

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Kindred Hospitals East, L.L.C./CON #9703
680 South Fourth Street
Louisville, Kentucky 40202

Authorized Representative: Bud Wurdock
(502) 596-7718

Select Specialty Hospital-Alachua, Inc./CON #9704
2021 Church Street, Suite 202
Nashville, Tennessee 37203-2016

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

2. Service District

District 3

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 3. However, letters in support of each applicant's proposal were received as follows:

Kindred Hospitals East, L.L.C. (CON #9703) submitted 15 letters of support for the project. Letters of support were submitted by the following: Munroe Regional Medical Center (three), Ocala Regional, TimberRidge Nursing & Rehabilitation Center, Leesburg Regional Medical Center, The Villages Regional Hospital, Ocala Vascular Specialists, Citrus

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Memorial Hospital, State Representative Dennis K. Baxley (District 24), Senator Nancy Argenziano (District 3), Parnell Townley (Marion County Commissioner – District 3), Gerald K. Ergle, Mayor (City of Ocala) and Patrick G. Howard, Marion County Administrator.

The letters of support basically state that the location of a LTCH in District 3 will enhance services and accessibility for residents. Several of the letters addressed the inability to place acute care patients that qualify for LTCH services. One of those letters was from Carolyn Porter, RN, MSN, the Director of Case Management at Munroe Regional Medical Center (MRMC), the hospital within which the applicant proposes to locate. Ms. Porter states that in MRMC's fiscal year 2002, there were 702 patients whose length of stay was over 15 days and she believes that more than 200 of these patients would have benefited from LTCH services. Caroline Smith, the administrator at TimberRidge Nursing and Rehabilitation Center, a local skilled nursing facility, states that she is aware of community residents needing LTCH services who are too ill to be placed in the nursing home. Ms. Smith indicates that these patients are either transferred out of the area to a LTCH or remain in a local hospital. None of the letters of support quantified the actual number of patients needing LTCH services but not receiving them.

State Representative Larry Cretul's letter of support for the project was received via the mail on October 2, 2003. Representative Cretul writes that 25 percent of Marion County's population is over age 65 and citizens who need LTHC services must now to Tampa or Jacksonville, which he believes is unacceptable.

Select Specialty Hospital-Alachua, Inc. (CON #9704) submitted 13 letters of support from physicians with Shands at AGH in Gainesville. R. Whit Curry, Jr. M.D., Professor and Chair, Department of Community Health and Family Medicine at the University of Florida, indicates that teaching staff and family practice residents are frequently involved in treating longer length of stay acute care patients, many of whom would be appropriate for long-term hospital care. He states that during CY 2002, there were approximately 250 of these patients. Clinton G. Bush III, M.D., Medical Director at Shands at AGH in Gainesville and Bernard J. Gros, M.D. Chief of Staff submitted letters stating that 577 patients treated at this facility during CY 2002 were appropriate for long-term hospital care.

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Jodi J. Mansfield, the Executive Vice President and Chief Operating Officer of Shands HealthCare submitted a letter stating that Shands (Healthcare System) in District 3 frequently has patients with a length of stay greater equal to or greater than 15 days and we would consider transferring to a long-term care hospital facility, pursuant to appropriate physician orders. The other nine letters from Shands AGH physicians indicate they treated from “several” to a maximum of 25 patients during CY 2002 that would be appropriate for LTCH services. All of the letters indicate that without the long-term care option, these patients must remain in acute care beds.

C. **PROJECT SUMMARY**

Kindred Hospitals East, L.L.C. (CON #9703), a wholly owned subsidiary of Kindred Healthcare, Inc., proposes to establish a 31-bed LTCH within Munroe Regional Medical Center in Ocala, Marion County. The applicant operates seven long-term care hospitals in Florida and has CON approval for 20 beds at Kindred Hospital in District 4 and six beds at Kindred in Ft. Lauderdale in District 10.

The proposed LTCH will be located on the fifth floor of Munroe Regional Medical Center at the main campus and will contain 11,606 square feet. The project involves a total cost of \$1,548,831, including renovation construction costs of \$440,957.

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

Select Specialty Hospital-Alachua, Inc. (CON #9704), a wholly owned subsidiary of Select Medical Corporation, proposes to construct a 44-bed freestanding LTCH in Alachua County. The applicant has identified three sites in Alachua County that it considers to be appropriate for development of the proposed LTCH and indicates that all three sites are convenient to Shands Hospital at the University of Florida. The parent, Select Medical Corporation, currently has 72 LTCHs nationwide, including one operational LTCH in Miami that was licensed on December 23, 2002, and a recently approved 40-bed LTCH in District 7. Select Specialty has submitted seven proposals in the current review cycle to develop LTCHs within the State of Florida. These involve two proposals in District 8 and one each in Districts 1, 3, 4, 6, 8 and 9.

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The proposed hospital will consist of 38,906 gross square feet of new construction and construction costs of \$6,819,750. Total project cost is estimated to be \$12,514,212. Select Medical Corporation will provide the funding for the proposed project.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent Medicaid and charity patient days combined. The applicant also proposes to condition award of the CON to the facility being “Joint Commission Accredited”. However, section 408.043 (3) Florida Statutes directs that “Accreditation by any private organization may not be a requirement for the issuance or maintenance of a certificate of need”.

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, James B. McLemore, analyzed the application in its entirety with consultation from the Financial Analyst, Doug 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.

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.

In the absence of agency policy regarding long-term care hospital beds and services, Chapter 59C-1.008 (2)(e), Florida Administrative Code, provides a need assessment methodology which must include, at a minimum, consideration of the following topics, except where they are inconsistent with the applicable statutory or rule criteria:

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- a. Population demographics and dynamics;
- b. Availability, utilization and quality of like services in the district, subdistrict or both;
- c. Medical treatment trends; and
- d. Market conditions.

The existence of unmet need will not be based solely on the absence of a health service, health care facility, or beds in the district, subdistrict, region or proposed service area.

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 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):

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- 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 11 long-term care hospitals with 769¹ beds licensed to operate in the State of Florida. These facilities are concentrated in six of the 11 AHCA health planning areas and are in the following counties: Dade (Miami), Hillsborough (Tampa), Broward (Ft. Lauderdale and Hollywood), Duval, Clay, Orange and Pinellas (St. Petersburg). There are an additional 165 beds approved but not yet operational. These consist of 20 beds at Kindred Hospital in District 4 and six beds at Kindred in Ft. Lauderdale in District 10 and the following approved new LTC Hospitals:

¹ A total of 86 beds have been licensed since 12/31/02 utilization in chart on following page. These consist of 22 at Kindred Hospital –Bay Area-St. Petersburg licensed on April 23, 2003 and the licensure of two new facilities: SemperCare of Orlando (35 beds) on June 12, 2003 and Mercy Medical Development, Inc. d/b/a Sister Emmanuel Hospital For Continuing Care (29 beds) on July 15, 2003.

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SemperCare of Panama City (30 beds) and SemperCare of Tallahassee (29 beds) in District 2, Select Specialty (40 beds) at Lucerne Medical Center in Orlando/District 7 and HealthSouth (40 beds) in Sarasota/District 8. The average occupancy of the operational programs was 76.96 percent for calendar year 2002, ranging from a low occupancy rate of 52.21 percent for Specialty LTCH-Jacksonville to a high of 100.15 percent for Kindred LTCH-St. Petersburg.

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

**Florida Long-term Care Hospitals
Utilization Experience Calendar Year 2002**

Hospital	District	Beds	Bed Days	Patient Days	Occupancy
Kindred-North Florida	4	60	21,900	19,821	90.51%
Specialty-Jacksonville	4	107	39,055	20,392	52.21%
Kindred-St. Petersburg	5	60	21,900	21,933	100.15%
Kindred-Central Tampa	6	102	37,230	29,569	79.42%
Kindred-Bay Area-Tampa	6	73	26,645	17,986	67.50%
Kindred-Hollywood	10	124	45,260	32,300	71.37%
Kindred-Ft. Lauderdale	10	64	23,620	21,409	91.65%
Kindred-Coral Gables	11	53	19,345	17,197	88.90%
*Select Specialty-Miami	11	40	360	Not Reported	Not Reported
Florida Total		683**	235,055*	180,607*	76.96%*

Source: Florida Hospital Bed Need and Service Utilization, 7/25/03.

*Select Specialty-Miami was licensed effective 12/23/02 but reported zero utilization. Utilization data shown above is based on 643 beds in operation for the 12-month reporting period deleting the 360 bed days credited to Select Specialty-Miami. While Specialty-Miami's license was effective 12-23-02, it was not issued until 1-3-03.

**Does not include Kindred Hospital-St Petersburg (District 5), which added 22 beds on 4/23/03 and a new 29-bed facility, sister Emmanuel Continuing Care in District 11 that was licensed effective July 15, 2003.

There are presently no existing or approved long-term care hospitals (LTCHs) located in District 3.

The current bed complement, patient days and average occupancy of the distinct other forms of care in District 3 are as follows:

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Acute Care and Post-acute Care Providers District 3 Beds and Utilization

Facility Type	Total Beds District 3	District 3 Average Occupancy
Acute Care	3,247	69.01%
Comprehensive Med. Rehab	55	70.85%
Hospital Based Skilled Nursing	*84	44.23%
Skilled Care Community Nursing Homes	7,528	86.42%

Source: Hospital Bed Need Projections 07/03 Projections, CY 2002 utilization.

January 2002-December 2002 and Nursing Home Utilization & HBSNU Utilization from AHCA publications of 4/11/03.

* As of 10/10/03, there are 40 licensed HBSNU beds in District 3, 30 beds at AGH at Shands which averaged 54.28% utilization for the 12 months ended June 30, 2003 and a 10 bed HBSNU at Putnam Community Medical Center (77.78% utilization).

Both Kindred Hospitals East (CON #9703) and Select Specialty (CON #9704) 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. As previously noted, LTCHs are designed to treat patients with medical conditions requiring extended hospital-level services, for a lengthy period of time (generally more than 25 days). Both co-batched applicants state their intention to 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. However, studies recently conducted suggest the opposite.

Although the applicants contend 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.).

As noted earlier, when no need methodology exists, it is the applicant's responsibility to demonstrate need based upon the availability, utilization and quality of like services in the district. The Centers for Medicare and Medicaid, based on several studies, have determined that LTCH services are similar to home health services, skilled nursing services and comprehensive medical rehabilitation services. Applicants for LTCH

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services must therefore show that there is need based upon the availability, utilization and quality of LTCH, home health, skilled nursing and comprehensive medical rehabilitation services in the district. Both applicants contend that LTCH services are distinct.

The June 2003 MedPAC Report² found that “LTCHs are the post-acute care setting least used by beneficiaries and are not available in many areas. In general, policymakers regard rapid growth in any sector as a phenomenon that requires examination. As the number of LTCHs has almost doubled since 1993 and Medicare spending for such care has also quintupled from 1993-2001, questions have arisen about whether beneficiaries using LTCHs are different from patients using other settings. Our analysis found patients in market areas with LTCHs had similar acute hospital lengths of stay regardless of whether they used LTCHs or not. Patients who used these hospitals were found to be three to five times less likely to use skilled nursing facility (SNF) care, suggesting that SNFs and LTCHs may be substitutes. Compared with similar patients who did not use LTCHs, total payments and mortality rates for LTCH patients were considerably higher”. Although the MedPAC report questions the role LTCHs play in providing acute and post-acute care and the relationship of patient outcomes and the high cost of care in this post-acute setting, the report admits that more information is needed on a number of issues regarding LTCHs before concluding that LTCHs represent a valid post-acute care option.

It was not definitively demonstrated by either co-batched applicant that patients cannot be treated in one of three other venues (rehabilitation, home health and skilled nursing). A discussion of each applicant’s need analysis is presented below.

Kindred Hospitals, East L.L.C. (CON #9703) 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. Kindred emphasizes that frequently its patients are dependent upon technology such as mechanical ventilation, total parenteral nutrition and renal dialysis for continued life.

² Source: MedPac Report to Congress: Variation and Innovation in Medicare, June 2003, Chapter 5 Monitoring post-acute care, pages 72-73.

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Kindred Hospitals East, L.L.C. indicates 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 also indicates that Munroe Regional Medical Center (Munroe Regional) in Ocala would provide the most optimal setting, given the hospital's size, location and importance to the district's health care delivery system. The applicant states that with Munroe Regional's centrally located facility, its project, Kindred Hospital Ocala will be able serve all of District 3.

The District 3 population growth was addressed and according to the applicant's projections, District 3 is expected to grow by 3.5 percent (48,594 persons) from January 2004 to January 2006 (the second year of operation of the proposed project). For the same time period, the applicant states that the 65 and over population is expected to increase by 5.0 percent. The reviewer checked the applicant's projections with the AHCA Population Estimates published June 2003 and they are correct.

The applicant addressed several methods of arriving at potential need for the Ocala project, including a use rate approach. Based on the operations of the LTCH's in the state for calendar year 2002, the applicant arrived at a combined average of 20.14 LTCH patient days per 1,000 total population and 124.33 days per 1,000 population age 65 and older using the population for the districts in which LTCH's are located. 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 applicant applied the historical utilization figure to projected 65 and over population of 321,344 for the District 3 service area as of January 1, 2006 (second year of operation) to arrive at 39,952 potential patient days or an average daily census (ADC) of 109. The applicant also applies the use rate for the total district population (1,425,589) to arrive at 28,711 potential patient days or an average daily census of 79 patients.

The applicant's discussion of a use rate methodology, the use rate approach is based on the assumption that the District 3 service area will perform, on average, the same as other LTCHs 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.

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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 71 LTCH beds (1,425,589 divided by 10,000 x 0.5=71.28). 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 3 residents age 18 and older for the 12 months ending December 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 provided a list of 50 DRGs that are considered LTCH appropriate, as based on the experience at other Kindred Hospitals. The applicant then analyzed the discharge data for hospitals located in District 3 to determine lengths of stay that exceed the DRG specific geometric mean length of stay by seven days to arrive at 20,222 potential LTCH patient days in District 3, for an ADC of 55.

In summary, the various approaches used by the applicant are not supported by any specific discharge studies or other data, including specific DRG admission criteria from area hospitals regarding potential need. The applicant failed to provide strong supporting documentation from area physicians regarding potential referrals. The only letter of any specificity was provided by the Director of Case Management at Munroe Regional stating that in fiscal year 2002, the hospital cared for 702 patients with lengths of stay over 15 days, some 200 or so she believes may have benefited from LTCH services. However, no other supporting documentation was provided by the hospital with regard to the ultimate placement of these patients or actual DRG data to support possible LTCH placement.

Select Specialty Hospital – Alachua, Inc. (CON #9704) indicates that it has a wide range of programs that improve patients' with medical complexities, co-morbidities, and chronic conditions. The applicant indicates that the typical patients who benefit from long-term care include post-surgical and trauma patients, wound care patients, head

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injury and spinal cord injury patients, patients with diseases such as muscular dystrophy, Gillain Barre syndrome and Myasthenia Gravis, respiratory/ventilator dependent patients and other medically complex patients who require extensive physiological monitoring, intravenous therapies, dialysis or post-operative care. Select's services include medically complex care for a range of underlying conditions and symptoms requiring intensive therapies and nursing care to maintain normal breathing without mechanical support, specialized care for patients with acute or chronic respiratory disorders who may have tracheotomies, ventilators or require extensive respiratory treatments to maintain normal breathing without mechanical support, wound/skin care, and care for patients who are unable to withstand three hours of intensive therapy a day or who require too high a degree of nursing or respiratory care to be acceptable for most acute rehabilitation programs.

Select Specialty Hospital-Alachua, Inc. projects that its primary service area will be Alachua County and the counties in the surrounding area. While the applicant alludes to a wider service area, it does state that the majority of its patients will originate from Alachua County acute care facilities. The applicant presented letters of support for the project from the medical director of Shands at AGH in Gainesville indicating that facility treated about 577 patients during CY 2002 that may have been appropriate for long-term care and the chairperson of the Department of Community Health and Family Medicine at the University of Florida indicating that during CY 2002, its teaching staff and family practice residents treated about 250 patients that may have been appropriate for long-term care. The applicant also included a letter from the executive vice president and chief operating officer of Shands HealthCare stating that Shands (Healthcare System) in District 3 frequently has patients with a length of stay greater equal to or greater than 15 days.

With regard to short-term acute care, the applicant states that the need for long-term care hospitals stems from the patients that are surviving complicated surgical interventions or traumatic injuries only to need long-term life support and various other therapies. 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 42.7 days. However, this does not show that

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medically complex post-acute patients were inappropriately cared for in this setting. The currently licensed 40 hospital-based skilled nursing beds in District 3 were utilized at only 60.64 percent for the 12 months ending June 2003.

The applicant provided an analysis of the Alachua County, Subdistrict 3-2³ and District 3 population growth. According to the applicant's projections, Alachua County is expected to grow by 5.4 percent (from 227,268 to 239,426 or by 12,158 persons) from July 2002 to July 2007 (the second year of operation of the proposed project). For the same time period, the applicant states that the 65 and over population is expected to increase by 6.7 percent. The seven counties comprising Subdistrict 3-2 are expected to have a total population increase by 7.0 percent (23,803) from July 2002 to July 2007, while the age 65 and over population is projected to increase by 21.0 percent (from 36,092 to 43,688 or by 7,596 persons). District 3 is expected to grow by 9.3 percent (124,646 persons) from July 2002 to July 2007 (the second year of operation of the proposed project). For the same time period, the applicant states that the 65 and over population is expected to increase by 13.3 percent. The reviewer checked the applicant's projections with the AHCA Population Estimates published June 2003 and they are correct.

In the absence of an approved methodological approach to need for LTCH beds, the applicant presents four different methods for estimating need. The first involves an extended length of stay analysis specific to Alachua County. The second and third methods address the geometric mean length of stay plus 15 days and seven days, for Subdistrict 3-2 and Alachua County, respectively. The fourth method is a patient discharge analysis that the applicant states were obtained utilizing UB-92 (Universal Billing Form 92) information for the three acute care hospitals in Alachua County.

With regard to the extended length of stay analysis, the applicant selected the top DRGs from Alachua County appropriate for LTCH stay. The evaluation of the hospital's discharges excluded lengths of stay of less than 24 days, patients under the age of 14, psychiatric diagnosis, substance abuse diagnosis, obstetric diagnosis, newborn diagnosis and rehabilitation diagnosis. The net number of discharges were then identified in an attempt to show potential need for LTCH beds. The applicant arrived at a total of 1,149 hospital discharges with a length of stay 24 days and greater. The applicant multiplied the potential number

³ Subdistrict 3-2 is the seven counties in Acute Care and Nursing Home rule designated as such. These are Alachua, Bradford, Dixie, Gilchrist, Lafayette, Levy, and Union Counties. There are no designated counties for Long-term Care Hospitals.

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of patients by the average length of stay for LTC hospitals in Florida (42.7 days) to arrive at total patient days and then divided this number by 365 to arrive at the average daily census of 134 patients. Based on a 75 percent occupancy rate, the applicant arrived at a need for 179 beds in support of its 44-bed request. The expected length of stay of 42.7 days may be overstated. The ALOS for LTCH patients in the state is inflated due to the Kindred facilities focus on ventilator/pulmonary services and a corresponding longer length of stay. Kindred currently operates seven of the 11 LTCHs in the state. A more realistic method using a 25 to 30 day length of stay supports an average daily census of 79 to 95 patients or a potential hospital specific need, absence other factors, for 59 to 71 beds based on a 75 percent occupancy rate. Further, as noted earlier, no evidence has been presented by the applicant indicating that area residents needed LTCH services but were unable to obtain them from one of the several venues of post-acute services currently available, within a reasonable distance, in District 3.

The second method examines the geometric mean length of stay plus 15 days to arrive at 295 potential LTCH discharges and a bed need for 199 beds. This method results in a count similar to the extended length of stay method previously discussed and is also based on an average length of stay of 42.7 beds. The third method examines the geometric mean length of stay plus seven days to arrive at 3,608 potential LTCH discharges and a rather liberal need for 422 beds (563 at 75 percent occupancy). Additionally, as noted above, there is no evidence that the patients the applicant projects it can serve cannot be served in existing healthcare settings in District 3.

The fourth method provides a more detailed, patient specific extended stay analysis conducted of Alachua County hospital discharges with average length of stays greater than 24 days. For CY 2002, the applicant identified 1,149 discharges with 24 days or greater length of stay. According to this analysis, 28 percent of the patients had a length of stay exceeding 46 days and 58 percent had a length of stay exceeding one month. The applicant contends that these patients were in a critical state and may have benefited from a stay at a LTCH. The applicant provided summaries of several patient cases in which the patient was not discharged to an appropriate setting due to the lack of LTCH services in the area. The applicant states that many of these patients were eventually discharged to a skilled nursing facility, after spending months in an acute care setting. This analysis does not provide a potential bed need but rather presents specific discharge data in support of the

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applicant's perceived need for LTCH services and to show that these patients are not candidates for other post-acute settings. There was no documentation provided that patients are being inappropriately cared for.

As with any LOS methodology, certain variations in patient characteristics can alter assumptions of need. These include the patient's functional ability, availability of caregivers at home, ethnicity, age, socio-demographics, and dependence on technology. Documentation from area hospital planners or area physicians with regard to discharges of potential LTCH patients is the best evidence of unmet need. This evidence was not provided by the applicant.

In summary, the applicant's 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. While Shands Hospital representatives indicated that they have patients that may have benefited from long-term hospital care, no other supporting documentation was provided by Shands with regard to the ultimate placement of these patients or actual DRG data to support possible LTCH placement. In addition, the applicant failed to provide strong supporting documentation provided from area physicians regarding potential referrals. 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 or indication of potential referrals from area hospitals. 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.

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 2003 District 3 CON Allocation Factors Report has the following preferences for the development of long-term care hospital beds.

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- a. **Preference shall be given to an applicant who proposes to establish new long-term care services within hospitals through the conversion of existing medical and surgical beds and renovation and conversion of existing space rather than new construction. However, preference is withdrawn and conversion is advised against if the acute care bed occupancy of the facility in which the beds will be converted was 70 percent or higher for the most recently completed 12-month period prior to the application.**

Kindred Hospitals East, L.L.C. (CON #9703) does involve the conversion of space within an existing hospital but does not involve the conversion of acute care beds. Munroe Regional Medical Center's 323 acute care beds averaged 84.68 percent utilization during CY 2002.

Select Specialty Hospital – Alachua Inc. (CON #9704) proposes to construct a 44-bed freestanding facility.

- b. **Preference shall be given to an applicant who documents support from acute care hospitals, long-term care facilities, home health agencies, vocational rehabilitation centers and community social services organizations in the proposed service area.**

Kindred Hospitals East, L.L.C. (CON #9703) submitted letters of support from Munroe Regional Medical Center (three), Ocala Regional, TimberRidge Nursing & Rehabilitation Center, Leesburg Regional Medical Center, The Villages Regional Hospital, and Citrus Memorial Hospital.

The applicant did not submit letters of support from home health agencies, vocational rehabilitation centers and community social services organizations.

Select Specialty Hospital-Alachua, Inc. (CON #9704) submitted letters of support from physicians with Shands HealthCare, Shands at AGH and the Department of Community Health and Family Medicine at the University of Florida.

The applicant did not submit letters of support from long-term care facilities, home health agencies, vocational rehabilitation centers and community social services organizations.

- c. **Preference shall be given to an applicant who identifies existing and approved providers of like services in the proposed service area and provide an analysis of need for the proposed service, including impact of the proposed project on existing providers and why the need is not currently being met.**

Kindred Hospitals East, L.L.C. (CON #9703) indicates there are no long-term care facilities in the district and refers the reviewer to its need discussion. This criterion however, addresses “like services” and as noted earlier, the Centers for Medicare and Medicaid have identified four venues of care for these services: home health agencies, comprehensive medical rehabilitation providers, skilled nursing facilities, and long-term care hospitals.

Select Specialty Hospital-Alachua, Inc. (CON #9704) also states that there are no long-term care facilities in the district and that the closest long-term care facilities are approximately one hour or more travel time away. The applicant also refers the reviewer to its need discussion. As noted above, this criterion however, addresses “like services” and the Centers for Medicare and Medicaid have identified four venues of care for these services: home health agencies, comprehensive medical rehabilitation providers, skilled nursing facilities, and long-term care hospitals.

- d. **Preference shall be given to an applicant who proposes 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 by AHCA’s Hospital Financial Data report.**

AHCA Hospital Financial data for FY 2002 shows the existing long-term care hospital in Florida average net patient service revenue was \$208,668,516 and the average charity care deduction was \$10,630,364. This results in an statewide average of 5.1 percent.

Kindred Hospitals East, L.L.C. (CON #9703) indicates that charity care days will account for 1.4 percent of its year two total patient days or 3.8 percent of year two net patient service revenue.

Select Specialty Hospital-Alachua, Inc. (CON #9704) indicates that charity care will account for 0.8 percent of its total patient days and 2.4 percent of its year two net patient service revenue.

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- e. **Preference shall be given to a hospital proposing a long-term care hospital within an acute care hospital, who documents a procedure to report utilization data separately and distinctly for each facility.**

Kindred Hospitals East, L.L.C. (CON #9703) states that it will submit maintain separate records and will submit separate reports as required to the local health council.

Select Specialty Hospital – Alachua Inc. (CON #9704) proposes to construct a 44-bed freestanding facility.

- f. **Preference shall be given to an applicant who documents that they provide, or will provide, at least the average percent of Medicaid and charity care patient days in relation to other long-term care hospitals throughout the state.**

According to FY 2002 Hospital Financial Data, LTCHs in the state averaged 1.8 percent Medicaid patient days and 1.7 percent charity care patient days. Both applicants propose combined Medicaid and charity care conditions below the combined 3.5 percent provided.

Kindred Hospitals East, L.L.C. (CON #9703) proposes to condition award of the certificate of need on the provision of 2.8 percent Medicaid and charity care 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 1.8 percent.

The applicant's Schedule 7A indicates that 1.4 percent of the total patient days under its "Other Payers" column will result in zero revenue per patient day. This is less than the state average of 1.7 percent.

Select Specialty Hospital-Alachua, Inc. (CON #9704) proposes to condition award of the certificate of need on the provision of 2.8 percent Medicaid and charity patient days combined. Schedule 7A indicates the applicant projects that two percent of its total patient days will be Medicaid patients and 0.8 percent for charity care patients. The applicant's projected Medicaid provision is above the state average of 1.8 percent but the projected charity care at 0.8 percent is less than the 1.7 percent state average.

- g. Preference shall be given to an applicant who utilizes relevant and legitimate data sources, cited and sourced accordingly, where applicable, in order to substantiate any projections, claims or estimations. Examples of commonly utilized data sources include, but are not limited to AHCA hospital discharge data, DOH vital statistics, Medicaid, Medicare, AHCA hospital financial data, AHCA CON annual report and various United States Census data.**

Both applicants cited AHCA hospital discharge data, population statistics from the AHCA Population Estimates and AHCA hospital financial data in their projections, claims and estimations.

- 3. Agency Rule Criteria** *((The Agency does not currently have adopted preferences relating to LTCHs. Please see Section 1 b. need section for discussion of criteria relevant to the applicants projects.)*

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.**

Kindred Hospitals East, L.L.C. (CON #9703) states that the proposed project will increase the availability and accessibility to care in District 3 because of the lack of any LTCH services in the district and the distance that residents must travel for these services.

The applicant contends that the proposed hospital within a hospital program 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.

As previously discussed, the applicant provided a letter from Munroe Regional indicating a potential caseload of LTCH patients based on length of stay. However, the applicant failed to provide any other specific supporting documentation from area hospitals and physicians regarding

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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 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.

Select Specialty Hospital-Alachua, Inc. (CON #9704) contends that Alachua County, Subdistrict 3-2 and District 3 are underserved with regard to the accessibility and availability of LTCH services and that clinically appropriate patients are remaining in inappropriate bed situations.

As previously discussed, the applicant provided letters from Shands HealthCare and Shands at AGH indicating a potential caseload of LTCH patients based on length of stay. However, the applicant failed to provide any specific supporting documentation from other area hospitals and physicians 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.

In response to quality of care, the applicant discussed its corporate experience in monitoring care, outcomes and patient satisfaction. Select currently has one existing operational LTCH in Florida.

The applicant did not 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.**

Kindred Hospitals East, L.L.C. (CON #9703) 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 detailed 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 in attachment 7 of the application. The applicant also indicates

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that patient satisfaction surveys are given to all patients and family members. Attachment 10 contained a summary of the patient satisfaction survey for CY 2002, which indicated that the applicant's facilities generally score above 4 (very good, 5 is excellent) on 19 categories rated. The applicant received scores below 4 on two categories, call light response and shift coordination which average 3.72 and 3.87 respectively. A score of three is indicated to be good. The survey also had as question 19, the likelihood that the respondent would you recommend the facility to others if they need this type of care. Very likely was five and somewhat likely is shown as four. The summary indicated a rating of 4.68 to this question.

According to the most recent Complaint Summary Report, the seven licensed Kindred LTCH's in the state had a combined total of 23 confirmed complaints, with 10 of those without deficiencies dating back to October 1999 through the present. The 13 confirmed allegations involve: patient care (4), restraints (2), staffing (2), patient abuse/neglect (1), nursing service (1), discharge planning (1), patient rights (1) and medicine problem/error (1). The majority of the allegations occurred at Kindred Hospital-Bay Area Tampa with nine confirmed and five confirmed without deficiencies; and at Kindred Hospital South Florida/Coral Gables with three confirmed allegations.

Select Specialty Hospital-Alachua, Inc. (CON #9704) 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. No complaints have been received on the parent corporation's new facility as of September 25, 2003. The applicant states that Select Medical Corporation hospitals continually monitor care, outcomes and patient satisfaction and that Select exceeds JCAHO reporting requirements and is unique among LTHC hospitals in actively developing comparable quality measures as a basis for monitoring care and developing best practices.

The applicant provided a description of its performance improvement plan that establishes specific methods and techniques for monitoring and improving care delivery. A copy of the Select Specialty Hospital Plan for Improving Organizational Performance, Year 2003 is included Attachment 21 in Volume 3 of the application. Attachment 16 contained a summary of Select Medical's 2,563 patient satisfaction surveys for the six month period ending June 30, 2003, which contained a percentage of yes responses to six questions. Four of these indicated over 90 percent yes responses. Two were under 90 percent; an explanation of treatment

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plan goals (89.48 percent) and someone on hospital staff explaining the purpose of medicines in a way you could understand (89.72 percent). 94.23 percent of the returned surveys indicated they would you recommend the Select facility to others if they needed hospital services.

- 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.

Kindred Hospitals East, L.L.C. (CON #9703) states that it will work with area universities, colleges and other educational training program to provide clinical on-site training for students in various programs. The applicant further states that by being located within Munroe Regional Medical Center, it can provide a clinical rotation site for students currently partnered with the hospital. The applicant provides a brief description of the clinical rotation current Kindred LTCH's provide to students in nursing, respiratory and rehabilitative services. However, the applicant states this project will not be located in a research or teaching hospital.

Select Specialty Hospital-Alachua, Inc. (CON #9704) states that the project will allow Select to introduce new clinical areas for the education of future clinicians and support personnel. The applicant cites the parent company's affiliations with Duke University, Vanderbilt University and Ohio State University as evidence of partnerships that have enabled the company to develop outcome-oriented programs that ensure high quality patient. However, the applicant states that while the focus of the project is to respond to need in the community, it is not a statutory teaching hospital nor is the project's primary purpose research or physician education.

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- 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.**

Kindred Hospital East, L.L.C. (CON #9703): The financial impact of the project includes the project cost of \$1,548,831 and incremental operating costs of \$8,224,428 in year two.

The audited financial statements for the calendar year ending December 31, 2002 were analyzed for the purpose of evaluating the applicant's ability to provide the capital and operational funding necessary to implement the project. The following is a list of the accounts and ratios used in the analysis:

FINANCIAL INDICATORS AND RATIOS

	12/31/2002
Current Assets	\$ 95,586,452
Cash and Current Investment	\$ 2,556,678
Assets Restricted for Capital Funding	\$ 0
Total Assets	\$ 144,057,782
Current Liabilities	\$ 47,475,625
Total Liabilities	\$ 47,488,505
Total Equity	\$ 96,569,277
Net Operating Revenues	\$ 436,765,013
Interest Expense	\$ 143
Net Profit – Operations	\$ 18,458,720
Net Income	\$ 11,293,364
Cash Flow Provided by Operating Activities	\$ 48,507,659
Working Capital	\$ 48,110,827
Current Ratio (CA/CL)	2.0
Long-Term Debt to Equity (TL-CL/TE)	0.0
Operating Cash Flow (CFO/CL)	1.0
Equity to Total Assets (TE/TA)	67.0%
Operating Margin (NPO/NOR)	4.2%
Total Margin (NI/NOR)	2.6%
Return on Assets (NI/TA)	7.8%
Operating Cash Flow to Assets (CFO/TA)	33.7%

The applicant 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

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million, and total assets of \$1.64 billion. Income from operations was \$3.3 billion with cash flows of \$248.7 million.

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 2.0 is moderately strong. The ratio of cash flow to current liabilities (operating cash flow) of 1.0 is good. Working capital (current assets less current liabilities) of \$48.1 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. In 2002, the applicant posted an operating profit of \$18.4 million, resulting in an operating margin of 4.2 percent, an average position. Total equity is \$96.6 million; the ratio of equity to assets is 67.0 percent. Overall, the long-term position of the applicant is good.

Capital requirements:

Schedule 2 indicates capital projects of \$23.8 million.

Available capital:

Funding for these projects will come from \$5.5 million from operating cash flows and \$18.2 million from funds in hand. The audited financial statements show \$2.6 million in cash on hand, and \$48.5 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.

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Health Manpower:

Kindred Hospitals East, L.L.C. presents brief bibliographies of its management team personnel that will oversee the project. The applicant also presents a detailed description of its staff recruitment and retention policies. The narrative indicates that the project involves the recruitment of 59.5 FTEs by the end of the first year including 44.8 licensed nursing and therapy staff in addition to contract therapy staff. According to Schedule 6, the applicant anticipates that the project will require a total of 59.5 FTE positions with the majority of FTEs being direct care givers consisting of a mix of RNs, LPNs and CNAs (35.2 positions). Physical, speech and occupational therapy positions are indicated to be contracted services. Ancillary "Other: Pharmacy, RT" positions are indicated to total 9.6 FTEs. Non-clinical overhead is based upon staffing and salary levels at other Kindred hospital within hospital facilities. Clinical staffing figures were also based upon staffing levels at other Kindred hospitals within hospitals. The applicant does not provide staffing for year two.

Select Specialty Hospital-Alachua, Inc. (CON #9704): The financial impact of the project will include the project cost of \$12,514,212 and operating costs in year two of \$11,765,435.

The audited financial statements of the applicant were reviewed to assess the financial position as of the balance sheet date and the financial strength of its operations for the period presented.

The applicant is a start up company with \$10 in assets as of August 5, 2003. The applicant is a wholly owned subsidiary of Select Medical, Inc. The company had, at December 31, 2002, \$56.1 million in cash on hand, \$346.8 million in current assets and \$739.1 million in total assets. Revenue from operations was \$1.1 billion with cash flows of \$120.8 million. This is a financially strong company.

Capital requirements:

Total capital costs for this project from Schedule 1 are \$12.5 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, which states that the company has access to a \$150 million credit line in addition to the previously discussed financial resources.

Conclusion:

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

Health Manpower:

Select Specialty Hospital-Alachua, Inc. presents brief bibliographies of the Select Medical Corporation management team personnel that will oversee the project. The applicant also provided a description of the qualifications, training and experience required for various LTCH positions in the supporting materials section of the application.

Schedule 6 indicates that the applicant intends to employ a total of 61.0 FTE staff in the first year of operation, increasing to 90.0 in year two. The majority of the positions involve nursing (year two - 50 positions) and physical, speech and occupational therapy positions (17 positions in year two). Pharmacy positions are indicated to total 4.0 FTEs in year two.

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

A comparison of the each of the applicants 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.

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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, which are derived from the reasonable cost-based reimbursement system, provide a rational basis for evaluating estimated revenues.

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 3.3 percent per year. Inflation adjustments were based on the 2003 2nd Quarter New CMS Hospital Market Basket Index.

Kindred Hospital East, L.L.C. (CON #9703) will lease the space required to operate the hospital from Munroe Regional Medical Center. The applicant has enclosed a copy of the executed lease agreement.

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 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 state how they intend to comply with this provision; a copy of a proposed agreement with Munroe Regional Medical Center (MRMC) submitted with the application includes the purchase of services from MRMC. Failure to meet this requirement 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.

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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.

Projected net revenue per adjusted patient day (NRAPD) of \$938 in year one and \$1,007 in year two is between the control group lowest and median values of \$838 and \$1,101 in year one and \$865 and \$1,136 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 \$1,124 in year one and \$908 in year two is between the control group median and highest values of \$1,024 and \$2,095 in year one and is between the control group lowest and median values of \$742 and \$1,057 in year two. Compared to the control group these costs are considered efficient. (See Comparative Table).

The year two operating profit for the hospital of \$896,513 computes to an operating margin per adjusted patient day of \$99 which falls between the lowest and median values of -\$31 and \$125. The computed operating margin ratio is 9.8 percent.

This project is considered financially feasible.

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Select Specialty Hospital-Alachua, Inc. (CON #9704): 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.

Projected net revenue per adjusted patient day (NRAPD) of \$935 in year one and \$1,026 in year two is between the control group lowest and median values of \$880 and \$1,156 in year one and \$908 and \$1,193 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 \$1,233 in year one and \$969 in year two is between the control group median and highest values of \$1,075 and \$2,199 in year one and the control group lowest and median values of \$779 and \$1,110 in year two. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$683,883 computes to an operating margin per adjusted patient day of \$56, which falls between the peer group lowest and median values of \$-31 and \$125 respectively. The operating margin of 5.5 percent indicates that net revenues are proportional to costs.

This project is considered financially feasible.

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Select Specialty Hospital-Alachua, Inc Comparative Table

CON #9704

PEER GROUP 12

	2007 YEAR 2 ACTIVITY	YEAR 2 ACTIVITY PER DAY	<u>INFLATION ADJ. VALUES</u>		
			Highest	Median	Lowest
ROUTINE SERVICES	11,530,150	950	1,224	908	690
INPATIENT AMBULATORY	25,461,479	2,098	12	0	0
INPATIENT SURGERY	295,371	24	0	0	0
INPATIENT ANCILLARY SERVICES	0	0	3,815	2,922	2,375
OUTPATIENT SERVICES	0	0	0	0	0
TOTAL PATIENT SERVICES REV.	37,287,000	3,072	5,051	3,830	3,065
OTHER OPERATING REVENUE	0	0	233	2	0
TOTAL REVENUE	37,287,000	3,072	4,785	3,854	3,045
DEDUCTIONS FROM REVENUE	24,837,682	2,046	*	*	*
NET REVENUES	12,449,318	1,026	2,213	1,193	908
EXPENSES					
ROUTINE	2,509,075	207	567	320	193
ANCILLARY	4,058,333	334	649	301	206
AMBULATORY	0	0	0	0	0
TOTAL PATIENT CARE COST	6,567,408	541	1,216	621	399
ADMINISTRATIVE & OVERHEAD	3,019,309	428	952	511	374
PROPERTY	2,178,718	*	*	*	*
TOTAL HOSPITAL EXPENSE	11,765,435	969	2,270	1,110	779
OTHER OPERATING EXPENSE	0	0	0	0	0
TOTAL EXPENSE	11,765,435	969	2,270	1,110	779
OPERATING INCOME (MARGIN)	683,883	56	280	125	-31
PERCENT OPERATING MARGIN	5.5%				

PERCENTAGES NOT INFLATION ADJUSTED

PATIENT DAYS	12,137			
ADJUSTED PATIENT DAYS	12,137			
TOTAL BED DAYS AVAILABLE	16,060			
ADJ. FACTOR	1.0000			
TOTAL NUMBER OF BEDS	44			
PERCENT OCCUPANCY	75.6%	100.2%	84.2%	52.2%

	PATIENT DAYS	PERCENT OF TOTAL			
PAYER CLASS					
SELF-PAY	97	0.8%	4.1%	0.9%	0.0%
MEDICAID	243	2.0%	13.3%	0.2%	0.0%
MEDICAID HMO	0	0.0%			
MEDICARE	9,414	77.6%	97.3%	75.4%	67.4%
MEDICARE HMO	0	0.0%			
INSURANCE	1,788	14.7%			
HMO/PPO	595	4.9%	23.4%	10.5%	0.0%
OTHER	0	0.0%			
TOTAL	12,137	100.0%			

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- 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
Kindred East (9703)	31	\$1,007	\$908	\$99	0.3%	1.3%
Select Specialty (9704)	44	\$1,026	\$969	\$56	4.9%	2.0%

Kindred Hospitals East, L.L.C. (CON #9703) projects managed care to represent 0.3 percent of its patient days. The applicant projects managed care days, including Medicaid HMO days, to represent 0.3 percent of its patient days. This is only slightly above the control group lowest level of activity of 0.0. The projected managed care levels, if realized, could have an adverse impact on competition to promote quality assurance and cost-effectiveness.

Select Specialty Hospital-Alachua, Inc. (CON #9704) 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 10.5 percent. The projected levels, if realized, will have a marginal 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.**

Schematic drawings are required to be submitted as part of the CON application. Although the drawings for the 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 #9703) proposes to establish a new 31-bed long-term care hospital (LTCH) on the fifth floor of the Munroe Regional Medical Center in Ocala. The project consists of 11,606 GSF of renovation at a renovation cost of \$440,957. This application was submitted previously as CON #9648 and reviewed architecturally on April 28, 2003. There have been no substantial changes to the plan. However, a space for basic radiographic equipment has been created. There is an issue with the location of the pharmacy noted below.

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The area to be leased is basically an entire wing connected to the existing hospital by a corridor. The wing has a stairwell at both ends with an elevator and a third stair in the middle. There are two spacious nurse stations, one near the center of the wing which apparently serves eight beds and the other further down the corridor to serve the remainder of the 31 beds.

There was a plan of the entire fifth floor in the application along with a demolition plan and a renovation plan. Also included were larger scaled plans of “typical” patient rooms and the single isolation room. The main floor plan has been clarified for this application. The pharmacy was overlooked by the architectural review on the previous submittal since it was not contiguous to the bulk of the space that will be occupied as an long-term acute care hospital. However, the new requirements of Chapter 59A-3 of the Florida Administrative Code require that the pharmacy be located within the boundaries of the physical plant of the newly licensed hospital.

Possibly the medical records space could be swapped with the pharmacy. That location is not perfect, but would be acceptable.

The enlarged patient room plans could have been clearer about the actual sizes of the spaces, but scaling them seems to indicate that they meet minimum size requirements. Any existing patient rooms which will remain as such in the new hospital will only be required to meet existing construction standards. All new patient rooms, including existing ones that are being physically changed in size, must meet new construction standards and must have a hand washing station within the room itself in addition to the lavatory in the bathroom. The two spaces that will be treated as new do not have these features.

All the staff and patient support areas appear to be provided since this is an operational hospital wing. There was a list of applicable building codes on the drawings but it was somewhat out of date. This is not a significant issue. The architectural problems noted appear to be rather easily corrected.

The projected costs and schedules appear to be reasonable.

Select Specialty Hospital-Alachua, Inc. (CON #9704) proposes to construct a freestanding 44-bed long-term care hospital consisting of 38,906 GSF at a total construction cost of \$6,819,750. Obviously new construction standards will be applied when and if the AHCA Office of Plans and Construction reviews the proposed building. The 2003

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revisions of the Florida Building Code are currently in effect, but the new edition of Chapter 59A-3 of the Florida Administrative Code has not yet been promulgated. There was a list of applicable building codes presented and it is mostly correct.

The application included a floor plan of the proposed one-story building, larger scaled plans of patient rooms and a smoke compartment plan. The main part of the building is almost identical to several other facility plans that have been previously reviewed for certificates of need. The surgery/procedure wing has been revised for this submittal and most of the architectural concerns have been satisfactorily addressed.

The building is layed out quite efficiently. There is a large central nurse station with three patient wings radiating from it. One wing leads to an ICU area with its own nurse station and required support spaces.

In the two other patient wings, the more critical areas and the semi-private rooms are located near the central nurse station. There are several toilet/shower configurations. Some patient rooms have handicapped accessible showers and some do not, which is acceptable. There is a five-station central bathing space which includes a shower that will accommodate a patient on a stretcher. This bathing area is located conveniently to the nurse station and the non-ICU patient wings which it serves. There is a sizable administrative/dining/visitor area.

In addition to the 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 has undergone extensive revision since the previous reviews. The traffic pattern for doctors and staff has been improved and there is a locker/changing space provided for both men and women with adjacent toilet/shower spaces. However, as before, there are no comparable spaces for the nursing staff. In most facilities, the staff support spaces are separate from those of the doctors. This was commented upon in the previous architectural reviews, and so it could be assumed that the nursing staff will use these spaces along with the doctors. If this is the case, labeling the spaces "DR'S" is misleading.

A nurse station and its ancillary spaces has been provided in the holding and recovery area and there is good visibility for the three patient stations in the area. One station is Isolation and has its own toilet room. The surgery waiting room has been relocated and functions much better as redesigned.

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Throughout the facility, there are numerous storage spaces as well as visitor and staff/patient amenities. The required pharmacy and space for radiographic equipment are provided.

Cost data and schedules submitted appear to be reasonable if somewhat high. There are extensive outline specifications for the proposed facility in the application. The issue of disaster preparedness is addressed in one section of the application, but strangely, not mentioned in the outline specifications.

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 FY 2002 Hospital Financial Data, LTCHs in the state averaged 1.8 percent Medicaid patient days and 1.7 percent charity care patient days. Both applicants propose combined Medicaid and charity care conditions below the combined 3.5 percent provided.

Kindred Hospitals East, L.L.C. (CON #9703) proposes to condition award of the certificate of need on the provision of 2.8 percent Medicaid and charity care 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 1.8 percent.

The applicant's Schedule 7A indicates that 1.4 percent of the total patient days under its "Other Payers" column will result in zero revenue per patient day. This is less than the state average of 1.7 percent. While, the assumptions to Schedules 7A & 8A do not provide confirmation the "Other Payers" will be charity care, Kindred Hospitals in Florida averaged approximately 1.7 percent charity care in both FY 2002 and FY 2001 per AHCA hospital financial data.

Select Specialty Hospital-Alachua, Inc. (CON #9704) 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 charity patient days combined. Schedule 7A indicates the applicant's expectation to provide two percent of its total patient days to Medicaid patients and 0.8 percent for charity care patients. The applicant's projected Medicaid provision is the above the state average of 1.8 percent but the projected charity care at 0.8 percent is less than the 1.7 percent state average.

F. SUMMARY

Kindred Hospitals East, L.L.C. (CON #9703), a wholly owned subsidiary of Kindred Healthcare, Inc., proposes to establish a 31-bed LTCH within Munroe Regional Medical Center in Ocala, Marion County. The applicant is currently the licensee and operator of 16 hospitals, including six LTCH's in Florida.

The proposed LTCH will be located on the fifth floor of Munroe Regional Medical Center at the main campus and will contain 11,606 square feet. The project involves a total cost of \$1,548,831, including renovation construction costs of \$440,957.

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

Select Specialty Hospital-Alachua, Inc. (CON #9704), a wholly owned subsidiary of Select Medical Corporation, proposes to construct a 44-bed freestanding LTCH in Alachua County. The applicant has identified three sites in Alachua County that it considers to be appropriate for development of the proposed LTCH and indicates that all three sites are convenient to Shands Hospital at the University of Florida.

The proposed hospital will consist of 38,906 gross square feet of new construction and construction costs of \$6,819,750. Total project cost is estimated to be \$12,514,212. Select Medical Corporation will provide the funding for the proposed project.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent Medicaid and charity 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.

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Kindred Hospitals East, L.L.C. (CON #9703)

- The various methodological approaches are not supported by discharge studies and other data, including specific DRG admission criteria from area hospitals suggesting need. The applicant provided a letter from Munroe Regional indicating a potential number of patients in FY 2002 that could have benefited from a LTCH. However, the letter was not specific with regard to diagnosis, length of stay or ultimate placement of patients. The applicant provided some letters of supporting documentation from area physicians and other providers regarding potential referrals. The applicant did not demonstrate that patients that qualify for LTCH services are not currently being served or that an access problem exists for residents in District 3.

Select Specialty Hospital-Alachua, Inc. (CON #9704)

- The applicant's methodological approaches to demonstrate need are not supported by discharge studies and other data, including DRG admission criteria from area hospitals regarding need. The applicant provided letters from Shands HealthCare and Shands at AGH indicating a potential number of patients in CY 2002 that could have benefited from a LTCH. However, the letters are not specific with regard to diagnosis, length of stay or ultimate placement of patients. The applicant provided some letters of supporting documentation from area physicians. However, the applicant did demonstrate that patients that qualify for LTCH services are not currently being served or that an access problem exists for residents in District 3.

Quality of Care:

Kindred Hospitals East, L.L.C. (CON #9703)

- 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 good description of its quality management functions.

Select Specialty Hospital-Alachua, Inc. (CON #9704)

- 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. The applicant states that Select Medical Corporation hospitals continually monitor care, outcomes and patient satisfaction and that Select exceeds JCAHO reporting requirements and is unique among LTHC hospitals in actively developing comparable quality measures as a basis for monitoring care and developing best practices. The applicant provided a good description of its performance improvement plan.

Cost/Financial Analysis:

Kindred Hospitals East, L.L.C. (CON #9703)

- The applicant has both a good short-term and long-term financial position following emerging from bankruptcy proceedings in 2001. Based on the audited financial statements of the applicant, cash on hand and cash flows, if they continue at the current level, 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.).
- The applicant does not indicate how it will comply with the required provisions for reimbursement as a hospital within a hospital. The applicant also did not disclose how the six-month demonstration period required by Medicare was accounted for in the financial projections. 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. The project is considered financial feasible.
- The applicant projects managed care to represent 0.3 percent of its patient days. The applicant projects managed care days, including Medicaid HMO days, to represent 0.3 percent of its patient days. This is only slightly above the control group lowest level of activity of 0.0. The projected managed care levels, if realized, could have an adverse impact on competition to promote quality assurance and cost-effectiveness.

Select Specialty Hospital-Alachua, Inc. (CON #9704)

- 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 \$739.1 million and revenue from operations of \$1.1 billion. The funding for the proposed project should be available, with the support of the parent company.
- The applicant also did not disclose how the six-month demonstration period required by Medicare was accounted for in the financial projections. 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 5.5 percent indicates that net revenues are proportional to costs. The project is considered 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 10.5 percent. The projected levels, if realized, will have not have a marginal positive impact on competition to promote quality assurance and cost-effectiveness.

Architectural Analysis:

Kindred Hospitals East, L.L.C. (CON #9703)

- The project involves a 31-bed hospital within a hospital in collaboration with Munroe Regional Medical Center and the area to be leased is basically an entire wing connected to the existing hospital by a corridor. There was a list of applicable building codes on the Drawings but it was somewhat out of date. The project will need to be revised and refined during the design development and contract document stages.
- All new patient rooms, including ones that are being physically changed in size, must meet new construction standards and must have a hand washing station within the room itself in addition to the lavatory in the bathroom. However, two new spaces do not have these features. There is an issue with the location of the pharmacy but the medical records space could be swapped with the pharmacy, which would be acceptable. The architectural problems noted appear to be rather easily corrected.
- The projected costs and schedules appear to be reasonable.

Select Specialty Hospital-Alachua, Inc. (CON #9704)

- The project involves new construction of a 44-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 has been designed efficiently. There are numerous storage spaces and visitor and staff/patient amenities through the facility. The required pharmacy and space for radiographic equipment is shown on the schematic drawings.
- The cost data and schedules submitted appear to be reasonable, if somewhat high.

G. RECOMMENDATION

Deny CON #9703 and CON #9704.

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