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May 30, 2017

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

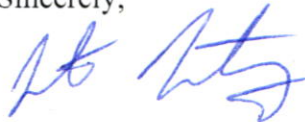
Mr. Paul Parker
Director, Center for Health Care Facilities
Planning & Development
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: BAYADA Hospice Comment on
Amedisys Hospice of Greater Chesapeake CON Application:
Docket No. 16-16-2382

Dear Mr. Parker:

Enclosed please find BAYADA Home Health Care, Inc.'s written comments to the Certificate of Need application of Amedisys Hospice of Greater Chesapeake.

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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Director, Center for Health Care Facilities
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4160 Patterson Avenue
Baltimore, Maryland 21215

Re: BAYADA Hospice Comment on
Amedisys Maryland, LLC
Certificate of Need Application: Docket # 16-16-2382

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 Amedisys Maryland, LLC d/b/a Amedisys Hospice of Greater Chesapeake (“**Amedisys**”) to establish a new general hospice program in Prince George’s County (the “**Amedisys 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):
footnote cont’d on next page

Comment

BAYADA agrees with Amedisys that the Commission could approve more than one new hospice care program for Prince George's County, given the Commission's projection that net need for the county at national use rates (662 cases) more than twice exceeds the average hospice size in the county.² That said, as between BAYADA and Amedisys, in a comparative review context, BAYADA's program would be more cost-effective for the following reasons.³

First, Amedisys' parent company, Amedisys, Inc., is subject to a corporate integrity agreement imposed by the federal Department of Health and Human Services.⁴ In 2014, the Department of Justice extracted a \$150,000,000 settlement from that company, following alleged False Claim Act violations in the home health care context. Specifically, it was alleged that the company "misrepresented patients' conditions" – such as "homebound" status – to Medicare as "the alleged result of management pressure on nurses and therapists to provide care based on financial benefits to the company, rather than the needs of patients."⁵ Medicare is the primary

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).

² Amedisys Application at p. 17.

³ "The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review." COMAR 10.24.01.08(G)(3)(c).

⁴ <https://www.justice.gov/opa/pr/amedisys-home-health-companies-agree-pay-150-million-resolve-false-claims-act-allegations> (retrieved May 25, 2017).

⁵ <https://www.justice.gov/opa/pr/amedisys-home-health-companies-agree-pay-150-million-resolve-false-claims-act-allegations> (retrieved May 25, 2017).

payer for any prospective hospice operating in Prince George's County, including Amedisys.⁶ The Commission should select a hospice, such as BAYADA, that does not have this track record.

Second, Amedisys' public education⁷ program for Prince George's County is incomplete and potentially misleading:

- Amedisys claims that it “currently employs James W. Clash to provide community relations and business development expertise complimentary to expanding public awareness and increasing utilization of Amedisys hospice care services.”⁸ Amedisys describes Mr. Clash as one of the “embedded and qualified individuals” that will provide expertise to meet the “overall need for additional hospice in the County...”⁹ However, Mr. Clash is employed⁷ by BAYADA, not Amedisys.¹⁰ BAYADA is the applicant that has hired Mr. Clash. In fact, the resume enclosed with the Amedisys application nowhere indicates that Mr. Clash was ever employed by Amedisys.¹¹
- Amedisys states that it has “developed a unique and successful program for providing effective public education on hospice care: ‘The Being Mortal Campaign’” and that it

⁶ Amedisys Application at Table 4 (payer mix).

⁷ The State Health Plan requires prospective applicants to document a plan to educate a diverse public about the need and availability of hospice services. *See* COMAR 10.24.13.05(O).

⁸ Amedisys Application at p. 24.

⁹ Amedisys Application at p. 24.

¹⁰ Documentation of Mr. Clash's employment as BAYADA's marketing manager is attached as Exhibit 1.

¹¹ Amedisys Application at Exhibit 12.

“owns the rights to show” a video by Dr. Atul Gawande as part of the public education program.¹² In fact, the Being Mortal project is a project of the Hospice Foundation of America.¹³ The video is an episode of PBS Frontline. The Hospice Foundation of America states that it allows various organizations to apply to be “host screening sites” – for whom “all program material will be provided at no charge” – through “a Survey Monkey application” that “takes approximately 15-25 minutes to complete.”¹⁴ Moreover, “Being Mortal” is an educational tool to help individuals in any population start an advanced care planning discussion. Amedisys has not explained why this model will *uniquely* help to increase hospice awareness and acceptance in the particular underserved communities in Prince George’s County.

- Amedisys’ public education plan seems focused exclusively on community institutions.¹⁵ Its plan does not address how Amedisys will reach out to other health care facilities, individual health care practitioners, or particular referral sources to develop awareness and acceptance of hospice in the health care community. Moreover, the plan does not describe how Amedisys will develop its own staff and other internal resources, sensitizing its own personnel to advocating for hospice and

¹² Amedisys Application at p. 23.

¹³ See <https://hospicefoundation.org/Being-Mortal-Project> (last accessed May 25, 2017).

¹⁴ <https://hospicefoundation.org/Being-Mortal-Project> (last accessed May 25, 2017).

¹⁵ Amedisys Application at p. 24.

increasing hospice acceptance in the particular underserved communities of Prince George's County.

Third, Amedisys' charity care policy¹⁶ is complex and restrictive, creating a potential barrier to care. Amedisys' policy requires the following approval process:

- a. Patients meeting guidelines for consideration for indigent or charity care may be prospectively approved by the agency Director of Operations for care up to \$1,000.
- b. Patients meeting guidelines for consideration for indigent or charity care that exceed \$1,000 but are less than \$5,000 are to be prospectively approved by the AVP.
- c. If the amount of services exceeds \$5,000, the approval of the corporate office or the Senior Vice-President of Operations/designee should be obtained.

Assuming a Tier 1 routine home care rate of \$195.58 per patient day per 2017 Medicare rates, this tiered \$1,000/\$5,000 limit would qualify someone for only 5 days of charity care with first level approval, 25 days of care with second level approval, and require an additional third level of approval for any charity care beyond \$5,000. The provisions of this policy would likely hinder a patient/family's ability to access timely hospice care due to the different approval levels required.

¹⁶ The State Health Plan requires applicants to establish a "written plan 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..." COMAR 10.24.13.05(J).

In contrast, BAYADA's charity care policy is not tiered or hierarchical.¹⁷ It is comprehensive and in line with Maryland regulations.

Conclusion

BAYADA believes that the Commission could approve two new hospice programs in Prince George's County, and, if it does, BAYADA's program should be one of them. Thank you for your attention to this matter.

Sincerely,



Jonathan Montgomery

¹⁷ BAYADA Home Health Care, Inc. Response to Completeness Questions dated January 11, 2017, at Revised Exhibit 23.

Exhibit 1

Anne Arundel County (ACV) - 149

[Back to Results](#)



Director
Diana J. Harbo

Specialty Practice: Home Health
Division: Camellia Division
Division Director: [JoAnn Saubz](#)

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Primary Address:
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[Get Directions](#)

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Fax: 443-749-1306

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Certifications

Medicare: yes
Hospice: no

Service Area Counties

Anne Arundel County, Calvert

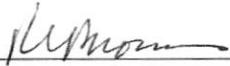
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Office - Training/Regis.	443-749-1300
Office - Support	443-749-1300

AMEDISYS HOSPICE OF GREATER CHESAPEAKE
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 Amedisys Hospice of Greater Chesapeake are true and correct to the best of my knowledge, information, and belief.



Randolph L. Brown
Division Director

5/30/17
Date