



December 27th, 2016

VIA Email and Mail

The State of Alaska
Department of Health and Social Services
Office of the Commissioner
Valerie Davidson
Anchorage
3601 C Street, Suite 902
Anchorage, Alaska 99503-5923

Dear Commissioner Davidson:

In response to the decision rendered by The Department of Health and Social Services on the Certificate of Need dated December 1st, 2016 and pursuant to 7 AAC 07.080, this letter serves as official notice of Mat-Su Colonies request for an administrative appeal.

Dated December 27th, 2016, this notice falls within the 30 day timeframe from the date of the official notice 7 AAC 07.072 from the Department.

The basis for this request lies in the failure of the department to provide accurate information to the applicants as well as in their analysis and vetting of information presented during the application process and through the public comment period. The subsequent decision that was made to reduce Mat-Su Colony's proposed project from 104 beds to 74 beds is not in accordance with the application review standards. Furthermore, this decision represents the most costly solution of delivering needed skilled nursing beds to the market by decreasing efficiencies and proper use of resources with two facilities versus one.

Please note that Mat-Su Colony does not dispute the department's decision to issue a certificate of need. There is an unequivocal need in the Valley for additional Skilled Nursing beds. Of dispute is the following.

In 7 AAC 07.060 (c), during a competitive review process, *"If the department determines each applicant is equally capable of providing the health services in a manner that meets the purposes of this chapter, the department will give preference to the originating application."* MSC has devoted more than two years and extensive resources in the Valley developing a relationship with the community to meet their needs. No preference was given to MSC as the originating application as the decision rendered by the department almost equally divided the identified need between the two applicants.

In addition to failing to meet this standard, the department also failed to analyze and vet all information available during the application and public comment period in accordance with the General Review Standards for Skilled Nursing Facilities; specifically standards 1, 3, 5 and 6.

General Review Standard #1: Document Need

1. Occupancy rates used to calculate bed need
 - a. Occupancy rates for the existing facilities in the Anchorage market were not publically available on the Certificate of Need website
 - b. Requests to the department resulted in the department supplying occupancy rates to applicant.



- c. Occupancy rate numbers provided differed from the numbers used by the department of health resulting in applicant deriving a need of 104 beds and the department identifying a need of 134 beds.
- d. Applicant's intent was to build a facility that met the entire need in the market. Because of the incorrect information provided, applicant's proposal was short of meeting the market demand leading the department to split the decision so the entire need could be met.
- e. Applicant is prepared to put forth a proposal to meet the entire need in the market if this is the intent of the department.

General Review Standard #3: Stakeholder Participation

1. Equal weight was given to both applicants for stakeholder participation even though according to staff review, Mat-Su Colony exhibited overwhelming support for its project.
 - a. Public Comments – 15 total, 15 in favor of project. 9 specifically in favor of Mat-Su Colony, 3 specifically in favor of Maple Springs
 - i. According notes taken by MSC of the public hearing there were actually 17 total comments, 11 specifically in favor of MSC, 2 Specifically in favor of MSSL
 - b. Written Comments – 191 total comments, 130 specifically in favor of MSC and 48 in favor of MSSL
2. On it's own merits, it is not clear that MSSL's efforts would have produced enough public support to satisfy this requirement. MSSL is relying on the support generated by MSC to meet this requirement.

General Review Standard #5: Impact on Existing System

1. The department failed to assess the affect of having two smaller facilities competing with each other in the same market.
 - a. Increases costs to the overall Medicaid system by unnecessarily duplicating positions in each facility.
 - b. Increases capital costs by advocating a two-facility decision thereby destabilizing the financial viability of both projects.
 - c. Competing for an extremely scarce supply of employees qualified to provide care
2. Incorrect calculation of impact to Medicaid system
 - a. The Office of Rate Review used applicant Medicaid Utilization rates to determine number of Medicaid patient days in the calculation.
 - b. MSSL's application represented Medicaid Utilization rates much lower (33%) than current Anchorage average rates (59%) severely underestimating the actual impact on Medicaid.
 - c. The department should have modified their analysis to reflect this underestimation to give a true impact on the Medicaid system.
3. Unnecessarily increases the cost to the Medicaid program by encouraging two separate facilities to be built versus realizing efficiencies in a single facility to meet the bed demand.
 - a. The decision encourages duplicative costs to the Medicaid system that are eventually reimbursed through revised Medicaid base rates. By choosing two projects, the department has chosen to increase costs to an already overstretched Medicaid budget in the state of Alaska.
4. Department failed to weigh the negative affect of competition by MSSL on existing healthcare infrastructure namely the Assisted Living market in the Mat-Su Borough when



identifying if they met this criteria.

General Review Standard #6: Access

1. The department argues that two facilities increase access for individuals seeking care but fails to consider the cost to the Medicaid system of two buildings versus one.
 - a. The facilities are slated to be roughly 5.6 miles apart from each other.
 - b. As outlined in the MSC application, applicant's facility is almost equi-distance from the two most populated cities (Wasilla and Palmer) in the Mat-Su Borough leaving it ideally accessible for individuals traveling by car, bus or plane.
 - c. The marginal gains of having separate facilities that might be slightly closer in proximity to an individual seeking care do not justify the increased cost of building and operating an additional facility.
 - d. If the intention of the department was to increase "choice" for individuals seeking care, this intention is outside of the scope of review of the CON process. The department is instructed to weigh the effects of competition in the market place, not to create it. Additionally, the market being analyzed encompasses Anchorage, which currently has two facilities. With an additional facility in the Valley, there is ample choice available for individuals seeking these services.

Additional Considerations for Concurrent Review

The department also failed to properly evaluate applicant qualifications listed under "Additional Considerations for Concurrent Review" specifically "1. Quality" and "2. Licensure and Accreditation".

Quality

1. The department failed to properly vet MSSL's experience when determining their ability to operate a skilled nursing facility. MSC provided information during the public comment period to encourage the department to investigate misrepresentations of experience and work history in the MSSL application but the department failed to do so.

Licensure and Accreditation

1. Staff review simply states that both applicants have met the standard of demonstrating a *"pattern of licensure and accreditation surveys with few deficiencies and a consistent history of few verified complaints"*. What information was used to verify a history of licensure and survey history for MSSL? At the time of application they had never owned or operated a skilled nursing facility as a company and therefore the department had no basis for crediting them with completion of this criteria.

In summary, the department failed to:

1. Give preference to the originating application as stipulated in 7 AAC 07.060 (c)
2. Provide accurate occupancy rate numbers to the applicants to establish consistent bed need calculations that were the basis for creating a plan to meet market needs
3. Properly reflect public comment in the decision making process by attributing equal weight to MSL and MSSC for meeting "Stakeholder Participation" criteria
4. Accurately assess the detrimental increase in cost to the Medicaid system by creating two separate projects versus one
5. Weigh "access" to care relative to project costs of two facilities



6. Vet qualifications of the applicants to clear up misrepresentations made by MSSL to satisfy the "Quality" standard.
7. Vet licensure and survey history of the applicants relative to the "Licensure and Accreditation" standard.

The oversight of these key points necessitates further review in an administrative hearing. It is our hope that we will be given the opportunity to build our original project with 104 beds and create an alternate plan to accommodate the 134 beds determined by the department. Revising the decision by the department will reduce costs to the Medicaid system, make the best use of scarce employee resources in the Valley and stabilize the viability of the project to provide quality care into the future.

Please let us know if there is any further information we can supply at this time. We would be open to any mediation attempts the department would like to put forth as it relates to this matter. For our purposes, Mat-Su Colony has retained the services of Stephen D. Rose with Hall, Render, Killian, Heath & Lyman, PC for assistance with the appeal process.

Please contact me at 801-899-5364 or on email at bnewberry@arletahc.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Newberry".

Brian Newberry
CEO, Arleta Healthcare

cc: Doug Clegg, CEO Spring Creek Enterprises
Serge Newberry, Arleta Healthcare
Stacie Kraly, Chief Assistant Attorney General
Jon Sherwood, Deputy Commissioner
Alex Hicks, Coordinator, Certificate of Need Program