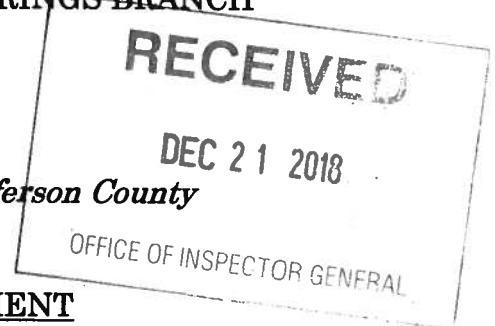


COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DIVISION OF ADMINISTRATIVE HEARINGS
HEALTH SERVICES ADMINISTRATIVE HEARINGS BRANCH
HSAHB CON 18-061

IN RE: Grace Home Care, Inc.
CON #056-06-5885(1)
Establish a home health agency to serve Jefferson County



MOTION FOR SUMMARY JUDGMENT

Baptist Healthcare System, Inc. d/b/a Baptist Health Home Care Louisville (“Baptist”), by and through counsel, and pursuant to 900 KAR 6:090 Section 3(5), moves for summary judgment denying the Certificate of Need Application (“Application”) of Grace Home Care, Inc. (“Grace”). There are no genuine issues of material fact and, based on the uncontroverted facts, Grace’s Application to establish a home health agency to serve Jefferson County is inconsistent with the criteria for home health services in the State Health Plan (“SHP”). Baptist is therefore entitled to a judgment denying the Application as a matter of law.

In order to be approved, Grace’s Application must be consistent with the SHP. KRS 216B.040(2)(a)2.a states, in pertinent part, that “[e]ach proposal approved by the cabinet *shall* be consistent with the state health plan. . . .” (Emphasis added) Similarly, 900 KAR 6:070 Section 2, entitled “Considerations for Formal Review,” states:

In determining whether to approve or deny a certificate of need, the cabinet’s review of an application under formal review shall be limited to the considerations established in this section.

1. Consistency with plans.

- a. To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.

The SHP contains the following Review Criteria for home health services:

Review Criteria

1. An application to establish a home health service shall be consistent with this Plan if there is a projected need for at least 250 additional patients needing home health care services in the county for which the application is made as shown in the most recent edition of the *Kentucky Annual Home Health Services Report*;
2. An application to expand a home health service currently licensed in Kentucky shall be consistent with this Plan if there is a projected need for at least 125 additional patients needing home health care services in the county for which the application is made as shown in the most recent edition of the *Kentucky Annual Home Health Services Report*;
3. Notwithstanding criteria 1 and 2, an application submitted by an existing home health agency that has met the emergency circumstances provision as outlined in 900 KAR 6:080, Section 2, and has received notice from the Office of Health Policy that an emergency exists shall be consistent with this Plan only if the application is restricted to the limited purpose of alleviating the emergency;
4. Notwithstanding criteria 1 and 2, an application by a licensed Kentucky acute care hospital or critical access hospital proposing to establish a home health service with a service area no larger than the county in which the hospital is located and contiguous counties shall be consistent with this Plan if the hospital documents, in the last twelve (12) months, the inability to obtain timely

discharge for patients who reside in the county of the hospital or a contiguous county and who require home health services at the time of discharge; and

5. Notwithstanding criteria 1 and 2, an application by an existing licensed Kentucky home health agency to expand to one (1) or more contiguous counties of its October 1, 2015 licensed service area shall be consistent with this Plan if the following conditions are met:

a. For an application filed prior to July 1, 2016:

i. The agency's most recently published rate by CMS Home Health Compare preceding the date the application is filed for "How often home health patients had to be admitted to the hospital" is equal to or better than national average; and

ii. The agency's most recently published rate by CMS Home Health Compare preceding the date the application is filed for "How often patients receiving home health care needed any urgent unplanned care in the hospital emergency room – without being admitted to the hospital" is equal to or better than the national average; or

b. For an application filed on or after July 1, 2016, the agency's published rate by CMS Home Health Compare under "Quality of Patient Care Star Ratings" was 4 stars or higher for three (3) out of the last four (4) reported quarters preceding the date the application was filed.

(2018 Update to the 2017-2019 State Health Plan (July 2018), pp. 33-34).

Grace's Application is inconsistent with the SHP criteria for home health services. The Home Health Need by Age Cohorts table updated by the Office of Inspector General, Division of Certificate of Need, on October 19, 2018 indicates that there is no unmet need in Jefferson County (-929 patients). (See Exhibit A attached hereto) Thus, pursuant to the official calculations from the Division of Certificate of Need, Grace's Application is undeniably inconsistent with the criteria set forth in the SHP, which requires a projected need of 250 additional patients needing home health services in order to establish a new agency.

Further, Grace's Application does not meet any of the exceptions to the SHP home health need model. Grace is not an existing home health agency and did not submit its Application pursuant to the emergency circumstances provision as outlined in 900 KAR 6:080, Section 2. Thus, the Application is inconsistent with SHP Review Criterion 3. Further, Grace is not a licensed Kentucky acute care hospital or critical access hospital proposing to establish a home health services. Thus, the Application is inconsistent with SHP Review Criterion 4. Finally, as previously mentioned, Grace is not an existing home health agency and thus does not have any published CMS Home Health Compare ratings. Accordingly, the Application is inconsistent with SHP Review Criterion 5.

Grace's Application does not meet any of the criteria for home health agencies as set forth in the SHP. Therefore, Grace's Application is inconsistent with the SHP as a matter of law, and its Application must be denied. There is simply no reason to

require the parties to submit to a hearing when disapproval is inevitable as a matter of law.

CONCLUSION

In light of the foregoing, Baptist respectfully requests that the Hearing Officer grant a summary disposition and deny Grace's Application. The undersigned respectfully requests that the foregoing motion be heard before the Hearing Officer during a telephonic pre-hearing conference.

Respectfully submitted,



Mathew R. Klein
DRESSMAN BENZINGER LAVELLE PSC
207 Thomas More Parkway
Crestview Hills, KY 41017
Telephone: (859) 341-1881
Fax: (859) 341-1469
mklein@dbllaw.com
*Counsel for Baptist Healthcare System, Inc.
d/b/a Baptist Health Home Care Louisville*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following by U.S. mail, postage prepaid, on this 20 day of December, 2018:

Dipendra Tiwari
640 Zorn Avenue, Unit 9C
Louisville, KY 40206

Agni Kharel
Chandra Kharel
5512 Bannan Crossings Drive
Louisville, KY 40218



Mathew R. Klein

Exhibit A

2017 Home Health Need

County	2017 Home Health Need by Age Cohorts						TOTAL	Avg. '16-'17	
	0-14	15-44	45-64	65-74	75-84	85+		Patients Served	Net Need
Adair	3	28	132	147	164	103	577	918	(341)
Allen	4	30	146	159	163	96	598	501	97
Anderson	4	32	163	158	153	122	632	452	180
Ballard	1	11	58	68	80	57	275	223	53
Barren	8	63	303	322	362	286	1,344	1,313	31
Bath	2	17	86	92	99	57	353	387	(34)
Bell	4	38	188	216	220	155	820	1,399	(578)
Boone	25	205	909	793	696	484	3,113	3,061	52
Bourbon	3	28	140	157	178	127	634	487	147
Boyd	7	68	335	379	422	324	1,535	1,592	(57)
Boyle	4	46	198	230	267	239	984	991	(6)
Bracken	1	11	60	63	64	38	237	253	(15)
Breathitt	2	19	96	102	97	50	365	393	(28)
Breckinridge	3	26	146	172	168	103	619	464	155
Bullitt	13	122	589	567	546	326	2,163	1,917	247
Butler	2	18	88	101	115	82	407	280	127
Caldwell	2	17	88	107	113	84	411	382	29
Calloway	5	70	224	272	311	207	1,089	875	89
Campbell	14	147	622	615	600	502	2,500	2,212	288
Carlisle	1	6	32	40	49	44	172	144	28
Carroll	2	15	72	74	76	59	297	373	(76)
Carter	4	38	187	209	210	129	778	781	(3)
Casey	2	21	107	136	143	101	510	705	(194)
Christian	15	135	327	358	419	342	1,596	1,573	23
Clark	6	51	254	277	286	207	1,081	1,060	21
Clay	3	32	140	134	135	85	530	944	(414)
Clinton	2	14	72	81	92	43	305	509	(204)
Crittenden	1	12	63	75	85	60	298	167	131
Cumberland	1	8	49	57	70	47	233	457	(224)
Daviess	18	146	659	710	777	688	2,997	2,472	526
Edmonson	2	17	86	108	121	69	402	430	(28)
Elliott	1	11	52	66	87	42	259	142	118
Estill	2	19	105	116	121	62	426	446	(20)
Fayette	50	591	1,913	1,846	1,747	1,537	7,684	6,545	889
Fleming	3	20	101	115	115	69	423	424	(1)
Floyd	6	51	258	296	293	180	1,084	1,117	(33)
Franklin	8	74	348	396	405	307	1,538	1,412	126
Fulton	1	8	40	50	58	41	199	328	(129)
Gallatin	2	13	64	58	47	24	208	201	7
Garrard	3	23	135	138	143	97	538	528	11
Grant	5	37	166	154	160	74	595	741	(146)
Graves	7	53	248	285	321	248	1,162	1,191	(29)
Grayson	5	37	177	202	210	132	763	777	(14)
Green	2	14	81	94	108	73	372	625	(253)
Greenup	5	48	250	307	351	246	1,206	1,264	(57)
Hancock	2	12	59	69	76	37	254	154	100

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**

Yellow: An Established Home Health Agency can Expand to this County.
 Green: New Home Health Agency can be Established in this County.

2017 Home Health Need

County	2017 Home Health Need by Age Cohorts						TOTAL	Avg. '16-'17	
	0-14	15-44	45-64	65-74	75-84	85+		Patients Served	Net Need
Hardin	20	171	721	663	681	513	2,769	3,065	(296)
Harlan	5	37	186	221	207	134	789	755	34
Harrison	3	25	138	143	152	111	572	430	142
Hart	3	25	135	139	148	87	537	611	(74)
Henderson	8	66	317	347	347	266	1,351	1,128	223
Henry	3	21	113	125	118	76	455	489	(33)
Hickman	1	6	31	42	57	48	184	146	38
Hopkins	7	64	313	360	395	268	1,407	1,284	123
Jackson	2	19	96	105	100	60	382	414	(32)
Jefferson	128	1,208	5,099	5,234	5,232	4,793	21,694	22,623	(929)
Jessamine	10	83	357	345	338	333	1,467	1,231	(14)**
Johnson	4	32	161	186	179	111	673	498	175
Kenton	29	262	1,095	1,052	986	788	4,212	4,537	(325)
Knott	2	21	112	123	120	63	442	337	105
Knox	5	45	207	239	287	148	932	1,022	(90)
Larue	2	20	100	106	123	100	452	336	116
Laurel	10	90	419	446	453	274	1,691	1,647	44
Lawrence	3	21	111	128	119	68	450	500	(50)
Lee	1	9	52	57	50	26	194	150	44
Leslie	2	14	76	80	88	55	315	311	4
Letcher	4	31	163	192	187	110	686	811	(125)
Lewis	2	18	99	106	116	70	411	363	48
Lincoln	4	33	169	189	214	134	744	826	(82)
Livingston	1	11	69	86	95	55	317	246	71
Logan	5	37	182	207	231	152	815	726	89
Lyon	1	11	65	92	95	62	325	255	71
Madison	13	159	544	552	559	417	2,245	2,116	129
Magoffin	2	18	94	97	95	53	358	257	102
Marion	3	28	133	137	141	141	582	542	40
Marshall	5	40	221	288	329	223	1,105	920	185
Martin	2	20	78	84	77	59	319	402	(82)
Mason	3	23	118	137	138	102	522	574	(51)
McCracken	10	90	442	532	580	514	2,169	1,729	440
McCreary	3	29	120	120	118	66	455	503	(48)
McLean	2	12	65	76	90	66	311	252	59
Meade	4	42	200	183	177	123	730	688	42
Menifee	1	8	48	54	60	34	205	185	21
Mercer	3	28	156	178	189	130	685	704	(19)
Metcalfe	2	13	68	77	95	58	313	327	(14)
Monroe	2	14	74	86	99	54	328	401	(72)
Montgomery	5	42	194	199	193	145	779	893	(114)
Morgan	2	21	93	94	88	61	359	318	41
Muhlenberg	4	45	211	243	270	192	965	896	70
Nelson	8	68	320	322	297	209	1,224	1,514	(289)
Nicholas	1	9	51	54	58	41	215	194	22
Ohio	4	34	158	184	202	141	724	502	222

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2017 Home Health Need

County	2017 Home Health Need by Age Cohorts						TOTAL	Avg. '16-'17	
	0-14	15-44	45-64	65-74	75-84	85+		Patients Served	Net Need
Oldham	11	103	489	419	359	232	1,614	1,050	565
Owen	2	14	77	86	86	46	312	247	65
Owsley	1	6	31	38	37	24	137	100	37
Pendleton	2	20	110	104	96	71	403	416	(13)
Perry	4	38	190	211	205	122	770	779	(8)
Pike	9	85	436	483	459	310	1,783	1,621	162
Powell	2	17	83	85	84	47	318	367	(48)
Pulaski	10	90	453	526	568	360	2,006	2,108	(102)
Robertson	0	3	16	19	23	24	85	73	12
Rockcastle	3	23	125	134	142	71	498	452	46
Rowan	4	45	138	144	169	114	613	594	20
Russell	3	23	126	149	166	120	587	677	(89)
Scott	10	92	374	314	283	180	1,253	971	33**
Shelby	8	71	331	327	306	210	1,254	1,105	150
Simpson	3	26	123	131	145	93	521	486	35
Spencer	3	27	151	127	109	56	472	400	72
Taylor	4	39	162	189	225	148	767	1,195	(427)
Todd	2	18	79	87	98	65	350	320	30
Trigg	2	18	105	140	155	81	501	326	175
Trimble	1	12	64	68	67	43	256	172	84
Union	2	25	95	110	108	72	412	363	49
Warren	21	233	733	730	721	561	2,998	2,632	367
Washington	2	17	84	93	105	84	386	329	57
Wayne	3	28	146	177	188	104	645	476	169
Webster	2	18	90	97	102	81	390	367	24
Whitley	7	54	226	244	256	157	944	1,228	(284)
Wolfe	1	10	51	63	66	30	221	161	61
Woodford	4	36	192	210	201	151	794	688	106
State Totals	735	6,821	29,871	31,393	32,021	23,880	124,721	121,941	1,905

Statewide Rates					
0-14	15-44	45-64	65-74	75-84	85+
0.87	3.94	25.32	71.51	149.90	304.28

* Numbers shown are rounded to the nearest whole number, while formulas within the cells are calculated with the unrounded number. This may make it appear that a Net Need number is off by one.

** Net Need has been adjusted to reflect CON approval to Establish (-250) or Expand (-125) Home Health Services in a county if the approved agency did not serve patients in the approved county as reported in the latest publication of the Kentucky Annual Home Health Services Report (CON #034-15-5847(1) and #073-01-5115(19)).

Yellow: An Established Home Health Agency can Expand to this County.
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