

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Select Specialty Hospital-Palm Beach, Inc./CON #9661

2021 Church Street, Suite 202
Nashville, Tennessee 37203-2016

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

Kindred Hospitals East, L.L.C./CON #9662

680 South Fourth Street
Louisville, Kentucky 40202

Authorized Representative: James H. Gillenwater, Jr. or
Bud Wurdock
(502) 596-7718

2. Service District

District 9

B. PUBLIC HEARING

A public hearing was not held or requested with regard to the establishment of a long-term care hospital (LTCH) in District 9. However, letters in support of each applicant's proposal were received as follows:

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) submitted one letter of support from JFK Medical Center, Atlantis, Florida (Phillip D. Robinson, CEO). Mr. Robinson's letter indicates that many of the hospital's long-stay acute care patients are candidates for LTCH services and that the hospital anticipates implementing a transfer agreement with the facility.

CON Action Numbers: 9661 & 9662

Kindred Hospitals East, L.L.C. (CON #9662) submitted 74 letters of support for the project. Letters of support were submitted by the following: Jupiter Medical Center (illegible name), Delray Medical Center (Suzanne Ranta, Director of Case Management and Michelle Gonzales, RN, Division of Trauma Services), Dr. J. Lancelot Lester III, Dr. A. Rogelio Choy, Dr. Kenneth J. Fuquay, Dr. Jose R. De Olazabal, Dr. Michael Miller, Catherine Lassard, Director of Critical Care and Emergency Services, Wellington Regional Medical Center), Dr. Michael Tonner, Dr. Earl Lysaker, Dr. Neil Warshoff, Dr. H. Swie, Dr. Dimiter Hristov, Dr. J. Roy Duke, Dr. Carlos W. Sanchez, Dr. Bruce Miles Berkowitz, Dr. Shekhar Sharma, Mary Doukakis, R.N., Barbara Poletick, RN, Omni HomeCare, Dr. Charles Schallop, Dr. George A. Mitchell, Margaret Pierce, RN (Case Manager, Palm Beach Gardens Medical Center), Mary Beth Martin, RN (Case Manager, Indian River Memorial Hospital), Lisa Smerker, RN (Case Manager, Indian River Memorial Hospital), Joan Reen, R.N., Mari Bock (Case Manager), Beck Dilts, R.N. (Case Manager), Dr. Michele S. Maholtz, and Dr. Daniel Piccard. There are also numerous other letters of support with illegible signatures.

The majority of support letters are similar in content and state that the location of a LTCH in Palm Beach County will enhance health care services, will improve access and offer patients and families continuity of care. There are also several form letters from area hospital case managers supporting the project.

None of the letters of support for either co-batched applicant quantified the actual number of patients needing LTCH services but not receiving them.

C. PROJECT SUMMARY

Select Specialty Hospital-Palm Beach, Inc. (CON #9661), a wholly owned subsidiary of Select Medical Corporation, proposes the creation of a 60-bed freestanding LTCH to be located in east central Palm Beach County, near JFK Hospital. Select Medical Corporation currently has 72 existing facilities in 24 states, including Select Specialty Hospital-Miami, licensed in December 2002.

The proposed hospital will consist of 44,434 gross square feet of new construction and construction costs of \$7,892,500. The total project cost is estimated to be \$12,856,139.

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

CON Action Numbers: 9661 & 9662

Kindred Hospitals East, L.L.C. (CON #9662), a wholly owned subsidiary of Kindred Healthcare, Inc., proposes to establish a 70-bed freestanding LTCH to be located in the north central portion of Palm Beach County. The applicant is currently the licensee and operator of 16 hospitals, including six Kindred hospitals in Florida.

The proposed LTCH will consist of 45,896 square feet of new construction and construction costs of \$7,617,009. The total project cost is estimated to be \$12,937,419.

The applicant agrees to condition award of the certificate of need on the provision of 2.0 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, M. Riley Gibson, analyzed the application in its entirety with consultation from the Financial Analyst, Douglas Pierce, who evaluated the financial data, and the Architect, Joel Hill, who evaluated the architectural 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, 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 patients 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 LTCHs 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):

CON Action Numbers: 9661 & 9662

- 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 LTAC 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

CON Action Numbers: 9661 & 9662

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 are presently no existing or approved long-term care hospitals (LTCHs) located in District 9.

Both **Select Specialty Hospital-Palm Beach, Inc. (CON #9661)** and **Kindred Hospitals East, L.L.C. (CON #9662)** contend that their respective proposals will provide LTCH services to patients with complex and medically unstable conditions that cannot be adequately addressed by licensed acute care beds, comprehensive medical rehabilitation beds, hospital-based skilled nursing unit beds, and nursing home beds in the service planning area. **Select Specialty Hospital-Palm Beach, Inc. (CON #9661)** 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

CON Action Numbers: 9661 & 9662

treatment program of the patient. **Kindred Hospitals East, L.L.C. (CON #9662)** intends to provide highly intensive services to medically complex and catastrophically ill patients. These include neurological disorders, brain and spinal cord trauma, chemical brain injuries, head injuries, cerebral vascular accidents, and other central nervous system disorders, developmental anomalies and cardiopulmonary disorders.

The current bed complement, patient days and average occupancy of these distinct other forms of care in District 9 are as follows:

**Acute Care and Post Acute Care Providers
District 9 Beds and Utilization**

Facility Type	Total Licensed Beds District 9	District 9 Average Occupancy
Long Term Care	-0-	N/A
Acute Care	4,238	66.29%
Comprehensive Med. Rehab	256	81.41%
Hospital Based Skilled Nursing	*68	29.05%
Skilled Care Community Nursing Homes	8,760	85.76%

Source: Hospital Bed Need Projections 01/03 Projections/HBSNU beds January 2002-December 2002 and Nursing Home Utilization By District July 2001-June 2002 (does not include sheltered beds)
*37 HBSNU beds approved for delicensure resulting in 68 beds remaining.

**Population Estimates for District 9 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
Indian River	119,769	130,097	8.62%	9.30%	7.22%
Martin	113,006	145,376	28.64%	8.06%	8.72%
Okeechobee	36,856	39,248	6.49%	13.45%	16.30%
Palm Beach	1,195,507	1,315,884	10.07%	7.55%	6.27%
St. Lucie	206,026	225,113	9.26%	7.67%	9.31%
Total District	1,691,164	1,855,718	9.28%	7.65%	7.04%

Source: AHCA Pop. Projections, published October 2002.

As shown above, the overall population in District 9 is expected to increase by 9.28 percent during the next five years, with the 65 and over and 75 and over age cohort increasing by 7.65 percent and 7.04 percent, respectively.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) states that its service area will comprise District 9. The primary referral sources are expected to be general acute care hospitals within a 10-mile radius. Although some of the physicians with patients living nearer Ft. Lauderdale, might choose to refer patients to the exiting LTCH in Ft. Lauderdale, is not clear why the applicant does

CON Action Numbers: 9661 & 9662

not expect to primarily receive referrals from other, particularly northern, District 9 hospitals. Additionally, while the applicant claims that it expects to primarily receive referrals from hospitals within a 10-mile radius, its need projections show more referrals from Jupiter Medical Center and West Boca Medical Center, the two hospital's the furthest from JFK Hospital than it does from Wellington and Columbia Hospitals, which are closer to JFK and listed as expected primary referral sources. Refer to the discussion and the chart below. Further, in another application filed by the applicant in this batching cycle CON #9656 for District 8, the proposed District 8 LTCH expects to receive almost twice the number of discharges from Columbia Hospital than does this District 9 proposed facility (129 verses the 67 indicated in this application). In CON #9656, the applicant claims that Columbia Hospital will generate need for 11 LTCH beds in District 8 and only six LTCH beds in District 9. Columbia Hospital is approximately 13.4 miles from JFK Medical Center and approximately 138 miles from the Lee Memorial's HealthPark, the proposed location of the District 8 LTCH proposed in CON #9656. The applicant contends that the proposed project will improve accessibility since the nearest LTCH is located in District 10 (Broward County), and specifically in Ft. Lauderdale, approximately 37 miles in distance. However, the applicant's concern for distance is inconsistent, given the expected referrals for its District 8 facility as noted above. There is also another Broward County LTCH located in Hollywood, approximately 43 miles to the south of the primary proposed site of the Select facility. The Ft. Lauderdale LTCH is licensed for 64 beds and had an average utilization of 90.35 percent for the July 2001 through June 2002 reporting period. The Hollywood LTCH has 124 beds and was utilized at 71.19 percent for the reporting period.

The applicant submitted one letter of support for the project from the CEO of JFK Medical Center, located in Atlantis, Florida, indicating that many of the hospital's long-stay acute care patients are candidates for LTCH services and that the hospital anticipates implementing a transfer agreement with the facility. The applicant states that in addition to JFK Medical Center, it expects to receive referrals from Good Samaritan Hospital, St. Mary's Hospital, Columbia Hospital, Wellington Regional Medical Center, Palms West and Bethesda Memorial Hospital. With the exception of JFK Medical Center, there was no indication given that the applicant has had discussions with or received any tentative agreements with these area hospitals regarding potential transfers to the proposed LTCH.

CON Action Numbers: 9661 & 9662

With regard to short-term acute care, the applicant states that the overall case mix index for short-stay acute care patients nationwide (1.00) and in Florida (1.24) is less by comparison with patients treated in the eight existing LTCH's in Florida (2.36). This indicates a higher medical complexity of cases. *(Note: The case mix index is a measure developed in conjunction with Medicare's prospective payment system (PPS) as a means of adjusting payments to hospitals based upon case complexity).* With regard to comprehensive medical rehabilitation (CMR) services, the applicant states that some rehabilitation will be offered at the LTCH but is not the primary focus. The applicant intends to use rehabilitation to augment the primary treatment program of the patient and that these services will be less intense than that provided by CMR programs in the area. With regard to hospital based or nursing home skilled care, the applicant contends that these patients are generally less medically complex and are provided 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, this data does not show that medically complex post acute patients were inappropriately cared for in this setting. The 68 remaining hospital based skilled nursing beds (37 additional HBSNU beds are approved for delicensure) in District 9 were utilized at only 29.05 percent for calendar year 2002.

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. A LTCH distinguishes itself within the overall health care continuum based upon the high acuity level of the patients it treat, the interdisciplinary treatment model, and the duration of the patients' hospitalization. Typically, patients are medically unstable, require extensive care and often require extensive technological support (ventilator care, dialysis, etc.).

CON Action Numbers: 9661 & 9662

For the reporting period July 2001 through June 2002, there were 127 District 9 residents discharged from one of the Florida LTCH's, with all but one from the two LTCHs in Broward County. Close to 19 percent of the discharges (109) were Palm Beach County residents discharged from the Ft. Lauderdale LTCH. The average length of stay for District 9 residents was 54.9 days and 55.7 days for residents of Palm Beach County. This is higher than the average length of stay statewide of just over 42 days. The applicant concludes that because the LTCH beds are all located outside of District 9, only the most seriously ill or injured patients currently utilize LTCH services and possibly wait until the severity of their circumstances dictates longer stays.

In the absence of an approved methodological approach to need, the applicant presents two methodologies for consideration in support of the proposed project. The first methodology utilizes statewide age-specific LTCH use rates applied to population projections for the first three years of operation of the proposed hospital. The second method involves an average length of stay (ALOS) methodology to identify acute care patients with lengths of stay in acute care hospitals that exceed the geometric mean length of stay (GMLOS).

With regard to the use rate method, the applicant calculated a statewide utilization rate using District 4, District 6 and District 10 patient days and populations only. 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 applicant's use rate analysis concludes that up to 479 LTCH beds will be needed in Palm Beach County by the year ending 2008 and that Palm Beach County alone will generate a sufficient number of patient days to support far more than the 60 beds requests. However, rather than illustrating need, this methodology, as explained by the applicant is not a valid method of calculating need because in at least two areas of the state, the results are "misleading".

The use rate approach is based on the assumption that Palm Beach County as well as surrounding area will perform, on average, the same as some, but not all, of the other LTCH's in the state. It does not take into account other variables that may

CON Action Numbers: 9661 & 9662

impact utilization including changes 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 project patient days for a new LTCH using the ALOS for LTCH appropriate patients in acute care hospitals to calculate an estimated number of patient days that may be generated by area hospitals. The applicant used Florida's Hospital Discharge Data for the 12-month period ending June 2002 for hospitals within Palm Beach County to identify patient days appropriate for LTCH services.

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.

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 Hospital Patient Days
Palm Beach County Hospitals: GMLOS plus 15 Definition
July 2001 - June 2002**

Hospital	Discharges	LTCH Days	ADC	Bed Need
Bethesda Memorial	186	4,418	12.1	15
Boca Raton Com. Hosp.	323	7,515	20.6	26
Columbia Hospital	67	1,755	4.8	6
Delray Com. Hosp.	286	7,514	20.6	26
Glades General Hosp.	23	496	1.4	2
Good Samaritan Med.	127	2,898	7.9	10
JFK Medical Center	391	10,604	29.1	36
Jupiter Hospital	77	1,866	5.1	6
Palm Beach Gardens	160	4,474	12.3	15
Palms West Hospital	76	1,775	4.9	6
St. Mary's Hospital	147	3,824	10.5	13
Wellington Reg. Med.	26	525	1.4	2
West Boca Med. Center	45	989	2.7	3
Total	1,934	48,650	133.3	167

Source: CON Application

CON Action Numbers: 9661 & 9662

Based on the above discharges, the applicant arrives at a total bed need for 167 LTCH beds, based on extended acute care lengths of stay. However, as noted earlier, the applicant has not received letters from area hospitals, other than JFK, indicating support for the project and the applicant has not shown that one person was unable to access needed services. Although the applicant claims that driving distances to existing LTCH constrain access, it has presented inconsistent information when another application filed by the applicant in the batch is considered. That application, filed under CON #9656 indicates it expects at least one hospital to transfer more of its patients to the applicant's proposed LTCH 138 miles away than 13 miles away.

The applicant also looks at all lengths of stay longer than 15 days to arrive at an even greater need, approximating 250 beds. However, this method does not recognize the nationally accepted GMLOS as assigned by CMS and appears to present a much more liberal approach to arriving at need. The applicant contends that the two estimates provide a reasonable upper and lower range of projected LTCH patient days. The mid-point of these two estimates is used to establish age specific utilization rates in order to forecast estimates for future years. This approach indicates that all of the hospitals located in Palm Beach County will generate sufficient patient days to support 237 beds by the year ending June 2008. The seven closest hospitals to the anticipated site are expected to produce potential patient days to support a need for 126 beds at 80 percent occupancy.

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 supporting 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. In addition, the applicant failed to provide any supporting documentation provided from area physicians regarding potential referrals. The applicant's use rate approach is based on the experience of other LTCH's in other parts

CON Action Numbers: 9661 & 9662

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 or indication of potential referrals from area hospitals. JFK Medical Center is the only area hospital that provided any interest in developing a transfer agreement with the applicant. There were no other letters of support or other supporting data provided by other hospitals in the county expected by the applicant to be primary referral sources for the project. It was further not demonstrated by the applicant that patients that may meet the definition of a LTCH patient are not currently being placed or that an access problem exists in the district.

Kindred Hospitals East, L.L.C. (CON #9662) states that in choosing markets for development of a LTCH, the most important factors are the size of the elderly population, projections for population growth, and the number of referral hospitals in an area. The applicant states that these factors were used in determining that Palm Beach County in District 9 would be the most suitable and accessible market for the development of LTCH services.

The applicant addressed the population growth in the district as well as Palm Beach County to show a high concentration of elderly. The applicant states that the closest LTCH to Palm Beach County is located in Ft. Lauderdale (District 10), which is approximately 45 miles south of the West Palm Beach area or almost one hour of driving time. The distance is even farther for the residents of Martin, St. Lucie, Indian River and Okeechobee Counties that make up the remainder of District 9. However, it is noted that a 30-bed LTCH has been approved in District 7 and will be located in Orange County at Florida Hospital. This will provide an additional option for northern District 9 patients in need for long-term post acute care.

The applicant addressed several methods of arriving at potential need for the Palm Beach project, including a use rate approach. Based on the operations of the LTCH's in the state for the period July 1, 2001 through June 30, 2002, the applicant arrived at a combined average of 20.36 LTCH patient days per 1,000 total population and 125.69 days per 1,000 population age 65 and older using the population for the districts in which LTCH's are located.

CON Action Numbers: 9661 & 9662

These rates are then used to project the number of potential patient days at the proposed facility based on the projected 65 and over population. The applicant states that since the average age of the LTCH patient at its current hospitals is approximately 70 years old, the historical utilization figure to projected 65 and over population for District 9 as of January 1, 2006 (second year of operation) is applied to arrive at 50,940 potential patient days or an average daily census (ADC) of 140 patients. The application of this methodology for the total district population results in a projected ADC of 100 patients.

As discussed above in co-batched applicant, Select Specialty-Palm Beach, Inc.'s discussion of a use rate methodology, the use rate approach is based on the assumption that the District 9 service area will perform, on average, the same as other LTCH's in the state. It does not take into account other variables that may impact utilization including a change in population growth, the availability of other care options and a change in referral patterns.

The applicant also addressed a population-based methodology utilized by the State of Tennessee to determine need for the project. This methodology uses a factor of 0.5 beds per 10,000 total population. The applicant applied this methodology to arrive at a need for approximately 88 LTCH beds (1,755,951 population divided by 10,000 x 0.5=87.80). Bed-to-population ratios are generally not considered good indicators of need as they do not consider utilization. Additionally, this method of determining need is based on review criteria and standards as well as other demographic factors from another state that may not be applicable to Florida.

In addition to the population-based approaches discussed above, the applicant also estimated need based on an average length of stay (ALOS) approach that looks at acute care discharges and patient days. The applicant states that it analyzed data for all District 9 residents age 18 and older for the 12 months ending September 2002. That data reveals the DRGs for patients that most frequently have long lengths of stay. The applicant then removed those DRGs that are not considered appropriate for LTCH referrals (pediatric, psychological, leukemia, heart transplants, rehabilitation, obstetrics, etc.). The applicant arrived at 50 DRGs that are considered LTCH appropriate, although different than the top 25 DRG's (with and without complications) as defined by the Centers for Medicare & Medicaid Services (CMS), as the applicant is an existing LTCH provider in Florida, they are consistent with its

CON Action Numbers: 9661 & 9662

existing patient population. The applicant then analyzed the discharge data for hospital's located in District 9 to determine lengths of stay that exceed the DRG specific geometric mean length of stay by seven days to arrive at 26,763 potential LTCH patient days in District 9 or 17,827 patient days for Palm Beach County alone. This results in an ADC of 73 for the district or 49 for Palm Beach County, not including potential days for patients currently leaving the district for LTCH services. This number approximated 184 patients for calendar year 2002. However, the applicant states that many of these patients reside in the southern portion of Palm Beach County that is geographically closer to Fort Lauderdale than to the north central portion of Palm Beach County. The applicant assumes that patients from this area will continue to leave the district for LTCH services.

In summary, the various approaches used by the applicant are not supported by any specific discharge studies or quantified data, including specific DRG admission criteria from area hospitals regarding potential need. Although numerous letters of support for the project were submitted by area physicians and hospital case managers, a quantified number of patients that would qualify for LTCH services was not provided. Additionally, like co-batched applicant Select Specialty, the applicant did not demonstrate that patients needing this care were unable to obtain it.

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.

The October 2000 District 9 CON Allocation Factors Report does not specifically address the development of long-term care hospital beds or provide for generic health care related preferences.

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.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) agrees to condition award of the certificate of need on the provision of 2.8 percent Medicaid and indigent patient days combined. According to Financial Schedule 7A, 2.0 percent of total patient days are allocated to self-pay (considered charity care by the applicant), while only 0.8 percent of total patient days is allocated to Medicaid. This projected provision of Medicaid patient days is less than the state average.

Kindred Hospitals East, L.L.C. (CON #9662) proposes to condition award of the certificate of need on the provision of 2.0 percent Medicaid and indigent patient days combined. According to Financial Schedule 7A, the applicant is projecting that Medicaid and Medicaid/HMO patient days combined will represent 1.6 percent of total patient days in year two, 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.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) 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 (2.0 percent), considered by the applicant to be charity. Assuming that the self-pay days do represent charity care days totally, the applicant exceeds the state average.

Kindred Hospitals East, L.L.C. (CON #9662) proposes to condition award of the certificate of need on the provision of 2.0 percent Medicaid and indigent patient days combined. In response to this preference, the applicant states that charity patients will account for 1.5 percent of total patient days by the end of year two. However, the applicant does not acknowledge the provision of any charity care patient days on Financial Schedule 7A to support this projection.

- 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.**

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) is proposing a 60-bed freestanding LTCH. The minimum licensed bed size criteria is met.

Kindred Hospitals East, L.L.C. (CON #9662) is proposing a 70-bed freestanding LTCH. The minimum licensed bed size criteria is met.

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 8 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.**

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) 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 proposed facility. The applicant also provides for the required pharmacy and space for radiographic equipment.

Kindred Hospitals East, L.L.C. (CON #9662) states that it will mirror its current operations in its other facilities and provide all of the above listed required services. The applicant has made provisions for surgery, pharmacy and basic radiology services.

- 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)

Both applicants state their intention to 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.**

Comparison Table Showing Projected Percentages of Major Diagnostic Categories For Both Select Specialty and Kindred

Major Diagnostic Category	Projected Percent Patient Day and/or Discharges	
	*Select Specialty	Kindred-East
Respiratory System	17.0%	47.0%
Skin	13.0%	10.0%
Circulatory System	14.0%	6.0%
Infectious & Parasitic	3.0%	5.0%
Musculoskeletal	8.0%	5.0%
Kidney & Urinary Tract	3.0%	4.0%
Nervous System	9.0%	4.0%
Digestive System	3.0%	2.0%
Other	30.0%	17.0%
Total	100.0%	100.0%

Source: Extracted from CON Applications

*Select Specialty percentages represent averages for under 65 and over 65 age group discharges

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) intends to rely on the experience of its parent corporation in operating similar facilities. According to the table provided by the applicant, the typical Select Specialty Hospital provides LTCH services to a predominantly older population group (65 and over). This group represents approximately 77 percent of total discharges.

CON Action Numbers: 9661 & 9662

As previously discussed, the applicant intends to treat patients that can be generally categorized into the following four programs: cardiopulmonary, medically complex, Stage III and IV wounds, and neurological and musculoskeletal disorders. As shown in the above table, approximately 45 percent of the projected discharges fall into the major diagnostic categories that include respiratory, skin and circulatory diseases and disorders.

Kindred Hospitals East, L.L.C. (CON #9662) expects that the majority of patients will be age 65 or older (68 percent) with an average age of seventy years. The applicant states that it expects to have a patient mix that is similar to other freestanding Kindred hospitals with diseases and disorders of the respiratory system comprising approximately 47 percent of total patient days, followed by diseases and disorders of the skin at 10 percent. As shown in the table above, the applicant proposes to serve respiratory cases (47 percent) at a substantially higher percentage rate than that of Select Specialty (17 percent).

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

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) states its intention to provide specialty care for pulmonary/vent; neuro/trauma; medically complex and wound care patients.

Kindred Hospitals East, L.L.C. (CON #9662) states its intention to provide specialized programs for ventilator-dependent patients, treatment for patients with multi-system failure, wound care and rehabilitation therapies. The hospital also intends to offer dialysis services and will admit and treat patients without regard to antibiotic resistant infections. In addition, the applicant states its intention to provide other specialty programs such as telemetry, orthopedic services including amputee rehabilitation and joint replacement rehabilitation and neurological services including the treatment of brain and spinal injuries.

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.**

Select Specialty Hospital-Palm Beach, Inc. (CON #9661)

provided a description of the qualifications, training and experience required for each of the various LTCH positions in the supporting materials section of the application.

According to Financial Schedule 6, the applicant expects to employ a total of 77.40 FTE staff in the first year of operation (2006), increasing to 125.60 FTE staff in year two. The applicant intends to staff the facility based upon the operating experience of the parent company. In year two, the majority of the positions involve nursing (61.0 positions) and ancillary/therapy (34.10 positions).

Kindred Hospitals East, L.L.C. (CON #9662)

references Schedule 6 (staffing) and briefly states that a typical Kindred hospital has one medical director who is a pulmonologist or an intensivist expert in the management of the catastrophically ill patient. The applicant did not provide the job descriptions of proposed staff. According to Financial Schedule 6, the applicant expects to employ a total of 105 FTE staff by the year ending 2005. The applicant intends to staff the facility based upon the operating experience of the parent company. The majority of the positions involve nursing (45.9 positions) and ancillary/therapy (33.6 positions).

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-Palm Beach, Inc. (CON #9661)

provided only a copy of a hospital transfer agreement currently in force at Select Specialty Hospital-Miami as well as one letter of support for the project from JFK Medical Center. The letter indicates the hospital's willingness to implement a transfer agreement with the facility, in the event that Select Specialty achieves appropriate licensure and certification. The applicant did not provide any other letters of support or evidence of transfer agreements with other area

CON Action Numbers: 9661 & 9662

hospitals. There was also no evidence provided as to the potential number of patient referrals from area physicians or other health care providers.

Kindred Hospitals East, L.L.C. (CON #9662) states that the primary source of patient referrals will come from area acute care providers. In addition, the applicant anticipates referrals from physicians, nursing facilities, rehabilitation facilities and home health providers.

The applicant provided over 70 letters of support for the project, many from area physicians, hospitals, caseworkers, etc. However, none of the letters of support quantified the actual number of patients needing LTCH services but not receiving them and no tentative patient transfer agreements were provided.

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

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) expects the length of stay to be 32.81 days with the 0-64 age group averaging 29.59 days and the 65 plus age group averaging 33.61 days.

Kindred Hospitals East, L.L.C. (CON #9662) expects the overall average length of stay will be 39 days with the 18-44 age group averaging 30 days, the 45-64 group averaging 40 days, the 65-84 group averaging 41 days and the 85 and over averaging 37 days.

6. Expected discharge destination by age group.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) expects to provide the same proportions of discharges by destination as 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).

CON Action Numbers: 9661 & 9662

Kindred Hospitals East, L.L.C. (CON #9662) states that its distribution of discharge destinations at the proposed LTCH will be similar to the experience of other Kindred hospitals. On average across all age groups, the applicant expects that discharges will represent the following percentages: skilled nursing (23.8 percent), home (20.0 percent), home health care (10.2 percent), acute care (13.3 percent), expired (23.0 percent), unknown/other (6.4 percent), and rehabilitation (3.2 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

Applicant	Self Pay or Charity	Medicaid/Medicare HMO	Medicare/Medicare HMO	Insurance	Managed Care	Other
Select Specialty (9661)	2.0% 298 days	0.8% 117 days	77.6% 11,539	14.7% 2,194	4.9% 731 days	-0-
Kindred East (9662)	-0-	1.6% 189 days	82.0% 9,232	15.1% 1,703 days	-0-	1.2% 138 days

Source: Schedule 7A

The above table provides a comparison of the proposed patient days and percentages by payer group for the second year of operation for both Select Specialty (CON #9661) and Kindred East (CON #9662).

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

Both applicants basically state their willingness to admit patients who meet their admission criteria regardless of ability to pay. Both applicants have agreed to condition award of the CON upon providing a percentage of charity care.

9. Services that will be provided by contract.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) anticipates that radiology, laboratory, and laundry services will be provided by contract. However, it should be noted that basic radiology must be provided in-house and cannot be contracted.

CON Action Numbers: 9661 & 9662

Kindred Hospitals East, L.L.C. (CON #9662) will contract out certain services that it contends are not cost effective to maintain in its own hospital. These services include MRI, nuclear medicine, CAT scans, cardiac catheterization, laboratory services, neurological services, specialized laboratory testing services, angiography or lithotripsy services. It should be noted that basic radiology must be provided in-house and cannot be contracted.

- 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.**

Only Kindred East (CON #9662) responded to this provision, stating that it will provide all appropriate reports to AHCA in a timely manner in accordance with the proposed rule.

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.**

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) states that from the proposed location of its LTCH, the nearest existing facilities are Kindred Hospital-Ft. Lauderdale, and Kindred Hospital-Hollywood, both in District 10 (Broward County). Additionally, there is a CON approved LTCH in District 7, which will be located in Orange County at Florida Hospital. The applicant states that the two Broward County LTCHs are located approximately 35 and 40 miles respectively from the proposed site. The applicant contends that consequently, only 127 residents of Palm Beach County received LTCH services during the most recent calendar year, but provided no evidence that patients needing care did not receive appropriate care. The applicant states that in a highly urbanized area as Palm Beach and Broward Counties, the distance factor can be daunting, especially for the elderly population. It is again noted that the applicant's concern for distance is inconsistent given projections in other applications it has submitted during this batching cycle.

CON Action Numbers: 9661 & 9662

Therefore, the applicant contends that in view of the lack of availability and accessibility of LTCH services in Palm Beach County and District 9 as a whole, patients tend to remain for extended stays in general acute care hospitals. The applicant did not demonstrate that patients are being denied access to LTCH services in adjacent areas. As previously shown, the 64-bed Kindred-Ft. Lauderdale facility averaged 90.35 percent occupancy for the 12 months ending June 2002 and has been approved to add six additional LTCH beds via CON #9621, while the Kindred-Hollywood facility with 124 LTCH beds averaged 71.19 percent occupancy for the same time period.

The applicant provided a letter of support for the project from JFK Medical Center indicating interest in implementing a transfer agreement with the facility. However, there were no other tentative transfer agreements or indication of interest in developing a transfer agreement with the LTCH from any other area hospitals. 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.

Kindred Hospitals East, L.L.C. (CON #9662) states that the proposed project will increase the availability and accessibility to care in District 9 because of the lack of any LTCH services in the district and the distance that residents must travel for these services. The applicant cites the projected growth in the elderly population in the district, which is expected to produce an increase in the number of patients seeking LTCH services.

The applicant contends that the proposed LTCH will improve efficiency of services by working with area providers to integrate a continuum of care to promote efficient use of area resources and placement of patients. The applicant also states that efficiency will be improved as a result of centralized sharing with other area Kindred facilities (purchasing, management, clinical and quality management, medical records, etc.). However, any centralized benefits to be realized were not outlined, specifically with regard to financial cost savings.

CON Action Numbers: 9661 & 9662

As previously discussed, the applicant provided numerous letters from area physicians, hospitals and specifically, hospital case managers expressing support for the project. However, the applicant failed to provide specific documentation from these supporters regarding potential LTCH referrals. 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-Palm Beach, Inc. (CON #9661) 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 that was licensed on December 23, 2002. 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.

CON Action Numbers: 9661 & 9662

Kindred Hospitals East, L.L.C. (CON #9662) states that all of its currently licensed LTCHs are accredited by JCAHO, an indication that quality care is being delivered and that the necessary components are in place to ensure delivery of care. The applicant provided a reasonably thorough description of the admission, care planning and discharge process. The quality management functions that are currently in place in Kindred hospitals are contained in a strategic quality plan, a copy of which is provided as an attachment to the application. The applicant also indicates that patient satisfaction surveys are given to all patients and family members.

According to the most recent Complaint Summary Report, the seven licensed Kindred LTCHs in the state had a combined total of 17 confirmed complaints, including eight without deficiencies, dating back to October 1999 through the present. The nine confirmed allegations involve: patient abuse/neglect (1), restraints (2), staffing (2), patient care (2), nursing service (1), and restraints (1). The majority of the allegations occurred at Kindred Hospital-Bay Area Tampa with five confirmed allegations and five confirmed without deficiencies; and at Kindred Hospital South Florida/Coral Gables with three confirmed allegations.

- 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.**

Neither applicant is proposing special health care services that are not 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.**

Neither of the proposed projects are to be located in a statutorily defined teaching hospital nor will the primary purpose of either project involve research or physician education.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) states that health professional training and development programs will not be a significant feature of the proposed project.

Kindred Hospitals East, L.L.C. (CON #9662) states that it will work with area universities, colleges and other educational training programs to provide clinical on-site training for students in various programs.

- 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 were reviewed to assess the financial position of both co-batched applicants as of the balance sheet date and the financial strength of its operations for the applicable period presented.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) is a start-up company with \$10 in assets as of February 4, 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.

Capital requirements:

Total capital costs for this project from Schedule 1 are \$12.9 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.

Kindred Hospital East, L.L.C. (CON #9662) is wholly owned subsidiary of Kindred Healthcare, Inc. (formerly Vencor, Inc.). The applicant submitted Form 10K for the parent, which included financial statements for the period ended December 31, 2002. Those statements disclosed that Kindred Healthcare, Inc. had cash of \$244.0 million, current assets of \$920.3 million, and total assets of \$1.64 billion. Income from operations was \$33.3 million with cash flows of \$248.7 million.

CON Action Numbers: 9661 & 9662

On April 20, 2001 Kindred Hospitals East, LLC emerged from proceeding under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) under a plan of reorganization. Under the plan, the applicant adopted the fresh start accounting provisions of SOP 90-7. Under fresh-start accounting, a new reporting entity is created and the recorded amounts of assets and liabilities are adjusted to reflect their estimated fair values. Accordingly, the prior period financial statements are not comparable to the current period statements and will not be considered in this analysis.

Short-term position:

The applicant’s current ratio of 2.9 is strong. The ratio of cash flow to current liabilities of 0.17 is, on the other hand, weak. Working capital (current assets less current liabilities) of \$75.2 million is substantial in relation to the entity’s size. Overall the applicant has a good short-term position.

Long-term position:

The ratio of long-term debt to equity of 0.0 is the result of carrying no long-term debt on the books of the applicant. Long-term debt is carried on the books of the parent corporation. The ratio of cash flows to assets of 3.9 percent is below average compared to other Florida hospitals. The most recent nine months had an operating profit of \$8.3 million, resulting in an operating margin of 2.6 percent, an above average position. Total equity is \$131.8 million; the ratio of equity to assets is 77.2 percent. Overall, the long-term position of the applicant is good.

Capital requirements:

Schedule 2 indicates capital projects of \$23.1 million.

Available capital:

Funding for these projects will come from \$4.0 million from operating cash flows and \$19.1 million from funds in hand. The audited financial statements show \$2.4 million in cash on hand, and \$6.7 million in cash flows.

Conclusion:

Based on the audited financial statements of the applicant, cash on hand and cash flows, if they continue at the current level, would be sufficient to fund this project as proposed. Funding for all capital projects, with the support of its parent, is likely to 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 each of the co-batched applicant's estimates to the corresponding 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 applicants' revenue estimates to the control group values, based on the reasonable cost-based reimbursement system, provide a rational basis for evaluating estimated 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. This applicant did not disclose how this period was accounted for in their financial projections.

CON Action Numbers: 9661 & 9662

Comparative data were derived from hospitals in peer groups that reported data in 2001. Both applicants 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.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) projected net revenue per adjusted patient day (NRAPD) of \$889 in year one and \$986 in year two that is between the control group lowest and median values of \$819 and \$1,075 in year one and \$846 and \$1,109 in year two. 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 \$1,132 in year one and \$923 in year two is between the control group median and highest values of \$966 and \$1,611 in year one and the control group lowest and median values of \$831 and \$996 in year two. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$926,498 computes to an operating margin per adjusted patient day of \$62, which falls between the peer group median and highest values of \$78 and \$-20 respectively. The operating margin of 6.3 percent indicates that net revenues are proportional to costs.

This project appears to be financially feasible.

CON Action Numbers: 9661 & 9662

**Select Specialty Hospital – Palm Beach, Inc: CON 9661
Financial Comparison Table**

PEER GROUP 12	2007	YEAR 2	INFLATION ADJ. VALUES		
	YEAR 2 ACTIVITY	ACTIVITY PER DAY	Highest	Median	Lowest
ROUTINE SERVICES	14,134,100	950	916	757	518
INPATIENT AMBULATORY	15,906,346	1,069	10	0	0
INPATIENT SURGERY	362,154	24	4,029	2,708	1,669
INPATIENT ANCILLARY SERVICES	0	0	324	4	0
OUTPATIENT SERVICES	0	0	0	0	0
TOTAL PATIENT SERVICES REV.	30,402,600	2,043	4,802	3,443	2,359
OTHER OPERATING REVENUE	0	0	15	2	0
TOTAL REVENUE	30,402,600	2,043	4,817	3,445	2,359
DEDUCTIONS FROM REVENUE	15,738,268	1,058	*	*	*
NET REVENUES	14,664,332	986	1,746	1,109	846
EXPENSES					
ROUTINE	2,952,850	198	440	264	200
ANCILLARY	5,274,865	355	503	271	207
AMBULATORY	0	0	0	0	0
TOTAL PATIENT CARE COST	8,227,715	553	943	535	407
ADMINISTRATIVE & OVERHEAD	3,224,400	370	810	471	378
PROPERTY	2,285,719	*	*	*	*
TOTAL HOSPITAL EXPENSE	13,737,834	923	1,663	996	831
OTHER OPERATING EXPENSE	0	0	0	0	0
TOTAL EXPENSE	13,737,834	923	1,663	996	831
OPERATING INCOME (MARGIN)	926,498	62	234	78	-20
PERCENT OPERATING MARGIN	6.3%				
			PERCENTAGES NOT INFLATION ADJUSTED		
PATIENT DAYS	14,879				
ADJUSTED PATIENT DAYS	14,879				
TOTAL BED DAYS AVAILABLE	21,900				
ADJ. FACTOR	1.0000				
TOTAL NUMBER OF BEDS	60				
PERCENT OCCUPANCY	67.9%		98.0%	81.1%	55.5%
<u>PAYER CLASS</u>					
SELF-PAY	298	2.0%	3.8%	0.8%	0.0%
MEDICAID	117	0.8%	15.3%	0.2%	0.0%
MEDICAID HMO	0	0.0%			
MEDICARE	11,539	77.6%	97.3%	73.4%	67.2%
MEDICARE HMO	0	0.0%			
INSURANCE	2,194	14.7%			
HMO/PPO	731	4.9%	16.3%	11.3%	0.0%
OTHER	0	0.0%			
TOTAL	14,879	100.0%			

CON Action Numbers: 9661 & 9662

Kindred Hospital East, L.L.C.'s (CON #9662) projected net revenue per adjusted patient day (NRAPD) of \$964 in year one and \$1,035 in year two is between the control group lowest and median values of \$814 and \$1,069 in year one and \$841 and \$1,103 in year two. 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.

Projected cost per adjusted patient day of \$1,837 in year one exceeds the control group highest value of \$1,601. In year two, projected cost per adjusted patient day of \$1,060 is between the control group median and highest values of \$990 and \$1,653. Compared to the control group in year two these costs are considered efficient.

The year two operating loss for the hospital of \$287,215 computes to an operating margin per adjusted patient day of -\$26 which falls below the lowest value of -\$20. The computed operating margin ratio is -2.5 percent.

With continued operational support from the parent company, this project is considered financially feasible.

CON Action Numbers: 9661 & 9662

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

Comparisons Between Applicant's Projections

	Beds	Net Rev. per day	Total Cost per day	Oper Profit per day	Managed Care percent	Medicaid percent
Select Specialty (9661)	60	\$986	\$923	\$62	4.9%	0.8%
Kindred East (9662)	70	\$1,035	\$1,060	(\$26)	16.7%	1.3%

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) projects managed care to represent 4.9 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.

Kindred Hospitals East, L.L.C. (CON #9662) projects that in year two, managed care patient days, including Medicare and Medicaid managed care days, are estimated at 16.7 percent of total patient days. The control group median value is 11.5 percent. If realized, this level of managed care is likely to have a significant positive impact on competition, and 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.**

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) will be subject to new construction standards when and if the AHCA Office of Plans and Construction reviews the proposed 60-bed LTCH. 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.

The application included a floor plan of the proposed one-story building, larger scaled plans of patient rooms and a smoke compartment plan.

The building is laid out quite efficiently. There is a large central core nurse station with three patient wings radiating from it. There is also a surgery/procedure wing and a sizable administrative/dining/visitor area. One wing leads to an ICU area with its own nurse station and its required support spaces as well as a sub-wing with 16 beds.

CON Action Numbers: 9661 & 9662

In the patient wings, the more critical areas and the semi-private rooms are located near the central nurse station. There is a variety of toilet/shower configurations. Some patient rooms have accessible showers and some do not. There is a five-station central bathing near the main nurse station, which includes a shower that will accommodate a patient on a stretcher.

In addition to having a staff dining room near the main entrance, there is also a small patient dining space. Both of these rooms open onto a covered exterior patio. Evidently the applicant anticipates that all patients will not be bed-ridden.

The surgery/procedure wing needs extensive further study and revision. Since there is only one operating room and one procedure room, the traffic pattern for doctors, staff and patients is overly complicated. There is only one two-station space that is labeled "Holding and Recovery". It is not clear if "Holding" refers to pre-op or post-op functions or both. No space is provided for a nurse station and its ancillary spaces in the holding/recovery room and this is particularly needed to serve a patient in the isolation room.

There is a doctor's area in the surgery/procedure wing with showers for both men and women but no adjacent toilet rooms. There are no comparable spaces for the nursing staff. In most facilities, the staff support spaces are separate from those of the doctors. The surgery waiting room could easily be enlarged and would function better by moving its entrance door and wall further up the corridor. If this were done, there could be a door leading directly from the waiting room to the surgical suite and the attendant could monitor this space better. In short, the surgical suite needs to be re-designed, and would most likely increase in size and cost.

There are numerous storage spaces as well as visitor and staff/patient amenities throughout the building. The required pharmacy and space for radiographic equipment are provided.

There is a list of applicable building codes on the plans, but most of them will change as noted above. Cost data and schedules submitted are difficult to analyze because of the surgery/procedure wing situation outlined above. The applicant has submitted several other proposals that have the identical problem, and the redesign will affect the timetable of at least one of these proposals and possibly the cost of all of them.

CON Action Numbers: 9661 & 9662

It is required that schematic drawings be submitted as part of the CON application. Although the drawings for this proposal may be more advanced than required, they 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.

Kindred Hospitals East, L.L.C. (CON #9662) presented a 1/16" scale plan of the proposed facility, along with larger scaled plans of two typical patient rooms. Smoke compartment walls were indicated. Most of the rooms will be semi-private and all patient rooms have handicapped accessible toilet/shower rooms. All patient room showers are sized to accommodate a wheelchair.

The portion of the hospital with 64 patient rooms is a cross-shaped area with four wings and a central nurse station. The other parts of the building are "L"-shaped and connect to the ends of two of the patient wings. For a long-term care facility, the building is quite expansive, with almost all typical hospital functions, including two operating rooms. Although a few specialized functions are listed to be contracted out, such as MRI services, the building could easily be described as functional for a typical non-specialty hospital. All the staff and patient ancillary support areas appear to be provided, including a pharmacy and basic radiology services.

There was a list of applicable building codes on the plans, but most of the codes will change before this project can be submitted to the AHCA Office of Plans and Construction for review. From the codes listed, it appears that the applicant is aware of the requirements for disaster preparedness and should keep these in mind when selecting a site for the new facility.

It is required that schematic drawings be submitted as part of the CON application. The drawings for this proposal 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.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661) is a new development stage company with no operating history. The applicant proposes 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 two percent of its total patient days to self-pay patients and 0.8 percent for Medicaid patients. The applicant anticipates that all self pay patients will be charity. This being the case, the applicant's charity care provision is higher than the state average of 1.7 percent. However, the applicant's projected Medicaid provision is less than the state average of 2.0 percent.

Kindred Hospitals East, L.L.C. (CON #9662) proposes to condition award of the certificate of need on the provision of 2.0 percent Medicaid and indigent patient days combined. According to Financial Schedule 7A, the applicant is projecting that Medicaid (1.3 percent) and Medicaid HMO (0.3 percent) will represent a total of 1.6 percent of total patient days in year two, less than the state average of 2.0 percent.

According to the applicant's response to the proposed rule provisions regarding charity care, the applicant states that charity patients will account for 1.5 percent of total patient days by the end of year two. However, the applicant does not acknowledge the provision of any charity care patient days on Financial Schedule 7A to support this projection.

F. SUMMARY

Select Specialty Hospital-Palm Beach, Inc. (CON #9661), a wholly owned subsidiary of Select Medical Corporation, proposes the creation of a 60-bed freestanding LTCH to be located in east central Palm Beach County, near JFK Hospital.

The proposed hospital will consist of 44,434 gross square feet of new construction and construction costs of \$7,892,500. The total project cost is estimated to be \$12,856,139. The funding for the proposed project will be provided by Select Medical Corporation.

CON Action Numbers: 9661 & 9662

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

Kindred Hospitals East, L.L.C. (CON #9662), a wholly owned subsidiary of Kindred Healthcare, Inc., proposes to establish a 70-bed freestanding LTCH to be located in the north central portion of Palm Beach County.

The proposed LTCH will consist of 45,896 square feet of new construction and construction costs of \$7,617,009. The total project cost is estimated to be \$12,937,419.

The applicant agrees to condition award of the certificate of need on the provision of 2.0 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.

Select Specialty Hospital-Palm Beach, Inc. (CON #9661):

- The applicant's two methodological approaches to demonstrate need are not supported by any specific discharge studies or other data, including DRG admission criteria from area hospitals regarding potential need. The applicant also failed to provide any supporting documentation from area physicians or other providers regarding potential referrals. It was further not demonstrated that patients that qualify for LTCH services are not currently being served or that an access problem exists for residents in District 9.

Kindred Hospitals East, L.L.C. (CON #9662):

- The various methodological approaches presented are not supported by any specific discharge studies or other data, including specific DRG admission criteria from area hospitals suggesting potential need. The applicant provided numerous letters of support for the project from area hospitals, physicians and case managers. However, the number of potential referrals of patients needing LTCH services was not quantified. It was further not demonstrated that patients that qualify for LTCH services are not currently being served or that an access problem exists for residents in District 9.

Quality of Care:

Select Specialty Hospital-Palm Beach, Inc. (CON #9661):

- 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.

Kindred Hospitals East, L.L.C. (CON #9662):

- The applicant states that all of its currently licensed LTCH's are accredited by JCAHO, an indication that quality of care is being delivered and that the necessary components are in place to ensure delivery of care. The applicant provided a reasonable description of its quality management functions.

Cost/Financial Analysis:

Select Specialty Hospital-Palm Beach, Inc. (CON #9661):

- 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 6.3 percent indicates that net revenues are proportional to costs. The project appears to be financially feasible.
- The applicant projects managed care to represent 4.9 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.

CON Action Numbers: 9661 & 9662

Kindred Hospitals East, L.L.C. (CON #9662):

- The applicant has both a good short-term and long-term financial position following emerging from bankruptcy proceedings in 2001. Based on the continued financial condition of the applicant, adequate cash on hand and cash flows will be sufficient to fund the proposed project. Funding for all capital projects is likely to be available as needed with the support of the parent company Kindred Healthcare, Inc. (formerly Vencor, Inc.).
- 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. Projected cost per adjusted patient day in year two is between the control group median and highest values. Compared to the control group, these costs are considered efficient. With continued operational support from the parent company, the proposed project appears to be financially feasible.
- The applicant estimates that managed care (including Medicare and Medicaid managed care days) will represent 16.7 percent of total patient days. This is higher than the control group median value. The projected levels, if realized, is likely to have a significant positive impact on competition, and to promote quality assurance and cost-effectiveness.

Architectural Analysis:

Select Specialty Hospital-Palm Beach, Inc. (CON #9661):

- The project involves new construction of a 60-bed freestanding LTCH 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 proposed project appears to be designed efficiently although the surgery/procedure wing needs extensive further study and revision. The required pharmacy and space for radiographic equipment are provided.
- The cost data and schedules submitted are difficult to analyze because of the required surgery/procedure revisions.

CON Action Numbers: 9661 & 9662

Kindred Hospitals East, L.L.C. (CON #9662):

- The proposed plan indicates a LTCH that is quite expansive and includes almost all typical hospital functions, including two operating rooms. All the staff and patient ancillary support areas appear to be provided. The required surgery, pharmacy and space for radiographic equipment are provided.
- The list of applicable building codes will change before this project is reviewed in final form by the Office of Plans and Construction. From the codes listed, it appears that the applicant is aware of the requirements for disaster preparedness and should keep these in mind when selecting a site for the new facility.
- There appear to be no major architectural concerns with the project.

G. RECOMMENDATION

Deny CON #9661 and CON #9662.

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: _____

Karen Rivera
Health Services and Facilities Consultant Supervisor
Certificate of Need

Jeffrey N. Gregg
Chief, Bureau of Health Facility Regulation