

BEFORE THE MARYLAND HEALTH CARE COMMISSION

IN THE MATTER OF

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**AMEDISYS HOSPICE OF
GREATER CHESAPEAKE**

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Docket No. 16-16-2382

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**COMMENTS SUBMITTED BY MONTGOMERY HOSPICE, INC. IN OPPOSITION TO
THE CON APPLICATION OF
AMEDISYS HOSPICE OF GREATER CHESAPEAKE**

Montgomery Hospice, Inc. ("Montgomery Hospice"), as an interested party, submits the following comments opposing the application submitted to the Maryland Health Care Commission ("Commission") by Amedisys Maryland, LLC d/b/a/ Amedisys Hospice of Greater Chesapeake ("Amedisys") on October 7, 2016 with the objective of satisfying the Commission's review criteria and applicable State Health Plan standards for Hospice Services. The submitted comments will state with particularity the review criteria and State Health Plan standards that Montgomery Hospice believes have not been met by Amedisys and the reasons why Amedisys does not meet those standards. COMAR 10.24.01.08.F(c).

1. The Amedisys application fails to demonstrate its organizational commitment to charity care as required by COMAR 10.24.13.05.J.

The State Health Plan requires each applicant to present a written policy illustrating how the applicant will ensure access to hospice services regardless of an individual's ability to pay. The applicant's policy is required to, at a minimum, demonstrate the applicant's track record in providing charity care in order to support the credibility of its commitment. The applicant must also provide a specific plan for achieving the level of charity care to which it has committed in its application.

The Amedisys application lacks a demonstrated commitment to charity care. By its own report, its entire Maryland operations in four jurisdictions provided a total of 239 days of charity

care to only three patients in FY2015, which amounted to .51% of total patient days and .33% of patients served. Further, Amedisys states that it provided \$7,949 in charity care to patients in FY2015 and that it has budgeted to provide \$42,705 in charity care to Prince George's County residents in FY2020.

In contrast to the Amedisys application, Montgomery Hospice's budget is a clear statement showing how thoroughly it is committed to providing charity care to Prince George's County residents. In its single jurisdiction of Montgomery County, Montgomery Hospice provided \$467,316 in charity care in 2015, serving 62 patients, representing 2.8% of the patients it served. Montgomery Hospice has budgeted to provide \$450,000 in charity care each year within Prince George's County once it begins providing hospice services there. The \$450,000 budgeted by Montgomery Hospice is over 1,000% more than the figure budgeted by Amedisys in FY2020.

2. The Amedisys application fails to demonstrate its organizational commitment to public education programs as required by COMAR 10.24.13.05.N.

The State Health Plan requires that each applicant document its plan to provide public education programs designed to increase awareness and consciousness of the needs of dying individuals and their caregivers, to increase the provision of hospice services to minorities and the underserved, and to reduce the disparities in hospice utilization. Applicants' plans are required to detail the appropriate methods to reach and educate diverse racial, religious, and ethnic groups that have used hospice services at a lower rate than the overall population in Prince George's County.

The Amedisys application does not describe in detail how it will provide public education to Prince George's County residents nor does it enumerate the methods it will use to reach and educate diverse racial, religious, and ethnic groups. Instead, its application includes a single

video licensed for use, produced by another organization as a documentary about general end-of-life (not necessarily hospice) care. The application also includes a handbook written in Cantonese purported to be used by a company owned by the Amedisys parent corporation operating in the Boston, Massachusetts metropolitan area. The relevance of this handbook is minimal at best; only 0.8% of Prince George's County residents identify as ethnically Chinese according to the 2015 American Community Survey conducted by the U.S. Census Bureau. Amedisys' promise to make translation services available via telephone lacks any compelling value because the availability of translation services are required for all Medicare-enrolled hospices. Finally, Amedisys' assertion that it plans to eventually hire a Prince George's County resident to provide education to Prince George's County residents as a part of a comprehensive public education campaign is insufficient. Locating such a resident and developing a yet-to-be provided comprehensive public education campaign are important steps that will take considerable time and effort to complete. After engaging in a critical analysis of each of these ideas, it will be difficult for the Commission to conclude that Amedisys has satisfied its obligation to detail how it will provide public education of its general hospice services throughout Prince George's County.

Montgomery Hospice provides more specific examples of how it structures its public education programs to better reach diverse racial, religious, and ethnic groups. Montgomery Hospice's application describes in detail how its Community Health Fairs, Senior Center Presentations, Extensive Website Materials, Social Media Presence, Newsletters, Faith Community Engagement, and Face-to-face as well as Online Education Workshops satisfy this important State Health Plan standard. Such a multi-step, detailed approach is essential to satisfy the standard provided at COMAR 10.24.13.05.N.

3. The Amedisys application raises concerns as to its viability under the standard provided at COMAR 10.24.01.08G(3)(d).

a. Amedisys includes no letters or statements of community support in its application.

The Code of Maryland Regulations require the Commission to consider the viability of each applicant's proposal by taking into account the community support generated by the applicant. Based on a complete review of the Amedisys application, Amedisys has provided no documentation showing that it has the support of community leaders in Prince George's County. Conversely, Montgomery Hospice has appended to its application twelve letters of support from individuals and organizations invested in the quality of health care services in Prince George's County from a multitude of perspectives. See the Montgomery Hospice application at Docket No. 16-16-2384, Appendix A to include letters from, for example, Maryland Delegate Joseline A. Pena-Melnyk, Maryland State Senator Joanne Benson, Theresa M. Grant (Director of the Prince George's County Area Agency on Aging), Willie L. Reaves (Pastor of New Horizon Gospel Ministries), Dr. Parthasarthy Pillai and Betty Hager Francis (Prince George's County Government Deputy Chief Administrative Officer for Health, Human Services and Education).

b. Ongoing Amedisys, Inc. legal proceedings and recent financial settlements may compromise the resources available to Amedisys.

The Amedisys application acknowledges that its parent corporation is involved in a diverse set of ongoing legal proceedings. Specifically, the consolidated financial statement for Amedisys, Inc. and its subsidiaries dated December 31, 2015 lists a range of ongoing legal actions in which the organization is a defendant. These actions include securities class action lawsuits, wage and hour litigation, commercial litigation involving breach of contract and negligent misrepresentation claims, and a civil investigative demand issued by the U.S. Department of Justice investigating allegations of federal False Claims Act violations connected to claims submitted for payment of hospice services. Additionally, Amedisys, Inc. and several of

its home health agencies agreed to pay \$150 million to the federal government to resolve troubling allegations that they violated the False Claims Act by submitting false home healthcare billings due to pressure from management to provide care to patients in a manner that was focused on the Amedisys, Inc. bottom line, rather than the needs of its patients. The real possibility that the \$150 million settlement could be followed by large settlements of the ongoing legal actions creates a level of financial vulnerability for all Amedisys, Inc. subsidiaries.

c. Amedisys does not include any working capital startup costs in its Project Budget.

The State Health Plan requires each applicant to submit a Project Budget with its application. In the Project Budget submitted by Amedisys, it does not account for any working capital startup costs. Failing to account for working capital startup costs calls into question the overall financial viability of the Amedisys proposal.

In the experience of Montgomery Hospice, these working capital startup costs are essential to initiate the provision of general hospice services in a new geographic area. By way of illustration, Montgomery Hospice has allocated over \$2.1 million to working capital startup costs in its Project Budget. Included in these costs are such vital outlays such as public education programs, lease arrangements for requisite space and equipment, and costs associated with the additional interdisciplinary personnel needed to provide hospice services in the new area.

d. Amedisys, Inc. represents that it has extremely low costs of care and long lengths of stay.

A review of the Form 10-K submitted by Amedisys, Inc. to the U.S. Securities and Exchange Commission for FY2016 shows that its nationwide hospice operations have extraordinarily low costs of care and long lengths of stay when compared to Medicare statistics. Amedisys, Inc. reported in its Form 10-K that it maintained a \$75.36 cost of service per day and

96-day average discharge length of stay. By comparison, during FY2016, the Medicare base payment rate for routine home care under the Medicare hospice benefit was \$161.89, available at: <https://www.gpo.gov/fdsys/pkg/FR-2015-08-06/pdf/2015-19033.pdf>, and the average length of stay for decedents receiving hospice services in FY2015 was 86.7 days. MedPac Report to the Congress: Medicare Payment Policy, March 2017, Table 12-4.

Comparing the Amedisys, Inc. statistics with the Medicare statistics can lead one to draw two inferences: Amedisys, Inc. may be selecting patients based on method attracting primarily the lowest cost patients or it may be limiting services beyond what would customarily be provided under the Medicare Hospice Benefit.

4. Amedisys would limit its Admission criteria by excluding pediatric patients.

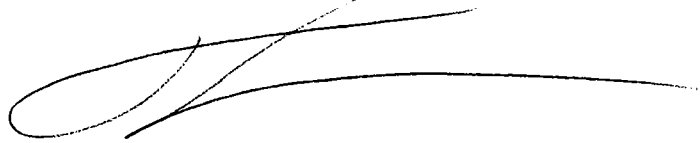
COMAR 10.24.13.05B requires each applicant to identify its admission criteria and proposed limits by age, disease, or caregiver. In its application, Amedisys discloses that it will not provide hospice services to Prince George's County residents who are less than nineteen years old. Indeed, Amedisys is not the only applicant that would limit its services to adult residents of Prince George's County. Bayada Home Health Care, Inc. attests in its application that it would only accept pediatric patients in exceptional circumstances and P-B Health Hospice attests that it will only service patients who are at least 35 years old. Conversely, Montgomery Hospice will serve Prince George's County residents of all ages who qualify for hospice services.

CONCLUSION

The Commission is responsible for reviewing each Certificate of Need application to ensure that it satisfies the review criteria published at COMAR 10.24.01.08G and, in this instance, the State Health Plan standards incorporated at COMAR 10.24.13 applicable to general hospice services Certificate of Need applicants. A review of the application submitted by

Amedisys establishes that it has failed to meet the required minimum standards and criteria. Moreover, Amedisys' Projected Budget does not appear to truly anticipate the cost for providing hospice services in Prince George's County. Its financial uncertainty due to ongoing litigation combined with its incomplete Project Budget, raises the overarching concern that Amedisys' goal of providing general hospice services to Prince George's County residents may not be sustainable. For these reasons, the Amedisys application should be denied.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'Timothy B. Adelman', is written over a horizontal line.

Timothy B. Adelman
Hall Render Killian Health & Lyman, P.C.
180 Admiral Cochrane Drive, Suite 370
Annapolis, Maryland 21401
Counsel for Montgomery Hospice, Inc.

I hereby declare and affirm under the penalties of perjury that the facts states in Montgomery Hospice's Comments on Amedisys Hospice of Greater Chesapeake's CON Application for Hospice Services in Prince George's County are true and correct to the best of my knowledge, information and belief.

5/30/17
Date

Ann Mitchell
Ann Mitchell, MPH
President and CEO
Montgomery Hospice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2017 a copy of the a copy of the COMMENTS SUBMITTED BY MONTGOMERY HOSPICE, INC. IN OPPOSITION TO THE CON APPLICATION OF AMEDISYS HOSPICE OF GREATER CHESAPEAKE was sent via First Class Mail and Electronic Mail to the following:

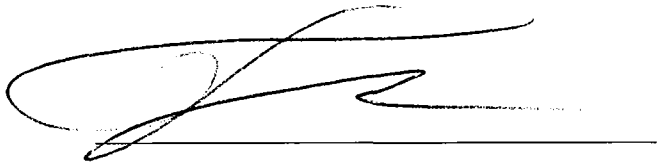
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A handwritten signature in black ink, appearing to read 'Timothy B. Adelman', written over a horizontal line.

Timothy B. Adelman