

# BUTLER | SNOW

October 8, 2024

**VIA EMAIL**

Logan Grant  
Executive Director  
Tennessee Health Services and Development Agency  
Andrew Jackson Building, 9<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, TN 37243

RE: Quality Hospice, CN2408-022

Dear Mr. Grant:

This letter is submitted on behalf of Covenant Homecare in opposition to the proposal by Quality Hospice to add five new counties to its already licensed service area. Specifically, there is no need for the proposed project and the project would neither improve access to healthcare nor benefit consumers.

Covenant Homecare operates as part of the Covenant Health system – a nonprofit health care system comprised of hospitals, outpatient facilities, physicians, and other clinical services throughout the greater-Knoxville region. Covenant Health is the largest provider of TennCare and charity care services in East Tennessee. Relevant to this application, Covenant Homecare is East Tennessee's largest locally owned homecare and hospice provider, with one of the largest rehabilitation departments in the area, that currently serves Anderson, Roane, and Campbell counties.

The proposed addition of five new counties to Quality Hospice's already existing service area is not needed, would not improve access to healthcare provided to the community, and would not be positive for consumers for the following reasons:

- Quality Hospice fails to meet the need criterion for the addition of new counties to its service area. When a hospice provider is attempting to expand its existing service area, the State Health Plan requires the applicant to demonstrate a need of at least forty additional hospice service recipients in each of the new counties. By its own admission, Quality Hospice cannot show the requisite need in any of the proposed new counties. Indeed, publicly available data illustrates that four of the five counties have a surplus of available hospice services and high utilization. The only county showing any numeric need,

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Cumberland County, is still well below the 40 patient-service need criterion articulated by the State Health Plan. These established metrics demonstrate that the proposed service area is already well-served today by existing hospice agencies. There is simply no objective data evidencing a need in these communities.

- The proposed project will not benefit consumers. Currently fifteen (15) hospice agencies already provide hospice services throughout the proposed service area. Specifically, there are nine agencies licensed to provide hospice services in both Anderson and Campbell County, eight agencies in Roane County, six agencies in Cumberland County, and five agencies in Putnam County. Based on publicly available data, all these agencies have ample capacity to care for patients from these five communities and each county has more than adequate hospice resources to meet the existing and future needs of its consumers.

Moreover, in addition to Covenant Homecare, Covenant Health refers patients to at least a dozen other hospice providers across its footprint and monitors those providers for responsiveness and acceptance rate of hospice patients. Relative to other hospice providers in the region, Quality Hospice generally has a slower response time and lower acceptance rate than many other hospice providers, suggesting that it may already be extended beyond its capabilities.

- Covenant Homecare, along with the other agencies, have invested significantly in these communities to ensure that patients have access to the highest quality of hospice services. Quality Hospice suggests that adding to its service area will benefit consumers by bringing “certain specialty services” to these communities. But these services are already being offered by agencies in the proposed service area. Covenant Health employs wound care nurses and contracts with respiratory therapists through its DME provider. And Covenant Homecare can offer psych nursing through the Covenant Health behavioral health program at Peninsula Behavioral Health. Duplicating these services will no doubt increase the costs passed on to the consumers and payors. Not only is the addition of Quality Care in these new counties not needed, but it will serve only to increase the cost of care to residents of the community.
- Finally, the proposed project would not improve access to the healthcare needed in this community. As mentioned, there is ample capacity at all of the existing hospice agencies in the proposed service area. And geographically, the existing agencies are in a much better position to provide the necessary services to these communities. Quality Hospice offers no explanation for how the addition of these five counties will improve access for consumer. Instead, it simply concludes that adding five counties to its license would “create[] a seamless continuity of care.” But Quality Hospice has failed to provide a quantification of its current home health patients to gain an understanding of whether those

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patients will be the source of a meaningful number of hospice patients in the proposed service area. Moreover, to the extent that a patient who is receiving home health enters a hospice program, even when owned by the same agency, the patient will be assigned new caregivers and nurses. So any claim of continuity of care is illusory.

The application by Quality Hospice to add five new counties to an already existing service area fails to meet the criteria of need, consumer advantage, and provision of quality care. As a result, we respectfully urge the Commission to deny the application.

Sincerely,

BUTLER SNOW LLP

A handwritten signature in black ink, appearing to read "TSW", is positioned above the name Travis Swearingen.

Travis Swearingen

cc: Jerry Taylor (via email)

**BASS BERRY ♦ SIMS** PLC

**W. Brantley Phillips, Jr.**  
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(615) 742-7723

October 8, 2024

**VIA EMAIL**

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Tennessee Health Facilities Commission  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, Tennessee 37243  
logan.grant@tn.gov

**Re: Opposition to Quality Hospice, CN2408-022**

Dear Mr. Grant:

Our firm represents Gentiva, which provides high quality hospice services across Tennessee, including in Cookeville. This letter registers Gentiva's opposition, under Tenn. Code Ann. § 68-11-1609(g), to Quality Hospice's certificate of need application to initiate hospice services in Anderson, Campbell, Cumberland, Putnam, and Roane Counties (collectively, the "PSA"). Gentiva has existing hospices licensed to serve all counties within the PSA.<sup>1</sup>

**I. Background on Gentiva.**

Gentiva is an award-winning hospice and home health provider with agencies serving dozens of communities in several states. Within Quality Hospice's PSA, Gentiva operates two accredited hospice agencies. In 2023, Gentiva's Cookeville agency delivered hospice care to approximately 392 patients in a 15-county service area that largely

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<sup>1</sup> Gentiva has two parent office facilities licensed to care for patients in Quality Hospice's PSA. Gentiva's Cookeville location (License No. 331) is licensed to serve 15 counties, including Bledsoe, Cannon, Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, Warren, and White Counties. Gentiva's Nashville location (License No. 369) is licensed to serve all 95 Tennessee counties. Gentiva is the trade name for the Kindred Hospice agency listed throughout Quality Hospice's CON application materials.

overlaps with Quality Hospice's existing service area and its proposed PSA, including Cumberland and Putnam Counties.<sup>2</sup> Gentiva's Nashville location is licensed in all the counties Quality Hospice now serves or proposes to serve. These agencies have a 35-year history of providing high quality end-of-life care to hospice patients in the PSA.

## II. Analysis of Health Facilities Commission Criteria.

As shown below, because Quality Hospice's project fails to meet all three Health Facilities Commission ("HFC") criteria for approval, the Commission should deny Quality Hospice's application to initiate hospice services in the PSA counties. Existing service area providers, including Gentiva, are already providing hospice patients in the PSA with high quality hospice care and are well-equipped to continue doing so.

### A. *Quality Hospice's Project Fails to Satisfy HFC Need Standards.*

Applying State Health Plan Criteria and Standards for Hospice Services, there is no need for Quality Hospice's project. At baseline, under the State Health Plan Need Formula, an existing hospice seeking to expand its service area must show that "**at least 40 additional hospice ... recipients in each of the new counties**" need hospice care. (Emphasis added). Quality Hospice's project does not meet this standard. On the contrary, there is a significant surplus of hospice capacity—**existing capacity for hundreds of additional hospice admissions**—in four of the five PSA counties at both 80% and 85% of the state median threshold. Only Cumberland County shows a need for more hospice services—and, even then, just barely so. The existing providers in Cumberland County can easily meet the need of 4-9 patients the state standard says live in that county.

Quality Hospice acknowledges the lack of need for its project in all five PSA counties.<sup>3</sup> It urges the Commission to overlook this and, instead, focus on other factors—like the fact that it operates a home health agency ("HHA") in 4 of the 5 PSA counties. This does not distinguish Quality Hospice, however, because other hospice providers in

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<sup>2</sup> These overlapping counties include Clay, Fentress, Jackson, Overton, and Pickett Counties.

<sup>3</sup> CON Application, Attachment 1N, at 9 ("Although **none** of the proposed new service area counties show a need of 40 or more ...." (emphasis added)).

the PSA also operate HHAs.<sup>4</sup> Moreover, this Commission has repeatedly rejected the argument that common ownership between an HHA and hospice provider promotes continuity of care or, much less, establishes a need for a new hospice service.<sup>5</sup> The Commission should stick to this precedent and deny Quality Hospice's application based on the admitted lack of need alone.

*B. Quality Hospice's Project Fails to Meet HFC Quality Criteria.*

In addition to the admitted lack of need, the project also fails to satisfy HFC quality standards. The project presents serious staffing concerns. Despite nearly doubling the size of its service area and increasing patient volumes **nearly 1.5 times** Quality Hospice's current utilization, Quality Hospice intends to add only three clinical staff to serve the five additional counties, which include **nearly 2,300 square miles of territory**. Further, Quality Hospice's claim that it will offer patients new access to specialty services and personnel is misleading for several reasons, including that Quality Hospice itself does not directly employ any "specialized nurses." Worse, because many of these staff will be shared between Quality Hospice and its affiliated HHA, it is difficult to understand how Quality Hospice will be able to deliver any hospice services to the expanded PSA.

Unlike Gentiva, Quality Hospice is not accredited by any outside quality organizations and thus lacks the infrastructure necessary to oversee quality functions adequately.<sup>6</sup> Indeed, but for an inquiry from Commission staff as to whether Quality Hospice would accept accreditation as a condition for approval, it is not clear that Quality Hospice has given any thought to accreditation. Without external oversight and evaluation of Quality Hospice's quality, the Commission is right to be concerned about Quality Hospice's ability to deliver safe and effective hospice care across 2,300 square miles with only minimal staffing changes.

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<sup>4</sup> Gentiva operates several traditional HHAs outside Tennessee.

<sup>5</sup> See CN2306-019A (Sept. 27, 2023) (denying Interim Healthcare of Montgomery County's CON application to initiate in-home hospice services but approving the establishment of a home care organization to initiate home health services); CN2302-005D (May 24, 2023) (denying AHC Home Health and Hospice of Nashville's CON application to initiate in-home hospice services at a commonly owned nursing home facility).

<sup>6</sup> Both of Gentiva's Tennessee licensed hospice agencies are ACHC-accredited.

*C. Quality Hospice's Project Will Not Benefit Consumers.*

Expanding Quality Hospice's existing service area will not benefit patients. Hospice patients in the PSA counties have ready access to high quality hospice services through the 15 existing hospice agencies licensed to serve those counties. Quality Hospice's CON application concedes there is no evidence to suggest otherwise. Indeed, Quality Hospice's only real justification for this project is its desire to serve more of the patients being cared for by its affiliated HHA. Given that only about 16% of those HHA patients ever transition to hospice, that is not a sound reason to ignore the State Health Plan standards. Also, nothing about the project will reduce healthcare costs for patients. Across all levels of hospice care, Quality Hospice's per diem charges are higher than the average charges of current hospice providers in the PSA counties.

Approving Quality Hospice's service area expansion will also negatively affect the PSA's already limited access to clinical leadership and appropriately trained clinical staff. As Quality Hospice acknowledges, the PSA is characterized by its rural and economically disadvantaged demographics, making it challenging for existing PSA hospice providers – who are also local and have been serving the community for many years – to recruit and retain qualified professionals. Adding a sixteenth hospice provider to this rural service area will impose a huge tax on this already limited pool of human resources.

**III. Conclusion.**

For all these reasons, Gentiva urges the Commission to deny Quality Hospice's application, which fails to meet the requirements for approval.

Representatives of Gentiva plan to attend the HFC's October 23, 2024 meeting and look forward to presenting further on its opposition at that time. In the meantime, please do not hesitate to contact us with any questions.

Sincerely,



W. Brantley Phillips, Jr.

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cc: Health Facilities Commission Staff (via email: [hsda.staff@tn.gov](mailto:hsda.staff@tn.gov))  
James B. Christoffersen (via email: [jim.christoffersen@tn.gov](mailto:jim.christoffersen@tn.gov))  
Jerry Taylor (via email: [jtaylor@thompsonburton.com](mailto:jtaylor@thompsonburton.com))





October 7, 2024

**VIA Email**

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502 Deaderick Street  
Nashville, Tennessee 37243  
[logan.grant@tn.gov](mailto:logan.grant@tn.gov)

**Re: Opposition to Quality Hospice owned by All Care Plus, Inc.**

Dear Mr. Grant,

I am Executive Director of Hospice of Cumberland County (HOCC), a free standing, non-profit hospice agency in Crossville, Tennessee. HOCC was Medicare certified in 1988, and we serve Cumberland County exclusively. We are the local, hometown hospice in Cumberland County, and over the past 5 years have served over 1,000 patients. In 2024 to date we have served 147 patients with the ability to serve all those who need hospice care in Cumberland County. In 2024 HOCC received the annual Hospice Consumer Assessment of Healthcare Providers and Systems Hospice Honors *Elite* Award, which recognizes hospices that continuously provide the highest level of quality care.

HOCC cares for all hospice qualified patients in Cumberland County regardless of their insurance status or ability to pay. In 2023 we provided 187 days of charity care to residents of Cumberland County. In our 36 years we have never turned anyone away because of their inability to pay.

Cumberland County is well served by HOCC, and for this reason I request, on the behalf of our staff, Board of Directors, and community members, that the Tennessee Health Facilities Commission deny Quality Hospice's application for a Certificate of Need for Cumberland County, Tennessee.

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If you have any questions, please do not hesitate to contact me at any time.

Sincerely,

A handwritten signature in cursive script that reads "Virginia Dyer".

Virginia (Ginny) Dyer  
Executive Director  
Hospice of Cumberland County

Cc: Health Facilities Commission Staff (via email: [hsda.staff@tn.gov](mailto:hsda.staff@tn.gov))  
James B. Christoffersen (via email: [jim.christoffersen@tn.gov](mailto:jim.christoffersen@tn.gov))  
Jerry Taylor (via email: [jtaylor@thompsonburton.com](mailto:jtaylor@thompsonburton.com))



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**Re: Opposition to Quality Hospice, CN2408-022**

Dear Mr. Grant:

I am Division President with Hospice of Chattanooga Holdings LLC (“HOC”), a well-established hospice provider serving 21 counties across Southeast Tennessee, including six counties in Quality Hospice’s existing seven-county service area and two counties in Quality Hospice’s proposed five-county service area, Cumberland and Putnam Counties.<sup>1</sup>

Pursuant to Tenn. Code Ann. § 68-11-1609(g), please allow this letter to register HOC’s opposition to Quality Hospice’s certificate of need application to initiate hospice services in Anderson, Campbell, Cumberland, Putnam and Roane Counties.

**I. Background on Hospice of Chattanooga.**

Since the 1980s, HOC has been delivering high quality hospice care to patients in Southeast Tennessee through several locations across its service area.<sup>2</sup> HOC’s Cookeville (Putnam County) branch location oversees the hospice care to patients in Cannon, Clay, Cumberland, DeKalb, Fentress, Jackson, Overton, Pickett, Putnam, Scott and White Counties. Excluding Putnam County, where HOC has operated for many years, HOC only recently received Health Facilities Commission approval to expand its hospice services to this rural 10-county service area. Since initiating services in June 2023, HOC has already cared for 124 patients, including **23 patients** in Cumberland County where HOC projected it would draw the largest proportion of patients in the expanded 10-county service area.

With extensive experience delivering quality end-of-life care to patients in rural communities and strong relationships with local healthcare providers and organizations, including

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<sup>1</sup> The overlapping counties in Quality Hospice’s current service area that HOC covers include: Clay, Fentress, Jackson, Overton, Pickett and Scott Counties.

<sup>2</sup> Hospice of Chattanooga (License No. 393) is licensed to serve the following 21 counties: Bledsoe, Bradley, Cannon, Clay, Cumberland, DeKalb, Fentress, Grundy, Hamilton, Jackson, McMinn, Marion, Meigs, Overton, Pickett, Polk, Putnam, Rhea, Scott, Sequatchie and White.

Cookeville Regional Medical Center, HOC is well-equipped to provide hospice care to patients in the Upper Cumberland region – particularly Cumberland and Putnam Counties. Allowing Quality Hospice to enter a service area that state data says has no need for additional hospice services would undercut HOC's efforts to implement its services in this region. The Commission should deny Quality Hospice's unneeded project.

## **II. State Health Plan Criteria.**

For the reasons set forth below, Quality Hospice's project fails to meet all three Health Facilities Commission standards for approval: need, quality and consumer advantage. Analysis of these criteria make clear that Quality Hospice's proposed five-county expansion project should be denied.

***First, there is no need for Quality Hospice's project.*** As Quality Hospice admits, "none of the proposed new service area counties show a need of 40 or more [patients]" (Attachment 1N, p. 9), which is the State Health Plan minimum for initiating hospice services. Quality Hospice's alternative justifications underscore the lack of need for its project. The operation of a commonly owned home health agency in most of the project's proposed service area is irrelevant to whether service area patients have adequate access to hospice services. And, this Commission has never accepted a project sponsor's desire to increase its market share as evidence of need. Finally, the suggestion that Quality Hospice's project is driven by Cookeville Regional Medical Center's strong desire to refer patients to Quality Hospice is misleading given that Quality Hospice admits it has engaged in only minimal outreach efforts with local nursing homes and hospitals. According to Quality Hospice, "[i]t is premature to have identified the exact facilities" with which it will partner. (Supplemental Responses #10, p. 7).

***Second, the project does not meet Health Facilities Commission quality standards.*** The State Health Plan requires an applicant to "provide documentation that it is, or intends to be, fully accredited by the Joint Commission, the Community Health Accreditation Program, Inc., the Accreditation Commission for Health Care ... and/or other third party quality oversight organization." (Attachment 1N, Standard 6). Quality Hospice does not meet this standard. It is not accredited by any outside organization, and its willingness to accept accreditation as a condition for approval does not demonstrate the proactive focus on quality that this Commission requires of applicants. Instead, this passive approach to accreditation raises significant questions about Quality Hospice's commitment to quality across a larger service area. The Commission staff flagged this issue as a concern during supplemental questions to Quality Hospice, and the staff was right in doing so.

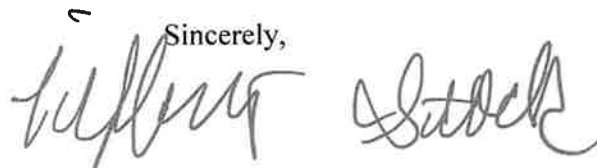
***Finally, the project will not improve patients' access to high quality, cost effective hospice services.*** Quality Hospice has offered no evidence of "specific instances of unmet need for hospice services" (Attachment 1N, Standard 2) from service area patients or healthcare providers. Not surprisingly, that is because the five-county service area has at least 15 hospice agencies delivering high quality end-of-life care to patients. In fact, Quality Hospice's application does not even account for the added access to hospice services that patients in this region, particularly Cumberland County, now have through HOC. Further, Quality Hospice's project will

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not reduce patients' healthcare costs and makes no provision for indigent patients. Similarly, the argument that the project will offer patients unique continuity of care also fails. If a Quality Home Health patient were to elect hospice services, the patient would have to be discharged from the home health agency and admitted into hospice regardless of whether the patient were to receive hospice services through Quality Hospice or another provider. There can be no internal hand-off between service lines, as the application falsely suggests.

For these and other reasons, the Health Facilities Commission should deny Quality Hospice's certificate of need application.

Representatives of HOC plan to attend the Health Facilities Commission's October 23, 2024 meeting and present further on its opposition at that time. In the meantime, please do not hesitate to contact us with any questions.

Sincerely,  
  
Tiffany Stock  
Division President

cc: Health Facilities Commission Staff (via email: [hsda.staff@tn.gov](mailto:hsda.staff@tn.gov))  
James B. Christoffersen (via email: [jim.christoffersen@tn.gov](mailto:jim.christoffersen@tn.gov))  
Jerry Taylor (via email: [jtaylor@thompsonburton.com](mailto:jtaylor@thompsonburton.com))

