STATE AGENCY ACTION REPORT

ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Select Specialty Hospital - Orange, Inc. /CON #9654
2021 Church Street, Suite 202
Nashville, Tennessee 37203-2016

Authorized Representative: Greg Sassman, Vice President
(615) 284-6716

2. Service Planning Area/District

District 7

B. PUBLIC HEARING

A public hearing was not requested with regard to the establishment of a long-term care hospital (LTCH) in District 7. The application included 13 letters of support and two other letters were mailed directly to the Agency. The 13 letters were from Orlando Regional Healthcare System employees and/or affiliated physicians. The theme of these support letters focused on the fact that there are currently no licensed long-term care beds in District 7 and patients requiring this level of service must be transferred to Tampa or Jacksonville. It is however noted, that the Agency recently awarded a CON to SemperCare Hospital of Orlando, Inc. to establish a 35-bed LTCH in Orange County at Florida Hospital. Seven of the letters were from physicians, five affiliated with the applicant and two from the Miami area, who support Select Medical Corporation and the alternative long-term care services it affords their patients. Among the five Orlando Regional Healthcare System affiliated physicians expressing concern over quality of care alternatives.

The applicant did not submit any letters from other area hospital discharge planners or physicians indicating a specific number of patients that would benefit from a LTCH

C. PROJECT SUMMARY

Select Specialty Hospital - Orange, Inc., a wholly owned subsidiary of Select Medical Corporation, proposes the creation of a 40-bed hospital-within-a-hospital model long-term care hospital to be located on the fourth floor of Lucerne Medical Center in Orlando, District 7. Lucerne Medical Center is a hospital in the Orlando Regional Health System, and is located within a few blocks of Orlando Regional Medical Center (.45 miles) in downtown Orlando. Lucerne Medical Center is currently licensed for 267 total beds, consisting of 212 acute care beds, 20 hospital-based skilled nursing beds and 35 comprehensive medical rehabilitation inpatient beds.

The proposed project will consist of 32,200 gross square feet of new construction and construction costs of $4,140,000. Total project cost is estimated to be $5,048,000.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent Medicaid and indigent patient days combined.

D. REVIEW PROCEDURE

The evaluation process is structured by the certificate of need review criteria found in Section 408.035, Florida Statutes. These criteria form the basis for the goals of the review process. The goals represent desirable outcomes to be attained by successful applicants who demonstrate an overall compliance with the criteria. Analysis of an applicant's capability to undertake the proposed project successfully is conducted by assessing the responses provided in the application, and independent information gathered by the reviewer.

Applications are analyzed to identify strengths and weaknesses in each proposal. If more than one application is submitted for the same type of project in the same district (subdistrict), applications are comparatively reviewed to determine which applicant best meet the review criteria.

Chapter 59C-1.010(2)(b), Florida Administrative Code, allows no application amendment information subsequent to the application being deemed complete. The burden of proof to entitlement of a certificate rests with the applicant. As such, the applicant is responsible for the representations in the application. This is attested to as part of the application in the Certification of the Applicant.

As part of the fact-finding, the consultant, Ed Carter, analyzed the application in its entirety with consultation from the Financial Analyst, John Williamson, who evaluated the financial data, and the Architect, Joel Hill, who evaluated the architecturals and the schematic drawings as part of the application.

E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA

The following indicate the level of conformity of the proposed project with the criteria and application content requirements found in Florida Statutes, Sections 408.035, and 408.037; applicable rules of the State of Florida, Chapter 59C-1 and 59C-2, Florida Administrative Code; Local Health Plans.

Proposed Rule 59C-1.045, Florida Administrative Code implements the provisions of subsection 408.034(3), and paragraphs 408.036(1)(a), (b), (c), (d), (f), and (g), Florida Statutes for the purpose of regulating proposals subject to comparative review for the establishment of new long-term care hospitals and the addition of beds to existing long-term care hospitals, and the conversion of licensed hospital beds to long-term care hospital beds.

1. Fixed Need Pool

a. Does the project proposed respond to need as published by a fixed need pool? Ch. 59C-1.008, Florida Administrative Code.

Need is not published by the Agency for long-term ~~acute~~ care hospital (LTCH) beds. It is the applicant's responsibility to demonstrate need.

A long-term care hospital is defined as a hospital licensed under Chapter 395, Florida Statutes, which meets the requirements of Part 412, subpart B, paragraph 412.23(e), Code of Federal Regulations; and, where applicable, also meets the requirements for a hospital within a hospital specified under paragraph 412.22(e) of that subpart. A long-term care hospital has an average length of inpatient stay greater than 25 days for all hospital beds. Long-term care hospitals are designed to provide extended care to patients who are clinically complex and have multiple acute or chronic conditions. Long-term care hospitals typically provide programs in one or more of the following areas: respiratory care, particularly for ventilator-dependent patients; treatment of patients with multiple illnesses or multiple systems failure; treatment of wounds

caused by disease or accident; and treatment for patients requiring interdisciplinary rehabilitation services who are unable to tolerate the more intensive treatments provided in a comprehensive medical rehabilitation hospital.

b. Criteria for Determination of Need.

1. **New Provider. In determining the need for a new long-term care hospital, the agency shall consider the proposed facility within the context of licensed or approved long-term care hospital beds in the service planning area, and the licensed acute care beds, comprehensive medical rehabilitation beds, hospital-based skilled nursing unit beds, and nursing home beds in the service planning area. The applicant proposing a new long-term care hospital shall provide documentation that the other licensed inpatient beds in the service planning area do not meet the need for the proposed service.**

   Note: The Centers for Medicare and Medicaid Services (CMS) have established a prospective payment system for short-stay acute care providers to include limited "outlier" payments for long-stay acute care patient s in short-stay acute care hospitals. Effective October 1, 2002, CMS implemented a new prospective payment system for long-term care hospital providers. Through this system, termed LTC DRGs, CMS is recognizing the patient population of LTCH's as separate and distinct from the populations treated by short-term acute care and post acute care providers that each have their own prospective payment system in recognition of the material differences in patient populations, cost of care, and health care delivery. Under this system, each patient admitted to a LTCH is assigned a DRG with a corresponding payment rate that is weighted based upon the patient's diagnosis and acuity. The LTCH will be reimbursed the pre-determined payment rate for that DRG, regardless of the cost of care.

   Federal Regulations, 42 CFR Parts 412, 413 and 476 regarding prospective payment for long-term care hospitals published in Volume 67, Number 169 of the Federal Register describe the universe of LTCHs on page 55960 as:

"LTCHs typically furnish extended medical and rehabilitation care for patients who are clinically complex and have multiple acute or chronic conditions. Generally, Medicare patients in LTCHs have been transferred from acute care hospitals and received a range of "postacute care" services at LTCHs, including comprehensive rehabilitation, cancer treatment, head trauma treatment and pain management."

CMS further draws parallels and distinctions among post acute care providers, most notably rehabilitation providers (page 55965):

- Most patients in LTCHs had several diagnosis codes on their Medicare claims, indicating that they had multiple co-morbidities and are probably less stable upon admission than patients admitted to other postacute care settings. Relative to intensive rehabilitation facilities (IRFs), LTCHs had a higher proportion of patient costs attributable to ancillary services (for example, pharmacy, laboratory, and radiology charges).
- LTCHs provide care to a disproportionately large number of Medicare beneficiaries who are eligible because of disability. While individuals with disabilities make up about 10 percent of the Medicare population, they make up 17 percent of the LTCH patients.
- LTCH admissions typically come from outlier acute care hospitals, nonoutlier acute care hospitals, and other (indicating direct admissions without acute stay).
- In terms of age, those without prior acute care stays were younger and about twice as many were under the age of 65, with a mean age about five or three years lower than those with prior acute care stays (whether outlier or nonoutlier). When compared to intensive rehabilitation facilities (IRFs) the proportion of LTCH patients who are under 65 years of age (18 percent) was twice that of IRF patients (nine percent).
- About 1/3 of the LTCH Medicare stays were beneficiaries who are also eligible for Medicaid, compared to fewer Medicaid-eligible beneficiary stays at IRFs. CMS states that it is widely documented that dually eligible beneficiaries are generally much sicker than non-Medicaid eligible Medicare beneficiaries.

Note: The proposed rule (42 CFR Part 412) for the LTCH Prospective Payment System (PPS) with proposed annual payment rate updates and policy changes was published in Vol. 68, No. 45, of the Federal Register on March 7, 2003.

At present there are nine long-term care hospitals with 683 beds licensed to operate in the state of Florida. These facilities are concentrated in five of the 11 AHCA health planning areas and are in the following counties: Dade (Miami), Hillsborough (Tampa), Broward (Ft. Lauderdale and Hollywood), Duval, Clay and Pinellas (St. Petersburg). There are an additional 182 beds approved but not yet operational: 20 beds at Kindred Hospital in District 4, 22 beds at Kindred in District 5, six beds at Kindred in Ft. Lauderdale in District 10 and the following approved new LTC hospitals: SemperCare (30 beds) in Panama City in District 2, SemperCare (35 beds) in Orlando in District 7, HealthSouth (40 beds) in Sarasota in District 8, and Mercy (29 beds) in District 11. The average occupancy of the operational programs was 76.6 percent for the period July 2001-June 2002, ranging from a low occupancy rate of 54.6 percent for Specialty LTCH-Jacksonville to a high of 99.2 percent for Kindred LTCH-St. Petersburg.

The following table shows the beds, patient days and occupancy of Florida's operational LTCH's for the July 2001-June 2002 reporting period.

Florida Long Term Care Hospitals
Utilization Experience - July 2001-June 2002

Hospital	District	Beds	Bed Days	Patient Days	Occupancy
Kindred-North Florida	4	60	22,080	19,524	88.4%
Specialty-Jacksonville	4	107	39,376	21,482	54.6%
Kindred-St. Petersburg	5	60	22,080	21,909	99.2%
Kindred-Central Tampa	6	102	37,536	28,794	76.7%
Kindred-Tampa	6	73	26,864	18,499	68.9%
Kindred-Hollywood	10	124	45,632	32,485	71.2%
Kindred-Ft. Lauderdale	10	64	23,552	21,279	90.3%
Kindred-Coral Gables	11	53	19,504	17,166	88.0%
Select Specialty-Miami	11	40	Not Reported*	Not Reported*	Not Reported*
Florida Total		683	236,624*	181,138*	76.6%*

Source: Florida Hospital Bed Need and Service Utilization, 1/24/03
***Select Specialty-Miami was licensed 12/23/02 and has no reported utilization. Utilization data shown above is based on 643 beds in operation for 12-month reporting period.**

There is one CON approved and no existing or operational long-term care hospitals (LTCHs) located in District 7. Pursuant to a Final Order in DOAH Case No. 02-3230, dated November 6, 2002, Certificate of Need Number 9544 was issued to SemperCare Hospital of Orlando, Inc. to establish a 35-bed long-term care hospital on the campus of Florida Hospital in Orlando.

The applicant contends that its proposals will provide LTCH services to patients with complex and medically unstable conditions that cannot be adequately addressed by continued stay in licensed acute care beds or by placement in comprehensive medical rehabilitation beds, hospital-based skilled nursing unit beds, and nursing home beds in the service planning area. Select Specialty intends to provide I.V. therapy, enteral therapy, wound/skin care, post surgical stabilization, respiratory care, ventilator weaning, nutritional support, dialysis and oncology support. In addition, rehabilitation services will be offered to augment the primary treatment program of the patient.

The current bed complement, patient days and average occupancy of these distinct other forms of care in District 7 are as follows.

Currently Licensed Acute Care, CMR, HBSNU, and Community Nursing Home Beds in District Seven

Area District 7	Total Beds	Total Days	Average Occupancy
Acute Care Beds	4,377	1,075,552	67.34%
Comprehensive Medical Rehabilitation Beds	192	50,187	71.61%
Hospital Based Skilled Nursing Beds	92	19,194	72.04%
Community Nursing Homes	8,865	2,841,649	88.32%

Source: AHCA Florida Hospital and Nursing Home Utilization Guides

AHCA population estimates for District 7 show the following:

Population Estimates for District 7 Counties and Percent Change by County For Total Population, 65 and over, and 75 and Over Population

County	Total Jan. 2003	Total Jan. 2008	Percent Change	65+ Percent Change	75+ Percent Change
Brevard	498,206	531,607	6.70%	6.04%	9.60%
Orange	975,010	1,080,579	10.83%	12.64%	12.61%
Osceola	190,300	218,925	15.04%	23.46%	24.14%
Seminole	393,857	428,494	8.79%	11.84%	10.22%
Total District	2,057,373	2,259,605	9.83%	10.94%	12.04%

Source: AHCA Pop. Projections, published October 2002.

As shown above, the overall population in District 7 is expected to increase by 9.83 percent during the next five years, with the 65 and over and 75 and over age cohort increasing by 10.94 percent and 12.04 percent, respectively.

Select Specialty contends that a need for a LTCH exists in Orange County/District 7, to better serve residents of the district. The applicant states that the currently approved CON #9544, issued to SemperCare Hospital of Orlando, Inc. on November 6, 2002 to "establish a 35-bed long-term care hospital on the campus of Florida Hospital in Orlando", targets patients transferred from Florida Hospital alone. There are several references to this in the original application by SemperCare (CON #9544). On page 20 of the SemperCare application, it states; "For purposes of this application, SemperCare Hospital of Orlando is basing its utilization projections only on referrals from Florida Hospital Orlando and attending physicians." Elsewhere in the application SemperCare states (pg. 41 & 42), "In summary, the specific need for a LTAC hospital within Florida Hospital Orlando is based on the high volume of long-stay acute patients that are admitted to FHO" (Florida Hospital Orlando). However, there is nothing to preclude other hospitals from referring patients needing LTCH services to this CON approved facility and regardless of claims made by SemperCare in its CON application, it was not clear that there was need for 35 LTCH beds to solely support discharges from Florida Hospital. The applicant was initially denied and the Agency's review of SemperCare's need discussion determined that its need analysis was not valid for the patient population that SemperCare proposed to serve. The applicant appears to be suggesting that the Agency's ultimate approval of CON #9544 is an indication that all information presented by SemperCare is validated, which is not the case. CON #9544 was approved to serve patients needing LTCH services in District 7.

Select Specialty states referral patterns in Orange County are already in place across the service area. Therefore, the applicant contends that most of the eligible LTCH patients discharged from hospitals in the service area will use a LTCH located in Orlando. Furthermore, the applicant contends that any hospital established in Orange County would also draw some percent of patient days from outside Orange County. Again, there is an approved, but not yet licensed, 35-bed LTCH in District 7, which will be located in Orange County.

The applicant states that LTCH patients typically represent the most critically ill patients coming out of the short-term acute care hospital setting. To illustrate this, the applicant references the DRG case mix index. This measure was developed in conjunction with Medicare's prospective payment system (PPS) as a means of adjusting payments to hospitals based upon case complexity. The mix of short-term acute care patients nationwide is expected to have an overall index of 1.00, whereas, in Florida, the average case mix for the various hospital groupings was 1.24 for the 12-month period ending June 2002. By comparison, the applicant states that patients treated at the eight Florida LTCH's licensed for the same time period had a composite case mix index of 2.36, indicating a greater medical complexity of cases than that of short-term acute care hospitals. The applicant contends that without the availability of LTCH beds, some of these high acuity patients may remain in intensive care beds or other critical care units of acute care hospitals. However, the applicant does not provide evidence that any District 7 acute care patients remained in intensive care beds or other critical care unit beds for extended periods of times because the hospital was unable to place any patient in an appropriate post-acute care bed or setting.

As compared to comprehensive medical rehabilitation (CMR) services, the applicant states that LTCH services offer a less intensive program of physical, speech and other therapies and a generally more intensive program of medical and nursing support services, including the capability to perform surgical procedures. With regard to hospital or nursing home sub-acute care units, the applicant contends that these patients are generally less medically complex and provide a more limited length of stay. Typically, the ALOS in skilled nursing units runs between 12 and 15 days whereas, Florida's eight LTCH's had an ALOS of 42.2 days during the 12-month period ending June 2002. However, these data do not show that medically complex post acute patients are inappropriately cared for in this setting. Although the applicant emphasizes that the level of care provided by a LTCH is acute care, this is not the case. Acute care services are only provided in an acute care setting, whereas, the care provided in a LTCH is considered "post acute care", predominantly provided to patients discharged from an acute care setting.

The applicant states that in the absence of an approved methodological approach to need for LTCH beds, it is presenting two methodologies for consideration. The first methodology is based upon use rates by age cohort in Florida counties where adequate long-term care beds exist to serve the county population, and a second based upon lengths of stay in general acute care hospitals in the proposed service area. The applicant contends that the use rate approach supports 107 to 114 beds during the anticipated first three years of operation of the hospital. The length of stay methodology, drawing from the primary service area for the proposed hospital, Orange County, shows 67,130 LTCH patient days being generated in the area's acute care hospitals by 2008, the anticipated third year of operation of the proposed hospital, producing a need for 229 LTCH beds. Just over 34 percent of the patient days in the county originate from ORMC and LMC. Therefore 22,937 LTCH patient days will be generated from these two hospitals by the year ending June 2008, and an average daily census (ADC) of 62.7 thus demonstrating a need for 78 LTCH beds. However, need methodologies based on use rates from patient populations different from the population the applicant is proposing to serve are not good indicators of need. Assumptions must be made that are without basis and likely without merit as illustrated by the applicant in its discussion of certain markets and utilization "skewing" projections. For example, the applicant arrived at a statewide utilization rate using only the District 4, District 6, and District 10 LTCH patient days and populations. The applicant states that both District 11 and District 5 have only four LTCH beds per 10,000 elderly people and in combination, suggests that LTCH use in these two districts is limited by bed availability. Therefore, the applicant concludes that the low utilization rate but yet high occupancy levels in these districts, skews the patient day projections downward, producing misleadingly conservative estimates of future demand. The patient day use rates during the 12-month period ending June 2002 vary tremendously, from 2.99 per 1,000 among the young (0-44) to almost 332 per 1,000 among those over the age 85 (153.74 for the 65-74 age group and 259.99 for the 75-84 age group), indicating the very old use these services more than the young. In view of the variability of use among the different age cohorts, the applicant arrived at an average utilization rate for the entire population of 38.05, which of course understates the usage among the elderly.

The applicant applied the various age specific utilization rates to the future population of Orange County to produce an expected number of LTCH patient days by age group. By applying an 80 percent utilization standard to the number of patient days projected for Orange County, based on the statewide use rate, generates a need for up to 114 LTCH beds, with an estimated 33,406 patient days expected by 2008. Adding additional out of area days, the applicant arrived at up to 206 beds needed. These additional days are arrived at based on the state average of 44.5 percent of LTCH patient days originating from beyond county boundaries. Rather than providing an acceptable need methodology, the applicant has demonstrated why this use rate model for this service in Florida is not a valid indicator of need.

The applicant states that because LTCH services are not currently distributed equally to all Florida residents, a vast number of people, particularly the elderly must either travel long distances to obtain these services or forego them completely. The applicant concludes that based on low utilization rates in Orange County, many patients ultimately forego LTCH hospital care completely. The result for this population, according to the applicant, has been longer stays at regular acute care hospitals, possibly prolonged occupancy in ICU beds, driving up the costs of care; situations where the proper - most efficient and effective care is not accessible to them at all. However, in another application submitted in this batching cycle, the applicant considers travel distances of approximately three hours not to be excessive and expects 129 Palm Beach County residents to travel to Lee County for services, suggesting that patients will travel for this type of care if it is needed. As noted earlier, the applicant has provided no documentation that shows District 7 residents are unable to access needed care, or that patients are held in acute care beds for unreasonably long period of times. Further, there is an approved 35-bed LTCH that is expected to serve the resident of this planning area.

The use rate approach is based on the assumption that District 7 will perform, on average, the same as other LTCH's in the state. It does not however, take into account other variables that may impact utilization including the difference in population growth of the various age groups, the availability of other care options and a change in referral patterns.

The applicant also presents a length of stay methodology to arrive at what it considers an understated need for LTCH beds. This methodology attempts to identify patients in acute care hospitals who are candidates for LTCH services by calculating an estimated number of days for LTCH services based on lengths of stay that are above the national average for the patient's diagnosis. Since not all diagnoses are appropriate for the services offered at a LTCH (burn victims, obstetric and gynecological care, alcohol and drug abuse, rehabilitation and psychoses, etc.), the applicant has deleted these DRGs and others from inclusion in the analysis. The applicant also removed all patients with a length of stay that is less than the GMLOS plus 15 days. *(Note: The GMLOS represents an adjusted value for all cases for a given DRG, assigned by the CMS)* It is therefore assumed that if patients stayed in the acute care hospital more than a few days beyond the GMLOS, they are potential candidates for a LTCH. However, the applicant has not supported its assumptions with quantified evidence of patients that would have benefited from but that did not receive LTCH services.

The following table indicates the applicant's calculated number of discharges and LTCH patient days for the hospitals expected to transfer patients to the proposed LTCH.

Long Term Acute Care Patient Days
Orange County Service Area Hospitals: GMLOS plus 15 Definition
July 2001 - June 2002

Hospital	Discharges	LTCH Days	ADC	Bed Need
Arnold Palmer Hospital	7	197	0.5	1
Florida Hospital - East Orlando	94	1,949	5.3	7
Florida Hospital - Apopka	2	31	0.1	0
Florida Hospital	756	21,038	57.6	72
Health Central	114	2,888	7.9	15
Lucerne Medical Center	110	3,239	8.9	11
Orlando Regional Medical Center	507	13,378	36.7	46
Sand Lake	96	2,292	6.3	8
Winter Park Memorial Hospital	85	1,897	5.2	6
Total	1,771	46,905	128.5	161

Source: CON 9654 Application

Based on the above discharges, the applicant arrives at a total bed need for 161 LTCH beds, more than the 40 beds requested by the applicant plus the 35 CON approved (#9544) beds for SemperCare Hospital of Orlando. The applicant also looks at all lengths of stay longer than 15 days to arrive at an even greater need of 224 beds.

However, this method presents a much too liberal approach to arriving at need. In order to arrive at need that more closely supports the 40 beds requested, the applicant contends that the mid-point of the two estimates is used to establish age specific utilization rates, that are then applied to the appropriate age cohorts. This LOS approach indicates need for 229 LTCH beds and 67,130 LTCH appropriate patient days generated from within Orange County hospitals by the end of year 2008 (an ADC of 183.4/80 percent). With just over 34 percent of the patient days (22,937 LTCH patient days) in the county originating from the applicant's two facilities, ORMC and Lucerne Medical Center, the applicant projects a need for 78 beds @ 80 percent occupancy (ADC of 62.7) by the year ending June 2008.

The applicant arrived at a potential caseload to support the proposed project based on an ALOS approach. However, as with any LOS methodology, certain variations in patient characteristics can alter assumptions of need. These include the patient's functional ability, availability of caretakers at home, ethnicity, age, socio-demographics, and dependence on technology. The applicant did not provide any specific data, including specific DRG data from any area hospitals in support of the project. There was no documentation presented from area hospital planners with regard to discharges of potential LTCH patients.

In summary, the applicant's two methodological approaches to need are not supported by any specific discharge studies or other data, including DRG admission criteria from area hospitals regarding potential need.

The applicant's use rate approach is based on the experience of other LTCHs in other parts of the state and relies on assumptions that may or may not occur in the proposed service area. With regard to the LOS methodological approach, the applicant's projections are based on assumed capture rates with no supporting data. Need for an additional LTCH in District 7 was not demonstrated.

2. **Local Health Plan Preferences**

Is need for the project evidenced by the applicable district health plans? Applicants shall provide evidence in their applications that a proposed long-term care hospital is consistent with the needs of the community and other criteria contained in Local Health Council Plans. ss. 408.035(1) and 408.037(1), Florida Statutes, and Ch. 59C-1.030(2)(c), Florida Administrative Code.

There are no local health plan preferences for long-term care hospitals.

3. **Agency Rule Criteria** *(The Agency does not currently have adopted preferences relating to LTCHs; however, the proposed rule for LTCHs does contain specific preferences which are discussed as follows)*

Please indicate how each applicable preference for the type of service proposed is met.

a. **Preferences Among Applicants for Long-Term Care Hospital Beds. In weighing and balancing statutory and rule review criteria, the agency will give preference to:**

1. **An applicant who provides or proposes to provide Medicaid days as a percentage of their total patient days equal to or greater than the statewide average percentage of Medicaid patient days provided by all long-term care hospitals, as determined in the Agency's most recent "Hospital Financial Data" report.**

According to the 2001 Hospital Financial Data Report, LTCHs in the state averaged 2.0 percent Medicaid patient days.

The applicant proposes to provide 0.8 percent of its total patient days to Medicaid recipients. This is less than the state average of 2.0 percent.

2. **An applicant who has or proposes to have a ratio of charity care deductions to net patient service revenue equal to or greater than the statewide average ratio for all long-term care hospitals, as determined in the Agency's most recent "Hospital Financial Data" report.**

According to the 2001 Hospital Financial Data Report, LTCHs in the state averaged 1.7 percent charity care patient days.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent Medicaid and indigent patient days combined. In Financial Schedule 7A, the applicant does not specifically allocate patient days for charity care but rather for self-pay days (1.4 percent in the second year), considered by the applicant to be charity. The applicant does not meet the statewide charity average. There is 0.6 percent of the Medicaid/indigent commitment left undefined by the applicant.

b. **Minimum Hospital Size. Freestanding long-term care hospitals established after the effective date of this rule shall have a minimum of 40 licensed beds. Long-Term care hospitals designated as hospitals within hospitals established after the effective date of this rule shall have a minimum of 25 licensed beds.**

The applicant is proposing a hospital within a hospital comprised of 40 beds. The minimum licensed bed size criterion of 25 beds is therefore exceeded.

c. **Required Services. Long-term care hospital services, as provided by the hospital or by contract, shall include at a minimum:**

1. Pre-admission screening.
2. Care for patients with multiple complex diagnoses.
3. Care for patients with multi-system failure.
4. Services for difficult-to-wean ventilator-dependent patients.'
5. Services for patients who cannot be weaned from ventilator dependence.
6. Respiratory/pulmonary care.
7. Airway restoration.
8. Intensive wound care.
9 Nutrition services, including metabolic analysis, invasive enteral tube placement, and total parenteral nutrition.
10. Infusion therapy.
11. Daily physician assessments.
12. An average of at least eight direct patient care nursing hours per patient per day.
13 Physical therapy, occupational therapy, speech therapy, and respiratory therapy.
14. Laboratory
15. Pharmacy.

16. Radiology.
17. An operating room.

The applicant states that the proposed project includes staffing, equipment, and facility provisions to meet all of the above requirements.

The applicant has made specific provision for a surgical suite, including an operating room incorporated into the physical plant of the existing facility. In addition, radiographic equipment and pharmacy space are shown on the submitted architectural plans.

d. **Quality of Care. Long-term care hospital services shall comply with the agency standards for long-term care hospital licensure described in Chapter 59A-3, Florida Administrative Code.** *(Note: Also reference Item 4-b regarding the provision of quality of care)*

The applicant states it will comply with applicable licensure standards.

e. **Services Description. An applicant for long-term care hospital beds shall provide a detailed program description in its certificate of need application including:**

1. **Characteristics of age groups to be served by age and diagnosis.**

The applicant expects approximately 80 percent of its proposed discharges will be for the age 65 and over population while 20 percent will be under the age of 65. With regard to this older age group, the applicant anticipates that 33.4 percent of total discharges will involves diseases and disorders of the respiratory system, 9.4 percent involving the circulatory system and 7.3 percent for diseases and disorders involving skin, subcutaneous tissue, and breast. The applicant also intends to treat disorders involving the nervous system, musculoskeletal and connective tissue, kidney and urinary tract, digestive system, endocrine, nutritional and metabolic diseases, infectious and parasitic diseases, hepatobiliary system, and toxic effects.

2. **Specialty programs to be provided.**

   The applicant states its intention to provide the following specialty programs: pulmonary/vent; neuro/trauma; medically complex; and wound care.

3. **Proposed staffing, including qualifications of the medical director, a description of staffing appropriate for any specialty program, and a description of the training and experience requirements for all staff who will provide direct patient care.**

   The applicant references Schedule 6 (Staffing) as well as job descriptions, including required training and experience for staff as part of the supporting materials submitted with the application. According to Schedule 6, the applicant's projected staffing levels are based upon the operating experience of the parent corporation.

4. **Expected sources of patient referrals. Applicants shall include evidence of transfer agreements with local hospitals indicating an intent to discharge appropriate patients to the proposed long-term care hospital.**

   Select Specialty Hospital-Leon, Inc. (CON #9645) does not specifically identify the source of its expected admissions but does indicate that its referral networks typically include physicians, hospital and nursing home case managers or social workers. The applicant provided a sample hospital transfer agreement currently in place at its recently opened Miami facility. The applicant references letters from hospitals anticipating establishing referral relationships with the proposed project. However, the only identified letter was submitted by Orlando Regional Healthcare System, expressing interest in developing a transfer agreement with the applicant facility. There is no evidence that any other preliminary discussions have occurred with other providers, including physicians in the area, with regard to patient referrals.

5. Expected average length of stay for discharges by age group.

The applicant projects the average length of stay for the 0-64 age group to be 29.12 days and the 65 and over age group to be 29.09 days for an overall ALOS of 29.10 days.

6. Expected discharge destination by age group.

/The applicant expects to mirror the experience of its other freestanding hospitals. On average across all age groups, the applicant expects that discharge status will represent the following percentages: acute care hospital (7.7 percent); assisted living (16.5 percent); expired (11.7 percent); home (58.6 percent); and other (5.5 percent).

7. Projected number of patient days by payer type, including Medicare, Medicaid, private insurance, self-pay and charity care patient days for the first two years of operation after completion of the proposed project.

Projected Patient Days and Percentage By Payer Type, Year Two

	Self Pay or Charity	Medicaid/ Medicare HMO	Medicare/ Medicare HMO	Insurance	Managed Care	Other
Patient Days	142	78	7,740	1,493	498	0
% of Patient Days	1.4%	0.8%	77.8%	15.0%	5.0%	0

Source: Schedule 7A

The above table provides the proposed patient days and percentages by payer group for the second year of operation for the applicant.

8. Admission policies of the facility with regard to charity care patients.

The applicant basically states its willingness to admit patients who meet their admission criteria regardless of ability to pay. It further agrees to condition award of the CON by providing up to two percent of its total patient days to charity care patients. Schedule 7A projects only 1.4 percent of patient days of care to self-pay, which the applicant considers same as charity.

9. Services that will be provided by contract.

The applicant anticipates that dietary, housekeeping, radiology, laboratory, plant maintenance and laundry services will be provided by contract.

f. Quarterly Reports. Licensed long-term care hospitals shall report to the agency or its designee, within 45 days after the end of each calendar quarter, the number of admissions and patient days by age and primary diagnosis that occurred within the quarter.

The applicant did not respond to this preference.

4. Statutory Review Criteria

a. Is need for the project evidenced by the availability, quality of care, efficiency, accessibility, and extent of utilization of existing health care facilities and health services in the applicant's service area? ss. 408.035(2) and 408.035(7), Florida Statutes.

The applicant explains that medically complex patients who face long hospital stays have created unique problems within the structure of the current health care system. However, as indicated in E. 1 above, the applicant provided no evidence that medically complex patients were staying an excessive amount of time in District 7 acute care facilities. The applicant discusses sub-acute care in skilled nursing facilities and contends that for a variety of reasons nursing home sub-acute units have declined in availability in recent years, and further are not appropriate alternatives for these patients since they specifically require acute level care. However, as noted earlier, LTCHs provide post acute, rather than acute care, and that applicant has not shown that the patients it intends to serve cannot be appropriately treated in either a skilled nursing facility or a hospital-based skilled nursing unit. The applicant states that its proposed project will greatly increase access and availability to LTCH beds for service area residents, helping ensure a more appropriate care delivery setting for high acuity, medically complex patients. However, as discussed above in E. 1, the applicant has not demonstrated that 40 additional LTCH beds are needed in the district.

The applicant arrived at a potential caseload to support the proposed project based on both an ALOS methodology and a use rate methodology. The ALOS methodology was not supported with specific data, including specific DRG data from any area hospitals in support of the project nor did the applicant provide documentation from area hospital discharge planners with regard to discharges of potential LTCH patients. The use rate methodology was not shown to be reasonable. It was further not demonstrated by the applicant that patients that may meet the definition of a LTCH patient were currently not being placed or that an access problem exists in the district.

Specific documentation from area providers with regard to delays in care would have been supportive and beneficial in showing an access problem to long-term care in the area.

The applicant did not fully demonstrate need for the project as evidenced by the availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the applicant's service area.

b. Does the applicant have a history of providing quality of care? Has the applicant demonstrated the ability to provide quality care? ss. 408.035(3), Florida Statutes.

Select Specialty Hospital - Orange, Inc. is a new, development stage corporation, and as such has no operating history. However, the applicant is a controlled entity of Select Medical Corporation, an existing provider of LTCH services nationwide with 72 existing facilities, including one in Miami, Florida. Select Medical Corporation was formed in December 1996 and commenced operations during February 1997. The Miami facility was licensed on December 23, 2002 (License #4469) as Select Specialty Hospital - Miami, Inc., a 40-bed Class I Hospital Long-Term Care. The applicant states that all existing Select Medical facilities have a current JCAHO accreditation, except those that have recently opened and are awaiting survey. The JCAHO accreditation is an indication that quality of care is being delivered and that the components are in place to ensure the delivery of quality of care.

The applicant provided a description of its performance improvement plan that establishes specific methods and techniques for monitoring and improving care delivery. The applicant also described the makeup of the Organizational Improvement Committee, an interdisciplinary group that connects all of the quality improvement activities and structures together. A copy of the Select Specialty Hospital Plan for Improving Organizational Performance, Year 2003 is included in the Supporting Materials section.

c. Is the applicant proposing special health care services for its service area that are not reasonably and economically accessible in adjacent service areas? ss. 408.035(4), Florida Statutes.

The applicant is not proposing special health care services that are reasonably and economically accessible in adjacent service areas.

d. Is this project to be located in a research or teaching hospital? Will the program affect the clinical needs of health professional training programs in the service area? ss. 408.035(5) Florida Statutes.

The proposed project is not a statutorily defined teaching hospital nor will its primary purpose involve research or physician education. The applicant states that health professional training and development programs will not be a significant feature of the proposed project.

e. What resources, including health manpower, management personnel, and funds for capital and operating expenditures, are available for project accomplishment and operation? ss. 408.035(6), Florida Statutes.

The audited financial statements for Select Specialty Hospital - Orange, Inc. were reviewed to assess the financial position as of the balance sheet date and the financial strength of its operations for the applicable period presented.

The applicant is a start up company with $10 in assets as of February 20, 2003. The applicant is a wholly owned subsidiary of Select Medical, Inc. The company had, as of December 31, 2001, $10.7 million in cash on hand, $276.5 million in current assets and $650.8 million in total assets. Revenue from operations was $959 million with cash flows of $95.8 million. This is a financially strong company.

Select Specialty Hospital - Orange, Inc. will lease the space required to operate the hospital from Lucerne Medical Center. The applicant did not disclose the terms of the lease.

Capital requirements:
Total capital costs for this project from Schedule 1 are $5.0 million. Schedule 2 indicates the applicant has no other capital projects.

Available capital:
Funding for the proposed project is coming from the parent, Select Medical, Inc. A letter was provided in support of their commitment to fund the project.

Conclusion:
Funding for this project, with the support of its parent, should be available as needed.

f. What is the immediate and long-term financial feasibility of the proposal? ss. 408.035(8), Florida Statutes.

A comparison of the applicant's estimates to the control group values provides for an objective evaluation of financial feasibility, (the likelihood that the services can be provided under the parameters and conditions contained in Schedules 7 and 8), and efficiency, (the degree of economies achievable through the skill and management of the applicant). In general, projections that approximate the median are the most desirable, and balance the opposing forces of feasibility and efficiency. In other words, as estimates approach the highest in the group, it is more likely that the project is feasible, because fewer economies must be realized to achieve the desired outcome. Conversely, as estimates approach the lowest in the group, it is less likely that the project is feasible, because a much higher level of economies must be realized to achieve the desired outcome. These relationships hold true for a constant intensity of service through the relevant range of outcomes. As these relationships go beyond the relevant range of outcomes, revenues and expenses may, either go beyond what the market will tolerate, or may decrease to levels where activities are no longer sustainable.

The Centers for Medicare and Medicaid Services (CMS) published a prospective payment system (PPS) rule for long-term care hospitals (LTCH) effective for cost reporting periods beginning or after October 1, 2002. Under the PPS for LTCH a payment for a Medicare patient will be made at a predetermined, per discharge amount for each LTC-DRG. The law requires that the LTCH PPS be budget neutral, which means that total payments must equal the amount that would have been paid if the PPS had not been implemented. Therefore, a comparison of the applicant's revenue estimates to the control group values, based on the reasonable cost-based reimbursement system, provide a rational basis for evaluating estimated revenues.

The estimated revenues submitted by the applicant for the project were developed based on the prospective payment system. In order to qualify for an exemption under CFR Part 412.23 for reimbursement under the prospective payment system a long-term acute care facility, operating as a hospital within a hospital, must not exceed more than 15 percent of its total inpatient operating costs in services obtained under contract with the host hospital *or* at least 75 percent of the hospital's inpatient population must be referred from a source other than the host facility. The applicant did not disclose how they intend to comply with this provision. Failure to comply would have a material negative impact on revenues.

Medicare requires a six-month period (demonstration period) before a hospital is eligible for reimbursement under the LTCH PPS. This period is required to demonstrate a minimum 25-day average length of stay. During the demonstration period the hospital is reimbursed at the acute care rate. The applicant did not disclose how this period was accounted for in their financial projections. However, the net revenue per patient day for year one from Schedule 7, adjusted for inflation, approximates that for year two, which leaves open the question as to whether they properly accounted for revenues during the demonstration period.

Comparative data were derived from hospitals in peer groups that reported data in 2001; the applicant will be compared to the hospitals in peer group 12. Per Diem rates are projected to increase by an average of 3.6 percent per year. Inflation adjustments were based on the 3rd Quarter New CMS Hospital Market Basket Index.

As noted previously the accuracy of revenue estimates for year one is questionable. The cost estimates submitted by the applicant on Schedule 8, year one are also problematic. Ancillary costs were left out of the total, while other administrative and overhead expenses were very high in comparison to year two values. The applicant did not provide any explanation for the makeup of costs included in the other administrative and overhead category. As a result, year one values will be excluded from the comparison.

Projected net revenue per adjusted patient day (NRAPD) of $994 in year two is between the control group lowest and median values of $830 and $1,103. The lowest value is generally viewed as the practical lower limit on economies of operation. With net revenues per adjusted patient day falling between the lowest and median the facility is expected to consume health care resources in proportion to the services provided. (See Comparative Table).

Projected cost per adjusted patient day of $948 the demonstration period in year two is between the control group lowest and median values of $816 and $993. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of $452,473 computes to an operating margin per adjusted patient day of $45, which falls between the peer group lowest and median values of $-186 and $53 respectively. The operating margin of 4.6 percent indicates that net revenues are proportional to costs.

This project may be financially feasible, but the financial estimates are open to question.

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Comparative Table

CON # 9654	2007	YEAR 2	VALUES ADJUSTED		
Select Specialty Hospital - Orange, Inc.	YEAR 2	ACTIVITY	FOR INFLATION		
2001 DATA Peer Group 12	ACTIVITY	PER DAY	Highest	Median	Lowest
ROUTINE SERVICES	9,453,450	950	900	736	327
INPATIENT AMBULATORY	10,487,942	1,054	10	0	0
INPATIENT ANCILLARY SERVICES	234,408	24	3,956	2,596	408
OUTPATIENT SERVICES	0	0	3,568	8	0
OTHER OPERATING REVENUE	0	0	58	2	0
TOTAL REVENUE	20,175,800	2,028	4,730	3,470	2,316
DEDUCTIONS FROM REVENUE	10,287,636	1,034	*	*	*
NET REVENUES	9,888,164	994	2,178	1,103	830
EXPENSES					
ROUTINE	1,830,375	184	432	272	196
ANCILLARY	3,697,153	372	573	280	203
AMBULATORY	0				
OVERHEAD	3,908,163	393	1,410	468	371
OTHER	0	0			
TOTAL EXPENSES	9,435,691	948	3,364	993	816
OPERATING INCOME	452,473	45	234	53	-186
		4.6%			
PATIENT DAYS	9,951		VALUES NOT ADJUSTED		
ADJUSTED PATIENT DAYS	9,951		FOR INFLATION		
TOTAL BED DAYS AVAILABLE	14,600				
ADJ. FACTOR	1.0000				
TOTAL NUMBER OF BEDS	40				
PERCENT OCCUPANCY	68.2%		98.0%	75.0%	9.5%
PAYER TYPE	PATIENT DAYS	% TOTAL			
MEDICARE	7,740	77.8%	97.3%	74.5%	67.2%
COMMERCIAL	1,493	15.0%			
MEDICAID	78	0.8%	15.3%	0.2%	0.0%
PRIVATE	142	1.4%			
HMO/PPO	498	5.0%	16.3%	11.3%	0.0%
OTHER	0	0.0%			
TOTAL	9,951	100.0%			

g. Will the proposal foster competition to promote quality and cost-effectiveness? ss. 408.035(9), Florida Statutes.

The applicant projects managed care to represent 5.0 percent of its patient days. This is between the control group lowest and median level of activity of 0.0 and 11.3 percent. The projected levels, if realized, will not have a positive impact on competition to promote quality assurance and cost-effectiveness.

h. Are the proposed costs and methods of construction reasonable? Do they comply with statutory and rule requirements? ss. 408.035(10), Florida Statutes; Ch. 59A-3 or 59A-4, Florida Administrative Code.

The application is to establish a 40-bed long-term care hospital-within-a-hospital in Lucerne Medical Center in Orlando.

New construction standards will be applied when and if the AHCA Office of Plans and Construction reviews the proposed facility. It is expected that the revised Florida Building Code and Chapter 59A-3 of the Florida Administrative Code will be in effect by the time this project could be submitted for review. The disaster preparedness requirements of the applicable codes will also have to be met since this is a new hospital.

The application included a site plan, a fourth floor plan of the Lucerne facility and two identical copies of a larger scale plan of a patient room. There was no readily apparent list of applicable building codes included in the application.

The floor is arranged with two areas of patient rooms. One end of the floor has a central core for the ancillary spaces and 28 new patient rooms on the perimeter. The other end of the floor has 12 perimeter patient rooms in an “L”-shaped layout with a corner nurse station. In between these two groups of patient rooms is a sizable area labeled “Surgery Suite” and a smaller area labeled “Office Suite”. There are no interior partitions shown for these areas.

The project description in Schedule 9 only has Page 1 of 2, and may not actually apply to this project because of the wording of the footer. Also, the text indicates the presence of an occupational therapy gym and no such space is shown on the plan. Nor do all rooms appear to have private showers as stated on this page.

The new facility has the required pharmacy, and it is possible that the "Equipment Storage" room will house the general radiographic equipment that must be provided for a hospital within a hospital. This can be verified at a later date, but space must be included within the new hospital area and not be a totally contracted service with the host hospital.

The application states that all patient rooms are private with private showers. There are several toilet/shower configurations and most of the rooms appear to have showers that will accommodate a wheelchair-bound patient. There are four rooms that only show a toilet and no shower, so some clarification needs to be provided if the project is approved. There are also two isolation rooms and four rooms that are stated to be handicapped accessible.

The application does not address the existing fourth floor conditions at Lucerne. It cannot be determined from the plan whether there will be any demolition required to provide space for the new hospital. The central core of the larger patient room area is drawn with double lines, but no doors are shown. This usually indicates new construction, so it must be assumed that some demolition will be necessary. The lack of information makes analyzing the projected costs and construction schedule difficult and somewhat meaningless.

The Schedule 6 Assumptions include several services that will be contracted with Lucerne. There are other items that will have to be contracted/shared, and the lease agreement should list these items. Examples are lobbies, elevators, stairs and fire alarm systems.

It is required that schematic drawings be submitted as part of the CON application. These plans have been reviewed as schematics with the expectation that they will necessarily be revised and refined during the design development (preliminary) and contract document stages. The architectural review of the application shall not be construed as an in-depth effort to determine complete compliance with all applicable codes and standards. The final responsibility for facility compliance ultimately rests with the owner.

i. Does the applicant have a history of providing health services to Medicaid patients and the medically indigent? Does the applicant propose to provide health services to Medicaid patients and the medically indigent? ss. 408.035(11), Florida Statutes.

According to the 2001 Hospital Financial Data Report, LTCHs in the state averaged 2.0 percent Medicaid patient days and 1.7 percent charity care patient days.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent Medicaid and indigent patient days combined. Schedule 7A indicates the applicant's expectation to deliver up to 1.4 percent of its total patient days to self-pay patients, which it considers charity, and 0.8 percent for Medicaid patients. The applicant did not identify 0.6 percent unaccounted for in its conditioned commitment. The applicant's projected Medicaid provision is less than the state average of 2.0 percent.

F. SUMMARY

The applicant proposes the creation of a 40-bed hospital-within-a-hospital LTCH to be located on the fourth floor of Lucerne Medical Center in Orlando, District 7.

The proposed hospital will consist of 32,200 gross square feet of new construction and construction costs of $4,140,000. Total project cost is estimated to be $5,048,000.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent Medicaid and indigent patient days combined.

Need:

Need is not published by the agency for long-term care hospital beds. It is the applicant's responsibility to demonstrate need.

- The applicant presented two methodological approaches to need (ALOS methodology and use rate methodology) in an attempt to demonstrate a potential caseload of patients for the proposed project. However, the applicant failed to present any specific discharge data from area hospitals or physicians or any other supporting documentation regarding potential LTCH referrals.

- It was not disclosed how many of the identified potential patients could be served by other treatment options in the area including hospital based skilled nursing units and community nursing homes. It was further not demonstrated that patients are being denied access to LTCH services outside of District 7. The current placement of patients with medical conditions that meet the criteria for LTCH services was not disclosed.

- There is a 35-bed CON approved, but not yet licensed LTCH in District 7. The applicant failed to demonstrate need for additional LTCH beds.

Quality of Care:

- The applicant is a new development stage corporation with no operating experience. However, the applicant's parent company is an existing provider of LTCH services and states that all existing LTCH's have a current JCAHO accreditation with the exception of those that have recently opened and are awaiting survey. The applicant provided a reasonable description of its performance improvement plan.

Cost/Financial Analysis:

- The applicant is a start-up company with limited assets. However, the parent, Select Medical, Inc. is a financially strong company with total assets of $650.8 million and revenue from operations of $959 million. The funding for the proposed project should be available, with the support of the parent company.

- With net revenues falling between the lowest and median values in the first two years of operation, the facility is expected to consume health care resources in proportion to the services provided. The projected operating margin of 4.6 percent indicates that net revenues are proportional to costs. The project may be financially feasible, but the financial estimates are open to question.

- The applicant projects managed care to represent 5.0 percent of its patient days. This is between the control group lowest and median level of activity of 0.0 and 11.3 percent. The projected levels, if realized, will have not have a positive impact on competition to promote quality assurance and cost-effectiveness.

Architectual Analysis:

- The project involves new construction of a 40-bed long-term care hospital-within-a-hospital and final drawings will need to meet the revised Florida Building Code and Chapter 59A-3 of the Florida Administrative Code. The disaster preparedness requirements of the applicable codes will also have to be met. The project is to be located on the fourth floor of Lucerne Medical Center. The application does not address the existing fourth floor conditions at Lucerne, therefore it cannot be determined from the plan whether there will be any demolition required to provide space for the new hospital. There is no readily apparent list of applicable building codes included in the application. In between two groups of patient rooms is a sizable area labeled "Surgery Suite" and a smaller area labeled "Office Suite". There are no interior partitions shown for these areas. The new facility has the required pharmacy, and it is possible that the "Equipment Storage" room will house the general radiographic equipment that must be provided for a hospital within a hospital. This can be verified at a later date, but space must be included within the new hospital area and not be a totally contracted service with the host hospital.

G. RECOMMENDATION

Deny CON #9654.

CON Action Number: 9654

AUTHORIZATION FOR AGENCY ACTION

Authorized representatives of the Agency for Health Care Administration adopted the recommendation contained herein and released the State Agency Action Report.

DATE: ______________________

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Karen Rivera
Health Services and Facilities Consultant Supervisor
Certificate of Need

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Jeffrey N. Gregg
Chief, Bureau of Health Facility Regulation