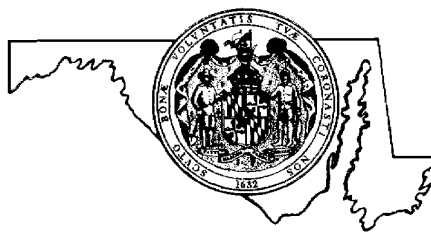


STATE OF MARYLAND

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MARYLAND HEALTH CARE COMMISSION

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July 31, 2018

By E-Mail and USPS

Timothy Adelman, Esquire
Hall Render Killian Health & Lyman, P.C.
180 Admiral Cochrane Drive, Suite 370
Annapolis, Maryland 21401

Re: Montgomery Hospice
Deficiencies in Pending Application
Prince George's County Hospice Review.
Docket No.: 16-16-2384

Dear Mr. Adelman:

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 Montgomery Hospice'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, Montgomery Hospice 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;

...
(c) Counseling (including bereavement and nutrition counseling)

In response to Subsection (1), Montgomery Hospice generally stated the numbers of people that it currently employs to provide these services. It needs to clarify whether 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:

(a) Physician services and medical direction;

(b) Hospice aide and homemaker services;

(c) Spiritual services;

(d) On-call nursing response; [and]

...
(f) Personal care

Montgomery Hospice 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 Montgomery Hospice 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.

Montgomery Hospice 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. Its policy does not describe the specific process by which it makes a determination of probable eligibility. It is unclear how or if the process for making determination of probable eligibility differs from its process for making a final determination of eligibility for charity or reduced fee care. Montgomery Hospice's "Charity Care / Financial Aid Policy No. 8-006" does not address reduced fee care or application for Medicaid. (DI #10, Att. CA3). The stated policy at the beginning of this document requires completion of its financial assistance application, but is unclear whether or not this is only required for the final determination of eligibility. Montgomery Hospice's financial assistance application requires supporting documentation. (DI #10, Att. CA6). As previously noted, 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.

Montgomery Hospice must revise its charity care policy to address these issues.

(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.

Montgomery Hospice makes reference to its patient handbook, which it notes is given to all patients and their families. (DI #10, p. 4 & att. CA4). The attachment appears to equate charity care with fee for service, when it first states that "[i]f there is no coverage for hospice services, the patient will be billed on a fee-for-service basis, which means there is a charge for each visit, as well as for supplies and medications." I note that the referenced page also advises the patient that, if s/he has "problems paying our charges, please ask your hospice social worker to evaluate the situation [and that] [n]o person will be denied essential service because of inability to pay." The wording, taken together, is unclear in that it 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.” The wording must be clarified to address charity care specifically.

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

In addition, Montgomery Hospice 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. Montgomery Hospice 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)(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 Montgomery Hospice’s 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.

Montgomery Hospice's projected cost/patient day is significantly above the Maryland hospice average cost (139% of state average), despite the fact that its high volume projections would be expected to facilitate economies of scale. Please explain the assumptions and/or factors contributing to projected high costs.

In addition, Montgomery Hospice's projected nursing visits/patient-day are the lowest among the applicants, and only 70% of Maryland hospice average. Similarly, its hospice aide visits/patient day of .18 is tied with P-B for lowest among the applicants, and just 56% of the Maryland hospice average. Please explain each or revise as necessary

Montgomery Hospice's projected productivity (annual visits/FTE) of nurses and hospice aides is just 53% and 43%, respectively, of the state average. Please explain or revise as necessary. Given that projected patient visits (by both nurses and aides) is below the Maryland hospice average, please explain why Montgomery Hospice's cost/patient day is significantly above the Maryland average.


If Montgomery Hospice's 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.

Timothy Adelman, Esq.
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I request that Montgomery Hospice 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 Montgomery Hospice 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.

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.
Margaret Witherup, 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