

# STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NEIL ABERCROMBIE

GARY L. GILL ACTING DIRECTOR OF HEALTH

ROMALA SUE RADCLIFFE, B.A., M.A.

1177 Alakea St., #402, Honolulu, HI 96813 Phone: 587-0788 Fax: 587-0783 www.shpda.org January 27, 2014

# CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF	) CERTIFICATE OF NEED ) APPLICATION
Hawaiian Health Care Corporation	) NO. 13-11
DBA ProHealth Hospice & Home Care	)
Applicant	)
- PP-1000	) 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. 13-11 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. 13-11. 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.

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#### FINDINGS OF FACT

- 1. This is an application for a Certificate of Need ("Cert.") for the establishment of home health agency and hospice services at 500 Ala Moana Blvd., Suite 5-325, Honolulu, Hawaii, at a capital cost of \$202,030.
- 2. The applicant, Hawaiian Healthcare Corporation DBA ProHealth Hospice & Home Care, 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 22, 2013, the applicant filed with the Agency, a Certificate of Need application for the establishment of home health agency and hospice services at 500 Ala Moana Blvd., Suite 5-325, Honolulu, Hawaii, at a capital cost of \$202,030 (the "Proposal"). On September 17, 2013 and October 14, 2013, the applicant submitted additional information. On October 17, 2013, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #13-11.
- 5. The period for Agency review of the application commenced on November 8, 2013, the day notice was provided to the public pursuant to HAR 11-186-39.
- 6. The application was reviewed by the Oahuwide Certificate of Need Review Committee at a public meeting on November 15, 2013. The Committee voted 6 to 0 in favor of recommending disapproval of the application.
- 7. The application was reviewed by the Certificate of Need Review Panel at a public meeting on November 20, 2013. The Panel voted 4 to 2 in favor of recommending disapproval of the application.
- 8. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on November 21, 2013. The Council voted 8 to 4 in favor of recommending disapproval of the application.
- 9. On December 26, 2013, the applicant filed amendments to the application and written testimony with the Agency.
- 10. This application was reviewed in accordance with HAR 11-186-15.
- 11. HRS 323D-43(b), provides:
  - "(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."

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12. Burden of proof. HAR 11-186-42 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."

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# FINDINGS OF FACT CERTIFICATE OF NEED CRITERIA

# REGARDING THE RELATIONSHIP OF THE PROPOSAL TO THE STATE HEALTH SERVICES AND FACILITIES PLAN

- 13. The applicant states that "Home health and hospice care is provided to patients in their place of residence, at a much lower cost and in a more comfortable setting for the patient than other resource-intensive care, such as inpatient care. The nature of these home-based services is delivery of clinically-appropriate, cost-effective care that improves the patient's quality of life and maintains the dignity and wishes of the patient."
- 14. The applicant states that "One of the main goals of ProHealth Hospice & Home Care is to increase awareness of home health and hospice services in general, as well as the transition services available specifically at ProHealth. Those efforts will increase community knowledge and access and decrease any stigmas related to home health and hospice, as well as promote appropriate use of health care resources."
- 15. The applicant states that "ProHealth Hospice & Home Care directly addresses the #1 priority for Honolulu. ProHealth will increase access and availability to both home health AND hospice services, long-term and supportive care services that support seniors in the continuum of care. Home health and hospice care are provided in the patient's residence, whether that be a nursing home, assisted living facility, individual home or some other place of residence, and include an array of medical and life services, as needed. The programs are directly aimed at maintaining quality of life for the patient."
- 16. The applicant states that "The increased use of home health and hospice services generally decreases unnecessary hospital admissions and associated pharmacy, laboratory, and intensive care costs. Thus increased use of homebased care will alleviate utilization associated with those unnecessary

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hospitalizations, and will free up existing medical resources to meet the need for tertiary and more acute patients."

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

# REGARDING QUALITY AND LICENSURE CRITERIA

- 18. The applicant states that "ProHealth currently operates two agencies in California, one in San Jose and one in Walnut Creek, both of which are Medicare-certified. Internal audits are conducted in order to ensure quality of care. Furthermore, ProHealth has undergone regular external audits by state agencies and by the Joint Commission... No major issues regarding quality of care have been identified, and ProHealth has never been cited for an issue that was not fully corrected to the satisfaction of the regulatory agency."
- 19. The applicant states that "After certificate-of need-approval, ProHealth will seek Medicare certification for home health and hospice services. Further, ProHealth will seek licensure for both services with OHCA."
- 20. The applicant states that "...as a participant in the Medicare program, ProHealth will comply with all Medicare quality reporting initiatives and will be in compliance with the Conditions of Participation."
- 21. The applicant states that "ProHealth has a performance improvement framework which integrates activities to improve organization performance, improve patient safety, reduce the risks for acquisition and transmission of infections, and improve palliative care outcomes and services."
- 22. The applicant states that "Each year, staff will be required to complete the following programs, at a minimum: Standard Precautions and Infection Control; Safety Program; Body Mechanics; Emergency Preparedness; and Corporate Compliance. Furthermore... home health and hospice clinical personnel must complete, at a minimum: (1) CPR certification (when appropriate), (2) 8 contact hours of clinical in-service or training in their specialty area, and (3) hospice aides must attend 12 hours of in-service education annually."
- 23. The Agency finds that the Proposal meets the licensure and quality criteria in HAR 11-186-15(a) (6), (7) and (8).

## REGARDING NEED AND ACCESSIBILITY CRITERIA

- 24. The applicant states that "Hawaii ranks 12<sup>th</sup> in the nation in terms of the percent of population age 65 and older. In Honolulu County specifically, the number of persons 65 and older has grown 1.6% annually (2000-2010), while total population has grown 0.8% annually. The percent of population age 65+ has grown from 13.4% in 2000 to 14.5% in 2010."
- 25. The applicant states that "Hawai'i hospice use rates are below national use rates. In Honolulu County, the use rate is 77% the figure nationwide (2011)."
- 26. In written testimony dated November 14, 2013, Cordt T. Kassner, PhD, Founder & Principal of Hospice Analytics, states "As a hospice industry analyst for over 14 years, I've been asked to provide an independent review of and comment on Hawaii's Medicare Hospice utilization rates over the past several years. This inquiry came from Bristol Hospice and Islands Hospice, both located in Honolulu."
- 27. In his written review, Dr. Kassner states that "National Medicare hospice utilization increased **12.8%** between 2005 (31.6%) 2012 (44.4%), an average of **1.8% / year...** Honolulu's Medicare hospice utilization increased **21.0%** between 2005 (20.7%) 2012 (41.7%), an average of **3.0% / year.**"
- 28. In his written review, Dr. Kassner further states that "...Honolulu's Medicare Hospice Utilization rate has been increasing faster than the national average over the past eight years, with a noticeable increase and departure from Hawaii's state average beginning in 2008 and continuing through 2012."
- 29. In his written review, Dr. Kassner projects that for 2014, the hospice utilization in Honolulu County will be at 99% of the national average and projects that in 2015, the hospice utilization in Honolulu County will likely exceed the national average.
- 30. On page 2 of his written review, Dr. Kassner states "If current trends continue, Honolulu's Medicare Hospice Utilization rate is expected to increase above the national average in 2015."
- 31. The Agency finds that, while hospice utilization for Honolulu County was below the national hospice utilization average in 2011, currently, it is likely at or near the national average and will likely exceed the national average in 2015.
- 32. The Agency finds that the applicant has not proven by a preponderance of the evidence that the proposal for the establishment of hospice services meets the need criterion as established in HAR 11-186-15(a) (1).

### REGARDING THE AVAILABILITY OF RESOURCES CRITERIA

- 33. The applicant projects that the deficit from its home health operations will be \$686,699 in Year 1, \$123,682 in Year 2 and that the Year 1 and Year 2 combined deficit will be \$810,381.
- 34. In its memorandum recommending disapproval of the application, dated November 15, 2013, the Oahuwide Certificate of Need Review Committee states, in pertinent part "There does not appear to be sufficient funding in place for the applicant to carry the cost of doing business until the proposal is fully implemented."
- 35. The Agency finds that applicant has not met the burden of proof in HAR 11-186-42 to establish that sufficient funds for operating needs will be available for the provision of the services proposed to be provided. The Agency finds that the applicant has not proven by a preponderance of the evidence that the proposal for the establishment of home health agency services meets the availability of resources criteria as established in HAR 11-186-15(a) (12).

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#### **CONCLUSIONS OF LAW**

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 13-11 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 proven by a preponderance of the evidence that the Proposal meets the criteria in HAR 11-186-15(a) (9).
- 2. The applicant has proven by a preponderance of the evidence that the Proposal meets the criteria in HAR 11-186-15(a) (6), (7) and (8).
- 3. The applicant has not proven by a preponderance of the evidence that the proposal to establish hospice services meets the criteria as established in HAR 11-186-15(a)(1).

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4. The applicant has not proven by a preponderance of the evidence that the proposal to establish home health agency services meets the criteria as established in HAR 11-186-15(a)(12).

Accordingly, pursuant to 323D-43, HRS, no certificate of need shall be issued for this Proposal. As the proposal to establish hospice services fails to meet the criteria in HAR 11-186-15(a) (1), and as the proposal to establish home health agency services fails to meet the criteria in HAR 11-186-15(a) (12), it is not necessary for the Agency to make any findings as to the application's relationship to the remaining criteria in HAR 11-186-15(a). The criteria in HAR 11-186-15(a)(2) are not applicable to 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 Hawaiian Healthcare Corporation DBA ProHealth Hospice & Home Care for the Proposal described in Certificate of Need application No. 13-11.

## 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: January 27, 2014 Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

Romala Sue Rad ME

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Administrator