



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

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November 17, 2011

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
)	NO. 11-16
Orthopedic Associates 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. 11-16 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 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. 11-16. 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 CON 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 Ambulatory Surgery Center services, limited to orthopedic procedures, at 550 South Beretania Street, Suite 701, Honolulu, Hawaii, at a capital cost of \$6,937,135.

2. The applicant, Orthopedic Associates 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 July 28, 2011, the applicant filed with the Agency, a Certificate of Need application for the establishment of Ambulatory Surgery Center services, limited to orthopedic procedures, at 550 South Beretania Street, Suite 701, Honolulu, Hawaii, at a capital cost of \$6,937,135 (the "Proposal"). On August 8, 2011, August 15, 2011, August 25, 2011 and August 26, 2011, the applicant submitted additional information. On August 31, 2011, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #11-16.

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 5 to 0 in favor of recommending approval of the application.

7. On October 31, 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 9 to 0 in favor of recommending approval of the application.

9. The Certificate of Need Review Panel review of the application was waived pursuant to Section 323D-44.6 HRS.

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

11. 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."

12. 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

13. The applicant states that “Chapter 2 of the Hawaii Health Services and Facilities Plan (“HHSFP”) does not establish quantitative utilization thresholds for new freestanding ambulatory surgery centers. Instead, the HHSFP states:

A collaborative arrangement shall be made with an existing acute care hospital in the county. This collaboration shall, without limitation:

- a. Include a transfer agreement
- b. Commit to support all training and recruitment of health care personnel for the benefit of the area
- c. Commit to enhance the EMS and trauma care systems of the area by using the ASC, when necessary, for cases such as natural disaster or pandemic.”

14. The applicant states that “OA-ASC (Orthopedic Associates Ambulatory Surgery Center, LLC) will enter into the required collaborative agreement with QMC (The Queen’s Medical Center) and, in the event that one of its patients requires hospitalization, the center’s personnel will coordinate the patient’s transfer to QMC.”

15. The applicant states that “This proposal will advance the SHCC’s priorities relating to promoting and supporting the long-term viability of the health care delivery system, maintaining overall access to quality health care, striving for equitable access to health care services, and fitting within the statewide continuum of care by relieving over-utilization of the ambulatory surgery center at QMC.”

16. The applicant states that "Currently, it is difficult to schedule emergency outpatient surgery procedures at QMC because most of the available hours have been reserved by physicians who perform all of their outpatient procedures during scheduled blocks of time. While the block scheduling arrangement helps surgeons maximize their efficiency, it also limits the flexibility needed to accommodate emergency procedures, because it is sometimes difficult to convert an operating room that has been set up for one type of procedure for use for another type of procedure quickly. The proposed ASC will be used only for orthopedic cases and its operating rooms will be equipped for those types of surgeries. Accordingly, OA-ASC will have more scheduling flexibility and be better able to accommodate unanticipated emergency procedures."

17. The applicant states that "The proposed ASC will also promote equitable access by the families of military personnel stationed on Oahu. Although military dependents are eligible for care at Tripler Hospital, because a substantial number of surgeons are deployed in support of the war efforts in Afghanistan and Iraq, military dependents needing same-day surgery often must obtain it from civilian facilities. The proposed ASC will provide an alternative source of care for military dependents in need of ambulatory orthopedic surgery who cannot obtain it on a timely basis at Tripler."

18. The applicant states "The proposed ASC will be integrated into QMC's emergency response team and therefore contribute to the statewide emergency response and trauma network. Its proximity to QMC will make it an ideal location for triage and treatment in the event of a natural disaster, pandemic or other emergency."

19. The applicant states that "...the proposed ASC will help to address Hawaii's health care manpower shortage by providing an additional training site for residents in JABSOM's Orthopaedic Residency Program."

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

B. REGARDING NEED AND ACCESSIBILITY CRITERIA

21. The applicant states that "OA-ASC will provide services to all Oahu residents. Patients needing orthopedic surgery come from all segments of our community, including low income persons, racial and ethnic minorities, women, people with disabilities and the elderly."

22. The applicant states that "Currently, the participating physicians are performing approximately 3900 primary ambulatory surgery cases per year, plus an additional 2000 secondary and tertiary procedures performed in conjunction with the primary procedures. These procedures are now being done at the QMC outpatient surgery department, which is experiencing difficulty accommodating emergency orthopedic surgery procedures because of overutilization. The new ASC is needed to relieve the overutilization at QMC's outpatient surgery department."

23. The applicant states that "A wide variety of surgical procedures in several different surgical specialties are performed at QMC. Surgeons typically reserve almost all of the unit's available time in blocks that will allow them to complete several procedures sequentially so as to maximize the surgeons' efficiency. However, the block scheduling arrangement makes it difficult to fit in emergency orthopedic procedures during periods when the unit is in use by surgeons from other specialties."

24. The applicant states that "Because no reliable estimates of supply of ambulatory orthopedic procedures or existing facilities' capacity to perform such procedures are available, it is impossible to accurately quantify the unmet need ... both Orthopedic Associates and QMC know that the new facility is needed to relieve over utilization of QMC's existing outpatient surgery unit."

25. The applicant states that "OA-ASC will be accessible to all the residents of Oahu, including low income persons, racial and ethnic minorities, women, people with disabilities, the elderly and the medically underserved. It is conveniently located on public transportation routes and has ample handicap accessible parking. The proposed ASC will provide services to patients covered by Medicare and Medicaid, and will devote 3% of its operating budget to the provision of indigent care."

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

C. REGARDING QUALITY AND LICENSURE CRITERIA

27. The applicant states that "By focusing on orthopedic surgery, the proposed ASC will offer patients optimal quality of care by utilizing staff with specialized training and experience in performing targeted procedures. Focusing on orthopedic surgery, the ASC will employ an intense care model, which will provide patients with a uniquely high level of service, and has proven effective in minimizing complications, optimizing treatment outcomes, reducing anesthesia times and, thereby, anesthesiology morbidity."

28. The applicant states that "OA-ASC will be certified by Medicare, and licensed by the Hawai'i Department of Health. The center will comply with all State and Federal regulations for delivery of care, maintenance of service equipment and maintenance of the clinical environment."

29. The applicant states that "OA-ASC will conduct ongoing quality review on a regular basis, as well as performance reviews of employees at least annually. The reviews will be used to identify strengths and areas for improvement, document professional performance, and gather data as a guide for employment related actions."

30. The applicant states that "All physicians providing services at OA-ASC will be Board Certified or Board eligible in orthopedic surgery and will be on the staff of one or more Honolulu hospitals..."

31. The applicant states that "The facility will be accredited by the American Association of Ambulatory Health Care."

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

D. REGARDING THE COST AND FINANCIAL CRITERIA

33. The applicant states that "This proposal will reduce health care costs by providing a venue in which orthopedic procedures can be performed in a more cost effective manner than in hospital surgery centers."

34. The applicant projects that "The operating revenue for the first year of operation is projected at \$7,784,858, and operating expenses for the same period are projected at \$6,489,650, resulting in net income of \$1,295,208 in Year One. By the third year of operation, operating revenue is expected to increase to \$8,262,164, with total expenses projected at \$6,768,876, resulting in net income of \$1,493,288."

35. The applicant states that "... the estimated cost of this proposal is \$6,937,135. Funds for the project will come from cash contributions of the members and a commercial loan. The site, which is valued at \$1,876,800, will be acquired by lease and will be paid for by means of monthly rent payments over the ten-year term of the lease."

36. 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

37. The applicant states that "In the short term, the proposed ASC will improve the availability of health care in the community by relieving over-utilization at the QMC outpatient surgery unit. In the long term, the proposed ASC will improve the availability of health care in the community by providing an additional site for training residents in JABSOM's Orthopaedic Residency Program, a substantial number of whom have historically went on to established their medical practices in Hawaii, and, thereby, improving Hawaii's supply of physicians trained in orthopedics."

38. The applicant states that "By relieving over-utilization of the ambulatory surgery center at QMC, the proposed ASC will improve access to emergency outpatient orthopedic procedures. The proposed ASC will also improve access to outpatient orthopedic surgery by the families of military personnel stationed on Oahu. Although military dependents are eligible for care at Tripler Hospital, because a substantial number of surgeons are deployed in support of the war effort, military dependents needing same-day surgery often must obtain it from civilian facilities. The proposed ASC will provide an alternative source of care for military dependents in need of ambulatory surgery who cannot obtain it on a timely basis at Tripler."

39. The applicant states that "The proposed ASC will be located in Physicians Office Building III on the QMC campus and will have a transfer agreement with QMC in place. In the event that any patient needs a higher level of care than can be provided at the ASC, the ASC's staff will coordinate the patient's transfer to QMC."

40. The Agency finds that these criteria have been met.

F. REGARDING THE AVAILABILITY OF RESOURCES

41. The applicant states that "OA-ASC is confident that it can hire the relatively small number of nursing personnel needed for its operation. There are currently many schools in Hawaii offering nursing programs that are constantly producing staff for all types of health care facilities in the area. These include University of Phoenix-Hawaii, Hawaii Community College, Hawaii Pacific University, Kapiolani Community College, University of Hawaii at Hilo, University of Hawaii at Manoa, University of Hawaii (Maui Community College), and University of Hawaii (Kauai Community College)."

42. The applicant states that "... the estimated cost of this proposal is \$6,937,135. Funds for the project will come from cash contributions of the members and a commercial loan. The site, which is valued at \$1,876,800, will be acquired by lease and will be paid for by means of monthly rent payments over the ten-year term of the lease."

43. 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. 11-16 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 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 Orthopedic Associates Ambulatory Surgery Center, LLC for the Proposal described in Certificate of Need application No. 11-16. The maximum capital expenditure allowed under this approval is \$6,937,135.

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: November 17, 2011
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



Romala Sue Radcliffe
Administrator