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May 30, 2017

VIA EMAIL (paul.parker@maryland.gov)
& HAND DELIVERY

Mr. Paul Parker
Director, Center for Health Care Facilities
Planning & Development
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: BAYADA Hospice Comment on P-B Health Home Health Care, Inc. CON Application: Docket No. 16-16-2385

Dear Mr. Parker:

Enclosed please find BAYADA Home Health Care, Inc.'s written comments to the Certificate of Need application of P-B Health Home Health Care, Inc.

Sincerely,

Jonathan Montgomery

Enclosures

cc: Mr. Kevin McDonald, Chief, Certificate of Need (via email)
Ms. Suellen Wideman, Esq., Assistant Attorney General (via email)
Ms. Ruby Potter, Health Facilities Coordination Officer, MHCC (via email)
Pamela Creekmur, R.N., Health Officer, Prince George's County
BAYADA Home Health Care, Inc. (internal distribution)

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Re: BAYADA Hospice Comment on
P-B Health Home Health Care, Inc.
Certificate of Need Application: Docket # 16-16-2385

Dear Mr. Parker:

Pursuant to COMAR 10.24.01.08(D)(2)(b), BAYADA Home Health Care Inc., d/b/a BAYADA Hospice ("**BAYADA**") hereby submits to the Maryland Health Care Commission (the "**Commission**") the following written comments to the October 7, 2016 Certificate of Need ("**CON**") application of P-B Health Home Health Care, Inc. ("**P-B Health**") to establish a new general hospice program in Prince George's County (the "**P-B Health Application**").[1]

[1] BAYADA qualifies as an interested party in this review because BAYADA has also applied to establish a new general hospice program in Prince George's County. *See* COMAR 10.24.01.01(B)(20)(a). Alternatively, BAYADA qualifies under COMAR 10.24.01.01(B)(20)(e): a new hospice program would compete with BAYADA for volume or for personnel or other resources. *See* COMAR 10.24.01.01(B)(2)(c), (d).

I. Summary

The people of Prince George's County deserve a new hospice care program that is financially stable and provides high quality care – such as one established by BAYADA. They do not need an underprepared, financially stressed first-time[2] hospice, especially one who proposes to provide less care, less often, than hospice patients in Prince George's County need and deserve.

II. Cost-Effective Alternatives

A new hospice care program in Prince George's County must demonstrate that it will be cost-effective when compared to "alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review."[3] The P-B Health Application shows that P-B Health may fail to provide adequately the hospice services mandated in the Hospice Chapter.[4] Namely, P-B Health projects treating hospice patients too late and too infrequently to be effective.

First, P-B Health estimates an unrealistically low average length of stay (ALOS) of less than three weeks per patient for its proposed program, declining from just under 21 days in 2018 to 19 days in 2021. In contrast, NHPCO data shows that average length of stay nationally is 72 days. P-B Health's short ALOS calls into question its ability to increase access to hospice care,

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[2] "P-B Health is not currently authorized to provide general hospice services in Maryland or any other state..." P-B Health Application at p. 38 (net ordinary income line and net income line for 2015 profit and loss statement).

[3] COMAR 10.24.01.08(G)(3)(c).

[4] *See generally* COMAR 10.24.13.05(C).

and positively impact end-of-life care for terminally ill patients. Effective public education and outreach should translate into ALOS ***gains*** rather than losses, as the relevant stakeholders and communities become familiar with the new hospice and the benefits of hospice generally, and seek enrollment in the hospice earlier in the end-of-life phase. When patients enter hospice care late, it is hard to create a positive end-of-life experience for the patient and family, as they are typically in a state of crisis. While hospices should not extend ALOS unnecessarily, BAYADA's experience has shown that through targeted outreach campaigns/efforts, it can help convert eligible referrals into admissions earlier, thereby increasing the ALOS over time and creating a meaningful and impactful experience for both patient and family.

P-B Health's short ALOS leads it to estimate providing visits per admission well below industry standards[5] across a number of disciplines, including, for example, the following:

(TEXT CONTINUED ON NEXT PAGE)

[5] P-B Health Response to Completeness Questions dated March 3, 2017, at Table 2B, p. 15.

TABLE 2B

VISITS PER ADMISSION – COMPARATIVE PROJECTIONS FOR 2019[6]

Volume Projection Comparison - 2019					
	PB-Health		BAYADA		NHPCO National Data Set 2014
	Assumptions	Visits/Admit	Assumptions	Visits/Admit	Visits/Admit
Admissions	75		141		
Deaths	60		104		
Non-death discharges	6		23		
Patients served	69		150		
Patient days	1,412		8,438		
Average length of stay	20.5		60		
Average daily hospice census	12		23		
Visits by discipline					
	PB-Health		BAYADA		NHPCO National Data Set 2014
	Assumptions	Visits/Admit	Assumptions	Visits/Admit	Visits/Admit
Skilled nursing	1,705	22.73	3,262	23.19	25.30
Social work	136	1.81	799	5.68	6.20
Hospice aides	252	3.36	3,571	25.39	27.70
Physicians - paid	-	-	64	0.46	0.50
Physicians - volunteer	8	0.11	N/A	N/A	N/A
Chaplain	119	1.59	490	3.48	3.80
Other clinical	306	4.08	90	0.64	0.40

How can P-B Health offer adequate and effective end of life care with so few patient encounters?

P-B Health compounds these limitations on care by proposing an overly restrictive admission criteria[7]:

[6] P-B Health Response to Completeness Questions dated March 3, 2017, at Table 2B, p. 15.

[7] P-B Health Application at pp. 16-18.

- Age – P-B Health's criteria appears to reject not just pediatric cases, but also any prospective patient under 35 years of age. Why?
- Disease – P-B Health proposes rejecting patients with tuberculosis or other contagious maladies. These restrictions go far beyond the requirements federal regulations.[8] The restrictions would deny care for many terminally ill patients. Moreover, P-B Health does not detail its screening process implementing these restrictions. P-B Health also fails to describe its plan for ensuring that affected patients receive an appropriate referral to another provider.
- Legal Documents – P-B Health proposes that all patients must have an advanced care directive (ADR) and do not resuscitate (DNR) document in place prior to admission. This restriction will limit access to hospice services as many patients will lack these documents when seeking admission. It is unusual – and perhaps coercive – for a hospice to deny care because a patient refuses to execute ancillary legal documents. In any event, the ***hospice itself*** should provide assistance to patients and families creating these documents – such as through the hospice's interdisciplinary team. If P-B Health will not accept a patient without these materials in place, what is their plan to assist the patient in obtaining them, or what is their plan to refer the patient to another hospice provider that doesn't require these documents?

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[8] 42 C.F.R. § 418.60.

Second, there are a number of gaps in the P-B Health Application's responses to the Hospice Standards section of the Hospice Chapter, such as the following:

- Volunteers – A new hospice must "have available sufficient trained caregiving volunteers to meet the needs of patients and families in the hospice program."[9] But P-B Health indicates that volunteer services will be expected instead from family and close friends of the patient.[10]
- Pharmacy Services – A new hospice must provide, or arrange for, pharmacy services for patients.[11] If P-B Health plans to use local Walgreens, CVS and other patient directed pharmacies, how will P-B Health assure that the full range of medications (such as compounded medications and C-II medications) will be available to patient when needed? How will P-B Health assure access to those medications (e.g., delivery), both on a routine basis and after hours?
- Respite Care – A hospice applicant must "document its system for providing respite care for the family and other caregivers of patients."[12] But P-B Health proposes to restrict how often families and other caregivers utilize respite

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[9] COMAR 10.24.13.05(e).

[10] P-B Health Application at p. 23.

[11] COMAR 10.24.13.05(c)(2)(i).

[12] COMAR 10.24.13.05(m).

care.[13] Why? Medicare does not impose any such restriction on the frequency with which the hospice benefit is used; hospices are expected to provide the necessary respite care.

Finally, the calculations contained in P-B Health's revised Table 2B do not add up, making it difficult to accurately assess the viability of their model.[14] For example, in 2019, P-B Health projects 75 admissions with an average length of stay of 20.5 days – which should mean a total of 1,537.5 patient days. But P-B Health's projects 1412 patient days for 2019. Even taking the higher 1537.5 figure would yield an average daily census of just four[15] for 2019 – rather than the twelve P-B Health projected in its revised Table 2B. Finally, it is hard to understand why P-B Health estimates it will serve fewer patients in 2019 than it will admit in 2019.

III. Viability

The P-B Health Application shows that P-B Health lacks the "resources necessary to sustain" and establish a new hospice program in Prince George's County, as required by the general CON regulations.[16] In particular, the P-B Health Application discloses that P-B Health's financial position suffers from the following serious maladies.

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[13] P-B Health Application at p. 36.

[14] P-B Health Response to Completeness Questions dated March 3, 2017, at Table 2B, p. 15.

[15] 1,537.5 patient days, when divided over a 365 day year, means an average of 4.2 patients per day.

[16] COMAR 10.24.01.08(G)(3)(d).

First, P-B Health appears to project long-term losses for the proposed project. Its latest Table 4 – showing projected revenues and expenses – states that it will generate net operating revenue in 2021 of $843,750 with total operating expenses of $874,226 for that year, generating a $30,476 deficit.[17] In contrast, BAYADA anticipates a positive operating margin in 2021 for BAYADA's Prince George's County hospice program.

Second, P-B Health's ***existing operations*** are uneconomic. For the two calendar years preceding the P-B Health Application – namely, 2014 and 2015 – P-B Health incurred operating losses. In 2015, P-B Health incurred an operating loss of $13,565.84.[18] In 2014, it incurred an operating loss of $328,460.68.[19] In contrast, BAYADA's audited financial statements showed net income of $12,557,000 in 2014 and $22,702,000 in 2015.

P-B Health has not shown why these losses should not continue. Although Commission staff, in completeness questions, noted P-B Health's "marginal financial performance shown in 2014 and 2015," P-B Health did not explain how it planned to reverse this trend.[20] Instead, P-B Health simply faults its accrual accounting for understating P-B Health's cash flow.[21] Similarly, although Commission staff's completeness questions invited P-B Health to submit additional

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[17] P-B Health Response to Completeness Questions dated March 3, 2017, at pp. 16-17.

[18] P-B Health Application at p. 38 (net ordinary income line and net income line for 2015 profit and loss statement).

[19] P-B Health Application at p. 43 (net ordinary income line and net income line for 2014 profit and loss statement).

[20] P-B Health Response to Completeness Questions dated March 3, 2017, at p. 9.

[21] P-B Health Response to Completeness Questions dated December 15, 2016, at p. 18.

financial data for 2016 in light of the P-B Health's loss-making performance in 2014 and 2015, P-B Health did not so in its response.[22]

Third, P-B Health appears to project unrealistically inexpensive, or at least internally contradictory, capital startup obligations. P-B Health projects to spend $7,500 total, all on CON application legal and consulting support. Although P-B Health currently does not operate in Prince George's County (or as a hospice in any jurisdiction), P-B Health appears to make no provision for physical investments to begin operations, such as acquiring any space or equipment.[23] Nor does P-B Health identify any loans for working capital. Yet, in contradiction, P-B Health identifies both "interest on project debt" and "rent" as ongoing expenses.[24] Moreover, P-B Health's prior responses to completeness questions indicated that the company may undertake to use a line of credit/loan from M&T Bank.[25]

Perhaps this is why P-B Health has not identified an internal source of funds for the project to P-B Health, despite multiple express requests from the Commission staff. Rather, P-B

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[22] P-B Health Response to Completeness Questions dated March 3, 2017, at p. 9.

[23] P-B Health Response to Completeness Questions dated March 3, 2017, at pp. 13-14.

[24] P-B Health Response to Completeness Questions dated March 3, 2017, at pp. 13-14.

[25] P-B Health Response to Completeness Questions dated December 15, 2016, at p. 19.

Health states the source of funds for the project will be "Owner"[26] and has promised up to $500,000 of "Owner" funds for the project.[27]

Finally, although required by the Commission's form application, and specifically requested in two rounds of completeness questions, the P-B Health Application contained neither: (a) audited financial statements, nor (b) documentation of the adequacy of financial resources to fund the project signed by a Certified Public Accountant (CPA) who is not directly employed by the applicant.

P-B Health acknowledged it lacked audited financial statements[28], and offered instead a CPA letter from a Mr. Ronald Katzen.[29] However, the letter is inadequate:

- The letter does not conform to standard accounting practice governing how and when an accountant may attest to financial statements.
- The letter does not expressly state that P-B Health has the financial resources adequate to sustain the proposed project. Although Mr. Katzen states that he reviews bank account information supplied by P-B Health, the letter does not state that the information reviewed is sufficient to establish and sustain the project. Rather, the

[26] P-B Health Response to Completeness Questions dated March 3, 2017, at p. 14 (line for total sources of funds).

[27] P-B Health Response to Completeness Questions dated December 15, 2016, at p. 19.

[28] P-B Health Response to Completeness Questions dated March 3, 2017, at pp. 34-35.

[29] P-B Health Response to Completeness Questions dated March 3, 2017, at p. 8.

letter lauds the integrity of P-B Health's owners, and supplies other subjective impressions.

- Mr. Katzen does not affirm that he is not directly employed by P-B Health, though one could infer his independence from the letter's disclosure of his status as a "consultant" to P-B Health.
- Mr. Katzen states that he is no longer responsible for generating P-B Health's financial statements, but that another CPA firm – "Moses Alada and Company" – has done so for the past six years. P-B Health should supply a letter from this other firm, not from Mr. Katzen.

IV. Conclusion

For the reasons set forth above, the Commission should reject the P-B Health Application. Thank you for your attention to this matter.

Sincerely,

Jonathan Montgomery

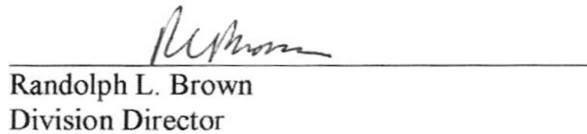
P-B HEALTH HOME HEALTH CARE, INC.

GENERAL HOSPICE SERVICES CON APPLICATION

COMMENT ON APPLICATION DATED OCTOBER 7, 2016

Attestation by Randolph L. Brown

Affirmation: I hereby declare and affirm under the penalties of perjury that the facts stated in the May 30, 2017 response, and its attachments, of BAYADA Home Health Care, Inc. to the application of P-B Health Home Health Care, Inc. are true and correct to the best of my knowledge, information, and belief.



Randolph L. Brown
Division Director

5/30/17
Date