

# STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII

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December 1, 2014

## CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF	)	CERTIFICATE OF NEED
	)	APPLICATION
	)	NO. 14-10
Hawaii Healthcare Partners, 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. 14-10 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. 14-10. 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 hospice services at 500 Ala Moana Blvd., Building 7, Suite 400, Honolulu, Hawaii, at a capital cost of \$111,400.
2. The applicant, Hawaii Healthcare Partners, 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 May 21, 2014 the applicant filed with the Agency, a Certificate of Need application for the establishment of hospice services at 500 Ala Moana Blvd., Building 7, Suite 400, Honolulu, Hawaii, at a capital cost of \$111,400 (the "Proposal"). On July 1, 2014, August 6, 2014 and August 26, 2014, the applicant submitted revisions/additional information. On September 3, 2014, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #14-10.

5. The period for Agency review of the application commenced on September 4, 2014, 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 September 11, 2014. 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 October 16, 2014. There was no Certificate of Need Review Panel recommendation as none of the motions made for a recommendation received the requisite number of votes to be carried or adopted.

8. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on October 28, 2014. The Council voted 9 to 2, with one abstention, in favor of recommending disapproval of the application.

9. This application was reviewed in accordance with HAR 11-186-15.

10. 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."

11. 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."

II

**FINDINGS OF FACT**  
**CERTIFICATE OF NEED CRITERIA**

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

12. The applicant states that “HHP (Hawaii Healthcare Partners, LLC) believes approval of its hospice CON application addresses both Statewide and Honolulu County priorities set forth in HSFP. These specific priorities include the following:

**STATEWIDE PRIORITIES**

- Promotes & support the long-term viability of the health care delivery system
- Ensures capacity & access to a continuum of long-term care services
- Encourages & support health education, promotion & prevention initiatives
- Expands health care workforce to enable access to appropriate & timely care

**HONOLULU COUNTY PRIORITIES**

- Increases availability of home & community-based services and hospice services
- Improves & increases access to geriatric services to keep older adults out of institutions
- Improves hospital bed availability through timely transfers to sub-acute levels of care
- Improves & increase access of services for uninsured and underinsured
- Helps maintain quality of life and social support for independent living
- Identifies & addresses shortages in health care, with particular emphasis on senior care”

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

#### REGARDING QUALITY AND LICENSURE CRITERIA

14. The applicant states that “HHP's management team has over 50 years of sub-acute healthcare experience including hospice, home health, skilled nursing, therapy and assisted living. HHP's management has successfully undergone accreditation surveys from a number of accreditation agencies including Joint Commission on Accreditation of Healthcare Organizations (JCAHO) as well as the Community Health Accreditation Program (CHAP) and successfully obtained accreditations from these organizations for multiple health care programs. In order to achieve the highest level of patient care, HHP will utilize the following three resources to establish and maintain the best standards of care:

- Medicare Conditions of Participation for Hospice
- National Hospice and Palliative Care Organization Standards
- Community Health Accreditation Program (CHAP) Standards.”

15. The applicant states that “Both a Certificate of Need for hospice and Medicare certification for hospice will be needed for this proposal. Although not required, HHP plans to pursue CHAP accreditation for its hospice program. The rigorous CHAP standards that HHP will need to comply with in order to obtain its CHAP accreditation will require HHP to achieve quality standards in some areas that exceed Medicare's Conditions of Participation for hospice.”

16. The applicant states that “HHP's staff will be comprised of professionals licensed to practice in their respective discipline in the State of Hawaii. These individuals will include Physicians, Registered Nurses, Licensed Social Workers, Certified Nurse Aides and Licensed Therapists (Physical, Occupational and Speech). HHP will seek healthcare professionals who have prior experience in hospice care and are either certified in hospice and palliative care or seek to become certified in hospice and palliative care.”

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

#### REGARDING THE NEED AND ACCESSIBILITY CRITERIA

18. The applicant states that “HHP's target population will be all residents of Honolulu County with a terminal illness who have a remaining life expectancy of six months or less.”

19. The applicant states that “**DESPITE** a seemingly **HIGHER THAN AVERAGE NEED** for senior services including hospice care, **HAWAII RANKED IN THE BOTTOM 20%** in terms of hospice utilization according to the most recent Medicare data on hospice utilization.”

20. The applicant states that “**DESPITE** having an equally **HIGH GROWTH RATE** and concentration of seniors as the State of Hawaii, **HONOLULU COUNTY RANKED** in the **BOTTOM 40%** in terms of hospice utilization as compared to the national average, and fell short of the national average of 44%.”

21. In written testimony dated September 10, 2014, Cordt T. Kassner, PhD, Founder & CEO of Hospice Analytics, states “As a hospice industry analyst for over 15 years, I've been asked to provide an independent review of Application #14-10 and comment on Hawaii's Medicare Hospice utilization rates over the past several years as well as other statistics quoted in the application. This inquiry came from Bristol Hospice located in Honolulu.”

22. In his September 10, 2014 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**.”

23. In his September 10, 2014 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. If current trends continue, Honolulu's Medicare Hospice Utilization rate is expected to increase above the national average in 2015.”

24. In written testimony dated October 9, 2014, Dr. Kassner states “On September 10, 2014, I wrote an extensive letter regarding Hawaii's hospice utilization rate using the most current Medicare information available at that time (2012). Since then, I've recently received the 2013 Medicare files and begun analysis of them.”

25. In his written testimony dated October 9, 2014, Dr. Kassner projects that, in 2014, the Medicare hospice utilization rate in Honolulu will be 46.1% and the national average Medicare hospice utilization rate will be 47.1%.

26. In his written testimony dated October 9, 2014, Dr. Kassner further states “Between 2012-2013... Hawaii's hospice utilization increased 2.1%, ranking it 5<sup>th</sup> strongest growth in the country... Honolulu's hospice utilization, after refining future projections based on this new information, is still expected to exceed the national average in 2015 - consistent with original projections.”

27. In a memorandum dated September 12, 2014, Leslie Tanoue, Acting Chair of the Oahuwide Certificate of Need Review Committee forwarded the

Committee's recommendation for disapproval of application #14-10. The recommendation states, in pertinent part:

**Need and Accessibility:**

Not Met. The applicant did not demonstrate that there was an unmet need for the proposed services.

28. The Agency finds that, while hospice utilization for Honolulu was below the national hospice utilization average in 2012, currently, it is likely at or near the national average and will likely exceed the national average in 2015.

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

III

**CONCLUSIONS OF LAW**

Having taken into consideration all of the records pertaining to Certificate of Need Application No. 14-10 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:

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) and (7).
3. The applicant has not proven by a preponderance of the evidence that the Proposal meets the criteria as established in HAR 11-186-15(a)(1).

Accordingly, pursuant to 323D-43, HRS, no certificate of need shall be issued for this Proposal. As the applicant has not proven by a preponderance of the evidence that the Proposal meets the criteria as established in HAR 11-186-15(a) (1), 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).

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 Healthcare Partners, LLC for the Proposal described in Certificate of Need application No. 14-10.

WRITTEN NOTICE

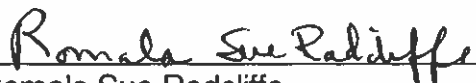
Please read carefully the written notice below. It contains material that may affect the Decision on the Merits. The written notice is required by Section 11-186-70 of the Agency's Certificate of Need Program rules.

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 1, 2014  
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

  
Romala Sue Radcliffe  
Administrator