

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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December 11, 2008

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
)	NO. 08-18
Kona Ambulatory Surgery Center, 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. 08-18 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 Hawaii County 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. 08-18.

I

BACKGROUND

1. This is an application for a Certificate of Need ("Cert.") for the establishment of an ambulatory surgery center at 75-5905 Walua Road, Kailua-Kona, Hawaii, at a capital cost of \$4,578,500.
2. The applicant, Kona Ambulatory Surgery Center, LLC is a 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 March 20, 2008, the applicant filed with the Agency a Certificate of Need application for the establishment of an ambulatory surgery center at 75-5905 Walua Road, Kailua-Kona, Hawaii, at a capital cost of \$4,578,500 (the "Proposal"). On August 26, 2008, October 3, 2008, and October 13, 2008, the applicant filed additional information. On October 14, 2008 application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #08-18.
5. The period for Agency review of the application commenced on October 28, 2008, the day notice was provided to the public pursuant to 11-186-39 HAR.
6. The application was reviewed by the Hawaii County Subarea Health Planning Council at a public meeting on November 5, 2008. The Council voted 5 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 on November 13, 2008. The Panel voted 4 to 0 with 2 abstentions in favor of recommending approval of the application.
8. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on November 20, 2008. The Council voted 8 to 1 with 2 abstentions in favor of recommending approval of the application.
9. This application was reviewed in accordance with Section 11-186-15, HAR.
10. Pursuant to Section 323D-43(b), HRS:
 “(b) No Certificate shall be issued unless the 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. The applicant states that "The proposed project will assist in early detection and diagnosis of esophageal and colon cancer through the use of endoscopic procedures and reduce the effects of chronic disease and prolonging health related quality of life through surgery and treatment."

13. The applicant states that "The addition of an ASC will also achieve equitable and effective access at reasonable costs for all Hawaii's residents by eliminating the need for Kona patients to travel to Oahu to receive these services. The KASC will continue to provide care to all residents of the area including: Medicare, Medicaid, QUEST and all underserved groups. Not only will this reduce patient costs related to travel, but will also increase patient outcomes and reduce morbidity by facilitating timelier treatment."

14. The applicant states that "In Section II, Vision and Guiding Principles, Part G, the H2P2 guidelines for a new ambulatory surgical center: (a) All other comparable operating rooms in the service area average a minimum of 1,600 hours per room utilization per year. Although the Kona Community Hospital is currently not at this threshold, expected additional growth in both in-patient and out-patient volumes resulting from the recruitment of additional specialists will result in the need for additional surgical capacity in the service area... we believe that the sub-optimization utilization should be applied to the proposed Kona ASC as the project:

- Incorporates current and best clinical practice for outpatient care
- Addresses the documented needs of an actual population – Hawaii county patients traveling to Oahu to receive optimal care and management – rather than a statistical generalization
- Encourages recruitment of medical specialties to a region currently experiencing a shortage. The ASC will be the only one of its kind for the community. The project provides benefits without the potential of negative side effects of providing excess capacity."

15. In a memorandum dated November 19, 2008, Barbara Ideta, Chair, Certificate of Need Review Panel, forwarded the Panel's recommendation for approval of this application. The recommendation states in pertinent part: "In regard to the application's projected sub-optimization utilization for the proposal, during member discussion of the application, Panel members commented that the benefits of the project – in the form of improved access for the service area population combined with significant reduction in price to the public – clearly outweighed the costs to community of potentially duplicating or under using services."

16. The applicant states that "The proposed ASC will address the following Big Island regional priorities:

- Perceived Gaps in Services: (c) Specialist services (H2P2, Page III-13
- Perceived Gaps in Services: (d) Integration of services (H2P2, Page III-14)
- Critical and Essential Services: (e) Specialty Care (H2P2, Page III-14

By providing a facility to accommodate the recruitment of physician specialists, the proposed ASC will address the stated regional priorities above."

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

B. REGARDING NEED AND ACCESSIBILITY CRITERIA

18. The applicant projects that 5,076 outpatient cases are anticipated by Kona residents in 2009 and that this number will increase to 5,627 by 2014.

19. The applicant states that "There is currently no ASC available in either North or South Kona."

20. The applicant states that "Patients...benefit from the specialized focus on surgical services that ASCs provide. For the Kona region, an ASC would make receiving certain surgical services less burdensome in terms of travel. It also facilitates better coordination of services between families, primary care physicians and specialists."

21. The applicant states that "Big Island residents who have to travel off-island for their ambulatory surgical procedures may incur costs resulting from as many as three trips. Having their surgery performed at an on-island facility will save the patient and his/her family the associated costs for flights, lodging and transportation."

22. The applicant states that "...the project will serve as a recruitment vehicle to attract additional physician specialists for the Kona region."

23. The applicant states that by providing a facility to accommodate the recruitment of physicians specialists, the proposed ASC will address the H2P2 perceived gaps and critical and essential services for Hawaii County:

- Perceived Gaps in Services: (c) Specialist services (H2P2, Page III-13)
- Perceived Gaps in Services: (d) Integration of services (H2P2, Page III-14)
- Critical and Essential Services: (e) Specialty Care (H2P2, Page III-14)

24. The applicant states that "KASC will accept all referred patients and provide service to all patients who are covered by Medicaid Quest, Medicare, and private insurance or self pay. Specifically, all residents of the area, in particular low income persons, racial and ethnic minorities, women, persons with disabilities and other underserved groups, and the elderly will have access to services."

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

C. REGARDING QUALITY AND LICENSURE CRITERIA

26. The applicant states that "...the ambulatory surgery center will be required to meet certain Medicare safety and quality standards in order to receive Medicare certification. This center will also be accredited by the American Association for Ambulatory Health Care."

27. The applicant states that "Policies and Procedures have been written that address the quality of care that will be provided in the ASC."

28. The applicant states that "Both partners in the ASC have significant expertise and a long history of providing healthcare to the residents of our state. HPH being the largest healthcare provider in the state, and Kona Community Hospital being the only hospital located in West Hawaii. While Kona ASC will be under a separate corporate structure and employing a separate staff, both partners in this venture will be providing significant guidance and oversight to the operation."

29. The applicant states that the ASC will be state licensed and Medicare Certified... and will be accredited by the Accreditation Association for Ambulatory Health Care (AAHC)."

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

D. REGARDING THE COST AND FINANCIAL CRITERIA

31. The applicant states that "The total project capital cost is \$4,578,500 which includes construction financing costs during the construction (\$45,200) and fair market value acquired by lease (\$221,300). Capital contributions will be provided by Hawaii Pacific Health Partners, Inc. (\$351,848) Kona Community Hospital (\$338,050), physician investors (\$172,474), and 3rd party financing from the Bank of America (\$3,449,628)."

32. The applicant states that "The proposed project is projected to achieve profitability by the end of year 1. In the first year of operations, KASC projects a total of 3,550 patients for a net income of \$100,552. By the third year of operation, KASC projects a total of 3,829 patients, resulting in net income of \$85,877. By year 4 of operations, KASC projects providing care to 3,976 patients and operating with a net income of \$187,638."

33. The applicant states that "Big Island residents who have to travel off-island for their ambulatory surgical procedures may incur costs resulting from as many as three trips. Having their surgery performed at an on-island facility will save the patient and his/her family the associated costs for flights, lodging and transportation."

34. The applicant states that "The project will also improve cost-effectiveness by offering cost savings of performing procedures in a setting that does not necessitate hospitalization."

35. 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

36. The applicant states that "Since 2007, over 32% of Big Island residents received surgical treatment from facilities off-island. There is evidently a gap in surgical services that is currently not being met."

37. The applicant states that "...the project will serve as a recruitment vehicle to attract additional physician specialists for the Kona region. The recruitment of additional specialists will provide a positive impact to the utilization of other healthcare services in the community."

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

F. REGARDING THE AVAILABILITY OF RESOURCES

39. The applicant states that "There are a total of 11 full time equivalents (FTEs) in year one with the following breakdown: (a) 1.0 FTE Administrator; (b) 4.5 FTE Registered Nurses; (c) 2.5 FTE Licensed Practical Nurse/Technicians; and (d) 3.0 FTE Clerical Staff."

40. The applicant states that "KASC is confident that it can hire the relatively small number of nursing, technicians and clerical personnel needed for the operation of the center."

41. The applicant states that "The total project capital cost is \$4,578,500 which includes construction financing costs during the construction (\$45,200) and fair market value acquired by lease (\$221,300). Capital contributions will be provided by Hawaii Pacific Health Partners, Inc. (\$351,848) Kona Community Hospital (\$338,050), physician investors (\$172,474), and 3rd party financing from the Bank of America (\$3,449,628)."

42. 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. 08-18 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 Hawaii County 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:

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 and ISSUES a certificate of need to Kona Ambulatory Surgery Center, LLC for the proposal described in Certificate Application No. 08-18. The maximum capital expenditure allowed under this approval is \$4,578,500.

WRITTEN NOTICE

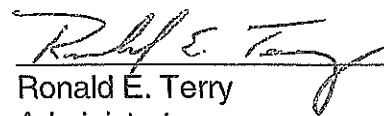
Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

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: December 11, 2008
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



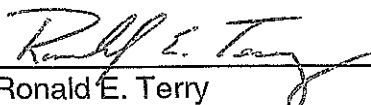
Ronald E. Terry
Administrator

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 December 11, 2008

Don Lewis
President
Kona Ambulatory Surgery Center, LLC
79-1019 Haukapila St.
Kealahou, HI 96750

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



Ronald E. Terry
Administrator