VENABLE® LLP

750 E. PRATT STREET SUITE 900 BALTIMORE, MD 21202
T 410.244.7400 F 410.244.7742 www.Venable.com

Marta D. Harting (410) 244-7542 mdharting@venable.com

October 17, 2016

VIA HAND DELIVERY

Ruby Potter, Administrator
Maryland Health Care Commission
Center for Health Care Facilities
Planning & Development
4160 Patterson Avenue
Baltimore, MD 21215

Re: In the Matter of Recovery Centers of America Upper Marlboro
Docket No. 15-16-2364

Dear Ms. Potter:

Enclosed are an original and six copies of Comments of Pathways on Applicant's Modification in Response to Project Status Conference for filing in the above-referenced case.

Should you have any questions, please let me know. Thank you for your attention to this matter.

Sincerely,

Marta D. Harting

Marta D. Harting

MDH:rlh
Enclosure

BEFORE THE MARYLAND HEALTH CARE COMMISSION

IN THE MATTER OF *

RECOVERY CENTERS OF AMERICA *
UPPER MARLBORO **Docket No. 15-16-2364**
* * * * * * * * * * * *

COMMENTS OF PATHWAYS ON APPLICANT'S MODIFICATION IN RESPONSE TO PROJECT STATUS CONFERENCE

Anne Arundel General Treatment Services, Inc., d/b/a/ Pathways ("Pathways") provides the following comments on the Modification In Response to September 20, 2016 Project Status Conference filed by Recovery Centers of America ("RCA") on October 7, 2016. Pathways incorporates its Interested Party Comments filed on November 16, 2015 by reference as if fully set forth herein.

1.

Provision of Care to Indigent and Gray Area Patients (COMAR 10.24.14.05D)

RCA proposes approximately 7.5% of detox revenues for charity care and 7.5% of total inpatient revenues to charity care.[1] RCA states that the amount of its charity care commitment across all inpatient and outpatient services is equivalent to 15% of detox revenues after bad debt and contractual allowance.

Pathways submits that Standard .05D cannot reasonably be interpreted to limit the indigent/gray area obligation to detox bed days, but allow an applicant to satisfy that obligation

[1]For example, in 2018, RCA proposes $1.189 million in detox charity care out of total detox revenues of $15.566 million after bad debt and contractual allowances, and RCA proposes $2.3 million in charity care for the entire facility out of total inpatient revenue of $30.5 million after bad debt and contractual allowances. See Tables G and J.

based on charity care provided in residential beds and other services. Either the obligation applies only to the detox beds, in which case it is satisfied based only on care provided in the detox beds, or it applies to all beds, in which case it is satisfied based on care provided in total beds.[2] In either case, RCA does not comply.

If Standard .05D could be satisfied by providing the financial equivalent of 15% of detox bed days in charity care as proposed by RCA, nothing would prevent an applicant from devoting no detox bed days to indigent/gray area patients and instead provide charity care only in residential beds and outpatient services. Indeed, an applicant could devote no bed days (detox or residential) to charity care and instead provide charity care in outpatient services to achieve the financial equivalent of 15% of detox bed days. This is contrary to the plain intent of Standard .05D.

RCA is also inconsistent with Standard .05D because it has not stated its charity care commitment in bed days but rather in gross revenues after bad debt and contractual allowances. Accordingly, it has not demonstrated the percentage of bed days that it will provide to indigent/gray area patients as required by the standard.

Further, in its December 21, 2015 modification of its application in Docket No. 15-16-2363, RCA acknowledged that it would not be clinically appropriate for it to release a charity care patient once detox care is complete but before the course of treatment is complete because the patient cannot afford to pay for residential treatment. Accordingly, by committing to

[2] This interpretation is supported by the language of the standard, which refers to "intermediate care facility bed days", not limited to detox bed days. Further, the definition of "intermediate care facility" in the State Health Plan refers to the entire facility, not just the detox beds in a facility.

provide charity care in its residential beds, RCA is not committing to do something that it would not already be required to do by clinical standards of care.

Accordingly, RCA does not comply with the requirement to provide at least 15% of beds days to indigent/gray area patients, and has not demonstrated a basis to waive that requirement. RCA has only shown that, with a 15% charity care requirement, it would make less money but would still generate a 12% margin. See August 31, 2015 Completeness Responses, at p.13 ("If RCA were to provide 15% of its annual adult intermediate care facilities bed days to Indigent or Gray Area patients at Melwood, the total profit margin will decrease to 12.2%"). If the requirement to provide 15% of bed days to indigent and gray area patients can be waived in this context, it is difficult to envision any context in which the requirement could be imposed, depriving it of any effect.

2.

Transfer and Referral Agreements
(COMAR 10.24.14.05J)

RCA has not complied with this standard or with the Reviewer's direction in the Project Status Conference. The State Health Plan standard requires an applicant to have written transfer and referral agreements with "facilities capable of managing cases which exceed, extend or complement its own capabilities", and specifically requires "documentation of its transfer and referral agreements in the form of letters of agreement or acknowledgment" from specified types of facilities, including acute care hospitals, halfway houses, long term care facilities, local mental health centers, mental health and alcohol and drug abuse authorities, the Alcohol and Drug Abuse Administration (now the Behavioral Health Administration) and the Mental Hygiene Administration, and the Department of Juvenile Justice. The Reviewer directed RCA to update

document its transfer and referral agreements, and provide an updated list of providers and agencies, categories by provider type. The Reviewer further specified that, if executed agreements cannot be provided, RCA must supply letters that express the agency or provider's intent to enter into an agreement after the CON (with first use approval subject to submitting such agreements).

In its October 7 filing, RCA provided one additional referral agreement (with Sheppard Pratt Health System). This brings its total number of referral agreements to three – the other two agreements with an outpatient drug and alcohol abuse program (CARE Consultants) and with a publicly funded detox facility (Hope House). RCA further states that it is "actively seeking" additional referral agreements. In its Modified Application filed in May, 2015, RCA similarly stated (at 47-48) that it had contacted and transmitted proposed transfer and referral agreements to a list of local facilities (including acute care hospitals, outpatient programs, community health centers, and state and local health departments). Yet, almost a year and a half later, RCA has only produced three executed transfer and referral agreements, and those agreement do not meet the State Health Plan Standard. RCA has not established referral relationships with any local acute care hospital, local or State health department or agencies, or community mental health centers. Nor has it even provided letters of intent to enter into such a relationship as stated in the Reviewer's letter.

Accordingly, RCA is not in compliance with this standard or the requirements of the Project Status Conference.

3.

Referral Sources
(COMAR 10.24.14.05K)

The Reviewer directed RCA to document that it has established agreements that ensure that it will provide the required level of service to indigent and gray area patients, but provided that, if agreements with the Behavioral Health Administration or other agency listed in the standard (i.e., a local alcohol and drug abuse agency and the Medical Assistance program) cannot be executed until after CON approval, he would accept letters the express these agencies' intent to refer patients to RCA's facility (with first use approval being conditions on receipt of executed agreements)

RCA does not comply with this standard. It states that it is "actively seeking" agreements with these State and local agencies. In its Modified Application filed in May, 2015, RCA stated (at 48) that it "fully expects" to engage in these relationships and would reach out to these organizations to secure referral agreements. More than a year and a half later, it has produced no such agreement. While RCA's October 7, 2016 letter to the Reviewer includes its letters to the Behavioral Health Administration and the Prince George's County Health Department (each dated October 7, 2016), contrary to the Reviewer's direction, it has not produced any letter from an agency expressing its intent to refer indigent or gray area patients to RCA. Nor has RCA made any outreach to the Medical Assistance program.

Accordingly, RCA is not consistent with this standard or the Reviewer's direction in his September 20, 2016 letter.

CONCLUSION

For the reasons stated, RCA's Application should be denied.

Respectfully submitted,

Marta D. Harting

Marta D. Harting
Venable LLP
750 E. Pratt Street, Suite 900
Baltimore Maryland 21202

Counsel for Pathways

Affirmation

I hereby declare and affirm under the penalties of perjury that the facts stated in the Comments of Pathways on Applicant's Modification in Response to Project Status Conference are true and correct to the best of my knowledge, information and belief.

October 17, 2016

Helen Reines, Executive Director