

STATE OF MARYLAND

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**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

July 31, 2018

By E-Mail and USPS

Margaret Witherup, Esquire  
Gordon Feinblatt, LLC  
233 East Redwood Street  
Baltimore, Maryland 21202

Re: Bayada Hospice  
Deficiencies in Pending Application  
Prince George's County Hospice Review.  
Docket No.: 16-16-2383

Dear Ms. Witherup:

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 – BAYADA Home Health Care, Inc. d/b/a BAYADA Hospice ("Bayada"); Amedisys Maryland, LLC d/b/a Amedisys Hospice of Greater Chesapeake ("Amedisys"); 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 Bayada's 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, Bayada will have the opportunity to modify its application in accordance with the procedural rules.

**COMAR 10.24.13.05C Minimum Services.**

...

**(1) An applicant shall provide the following services directly:**

- (a) Skilled nursing care; [and]**
- (b) Medical social services . . . .**

In response to Subsection (1), Bayada generally stated how it currently provides the above services; however, it needs to clarify whether its employees will provide these services in Prince George's County if its application is approved.

**(2) An applicant shall provide the following services ... directly or through contractual arrangements:**

...

- (b) Hospice aide and homemaker services;**
- (c) Spiritual services;**
- (d) On-call nursing response;**

...

- (f) Personal care; [and]**

...

- (h) Bereavement Services . . . .**

Bayada must clarify whether each of the above listed types of services will be provided directly or through contractual arrangements, that is whether the person(s) providing the service in each category will be employee(s) of Bayada or whether the services will be delivered by person(s) with whom it has or will establish contractual arrangements.

**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 for charity or reduced fee care, application for Medicaid, or both. 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.

Bayada's revised "Charity Care – Maryland Hospice" Policy 0-8407 contains its stated procedures for making a determination of charity care. (DI #10, Exh. 23). The document provides that, upon receipt of a request for charity care, Bayada will make a determination of charity care within two business days. (*Id.* at para. 2.0). The procedures indicate that a request for reduced fee care is included in the two-day determination of probable eligibility for charity care, but make no mention of making a determination of probable eligibility within two days of application for Medicaid, as required by Subsection (1) of the standard. Bayada's Policy 0-8407 also makes reference to a financial hardship policy #0-3682 that was not provided. (*Id.* at para. 1.0). It is unclear how or if Bayada's process for making determination of probable eligibility differs from its process for making a final determination of eligibility for charity or reduced fee care. As noted earlier, while documentation may be required for a final determination of eligibility for charity or reduced fee care, it cannot be required for a determination of probable eligibility.

The procedures in Bayada's Policy 0-8407, while unclear, indicate that a patient approved for full (or, apparently, partial) charity care will be classified as private pay by Bayada's "Billing and Collections Office." (*Id.* at para 2.1.2). This implies that a patient may be billed for charity or reduced fee care, which should be an up-front determination that the patient does not have means to pay (or can only partially pay) for hospice care. I note that COMAR 10.24.13.07B(6) defines charity care as "care for which there is no means of payment by the patient or any third party payer [and] ... does not include bad debt." Bayada must correct this policy so that charity and reduced fee care are not equated with private pay or bad debt.

Bayada must revise its charity care policy and procedures to comply with subsection (1) of the standard. It must distinguish between what is required for a determination of probable eligibility and what is required for a final determination. It must provide its financial hardship policy #0-3682, revised as necessary.

**(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.**

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Bayada must revise its notice(s) and its website as necessary to comply with the Charity Care and Sliding Fee Scale standard. The notice(s) should state that Bayada will make a determination of probable eligibility within two business days of request for charity or reduced fee care, application for Medicaid, or both.

**(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), Bayada stated that it has budgeted 1% of its revenue to charity care services. (DI #3, p. 33). However, it did not provide the specific plan required by Paragraph 4(b) for achieving this committed level of charity care. 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. Bayada 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.

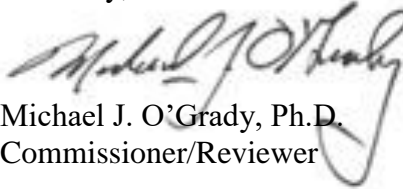
**In addition,** Bayada must provide copies of all applicable (existing or revised) forms, notices, and information that are designed to comply with or implement the Charity Care and Sliding Fee Scale standard. This includes all public notices, posted notices, notices to be posted on its website, in 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. Bayada 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.

I request that Bayada 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 Bayada 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: Marta D. Harting, Esq.  
Timothy Adelman, Esq.  
Howard L. Sollins, Esq.  
Paul E. Parker, Director, Center for Health Care Facilities Planning and Development  
Kevin McDonald, Chief, Certificate of Need  
Mariama Gondo, Program Manager  
Suellen Wideman, Assistant Attorney General  
Sarah E. Pendley, Assistant Attorney General  
Pamela Brown-Creekmur, RN, Prince George's County Health Officer