



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

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March 2, 2015

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

IN THE MATTER OF)	CERTIFICATE OF NEED
)	APPLICATION
)	NO. 14-07
Regency Namakua, 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. 14-07 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 Tri-Isle Subarea Health Planning Council, 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. 14-07. 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 a 40 SNF/ICF bed facility at Ninau Street, Lot 4 & Lot 13-B-2-B-4, Kihei, HI, at a capital cost of \$7,797,760.
2. The applicant, Regency Namakua, 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 16, 2014 the applicant filed with the Agency, a Certificate of Need application for the establishment of a 40 SNF/ICF bed facility at Ninau Street, Lot 4 & Lot 13-B-2-B-4, Kihei, HI, at a capital cost of \$7,797,760 (the "Proposal"). On August 21, October 15, October 27 and October 29, 2014, the applicant submitted revisions/additional information. On October 31, 2014, the application was determined to be complete. For administrative purposes, the Agency designated the application as Cert. #14-07.

5. The period for Agency review of the application commenced on December 8, 2014, the day notice was provided to the public pursuant to HAR 11-186-39.

6. The application was reviewed by the Tri-Isle Subarea Health Planning Council at a public meeting on December 15, 2014. The Council 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 December 18, 2014. The Panel voted 5 to 2 in favor of recommending conditional approval of the application. The condition was that the applicant was to submit the following modifications to its application:

- Additional information/documentation in regard to Regency Pacific Management's Kauai and Kona facilities demonstrating that quality care is being provided at those facilities
- Additional information/data showing that there is a need for the proposal specific to the target population located in the geographical area of Kihei on Maui

8. On January 30, 2015, the applicant submitted additional information/modifications to its application.

9. The application was reviewed by the Statewide Health Coordinating Council at a public meeting on January 30, 2015. The Council voted 12 to 0, in favor of recommending disapproval of the application.

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.”

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.”

II

FINDINGS OF FACT
CERTIFICATE OF NEED CRITERIA

REGARDING THE QUALITY AND LICENSURE CRITERIA

13. The applicant states that “The Project will be fully-licensed and managed by Regency Pacific Management, LLC, a highly-experienced manager with facilities throughout the western United States and Hawaii.”

14. The applicant states that “The manager of the Project has substantial experience managing SNF/ICF facilities throughout the Western United States and Hawaii. The Manager operates the following licensed facilities:

Regency at Hualalai
75-181 Hualalai Road
Kailua-Kona, HI 96740
Care Levels: Independent Living, Assisted Living, and Dementia Care

Regency at Puakea
2130 Kaneka Street
Lihue, HI 96766
Care Levels: Independent Living, Assisted Living, and Dementia Care

Kauai Care Center
9611 Waena Road”

15. In written testimony dated January 30, 2015, the applicant states that "The Kauai facility is rated five out of five stars by *www.medicare.gov*, the official U.S. government site for Medicare... In addition, the Kauai facility was awarded a 'Best Nursing Homes' designation by U.S. News & World Report in 2014. The Kona facility provides assisted living, independent living, and memory care services (not skilled nursing) so it is not ranked at *www.medicare.gov*. However, the Kona facility has been operating and continuously licensed for nearly 15 years, which evidences the quality of care provided."

16. The applicant states that "In addition to the Quality Assurance Plan, the Project will develop and implement policies and procedures that are in accordance with the State of Hawaii licensing requirements. The Project will measure, monitor, report, and evaluate the quality of care per those standards."

17. The applicant states that "...the Project will implement policies and procedures to complete the Center for Medicare and Medicaid Services' (CMS) Quality Indicator Survey process to attain and maintain Medicare certification, receive appropriate reimbursement, and maintain a high level of quality care."

18. The applicant states that "The staff will be required to meet all state and federal criteria to be able to provide care in a SNF/ICF facility. In addition, the Project will seek out individuals that are certified in wound care, pain management, and Alzheimer's training."

19. The applicant states that "The Project is required to be licensed by the State of Hawaii and be Medicare/Medicaid certified. The Project must and will acquire these before opening."

20. 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

21. The applicant states that "...an independent market analysis has determined that (sic) the need, demand, and supply of skilled nursing beds in Maui County. Jerry M. Walker, principal of the consulting firm HCMA-Portland, conducted an independent market analysis in October, 2013 for the Project."

22. The applicant states that "Mr. Walker's independent report concludes that the 75+ population on the island of Maui is increasing rapidly. He projects a need for up to 60 additional skilled nursing beds on the island in 2013, increasing rapidly to up to 130 to 150 additional skilled nursing beds by 2018. These

numbers take into consideration the 40-bed West Maui Hospital skilled nursing facility approved for Lahaina, which as of the date of this application, has not been constructed. The methodology used to estimate the demand for assisted living and skilled nursing beds in the Maui market is based on (1) statistics on penetration rates obtained from the quarterly NICMap reports, (2) the actual penetration rates in the defined market area, and (3) the experience of Mr. Walker and HCMA-Portland in observing actual penetration rates in Hawaii and in may (sic) other towns, cities, and market-center metropolitan areas in the United States.”

23. In written testimony dated January 30, 2015, Hawaii Health Systems Corporation-Maui Region & Hale Makua Health Services state that “This proposal does not meet the need criterion...The applicant cites (page B-5) an independent report that projected a need for ‘60 additional skilled nursing beds on the island in 2013.’”

24. In its written testimony dated January 30, 2015, Hawaii Health Systems Corporation-Maui Region & Hale Makua Health Services state that “It fails to acknowledge the shift, as of 2009, of patients from institutions to home and community based service (HCBS).

- Because of this shift, fewer and fewer institutional beds are needed.
- Statewide, Med-QUEST's institutional patients declined from 3,054 in 2008 to 2,404 in 2013.
- In the same time period, Med-QUEST's HCBS patients increased from 2,050 to 4,646.
- From February 2009 to February 2014 Hale Makua’s census declined from 359.6 to 304.
- Because of the declining census, Hale Makua closed a 34 bed unit in 2011.
- From 2009 to 2013 Kula’s average daily census declined from 94 to 72.
- Consequently, the need for institutional beds is declining, not increasing.”

25. In written testimony dated February 3, 2015, Rita Barreras states “I believe approval of this application would be inappropriate at a time when federal, state, and local governments have designed and are implementing programs (including Hawaii's Quest Integration Program and Aging and Disability Resource Centers) that emphasize home and community based services (HCBS) for older adults and persons with disabilities. One goal of national long-term care policy is to increase the use of HCBS and reduce reliance on institutional care. States seek to balance spending for nursing facility and HCBS programs with an emphasis on reducing nursing home utilization. As pointed out in a study commissioned and funded by the U.S. Centers for Medicare and Medicaid

Services (CMS) titled '*Real Choice Systems Change Grant Program: Why Are Nursing Home Utilization Rates Declining?*' (August 2009) nursing home use has fallen substantially in recent years as it has on Maui."

26. In written testimony received December 18, 2014, Tony Krieg, C.E.O. of Hale Makua Health Services states that "There is no need for additional beds as Maui's nursing homes continue to experience steeply declining occupancy due to the Hawaii's Medquest (Medicaid) conversion to managed care and the State Legislature's investment in Kupuna Care (\$4.1 million) which provides focus and funding on home and community based alternatives to nursing homes. In the 31 years I have been a LTC administrator on Maui I have never seen such a drop in our census which started in 2009. At the end of 2010 we had 33 empty beds and were force (sic) to make a business decision to de-certify them in 2011. They are still empty and can be recertified at any time if there is a need."

27. In written testimony dated January 30, 2015, Darren Kasai, Assistant Administrator of Kula Hospital states that "The numerous changes in the utilization of SNF/ICF post-acute beds, since the implementation of managed Medicaid in the State of Hawai'i, have caused a significant shift of patients from SNF/ICF facilities to home care. This has resulted in an overall decreased census at existing SNF/ICF facilities. Specifically at Kula Hospital, the SNF/ICF resident census has decreased from five years ago when the census was approximately 95 residents in Long Term Care (LTC) to our current census of 73 residents. During the past year, the SNF/ICF resident population at Kula Hospital has dropped as low as the mid-60s due to the shift to home care. With 73 residents, Kula Hospital has 27 vacant SNF/ICF beds... The current low patient census and the number of vacant SNF/ICF beds at Kula Hospital and Hale Makua clearly illustrates that the need for additional beds on the island of Maui is unwarranted."

28. In written testimony received January 30, 2015, Connie Miller, Administrator of Hale Makua Wailuku states that "In April of 2011, I had to close an entire wing of my nursing home – 34 beds – due to an inability to fill them... As of yesterday, between Hale Makua and Kula Hospital, there are an ADDITIONAL 77 empty beds – on top of the 34 I closed."

29. The Agency finds that there are a significant number of unutilized skilled nursing beds on Maui.

30. The Agency finds that the need for skilled nursing beds on Maui is declining.

31. The Agency finds that the applicant has not demonstrated that there is a need for its Proposal.

32. 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. 14-07 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 Tri-Isle Subarea Health Planning Council, 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) (6) and (7).
2. 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 Regency Namakua, LLC for the Proposal described in Certificate of Need application No. 14-07.

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: March 2, 2015
Honolulu, Hawaii

HAWAII STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY



Romala Sue Radcliffe
Administrator