly provide an opportunity for lowering the cost of dialysis services on Maui where the lack of competition has allowed the sole provider, Liberty Dialysis Hawaii, to dictate the commercial rates for dialysis services at over twice the cost for these same services on Oahu where there are at least 2 providers."

60. The Agency finds that the finds that the applicant has met the criteria in HAR 11-186-15(a)(4) and (5). The Agency finds that the application, if modified in accordance with the conditions on pages 13 and 14 of this Decision on the Merits, will meet the criteria in HAR 11-186-15(a)(3).

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

61. The applicant states that "Kaiser has exhausted other options for dialysis and determined that Rainbow Dialysis is both the most cost-effective option and the best for improving health outcomes for the patients served on Maui. Other options pursued were more costly, not less costly, and included joint ventures, purchasing financial interests in outside dialysis centers and internalizing dialysis without a management agreement... In the end, the option proposed in this application best serves the Maui community with quality care at the best price."

62. The applicant states that "Rainbow Dialysis intends to be a competitor focused on the management of Kaiser Permanente members, and impacts on the Liberty Dialysis service model will be limited and short-lived....It is also reasonable to expect that Liberty's profitable operations will continue with the opening of Rainbow Dialysis facilities. Liberty has already demonstrated that that it does not need to operate anywhere close to full utilization levels to operate profitably."

63. In written testimony received by the Agency December 10, 2009, Liberty Dialysis – Hawaii, LLC states "...Reimbursement from commercial patients ... allows Liberty to operate clinics in more remote regions, such as Moloka'i and the new program in Hana..."

64. The Agency finds that the applicant has met the criteria in HAR 11-186-15(a)(11). The Agency finds that the application, if modified in accordance with the conditions on pages 13 and 14 of this Decision on the Merits, will meet the criteria in HAR 11-186-15(a)(10).

F. REGARDING THE AVAILABILITY OF RESOURCES

65. The applicant states that "Kaiser and DaVita do not intend to recruit staff from existing medical providers, and will strive to hire or train from within the Kaiser system of utilize DaVita's resources for locating, hiring and educating qualified dialysis center employees to serve Maui patients. The staffing needs for these projects will be met through:

- Maui Community College has a nursing degree program that graduated 61 nurses and 70 LPNs in 2008, and is expected to graduate 50 nurses in 2009.
- Kaiser Permanente is an existing provider in the community with a pool of nurses, including 42 FTE RNs on Maui, and 781 FTE RNs in the State of Hawaii. Three of the Kaiser RNs on Maui are already dialysis trained.
- DaVita has a training program for dialysis nurses involving 400 hours of training over a three (3) month time span.
- DaVita has a well-established national corporate recruitment program, if required."

66. The applicant states that "There are no financing contingencies for this project. The project will be financed with cash and retained earnings of Rainbow Dialysis's parent company, Kaiser Foundation Health Plan, Inc."

67. The Agency finds that the finds that the applicant has met the criteria in HAR 11-186-15(a)(12).

III

CONCLUSIONS OF LAW

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 09-13 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, 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:

1. The applicant has met certificate of need criteria in Subsections 11-186-15(a) (4), 11-186-15(a) (5), 11-186-15(a) (6), 11-186-15(a) (7), 11-186-15(a) (11), and 11-186-15(a) (12), HAR.
2. The applicant's Proposal, if it were modified as specified in the Order below, would meet the certificate of need criteria in Subsections 11-186-15(a) (1), 11-186-15(a) (3), 11-186-15(a) (9), 11-186-15(a) (10), HAR and for the issuance of a certificate of need.
3. The certificate of need criteria in Subsections 11-186-15(a) (2) and 11-186-15(a) (8), HAR are not applicable to this Proposal.

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 Rainbow Dialysis, LLC, for the proposal described in Certificate of Need application No. 09-13 as modified herein.

The conditions are that on or before July 29, 2010, the applicant shall submit to the Agency, for Agency approval:

- a. A detailed long-term implementation plan (the "Plan") specifying how the applicant and Kaiser Foundation Health Plan Inc. will allocate to the public and the community, the significant cost reduction associated with the Proposal.

- b. A joint and several written undertaking from Rainbow Dialysis, LLC and Kaiser Foundation Health Plan Inc. stating that:

In the event that Liberty Dialysis-Hawaii, LLC should cease providing chronic renal dialysis services to Hana or Molokai within 10 years of the date of this Decision on the Merits, Rainbow Dialysis, LLC or Kaiser Foundation Health Plan Inc. shall, subject to regulatory approvals, immediately establish chronic renal dialysis services to the community(s) vacated by Liberty Dialysis-Hawaii, LLC upon receipt of written notice by the Agency to fulfill the said undertaking herein. The undertaking to establish services herein shall be to replace the vacated capacity level, with chronic renal dialysis services of equal or enhanced quality and accessibility.

- c. A written acknowledgment from the applicant stating that:

The applicant acknowledges and agrees that failure to fulfill or implement the Plan or the undertaking herein, in whole or in part, shall be deemed to be a breach of Subsection 11-186-91(a) (2), Hawaii Administrative Rules (HAR) and upon such failure, the Agency may withdraw Certificate of Need #09-13 upon 60 days notice by the Agency to the applicant.

These modifications are 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, May 26, 2010, as the date by which the applicant must certify, in writing, that it accepts these conditions and that its application is 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 \$3,609,352.

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: May 3, 2010
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



Ronald E. Terry
Administrator