

STATE OF MARYLAND

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**MARYLAND HEALTH CARE COMMISSION**

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July 31, 2018

By E-Mail and USPS

Marta D. Harting, Esquire  
Venable, LLP  
750 East Pratt Street  
Baltimore, Maryland 21202

Re: Amedisys Hospice  
Deficiencies in Pending Application  
Prince George's County Hospice Review.  
Docket No.: 16-16-2382

Dear Ms. Harting:

By letter dated June 29, 2018, I advised the four applicants in the Prince George's County Hospice Review that no application met all the required standards and criteria that apply to this review. I suggested a method by which, if all applicants agreed, each applicant would be able to modify its Certificate of Need ("CON") application to correct deficiencies more quickly than through the traditional project status conference procedure set out in COMAR 10.24.01.09A(2). The four applicants – Amedisys Maryland, LLC d/b/a Amedisys Hospice of Greater Chesapeake ("Amedisys"); BAYADA Home Health Care, Inc. d/b/a BAYADA Hospice ("Bayada"); Montgomery Hospice, Inc.; and P-B Health Home Care Agency ("P-B Health") – agreed to proceed by way of project status conference that will be conducted in writing.

As I noted in my earlier letter, I will identify the deficiencies in each of the applications filed in this review in separate letters to each applicant. Each applicant will have an opportunity to correct the identified deficiencies.

I will detail the deficiencies in Amedisys' application by reference to the applicable standard in COMAR 10.24.16, the State Health Plan for Facilities and Services: Hospice Services ("Hospice Chapter") and to the CON review criteria, COMAR 10.24.01.08G(3). Through this written project status conference process to which all applicants agreed, Amedisys will have the opportunity to modify its application in accordance with the procedural rules.

**COMAR 10.24.13.08J. Charity Care and Sliding Fee Scale Standard**

**Each applicant shall have a written policy for the provision of charity care for indigent and uninsured patients to ensure access to hospice services regardless of an individual's ability to pay and shall provide hospice services on a charitable basis to qualified indigent persons consistent with this policy. The policy shall include provisions for, at a minimum, the following:**

**(1) Determination of Eligibility for Charity Care. Within two business days following a patient's request for charity care services, application for medical assistance, or both, the hospice shall make a determination of probable eligibility**

The wording of the Commission's charity care standard regarding a determination of probable eligibility is generally consistent across regulated facilities and services. Some facilities meet the requirement to make a determination of probable eligibility for charity or reduced fee care within two business days of request by having a two-step process. The first step, the determination of *probable* eligibility, should be based on an abridged set of information, and must result in the provider communicating its determination of probable eligibility to the potential patient or family within two business days of request or application for Medicaid. This process may consist simply of an interview that discusses matters such as family size, insurance, and income. The second part of the process, which results in a *final* determination of eligibility for charity care or reduced fees, may be based on a completed application with required documentation.

Amedisys does not comply with Subsection (1) of the Charity Care standard, which requires it to have both a policy and a process that assure that it will make and communicate a determination of probable eligibility for charity or reduced fee care within two business days of a patient's request for charity care, application for Medical Assistance ("Medicaid") or both. Amedisys' response to subsection (1) of the standard includes a Policy FM-006 with the subject "Indigent and Charity." (DI #9, Exh. 23). This policy outlines a process that requires documentation such as a "W-2, pay stub, tax return, Medicaid card, or other similar documentation" from a patient seeking indigent or charity care. (*Id.* at Procedure 1.d). The policy appears to require this documentation for any determination of eligibility for charity or reduced fee care.

I note that the general policy in FM-006 seems to use the term "charity care" to include only those persons seeking reduced fee care and to use the term "indigent" to include those who receive what the Hospice Chapter, at COMAR 10.24.13.07B(6), defines as "charity care," i.e., "care for which there is no means of payment by the patient or any third party payer [and] ... does not include bad debt." This is further complicated by other wording in the general policy (at Procedure 1.c), which appears to equate charity care with "writing off" a portion of a patient's bill.

Amedisys' Policy FM-006 contains a "Maryland Sliding Fee Scale" on page 5, below which is the statement that "Amedisys will make a determination of probable eligibility for financial assistance and/or reduced fees within two business days after the request is made." This

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stated policy does not comply with the wording in subsection (1) of the standard, in that it makes no mention of application for Medical Assistance (Medicaid) or charity care (a defined term in the Hospice Chapter). This must be corrected.

Amedisys' general policy and its Maryland-specific language are confusing at best. Its general policy requires certain documentation that is needed for what, in Maryland, would be a determination of final eligibility and only later incompletely mentions the determination of probable eligibility that is required by Subsection (1) of the standard. I recommend that Amedisys create a Maryland-specific charity care and reduced fee care policy and procedures that are separate from its general policy and consistent with the Charity Care and Sliding Fee Scale standard. It must distinguish between what is required for a determination of probable eligibility and what is required for a final determination. Such a policy would be clearer, and thus more informative, to Maryland patients and their families, as well as to Amedisys staff administering the policy.

**(2) Notice of Charity Care Policy. Public notice and information regarding the hospice's charity care policy shall be disseminated, on an annual basis, through methods designed to best reach the population in the hospice's service area, and in a format understandable by the service area population. Notices regarding the hospice's charity care policy shall be posted in the business office of the hospice and on the hospice's website, if such a site is maintained. Prior to the provision of hospice services, a hospice shall address any financial concerns of patients and patient families, and provide individual notice regarding the hospice's charity care policy to the patient and family.**

Amedisys does not meet the requirements of subsection (2) of the standard. Amedisys provided a draft notice titled that refers to its "financial assistance policy," apparently Policy FM-006, which, as discussed above, does not meet the requirements of subsection (1) of the Charity Care and Sliding Fee Scale standard. (DI #9, Exh. 24). Initially, I note that the draft notice gives no information to a potential hospice patient/family that it will make and communicate a determination of probable eligibility within two business days. Amedisys must revise its notice to address this.

The draft notice refers to Amedisys' financial assistance policy on its website, but the provided link does not work. For a website notice to "best reach" the service area population, it must be easily accessible on the website. I note that the website for Amedisys hospice does not have a search function and that the "Frequently Asked Questions" feature does not have a question addressing financial assistance. The notice, after modification, must be easily accessible on Amedisys' website.

Amedisys' draft notice states that it "offers financial assistance to residents of Prince George's County who are unable to pay and who apply for financial assistance under the program." I note that the applicant, Amedisys Maryland, LLC d/b/a Amedisys Hospice of Greater Chesapeake, is currently authorized to provide hospice services in four Maryland jurisdictions and

seeks to expand to Prince George's County. It is not clear whether or not Amedisys will make its policy, once revised, applicable to its other Maryland jurisdictions. Amedisys Hospice of the Greater Chesapeake, as a single licensed hospice, should make its charity care and sliding fee scale policy applicable to patients served by Amedisys Hospice of the Greater Chesapeake, not only to patients in Prince George's County. Please advise if Amedisys intends to do so.

**(4) Policy Provisions. An applicant proposing to establish a general hospice, expand hospice services to a previously unauthorized jurisdiction, or change or establish inpatient bed capacity in a previously authorized jurisdiction shall make a commitment to provide charity care in its hospice to indigent patients. The applicant shall demonstrate that:**

. . .

**(b) It has a specific plan for achieving the level of charity care to which it is committed.**

In response to Subsection (4), Amedisys stated it has budgeted \$42,705 for charity care, which amounts to 1.5% of its projected 2020 net operating revenue. (DI #3, p. 21). For frame of reference, I note that, over the three-year period 2014-2016, hospices operating in Prince George's County provided an average percentage of 2.1% charity care days (of total patient days); over this same time period, Maryland hospices overall provided an average percentage of .73 charity care days. However, it did not provide the specific plan required by Paragraph 4(b) for achieving this committed level of charity care. Amedisys needs to provide its specific strategy for recruiting patients who will need charity care and, ideally, describe local connections it has made within Prince George's County.

**In addition,** Amedisys must provide copies of all applicable (existing or revised) forms, notices, and information that are designed to comply with or implement the Charity Care and Sliding Fee Scale standard. This includes all public notices, posted notices, notices to be posted on its website, in its business office, contained in material/brochures given to potential patients/families, as well as any application(s), etc. for charity care or reduced fees, and the description of processes for its employees to follow in implementing the Charity Care and Sliding Fee Scale standard. Amedisys should assure that these materials comply with all parts of the standard and make the necessary distinction between: (1) information needed and its process for making a determination of probable eligibility; and (2) application, information, and/or documentation needed and its process for making a final determination of eligibility for charity care or reduced fee care. This is important because having a policy that contains only the words of the standard, but that will not be implemented through practice, does not comply with the standard.

**COMAR 10.24.01.08G(3)(e) Compliance with conditions of previous Certificate of Need. An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.**

Amedisys is incorrect in its response that this criterion is not applicable. Amedisys Maryland, LLC d/b/a Home Health Care of America (“Amedisys d/b/a HHCA”) was issued a CON in 2011 (Docket No. 10-20-2312), which permitted it to expand its home health agency (“HHA”) services into Talbot County. The CON contained the following condition:

HHCA shall provide charitable home health agency services to indigent persons in need of such services residing in its service area who qualify under the terms of its charity care policy. HHCA shall determine probable eligibility of a person seeking charity care services within two business days of application. If an applicant for charity care is determined to be eligible, that person will not be billed for services or will only be billed for the portion of services specified under HHCA’s sliding fee scale. Decisions by HHCA to forego collection of billed charges (“bad debt”) do not qualify as charity care. At a minimum, HHCA will annually provide charitable HHA services equivalent in value to at least 0.4 percent of total expenses and will document that it complied with this condition within six months of the close of each fiscal year. HHCA will undertake appropriate outreach and public notification requirements necessary to comply with this condition.

I note that, in a July 1, 2011 letter responding to a June 30, 2011 inquiry from Amedisys d/b/a HHCA’s counsel regarding the above condition, Commissioner/Reviewer Garret Falcone advised that this requirement would apply to its entire expanded region (Worcester, Wicomico, Dorchester, Somerset, and Talbot Counties). Amedisys must demonstrate its compliance with the terms and this condition of its 2011 CON or offer a satisfactory explanation why any term or condition was not met.

**COMAR 10.24.01.08G(3)(d) Viability of the Proposal. The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.**

To assess Amedisys’ ability to sustain the project, I reviewed its projections for the final projected year in its application, as shown in the following tables: Table 2b (Statistical Projections), Table 4 (Revenue and Expense projections), and Table 5 (Manpower Information). I then calculated projected visits per patient-day for each discipline, annual visits per full-time-equivalent employee (“FTE”) for each discipline, and cost and revenue per patient-day. I compared the results both among the applicants and with statewide averages to gain insight into the likely accuracy of its respective projections and business plans. See table below.

**Comparisons of Visit Frequency, Staff Productivity, and Cost and Revenue/Patient-Day**

	Calculated measures	Maryland Hospice average, 2016	Amedisys	Bayada	Montgomery Hospice	P-B Health
Visits by discipline/pt-day	Nursing Visits/Pt-day	.30	.45	.31	.21	.33
	Hospice Aide Visits/Pt-day	.32	.35	.34	.18	.18
Productivity	Annual Nursing Visits/FTE	893	854	784	469	1,279
	Annual Hospice Aide Visits/FTE	1,323	738	1,149	563	1,385
Financial measures	Revenue/Pt-day	\$178.94	\$145.94	\$207.57	\$175.02	\$165.48
	Cost/Pt-day	\$125.13	\$108.73	\$175.69	\$173.71	\$67.23

Sources: Each applicant's projections for its final projection year in Table 2b (Statistical Projections), Table 4 (Revenue and Expense projections), and Table 5 (Manpower Information); and MHCC's 2016 Hospice Survey Public Use Data Files.

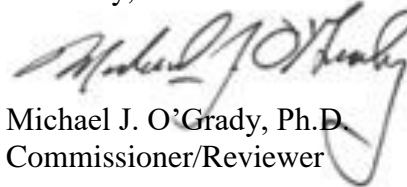
Amedisys projects the highest ratio of nursing visits per patient-day, with a ratio of .45 that is 50% above the statewide average with a nursing productivity (annual visits/FTE) that is slightly lower than the Maryland hospice average. This is projected to occur at a cost-per-patient-day that is considerably lower than the projections made by Bayada and Montgomery Hospice, and that is 87% of the state average. Please explain how these results will be achieved or revise as necessary. If Amedisys' review of its response to the Viability criterion results in modification of its projections, it should submit revised application tables, possibly including Tables 4, 5, and other tables as appropriate.

I request that Amedisys let me know by 4:30 p.m. on August 3, 2018, whether it chooses to modify its application or whether it will go forward with the application as filed. I also request that Amedisys and any other applicant that chooses to modify its application, let me know in its August 3 filing if it can file its modifications on or before August 17, 2018. As always, please copy all persons on the email by which this letter is sent on your response.

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I remind all parties that this remains a contested case and that the *ex parte* prohibitions in the Administrative Procedure Act, Maryland Code Ann., State Gov't §10-219, apply to this proceeding until the Commission issues a final decision.

Sincerely,



Michael J. O'Grady, Ph.D.  
Commissioner/Reviewer

cc: Margaret Witherup, Esq.  
Timothy Adelman, Esq.  
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