



# STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII  
LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH  
ROMALA SUE RADCLIFFE, B.A., M.A.  
ADMINISTRATOR

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

February 7, 2012

## CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF	)	CERTIFICATE OF NEED
	)	APPLICATION
	)	NO. 11-15
Hawaii Medical Response, Inc.	)	
	)	
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. 11-15 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, 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. 11-15. Where appropriate, Findings of Fact shall operate as Conclusions of Law, and Conclusions of Law shall operate as Findings of Fact. As many of the criteria for a certificate of need are interrelated, each of the criteria and subheadings within the Findings of Fact shall be deemed to incorporate and include all other Findings of Fact to the extent relevant.

I

## FINDINGS OF FACT

1. This is an application for a Certificate of Need ("Cert.") for the establishment of Surface Ambulance services at 87-154 Farrington Highway, Waianae, Hawaii, at a capital cost of \$450,000.
2. The applicant, Hawaii Medical Response Inc., 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 July 11, 2011, the applicant filed with the Agency, a Certificate of Need application for the establishment of Surface Ambulance services at 87-154 Farrington Highway, Waianae, Hawaii, at a capital cost of \$450,000 (the "Proposal"). On August 16, 2011 and August 25, 2011, the applicant submitted additional information. On September 2, 2011, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #11-15.
5. The period for Agency review of the application commenced on September 9, 2011, the day notice was provided to the public pursuant to 11-186-39 HAR.
6. The application was reviewed by the Oahuwide Certificate of Need Review Committee at a public meeting on September 16, 2011. The Committee voted 4 to 0 with one abstention in favor of recommending disapproval of the application.
7. On October 21, 2011, the applicant filed amendments to the application with the Agency.
8. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on October 31, 2011. The Council voted 5 to 0 with four abstentions in favor of recommending disapproval of the application.
9. On December 1, 2011, pursuant to 11-186-41, HAR, the Agency extended the period for Agency review an additional 60 days due to difficulties in obtaining meeting quorums for its volunteer advisory boards.
10. On December 2, 2011, the applicant filed amendments to the application with the Agency.
11. The application was reviewed by the Certificate of Need Review Panel at a public meeting on December 9, 2011. The Panel voted 7 to 0 with two abstentions in favor of recommending disapproval of the application.
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**  
**CERTIFICATE OF NEED CRITERIA**

**A. REGARDING THE RELATION OF THE PROPOSAL TO THE STATE HEALTH SERVICES AND FACILITIES PLAN**

15. The applicant states that “HMR's transport service and supervisory care of patients will ensure efficient access to long-term care services and primary care services.”

16. The applicant states that "HMR's transport services will also promote and support the long-term viability of the health care delivery system by providing prompt and efficient supervisory transfers, delivering safe, efficient, customized, and timely services to patients that need and demand exemplary care.”

17. The applicant states that “HMR's services relate to the Honolulu SAC's priorities of increasing the availability of long-term care services and other supportive services. Many of HMR's patients reside in nursing homes, home healthcare facilities, and assisted living facilities.”

18. The applicant states that “HMR's services are aligned with West Oahu SAC's priorities of improving access to acute care, specialty care, routine outpatient diagnostic services, and mental health/geriatric services. Additionally, HMR's services are aligned with Windward SAC's priorities of having adequate access to and from facilities of care.”

19. The Agency finds that Proposal meets the relationship to the state health services and facilities plan criterion in 11-186-15(a) (9), HAR.

**B. REGARDING NEED AND ACCESSIBILITY CRITERIA**

20. The applicant states that "The specific target population affected by the proposed project encompasses those sixty-five years and older with an annual income exceeding \$100,000, who are in need and want of a scheduled and supervised non-emergency transport service both to and from medical and health facilities."

21. The applicant states that "HMR's target population resides in high-income areas, specifically in the zip codes 96816, 96821, and 96825, and includes those sixty-five years and older who are in need of supervisory transport care and over the annual income level of \$100K/year."

22. The applicant states that "Those over the age of 65 in our target areas average 22% of the population, their median income averages 102 thousand dollars a year, and they make up approximately 40% of heads of household for our targeted areas. More specifically, for future growth, consumer healthcare expenditure, currently at an average of \$4,609.24 for households within our target population, is projected to increase. In light of this targeted data, HMR's proposal shows not only a need and demand by its current targeted population affected by this proposal, but has the potential for future growth on Oahu."

23. The applicant states that "There is a need and demand for HMR's private non-emergency BLS surface ambulance service that focuses on excellent service, customized care, and scheduled transport to those who demand that extra bit of care on the island of Oahu. HMR has signed private agreements for service with twenty-three individuals residing on the island of Oahu, who need and demand HMR's specialized and customized BLS transport service."

24. The applicant states that "As of current, the only company providing BLS service on Oahu is American Medical Response whose majority of service and equipment, according to their Administrative Manager Anna Paro, is focused on emergency response. HMR proposes a private, non-emergency transport service for the twenty-three patients that need and demand BLS transport services that are scheduled, customized, and timely."

25. The applicant states that "HMR's non-emergency, BLS, supervisory transport services will be accessible to the twenty-three patients that have signed on to benefit from HMR's private service. Future growth will allow for HMR's services to extend to its target population of those 65 years and older, with an annual income exceeding 100 thousand dollars."

26. In written testimony dated December 7, 2011, Anna Paro, Administrative Manager of American Medical Response states "Access is a major problem under the amended application, as HMR's target is the 'discerning patient' with over \$100,000 annual income. Since the proposed service to routine medical appointments will not be a covered service for virtually anyone, this creates major problems in making the services accessible to the community at large. The applicant previously recognized the need to be 'accessible to the community at large' but the December amendments fly in the face of that requirement."

27. Section 11-186-15, HAR states, in pertinent part:

Criteria (a) The agency shall consider the following criteria in the review of an application for a certificate of need: (1) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services. (Emphasis added)

28. The Agency finds that the applicant has not proven by a preponderance of the evidence that the Proposal meets the accessibility criteria as established in 11-186-15(a) (1), HAR.

### C. REGARDING QUALITY AND LICENSURE CRITERIA

29. The applicant states that "HMR is required to obtain licensure for its ambulances from the State of Hawaii, and will seek to obtain any certificates or licenses that will aid in providing both safe and quality care to its patients."

30. The applicant states that "The EMT-B's will be State licensed and qualified, and will be required to attend continued education courses. HMR's medical director, who will oversee quality of care, is a highly qualified physician currently active in the State of Hawaii with extensive experience in medical directorship, family medicine, and elderly care."

31. The applicant states that "Each non-emergency BLS transfer ambulance will be staffed with at least one driver and one support personnel, both being basic emergency medical technicians ('EMT-B')."

32. The applicant states that "We will provide service to clients that need non-emergency BLS supervisory transportation. HMR's quality of service stems from four critical points that combined create HMR's focus of care: 1) Exceptional Care: patients being our top priority, we will personalize and customize their

transportation to and from physicians' offices or other health related facilities; 2) Safety: HMR's medical staff will regularly participate in rigorous education and training that exceed State agency standards; 3) Regularity of Care: the same two EMTs will accompany our patients throughout the trip (to and from medical healthcare facilities) to ensure a comfortable and safe transfer; 4) Communication: HMR will be in constant contact with patients and patients' family members to keep them informed and address any questions or concerns that they may have."

33. The Agency finds that the Proposal meets the licensure and quality criteria in 11-186-15(a) (6) and (7), HAR.

#### D. REGARDING THE COST AND FINANCIAL CRITERIA

34. The applicant states that "HMR's proposal will not affect current health care costs but will offer patients a reliable high-end option when in need of scheduled BLS, non-emergency transfers. HMR's proposal is based on the twenty-three patients that have chosen to benefit from HMR's proposed services. HMR will not only provide its patients with quality and customized service, but its pre-scheduled services will reduce wait times in health and medical centers alike, reducing capacity costs for those institutions."

35. The applicant projects that for the first year of operations, it will perform 4,640 outpatient transportations and gross patient service revenue will be \$1,132,160.

36. In her written testimony dated December 7, 2011, Anna Paro, Administrative Manager of American Medical Response states "The revenue is grossly overstated because 92% of the forecasted transfers are for patients covered by Medicare, Medicaid or commercial insurance, who will not pay for non-emergency ambulance care for routine medical appointments."

37. In her testimony, Ms. Paro states "Medicare/Medicaid (47% of applicant's source of funds, Table 5A) will not reimburse for ambulance services for routine medical care, and absent a Physician Certification Statement, would not cover recurring weekly visits as the applicant contemplates... Moreover, private payors such as HMSA, UHA and Kaiser also exclude coverage for the proposed services. Health plans for HMSA and UHA, for example, state they exclude coverage for 'the cost of travel' and only cover ambulance services when 'for the purpose of emergency treatment' when the transfer is to 'the nearest facility equipped to furnish emergency care'... Applicant fails to show any health plan terms from these carriers permitting coverage for the proposed services, despite relying on 45% of its income from commercial insurance."

38. Ms. Paro's testimony further states "Therefore, it is highly unlikely that 23 'patients', representing 20 families will be capable or willing to pay on their own the \$1,122,000+ that HMR plans to charge them (over \$49,000 per patient per year..."

39. The Agency finds that the applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion in 11-186-15(a) (5), HAR (The immediate and long term financial feasibility of the proposal).

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

40. The applicant states that "HMR's proposal will deliver reliable, professional, and customized non-emergency transfer services. Other health care services will in turn benefit from HMR's overall performance."

41. In her written testimony dated December 7, 2011, Anna Paro states that "...BLS is an essential component of the mix of ambulance services that make it economically viable for a private ambulance provider to bear the high costs of equipment and personnel to staff ambulances 24/7 so it can also offer life-saving inter-facility ALS and back-up 911 services for the City and County of Honolulu - a service the applicant cannot, and will not, be providing. If this application is approved and applicant performs thirteen calls per day of covered ambulance services as it projects, then the net affect will be thirteen fewer calls that AMR currently performs, accompanied by a commensurate reduction in the AMR fleet and services that exist currently. Since AMR provides ALS services Oahu-wide, any reduction in services will affect AMR's ability to care for all ALS and BLS patients who require ambulance services."

42. The Agency finds that the applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion in 11-186-15(a) (10), HAR (The relationship of the proposal the existing healthcare system of the area).

#### F. REGARDING THE AVAILABILTY OF RESOURCES

43. The applicant states that "HMR has sufficient financial resources and availability of personnel to carry out its proposed project. As of current, HMR has a stable and reliable source of funds available upon approval of this application. An estimated amount of \$200,000 of this funding is available cash, and \$250,000 is available on credit line."

44. The applicant states that "HMR has estimated its need of personnel to carry out this project and is confident that it will procure the necessary personnel to

carry out its proposal. Qualified personnel, including the Chief of Operations, a highly qualified Medical Director, Deputy Chief of Operations, and Equipment Director are already designated and ready to take position upon approval of this CON.”

45. The applicant states that “According to the State of Hawaii’s DCCA, as of October 3, 2011, there are a total of 673 licensed EMT-B in the State of Hawaii. Of those, 305 are based on Oahu, with the addition of at least 36 new graduates every year from the Island of Oahu alone. This data was provided by Mark Kunimune, Program Director of the EMS Program at Kapiolani Community College. There are more than enough EMT-Bs to provide the necessary six (6) licensed personnel HMR’s proposal requires.”

46. The Agency finds that the Proposal meets the availability of resources criteria in 11-186-15(a) (12), HAR.

### III

#### CONCLUSIONS OF LAW

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 11-15 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:

1. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(1), HAR.
2. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(5), HAR.
3. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criterion as established in Section 11-186-15(a)(10), HAR.

Accordingly, pursuant to 323D-43, HRS, no certificate of need shall be issued for this Proposal.

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 DISAPPROVES and DENIES a certificate of need to Hawaii Medical Response Inc. for the Proposal described in Certificate of Need application No. 11-15.

WRITTEN NOTICE

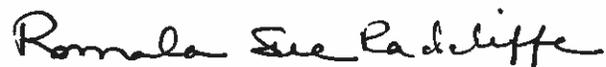
Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

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: February 7, 2012  
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY



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Romala Sue Radcliffe  
Administrator