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June 21, 2017

VIA EMAIL & HAND DELIVERY

Mr. Paul E. Parker
Executive Director
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: BAYADA Home Health Care, Inc. Response to Interested Party
Comments
Docket No. 16-16-2383

Dear Mr. Parker:

Enclosed please find six (6) physical copies of BAYADA Home Health Care, Inc.'s response to the interested party comments regarding the above-referenced application. You should also receive today, via email, a PDF and word copy of the response, as well as a PDF copy of the exhibits to the response.

Please return a date-stamped copy of this letter to the waiting messenger.

Respectfully Submitted,



Jonathan Montgomery

cc: Mr. Kevin McDonald (via email)
Ms. Ruby Potter (via email)
Ms. Suellen Wideman (via email)
Howard L. Sollins, Esq. (via email)
Marta D. Harting, Esq. (via email)
Timothy B. Adelman, Esq. (via email)
Pamela Creekmur, R.N., Health Officer, Prince George's County
BAYADA Home Health Care, Inc. (internal distribution)

IN THE MATTER OF * BEFORE THE
 BAYADA HOME HEALTH CARE, INC. * MARYLAND
 * HEALTH CARE COMMISSION
 * DOCKET NO.: 16-16-2383

* * * * *

BAYADA HOSPICE
RESPONSE TO INTERESTED PARTY COMMENTS

I. Summary of Response

The Maryland Health Care Commission (the “**Commission**”) should grant the certificate of need (“**CON**”) application of BAYADA Home Health Care, Inc. d/b/a BAYADA Hospice (“**BAYADA**”) to establish a new licensed general hospice care program in Prince George’s County, Maryland (the “**BAYADA Application**”). The BAYADA Application demonstrates compliance with the general certificate of need standards¹ and with every applicable standard of the State Health Plan for Facilities and Services – Hospice Services (the “**SHP**”).²

The BAYADA Application builds on BAYADA’s status as the largest private home health and hospice organization in the country, with extensive experience providing high quality hospice services in New Hampshire, Vermont, New Jersey, and Pennsylvania, and with existing home health operations in Maryland. BAYADA is uniquely qualified to help Prince George’s County improve its hospice delivery system. Montgomery Hospice’s objections fail to show otherwise, as demonstrated below.

¹ See COMAR 10.24.01.08(G)(3).

² See COMAR 10.24.13.00 *et seq.*

II. Charity Care

The BAYADA Application, and the accompanying completeness responses, demonstrate that BAYADA's charity care policy will offer low-income patients and their families hospice care, using a sliding scale to reduce or even eliminate fees charged by BAYADA.³ For the following reasons, Commission should reject Montgomery Hospice's critique of the absolute dollar amounts of charity care provided by BAYADA in other settings in the past.

First, BAYADA's charity care policy commits it to apply charity care according to an objective formula derived from federal poverty guidelines.⁴ The absolute dollar amount of charity care provided will therefore be determined by the need of BAYADA's patients and prospective patients, not the pure discretion of BAYADA. So long as BAYADA's commitment to meeting that formula is credible – which it is – and the formula itself addresses the financial needs of the patients – and it does – the absolute dollar amount of charity care provided by BAYADA will, almost by definition, meet the need.

Second, BAYADA has adequately budgeted to meet this charity care commitment. BAYADA is committed to providing all necessary charity care, and fully understands and appreciates the socio-economic composition of County residents. It has budgeted for a minimum of 1% of charity care in each year of operation through CY 2021, as shown in the table attached hereto as Exhibit 53.⁵

³ See COMAR 10.24.13.05(J). See also Revised Exhibit 23 to BAYADA's CON Application.

⁴ BAYADA will use the U.S. Federal Poverty Guidelines, published annually by the Department of Health and Human Services, to determine eligibility for charity care, including its sliding fee scale. BAYADA's sliding fee scale is as follows:

- 100-125 percent of poverty: 100% reduction of per diem fees
- 125-150 percent of poverty: 75% reduction of per diem fees
- 150-175 percent of poverty: 50% reduction of per diem fees.

⁵ See also page 33 of BAYADA's CON Application dated October 7, 2016.

This amounts to \$202,719 in total charity care provided, or 2.08% of revenue, including uncompensated care provided by BAYADA prior to its Medicare certification.

In fact, BAYADA anticipates providing a level of charity care similar to the level proposed by Montgomery Hospice for the Prince George's County operation, when calculated as a percentage of revenue. Montgomery Hospice has budgeted for charity care provision of between \$450,000 (low end) to \$649,000 (high end). This translates to about 1.4%-2.1% of revenue, in contrast to the BAYADA commitment of 1% of revenue, or 2.02% when counting care provided prior to Medicare certification, as shown in the table attached hereto as Exhibit 53.

Lastly, and perhaps most importantly, BAYADA is transitioning to a non-profit model. Nothing can better underscore BAYADA's future commitment to charitable giving more than its owner's "Lasting Legacy" to donate BAYADA Home Health Care, Inc. to a non-for-profit foundation, as indicated in the BAYADA Application.⁶

BAYADA's mission has been and always will be to help people have a safe home life with comfort, independence and dignity. In upholding this mission, BAYADA's hospice programs have never turned down a patient referral due to inability to pay. Whatever the absolute dollar amount needed, BAYADA will continue care for all patients regardless of their ability to pay. If the Commission wishes for BAYADA to commit to another budget target for charity care, or wishes BAYADA otherwise to guarantee the availability of charity care resources, BAYADA would be happy to do so.

III. Volunteers

BAYADA understands the important role that volunteers play in the provision of high quality hospice care services. BAYADA's hospice operations in Pennsylvania, New Jersey,

⁶ See pages 14-15 of BAYADA's CON Application dated October 7, 2016.

Vermont, and New Hampshire have all consistently met the volunteer requirement contained in the Medicare conditions of participation. All BAYADA Hospice operations recruit adequate numbers of volunteers to meet this requirement and to meet the needs of the patients and their families. BAYADA uses various methods to recruit volunteers via targeted digital and print advertisements, local postings, coffee shop meet and greets, open houses, and on-line recruitment resources. These strategic recruiting tactics have afforded BAYADA the opportunity to build a strong corps of hospice volunteers, enabling BAYADA to meet not only the needs of patients and families, but meet and most times exceed the 5% compliance threshold for volunteer hours.

In the early stages of a start-up, the recruitment of the volunteers is the responsibility of the core start-up team (Director, Clinical Manager and Client Services Manager). BAYADA's budget includes a PsychoSocial Manager within its second quarter of operations (3Q18) whose responsibility will include the recruitment, onboarding, training and deployment of volunteers. The PsychoSocial Manager will continue to oversee this for a year before recruiting a Volunteer Coordinator to join the team in 2020.

Obviously, BAYADA has no hospice volunteers in Prince George's County at the moment, because BAYADA is not authorized to provide hospice services in the County.

But since its inception, BAYADA has always been able to meet the needs of its patients requesting or requiring volunteers. BAYADA's commitment to meeting the volunteer needs of its patients would be no different in Prince George's County. Should the Commission award this CON to BAYADA, BAYADA would begin volunteer recruitment activities immediately.

IV. Admissions Criteria

BAYADA's admission policy complies with the State Health Plan, for the following two reasons.

First, the State Health Plan contains no mandate that a hospice agree to admit pediatric patients, and Montgomery Hospice identifies no such rule. In fact, the State Health Plan specifically contemplates referrals between hospices in certain individual cases.⁷ BAYADA commits to making appropriate referrals of pediatric patients to existing hospice providers, or, if the Commission wishes for such a commitment, BAYADA is also willing to commit to investing in pediatric access to hospice services as a condition of the approval of BAYADA's Application. BAYADA is building pediatric capacity in its Pennsylvania hospice operations, and could extend that capacity to Maryland (whether at the time its new program is established, or in the future).

Second, there is a strong need for hospice services amongst the adult population of the County. The Commission's need projections focused on the adult population, which makes sense as pediatric admissions to hospice are rare. Moreover, it is amongst the adult population that hospice awareness and utilization need attention, as documented and described in the BAYADA Application.

For these reasons, BAYADA's admission policy is sufficient to approve the BAYADA Application.

V. Conclusion

In this comparative review, the Commission should approve the certificate of need application of BAYADA to establish a licensed general hospice program in Prince George's County.⁸

[signature on next page]

⁷ Cf. COMAR 10.24.13.04(D).

⁸ An affidavit for this response is enclosed as Exhibit 54.

Respectfully submitted,



Dated: June 21, 2017

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Attorneys for BAYADA Home Health Care, Inc.

Exhibit 53

EXHIBIT 53

COMPARATIVE CHARITY CARE ESTIMATES:

MONTGOMERY HOSPICE AND BAYADA

Montgomery Hospice Budgeted Charity Care - Lower Estimate Prince George's County 2017-2020						
	2015	2017	2018	2019	2020	Total 2017-2020
Revenue	\$ 23,602,050	\$ 29,069,814	\$ 31,955,125	\$ 34,166,814	\$ 36,765,868	\$ 131,957,621
Charity Care (\$)	\$ 467,316	\$450,000	\$450,000	\$450,000	\$450,000	\$ 1,800,000
Charity Care (% Revenue)	2.0%	1.5%	1.4%	1.3%	1.2%	1.4%

Montgomery Hospice Budgeted Charity Care - Higher Estimate Prince George's County 2017-2020						
	2015	2017	2018	2019	2020	Total 2017-2020
Revenue	\$ 23,602,050	\$ 29,069,814	\$ 31,955,125	\$ 34,166,814	\$ 36,765,868	\$ 131,957,621
Charity Care (\$)	\$ 467,316	\$ 694,000	\$ 694,000	\$ 694,000	\$ 694,000	\$ 2,776,000
Charity Care (% Revenue)	2.0%	2.4%	2.2%	2.0%	1.9%	2.1%

BAYADA Hospice Budgeted Charity Care Prince George's County 2018-2021					
	2018	2019	2020	2021	Total
Budgeted Revenue	\$ 561,592	\$ 2,068,760	\$ 3,020,428	\$ 4,077,650	\$ 9,728,430
Pre-Medicare Cert (\$)	\$ 85,586	\$ -	\$ -	\$ -	\$ 85,586
Pre-Medicare Cert (% Revenue)	15%	0%	0%	0%	1%
Charity Care (\$)	\$ 4,777	\$ 41,375	\$ 30,204	\$ 40,776	\$ 117,133
Charity Care (% Revenue)	1%	2%	1%	1%	1%
Total	\$ 90,363	\$ 41,375	\$ 30,204	\$ 40,776	\$ 202,719
Total (% Revenue)	16.1%	2.0%	1.0%	1.0%	2.1%

Note: 1% of revenue was allotted to charity care in each year of operation, plus pre-medicare certification

In the 2018 tables, charity care was at .10% rather than 1.0%.

*Please note that the above table corrects a typo contained in the tables set forth in Exhibit 1 of the BAYADA application: the dollar amount of charity care BAYADA estimated for CY 2018 amounted to 1% of BAYADA's CY 2018 revenue, not 0.1% as originally stated.

Exhibit 54

IN THE MATTER OF * BEFORE THE
BAYADA HOME HEALTH CARE, INC. * MARYLAND
* HEALTH CARE COMMISSION
* DOCKET NO.: 16-16-2383
* * * * *

**AFFIDAVIT OF RANDOLPH BROWN IN SUPPORT OF
BAYADA HOME HEALTH CARE, INC.
RESPONSE TO INTERESTED PARTY COMMENTS**


I, Randolph Brown, being over 18 years of age and competent to testify as to the matters set forth herein, state as follows:

1. I am Division Director at Bayada Home Health Care, Inc. d/b/a BAYADA Hospice (“BAYADA”).
2. BAYADA is committed to caring for all hospice patients regardless of their ability to pay. I am not aware of any case in which a BAYADA hospice program has turned down a patient referral due to inability to pay.
3. BAYADA is currently building pediatric capacity for its hospice operations in Pennsylvania.
4. BAYADA’s hospice operations aim to maintain a volunteer staff sufficient to provide administrative or direct client care in an amount that, at a minimum, equals 5% of the total client care hours of all paid hospice employees and contract staff. BAYADA has complied with this volunteer mandate in its existing hospice operations as a result of successful volunteer recruitment, using techniques similar to those described in the response to which this affidavit is enclosed. BAYADA expects to have the same success in Maryland.

(signature follows on next page)

I SOLEMNLY DECLARE UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE FOREGOING AFFIDAVIT IS TRUE AND CORRECT.

Executed on June 21, 2017



Randolph L. Brown