



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**OFFICE OF INSPECTOR GENERAL**

**Matthew G. Bevin**  
Governor

Division of Certificate of Need  
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**Adam M. Meier**  
Secretary

**Steven D. Davis**  
Inspector General

January 14, 2019

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

**RE: CON #056-06-5885(1)**  
**Grace Home Care, Inc.**  
**Louisville, Jefferson County**  
**Establish a home health care agency to serve**  
**Jefferson County**  
**Capital Expenditure: \$80,000.00**

Dear Dipendra Tiwari:

Enclosed is a copy of the Order Granting Motion for Summary Judgment on the above-referenced certificate of need, which disapproves the issuance of a Certificate of Need for Grace Home Care, Inc., CON #056-06-5885(1) based on inconsistency with:

Criterion 1 (consistency with plans)

In accordance with KRS 216B.085(4), the decision of the Cabinet shall become final for purposes of judicial appeal unless a reconsideration hearing is requested. This letter serves as notice of the Cabinet's decision.

In accordance with KRS 216B.090, any party of the proceedings may, for good cause shown, request in writing a hearing for purposes of reconsideration of a Cabinet's decision. The request for this public hearing must present significant, relevant information not previously available for consideration by the Cabinet, or demonstrate significant changes in the factors or circumstances relied upon by the Cabinet in reaching its decision, or demonstrate that the Cabinet has materially failed to follow its adopted procedures in reaching its decision, or state that a public hearing pursuant to KRS 216B.085 was not conducted prior to a decision to deny a Certificate of Need.

This reconsideration request shall be filed in writing with the Cabinet within fifteen (15) days of the date of notice of this decision. If the request for reconsideration is granted by the Cabinet, the public hearing will be held within thirty (30) days after the decision to grant the request for reconsideration.

Letter to:  
Dipendra Tiwari  
CON #056-06-5885(1)  
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In accordance with KRS 216B.115, any party to the proceedings may appeal a decision of the Cabinet by filing a petition for review in the Franklin Circuit Court within thirty (30) days after notice of the final decision unless a request for reconsideration has been filed, in which case the petition shall be filed within fifteen (15) days of the Cabinet's decision not to reconsider or notice of its decision on reconsideration.

Contact our office at (502) 564-9592 if you have any questions concerning this matter.

Sincerely,



Steven D. Davis  
Inspector General

Enclosure

c: Mathew R. Klein

**COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
Division of Administrative Hearings  
Health Services Administrative Hearings Branch  
HSAHB CON 18-0061**

IN RE:           **GRACE HOME CARE, INC.**  
                  CON #056-06-5885(1)  
                  *Establish a home health care agency to serve Jefferson County*

**ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

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This Certificate of Need (“CON”) application is scheduled for an administrative hearing to be held January 29-30, 2019.

On December 21, 2018, Affected Party Baptist Healthcare System, Inc., d/b/a Baptist Health Home Care Louisville (“Baptist”), filed a Motion for Summary Judgment and a Motion for Telephonic Prehearing Conference. On January 3, 2019, the tribunal entered an Order Setting Filing Deadline, providing the Applicant, Grace Home Care, Inc. (“Grace”) until January 10, 2019, to file a response to the Motion for Summary Judgment. The Applicant failed to file a response.

In its Motion, Baptist argues that the application is inconsistent with the State Health Plan (“SHP”) and that, as such, the application should be disapproved as a matter of law. More specifically, Baptist asserts that Grace is unable to meet the SHP home health need model.

The July 2018 Update to the 2017-2019 SHP contains the following Review Criteria for home health services:

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.

In the Additional Information submitted by the Applicant on October 24, 2018, Grace makes clear that it is proceeding under Review Criterion 1, as it indicated, "Not Applicable" for Review Criteria 2-5.

The most recent edition of the *Kentucky Annual Home Health Services Report* was issued on October 19, 2018. Per the Report, the home health net need for Jefferson County is negative

929. Thus, the Applicant does not meet Review Criterion One, which requires a projected need for at least 250 additional patients needing home health care services in Jefferson County.

Pursuant to KRS 216B.040(2)(a)2.a and 900 KAR 6:070, Section 2, in order to be approved, the Application must be consistent with the SHP.

Summary judgment is appropriate when there are no material issues of fact in dispute. Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 482 (Ky. 1991); Paintsville Hosp. Co. v. Rose, 683 S.W.2d 255, 256 (Ky. 1985). Under Kentucky law, summary judgment should only be used “to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant.” Paintsville, 683 S.W.2d at 256 (quoting Roberson v. Lampton, 516 S.W.2d 838, 840 (Ky. App. 1974)).

Here, it is undisputed that the projected home health patient need for Jefferson County is negative 929. Thus, Grace does not meet the criteria for home health agencies as set forth in the SHP. Having concluded that the application does not comply with the *2017-2019 State Health Plan (July 2018)*, and as compliance with the SHP is required to approve an application for a Certificate of Need, it is not necessary to address the remainder of the application.

#### **FINAL ORDER**

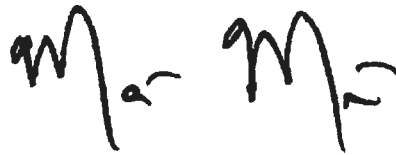
Based on the foregoing, it is hereby **ORDERED** that the Affected Party’s Motion for Summary Judgment is **GRANTED** and the application of Grace Home Care, Inc., CON #056-06-5885(1), for a certificate of need to establish a home health care agency to serve Jefferson County, Kentucky, is hereby **DISAPPROVED** as inconsistent with Criterion 1.

The Affected Party’s Motion for Telephonic Prehearing Conference is **DENIED AS MOOT**. The hearing scheduled for January 29-30, 2019, is **CANCELLED AS MOOT**.

Pursuant to KRS 216B.090(1), any party to the proceeding may file a request for reconsideration with the Cabinet for Health and Family Services, Office of Health Policy, within fifteen (15) days from the notice of this decision.

Pursuant to KRS 216B.115(1), any party to the proceeding may file an appeal to the Franklin Circuit Court within thirty (30) days from the date of notice of this decision or within fifteen (15) days from the notice of a decision to deny reconsideration or a decision on reconsideration.

Entered this the 11<sup>th</sup> day of January, 2019.

A handwritten signature in black ink, appearing to read 'Maria Mier', written in a cursive style.

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MARIA MIER  
Administrative Hearing Officer

*Distribution to be made by the Office of Inspector General.*