



State of New Jersey

DEPARTMENT OF HEALTH AND SENIOR SERVICES

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JON S. CORZINE
Governor

www.nj.gov/health

HEATHER HOWARD, J.D.
Commissioner

January 9, 2008

**VIA UNITED
PARCEL SERVICE**

Daniel Kane
Interim President and Chief Executive Officer
Bayonne Medical Center
29 East 29th Street
Bayonne, New Jersey 07002

Re: CN# FR 071203-09-01
Bayonne Medical Center
Project Cost: \$100,000
Expiration Date: January 9, 2013

Dear Mr. Kane:

I am pleased to inform you that I am approving IJKG Opco, LLC's (Opco) certificate of need (CN) application, submitted pursuant to N.J.A.C. 8:33-3.1, for the transfer of ownership of Bayonne Medical Center (BMC), Bayonne Medical Care Center Transitional Care Unit and Bayonne Medical Center School of Nursing, to Opco, a wholly owned subsidiary of IJKG, LLC, a newly formed, for-profit limited liability company. This application is being approved at the total project cost noted above.

This CN approval is limited to the transfer of ownership of BMC, a licensed general acute care hospital with a 261 bed capacity of which 205 are medical/surgical beds, 10 obstetrical beds, 17 pediatric beds, 14 adult ICU/CCU beds and 15 adult acute psychiatric beds. It is designated as a Community Perinatal Center-Basic. Moreover, it also has 17 hospital based, long term sub-acute beds. The service complement consists of 6 inpatient OR's, 2 cystoscopy rooms, 1 full service cardiac catheterization lab, 12 chronic hemodialysis stations, 1 MRI unit, emergency PTCA services, C-Port-E demonstration elective angioplasty and 2 hyperbaric chamber units. As set forth in the CN application, Opco agrees to operate BMC as a general acute care hospital for a period of at least seven years following the sale of the hospital, continue all existing medical services offered by BMC, maintain the existing licensed bed capacity, service complement and programs at the BMC location and in their surrounding service area. Opco also agrees to hire substantially all hospital employees who are employed at the time of the sale, subject to the staff reductions documented in the Asset Purchase Agreement.

Daniel Kane
CN# FR 071203-09-01

The standards that I am compelled to use in evaluating this application are set forth in statute (N.J.S.A. 26:2H-1 et seq.) and by regulation (N.J.A.C. 8:33). I must be satisfied that the project submitted by Opco is consistent with those requirements. Therefore, for the reasons that follow, I am approving with conditions the application submitted for the transfer of ownership of BMC to Opco. I note for the record that my decision to approve this application is consistent with the recommendation of the State Health Planning Board (SHPB), which recommended approval of the project with conditions, at its January 8, 2008 meeting. I reviewed the application including completeness questions and responses, the transcript of the public hearing held as part of the Community Health Assets Protection Act (CHAPA) process, and the Department's staff recommendations. At the completion of the SHPB hearing, I was provided with a briefing by Department staff as to the SHPB's recommendations.

N.J.S.A. 26:2H-8, as well as N.J.A.C. 8:33-4.9(a), provides for the issuance of a certificate of need only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health services in the region or statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations, I must take into consideration: (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation. A review of the aforementioned statutory criteria must be undertaken to demonstrate a need for the transfer of ownership as requested in the application. As previously mentioned, I have also taken into consideration the recommendations made by the SHPB to approve this application.

As to the specifics of this application, N.J.S.A. 26:2H-8(a) requires that I consider the availability of facilities or services, which may serve as alternatives or substitutes. I believe the applicant carefully and thoroughly examined its available options before deciding to proceed with the acquisition of BMC. The applicant believes that this transfer of ownership is the only viable option to preserving the current level of health care services for city residents. The applicant does not intend to downsize services or reduce availability to any service previously provided at BMC. Although there are other hospitals in the county that offer similar health care services to BMC, these general hospitals are not as accessible as BMC for residents of Bayonne. I agree that the proposed transfer of ownership, as opposed to the closure of the hospital, will preserve

Daniel Kane
CN# FR 071203-09-01

access to health care services for the community, including the medically indigent and medical underserved population. Thus, I am satisfied that this criterion is met.

I also find that the requirement at N.J.S.A. 26:2H-8(b) to consider the need for special equipment and services in the area would be met in this case since following the transfer of ownership, Opco has agreed to offer the same services that are currently licensed at the present facility.

With respect to N.J.S.A. 26:2H-8(c) regarding the possible economies and improvement in services to be anticipated from the operation of joint central services, I find that this is not applicable since the applicant will continue to operate a separate hospital. Moreover, I note that the applicant states that through medical staff development and management expertise following the transfer of ownership, while maintaining all existing beds and services at BMC and the surrounding service area, they will enhance revenues, effect operational efficiencies and improve resource utilization to reverse the recent operating losses at BMC.

N.J.S.A. 26:2H-8(d) requires me to examine the adequacy of financial resources and sources of present and future revenues. Financial analysis of the Opco application undertaken by the Department of Health and Senior Services (Department) reveals that Opco possesses adequate financial resources to accomplish the proposed project. Finally, with respect to N.J.S.A. 26:2H-8(e) regarding the availability of sufficient manpower in the several professional disciplines, I am satisfied that there will be sufficient qualified personnel to staff the hospital since Opco will continue to operate all existing beds and services at BMC and the surrounding service area and has agreed to hire substantially all of BMC's employees who are employed at the time of the sale, subject to the staff reductions as documented in the Asset Purchase Agreement.

N.J.S.A. 26:2H-8(f) requires consideration of such other factors as may be established by regulation; therefore, I have taken into consideration the applicable regulations for the services subject to full review (i.e., N.J.A.C. 8:33-1.1 et seq.). Opco is in compliance with the access requirements set forth in N.J.A.C. 8:33-1.1 et seq. and N.J.A.C. 8:33-4.10(a). Specifically, Opco states it will make no changes to the care or services currently provided by BMC and that outreach efforts will continue to low income, racial and ethnic minorities, women, disabled, elderly and all other patients in need of prevention, diagnostic and treatment services. The applicant states that there will be no change in BMC's policies regarding the provision of indigent care and that Opco would continue to provide indigent care in accordance with State and federal law. Therefore, Opco would continue to accept all patients regardless of their ability to pay and maintain a commitment to the community to continue providing medical care and treatment for medically underserved populations.

Daniel Kane
CN# FR 071203-09-01

In addition, N.J.A.C. 8:33-4.9(a) requires a demonstration that this transfer of ownership shall not have an adverse impact on the population being served in regards to access and quality of care. The applicant indicates that the transfer of ownership of BMC, as opposed to the closure of the hospital, will preserve and enhance the financial viability of the hospital, and allow it to remain with its current mission as a general acute care hospital providing healthcare services in the community. In addition, Opco has made a commitment to maintain BMC as a general acute care hospital for no less than seven years after the transfer of ownership and will continue to offer at BMC similar levels and types of services to the market area which were offered prior to the acquisition.

Finally, I find that Opco has provided an appropriate project description, which includes information as to the total project cost, operating costs and revenues, services affected, equipment involved, source of funds, utilization statistics, and justification for the proposed project (N.J.A.C. 8:33-4.10(b)); assurance that all residents of the area, particularly the medically underserved, will have access to services (N.J.A.C. 8:33-4.10(a)); and assurance that it will meet appropriate licensing and construction standards (N.J.A.C. 8:43G-1.1 et seq. and N.J.A.C. 8:33-4.10(d)).

Based on the foregoing, I am approving the application for the transfer of ownership of BMC. My decision to allow this transfer of ownership to Opco is based on the fact that the operation of BMC under the proposed new ownership would be beneficial to the population in its service area since the transfer of ownership, as opposed to the closure of the hospital, will preserve access to health care services for the community, including the medically indigent and medically underserved population. I believe that this approval will not have an adverse impact on any hospital in Hudson County or the surrounding counties.

Finally, I acknowledge BMC's long-standing commitment to the residents in its service areas and believe that this approval will better enable BMC to maintain and enhance this commitment into the foreseeable future. Based on the foregoing, and noting the approval of the SHPB, I am approving the application for the transfer of ownership of BMC subject to the following conditions:

1. A license to operate BMC will not be issued to Opco until the transaction is approved by the Attorney General under P.L. 2000, c. 143, the Community Health Assets Protection Act (CHAPA), and a notarized letter indicating the actual date of the transfer has been submitted to the Certificate of Need and Healthcare Facility Licensure program. Opco shall apply for a new license and surrender the existing license within ten days of CHAPA approval.

Daniel Kane
CN# FR 071203-09-01

2. As noted in the application, Opco shall hire substantially all BMC employees who are employed at the time of the sale, subject to the description of staff reductions documented in the Asset Purchase Agreement, dated November 8, 2007.
3. In accordance with the provisions of N.J.S.A. 26:2H-18.59h, Opco shall "offer to its employees who were affected by the transfer, health insurance coverage at substantially equivalent levels, terms and conditions to those that were offered to the employees prior to the transfer."
4. As noted in the application, Opco shall operate BMC as a general hospital for at least seven years.
5. Opco shall continue all clinical services and community health programs currently offered at BMC by the previous ownership. Any changes in this commitment involving either a reduction or elimination of clinical services or community health programs offered by BMC's former ownership shall require prior written approval from the Department and shall be subject to all applicable statutory and regulatory requirements.
6. Opco shall submit to the Department a quarterly progress report on their efforts to reinstate inpatient Obstetric and OB/GYN services with the reporting period commencing on the date upon which the certificate of need is approved. Within one year of the date of this approval, Opco shall have either reinstated these services or filed appropriate applications to the Department for their permanent removal.
7. Opco shall continue compliance with N.J.A.C. 8:43G-5.21(a), which requires that "[a]ll hospitals . . . provide on a regular and continuing basis, out-patient and preventive services, including clinical services for medically indigent patients, for those services provided on an in-patient basis." Documentation of compliance shall be submitted within 30 days of the issuance of the license and quarterly thereafter for a period of seven years.
8. In accordance with N.J.S.A. 26:2H-18.64 and N.J.A.C. 8:43G-5.2(c), Opco shall not only comply with federal EMTALA requirements but also provide care for all patients who present themselves at BMC without regard to their ability to pay or payment source.

9. The value of indigent care provided by BMC shall be determined by the dollar value of documented charity care, calculated at the prevailing Medicaid rate, and shall not be limited to the amount of charity care provided historically by BMC.
10. Opco shall submit quarterly unaudited financial statements and annual audited financial statements. Upon Department review and request, Opco shall make themselves available to the Department to provide additional clarification.
11. Opco shall appoint a Board of Trustees (governing board) of the hospital that shall include the following ex-officio voting members: the Mayor of the City of Bayonne or his/her designee, the President of the Health Professional and Allied Employees (HPAE) union or his/her designee, the President of the BMC Medical Staff and the co-chair (community member) of the Community Advisory Group (CAG), as described in Condition 12c. This Board shall maintain suitable representation of the residing population of BMC's service area who are neither themselves employees of, nor related to employees of, any parent, subsidiary corporation or corporate affiliate. Annual notice shall be made to the Department of this Board's roster, along with any policies governing Board composition, governance authority and Board appointments.
12. Within three months of approval of this application, Opco shall develop and participate in the CAG to provide ongoing community input to the hospital's CEO and the hospital's Board of Trustees on ways that BMC can meet the primary, preventive, reproductive health service needs and emergency health needs of all residents in its service area.
 - a. Subject to the provisions below, Opco shall determine the membership, structure, governance, rules, goals, timeframes, and the role of the CAG in accordance with the primary objectives set forth above, and shall provide a written report setting forth same to the hospital's Board of Trustees, with a copy to the Department and subject to the Department's approval, within 60 days from the date of formation of the CAG.
 - b. Opco shall minimally seek participation from each town in the service area of BMC by offering a seat on the CAG to a representative of each town that provides BMC with 30% of the hospital's market share. Membership on the CAG shall include patient advocates, including patient advocates whose mission is to ensure that New Jersey residents are provided fully-integrated and comprehensive reproductive services,

local health officials, clinical practitioners, including but not limited to, obstetricians, internists and other health care providers such as hospitals and clinics.

- c. Opco shall designate co-chairs of the CAG, one of whom shall be a member of the hospital's Board of Trustees and one of whom shall be a community member who is neither employed nor related to anyone employed by any parent, corporate subsidiaries or corporate affiliates.
 - d. The co-chairs of the CAG shall jointly submit to the hospital's Board of Trustees, with a copy to the Department, a semi-annual report of the progress toward the goals of the CAG.
 - e. The co-chairs of the CAG shall jointly transmit to the hospital's Board of Trustees, with a copy to the Department, quarterly and any special reports relative to the implementation of these conditions.
 - f. Opco may identify a report as proprietary which is submitted to the CAG as required in Condition 12, which shall not be applicable to any mandatory reporting requirement or publicly reported document.
 - g. Opco may petition the Department to disband the CAG not earlier than three years from the date of CN approval and on showing that all of the above conditions have been satisfied for at least one year.
13. For seven years after initial licensure of BMC under Opco ownership, the hospital's Board Chairman, President/CEO and other senior hospital management shall meet with the Commissioner of the Department of Health and Senior Services (Commissioner) at regular intervals on a schedule to be determined by the Commissioner to discuss the hospital's condition and compliance with the terms of this certificate of need.
14. Opco shall develop a patient transportation plan after performing an assessment to determine transportation needs. This plan shall be submitted to the Department within three months of the date of certificate of need approval. This plan shall remain in effect for seven years after licensure. Any changes in this plan require Department approval and shall require 120-day prior notice. A self-evaluation of the implementation of the plan shall also be conducted on a yearly basis for seven years after licensure to measure effectiveness of this initiative and shall be submitted to the Department for review and comment.

Daniel Kane
CN# FR 071203-09-01

15. An outreach effort shall be placed into effect to ensure that all residents of the hospital service area, especially the medically indigent, have access to the available services at the location. A self-evaluation of this effort shall be conducted on a yearly basis for seven years after licensure to measure its effectiveness and shall be submitted to the Department for review and comment.
16. All the above conditions shall also apply to any successor organization to Opco (i.e., for the unfilled balance of the seven years) who acquires BMC within seven years from the date of the CN approval.
17. Nothing in the above conditions shall be construed to negatively affect any lender's rights should Opco be unable to continue the operation of the hospital.

Failure to satisfy the aforementioned conditions of approval may result in sanctions, including license suspension, monetary penalties and other sanctions in accordance with N.J.S.A. 26:2H-1 et seq. and all other applicable requirements. Acceptance of these conditions will be presumed unless written objections are submitted to the Department within 30 days of receipt of this letter. Upon receipt of such objections, this approval will be deemed suspended and the project shall be reexamined in light of the objections.

Please be advised that this approval is limited to the proposal as presented and reviewed. An additional review by the Department may be necessary if there is any additional change in scope, as defined in N.J.A.C. 8:33-3.9. However, effective August 5, 2002, a change in cost of an approved certificate of need is exempt from certificate of need review subject to the following:

1. The applicant shall file a signed certification as to the final total project cost expended for the project at the time of the application for the transfer of ownership of the facility with the Office of Certificate of Need and Healthcare Facility Licensure.
2. Where the actual total project cost exceeds the certificate of need approved total project cost and is greater than \$1,000,000, the applicant shall remit the additional certificate of need application fee due to the Office of Certificate of Need and Healthcare Facility Licensure. The required additional fee shall be 0.25 percent of the total project cost in excess of the certificate of need approved total project cost.

Daniel Kane
CN# FR 071203-09-01

3. The Department will not issue a license for beds/services until the additional fee is remitted in full.

This approval is not intended to preempt in any way any municipality's authority to regulate land use within its borders and shall not be used by you to represent that the Department has made any findings or determination relative to the use of any specific property. Finally, please be advised that the facility may not operate under the ownership of Opco until such time as a license amendment, reflecting the change, has been issued by the Office of Certificate of Need and Healthcare Facility Licensure. In addition, any alteration, renovation, or new construction of the physical plant requires the submission of plans to the Department of Community Affairs, Division of Codes and Standards, Healthcare Facilities Plan Review, for review and approval prior to the initiation of work.

Please be aware that the Department will forward the above-noted conditions to the Attorney General and request that they be incorporated as conditions within any action taken regarding Opco's application under CHAPA. These conditions are imposed to prevent a negative impact on quality, availability or accessibility of health care in Hudson County as a result of the proposed sale.

We look forward to working with you and helping you to provide a high quality of care to your patients. If you have any questions concerning this certificate of need, please do not hesitate to contact John Calabria, Director, Office of Certificate of Need and Healthcare Facility Licensure, at (609) 292-8773.

Sincerely,



Heather Howard, J.D.
Commissioner

c: John A. Calabria