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By Kelli Fisk at 10:00 am, Sep 09, 2009

September 8, 2009

North Carolina Division of Health Services Regulation  
Medical Facilities Planning Section  
2714 Mail Service Center  
Raleigh, North Carolina 27699-2714

Attention: Floyd Cogley

Re: Liberty Home Care, LLC Comment against the Petition of Bayada Nurses, Inc. to adjust the need determination to allocate an additional home health agency in Brunswick County.

Dear Sir:

Bayada Nurses, Inc. ("Bayada") has recently filed a Petition, dated July 31, 2009, requesting an exception to the need determination for home health agencies in Brunswick County to allocate an additional home health agency for this county in the 2010 State Medical Facilities Plan (SMFP). After reading the request, Liberty Home Care, LLC ("Liberty"), a home health provider in Brunswick County and an interested party, contends that there is no basis in fact to support Bayada's premise that patients are better served by an agency that is located within the county. Bayada suggests that either quality or availability suffer when care is provided by an agency (as distinct from a physical office location) based outside of the particular county. Such an assertion is unfounded and an exception granted pursuant to Bayada's Petition would be contrary to North Carolina General Statutes § 131E-175(4), which states that "the proliferation of unnecessary health service facilities results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services."

Liberty has been serving the residents of Brunswick County for over twenty (20) years without limitations of service or accessibility. Liberty has never rejected a patient due to distance from the office. We primarily serve patients in the county from our Supply office, however we also have the ability to serve patients in Brunswick County from two other locations, Whiteville office to the west and Wilmington office to the northeast. We normally can reach all locations in Brunswick County from our Supply location and if needed we can serve patients from our other two locations.

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The assumption that Bayada relies upon, that "... because of the relatively large size of Brunswick County, sufficient resources need to be located within the county to cut down on travel times and provide the most cost effective, quality services...", is problematic in itself. If another sole agency is allowed to operate in Brunswick County, it may, in fact, be more costly to operate due to the implied distance the employees would need to travel to cover all parts of the county. To take this point one step further, if Bayada believes that any service from an agency based outside Brunswick County is less efficient, would Bayada serve only some parts of the county and not the entire county if certain patient locations were not in sufficiently cost-effective proximity to the Bayada office location? In contrast, Liberty gains efficiencies by serving patients from its office in New Hanover County to residents in the northern part of Brunswick County and from its Whiteville office to residents in the western part of Brunswick County. Therefore, Liberty with its own agencies in contiguous counties is best able to serve Brunswick County and will be able to meet the future needs. .

The formula for determining need for home health agencies is recommended by the State Health Coordinating Council (SHCC) and approved by the Governor. The SHCC has reviewed different methodologies over the years and is best qualified to identify what needs the State has by county. The 275 patient limit has been determined to be a reasonable threshold to assure the needs of the population are met and the needs of agencies to maintain viability.

The implication of granting a CON to Bayada as an exception to the current methodology that there must be an unmet need of care for 275 patients in the County would be that other counties throughout the State would fall under scrutiny. Union County has a deficit of 223, Guilford County of 141, Forsythe County of 101, and Pitt County of 97, all deficits of a greater number than the 90 in Brunswick County.

Moreover, even though CON looks at county specific populations, agencies can serve a population approximately 60 miles from their office (this is only a guideline and not absolute in and of itself). This allows agencies to serve populations outside of the county the office is located in. SHCC seemingly grants recognition to the treatment of patients by out-of-county providers in that the SMFP has grouped counties by regions in data analysis. In reviewing Region O, Brunswick, Columbus, New Hanover and Pender, there is actually a 128 surplus. This identifies that the region is adequately served with the currently approved agencies. Only 2 other regions in the state have a higher surplus, Regions F at 280 and J at 132.

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Liberty has been increasing the number of patients served on an annual basis and welcomes the opportunity to serve more patients. The structure of most home health agencies allows for and in fact encourages growth. The Petitioner states "However, a much greater number than 90 patients will not be adequately served if a third Medicare-certified home health agency is not allocated to Brunswick County." This statement has no basis. The three bullet points that the Petitioner identifies are flawed: First, the number of home health agencies in no way reflects the ability to serve patients in any given location; Second, if the population projections through 2019 becomes reality, the SMFP will address the needs of the population at each year and may issue a CON with the methodologies in effect; Third, the suggestion that the Petitioner states "home health patients are being served by out-of-county home health agencies which is not a positive trend." is purely speculative, is not supported by any facts and is without merit. The SMFP does not identify how many agencies is appropriate to serve a particular county, only that there should be at least one county based home health agency in each county (Policy HH-3).

The acceptance of this Petition would erode the Certificate of Need process and be precedent setting for others to challenge need determinations in other counties with deficits less than 275 patients or by the number of agencies based in a county. It is not how many agencies serve an area, but how effectively the agencies serve and if the agencies are meeting the needs of the population as identified in the SMFP. Liberty can meet the needs of Brunswick County.

Again, Liberty opposes the CON Section approving this Petition from Bayada Nurses, Inc. requesting an exception to the 275 deficit threshold as the basis for the issuance of a new CON and respectfully requests that Bayada's Petition be denied.

Sincerely,

A handwritten signature in black ink that reads "Anthony J. Zizzamia, Jr." with a stylized flourish at the end.

Anthony J. Zizzamia, Jr.  
President