

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Lee Behavioral Health Center, Inc./CON #9712
18302 Highwoods Preserve Parkway, Suite 114
Tampa, Florida 33647

Authorized Representative: James E. O'Shea
(813) 978-1933

2. Service District/Subdistrict

District 8

B. PUBLIC HEARING

Although no public hearing was held or requested, the applicant submitted 173 letters of support for the proposed project from physicians, various health care providers, local area citizens, and from individuals who may or may not reside within the district. The majority of the letters were exactly the same (form letters, apparently prepared for an individual's signature by the applicant), had no letterhead and a large number of them did not in any way identify where the people submitting them lived.

The majority of the letters submitted reference the recent closures of Charter Glade Hospital and G. Pierce Wood State Mental Hospital however, only one letter indicated that District 8 residents are having problems accessing needed care. Samuel T. Pinosky, M.D., P.A., a private practice psychiatrist in Naples, Florida; and former medical director of Psychiatric Services at Naples Community Hospital, and The Willough at Naples, wrote that he has a waiting list for his patients and the beds that are available, are not licensed to treat the more severely

incapacitated; involuntary patients. He indicates that this is notably problematic for the areas growing elderly population. According to Dr. Pinosky, the nearest facility for involuntary elderly patients is two counties north in Punta Gorda. He states that he has had multiple experiences with the area nursing homes refusing patients that have a history of psychiatric problems.

C. PROJECT SUMMARY

Lee Behavioral Health Center, Inc. (CON #9712) proposes to establish a new 55-bed adult psychiatric hospital in Fort Myers, Lee County, Florida, which is located in District 8. The applicant is a subsidiary of Oglethorpe, Inc., which was founded for the specific purpose of acquiring The Willough at Naples, a licensed inpatient psychiatric hospital in Naples, Florida. According to the applicant, on May 19, 2003, the Oglethorpe Management Group through an affiliate corporation, Florida Property Resources, acquired ownership of Springbrook Hospital located in Brooksville, Florida. However, Agency records do not verify this affiliation. Oglethorpe has now developed Lee Behavioral Health System (LBHS) to address the inpatient mental health needs of Lee County and the surrounding District 8 area. The applicant indicates that it is considering using an existing structure located at the corner of Park Windsor Drive and Meadowbrook Drive in Fort Myers, Florida.

According to the applicant's *Certificate of Need Predicated on Conditions* page, it will set aside a minimum of 2.0 percent of its patient days to charity care patients. The proposed project cost is estimated to be \$2,184,000. Construction costs are projected at \$1,150,000 and the project will involve 21,461 gross square feet (GSF) of renovated space and 8,024 gross square feet (GSF) of new construction.

D. REVIEW PROCEDURE

The evaluation process is structured by the certificate of need review criteria found in Section 408.035, Florida Statutes, rules of the State of Florida, Chapters 59C-1 and 59C-2, Florida Administrative Code, and local health plans. 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 evaluating the responses and data 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 meets the review criteria. Rule 59C-1.010(2) (b), Florida Administrative Code, prohibits any amendments once an application has been 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, Jennifer Benghuzzi, analyzed the application with consultation from the financial analyst, John Williamson, who reviewed the financial data and the architect, Joel Hill, who evaluated the architectural and the schematic drawings.

E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA

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

1. Fixed Need Pool

a. Does the project proposed respond to need as published by a fixed need pool? Or does the project proposed seek beds or services in excess of the fixed need pool? ss. 59C-1.008(2), Florida Statutes

On July 25, 2003, AHCA published a fixed need pool (FNP) in Volume 29, Number 30, Florida Administrative Weekly (F.A.W.) of zero (0) for additional adult inpatient psychiatric beds in District 8.

b. Regardless of whether bed need is shown under the need formula, no additional hospital inpatient general psychiatric beds for adults shall normally be approved in a district unless the average annual occupancy rate of the licensed hospital inpatient general psychiatric beds for adults in the district equals or exceeds 75 percent for the 12-month period ending six months prior to the beginning date of the quarter of the publication of the fixed need pool. (59C-1.040(e)(4), Florida Administrative Code.

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District 8 has a total of 140 licensed beds and 10 CON approved adult psychiatric beds (Bon Secours-Venice Hospital delicensed 30 adult psychiatric beds on April 28, 2003). AHCA's publication, *Florida Hospital Bed and Service Utilization Data by District, July 2003 Batching Cycle*, originally reported that the 170 adult psychiatric beds in District 11 experienced an occupancy rate of 43.08 percent during the reporting period January 2002 through December 2002. However, The Willoughs at Naples misreported its utilization data to the District 8 Local Health Council (LHC) and the corrected figure for District 8's total adult psychiatric occupancy is higher at 50.45 percent.

The proposed project is not submitted in response to the fixed need pool, but rather on the basis of "not normal" circumstances that the applicant contends exists in the area. These circumstances are presented below.

c. Other Circumstances:

The applicant states that Lee County does not currently have any adult psychiatric beds. The planning area for psychiatric services is the district. However, Lee County makes up 36 percent of the total district population and covers over 12 percent of the total district geographic area. The closing of the 96-bed Charter Glade facility, which was located in Ft. Myers in Lee County, in July of 2000 created an access issue for many District 8 residents because of travel distances, according to the applicant. Additionally, G. Pierce Wood Memorial Hospital closed in 2002 and Bon Secours-Venice Hospital delicensed its 30 adult psychiatric beds in April 2003, further reducing the availability of mental health services in District 8. Presently, there are four operational facilities in District 8 providing inpatient adult psychiatric services: Charlotte Regional Medical Center with a 26-bed inpatient unit; Naples Community Hospital with a 23-bed inpatient unit; Sarasota Memorial Hospital with a 49-bed inpatient unit and The Willough at Naples, a 42-bed freestanding adult psychiatric hospital. However, pursuant to a CON condition, The Willough is restricted to serving only patients with an eating disorder, and only 20 percent of its patients can reside in District 8.

While the applicant states that some of the patient population served by Charter Glade may have been redirected to other providers, it did not discuss where the patient population served by G. Pierce was being diverted for treatment. For example, the applicant did not discuss if patients are having to travel outside the district in order to receive necessary services or if the admissions to Crisis Stabilization Units have increased as a result of the closers. The Charter Glade facility and G. Pierce Wood Memorial Hospital have been closed long enough that the

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applicant should have been able to discuss the effects of these facilities closure on Lee County residents.¹

The following table provides the list of facilities that were operational for the January 2002-December 2002 reporting period, including Bon Secours-Venice, which delicensed its adult psychiatric beds on April 28, 2003. The table provides total beds, annual utilization rates, location and distance from the proposed site.

**District 8 Adult Inpatient Psychiatric Hospital Data
(Location, Beds, Occupancy, Travel in Distance and Miles From the
Proposed New Hospital)**

Facility	Location	Adult Beds	% Occup. 1/1/02 to 12/31/02	Travel Distance In Miles	Travel Distance In Time
Bon Secours-Venice*	Venice	30	36.41%	68.14	1hr/12 min.
Charlotte Regional**	Punta Gorda	26	102.10%	35.19	39 min.
Naples Community	Naples	23	38.42%	41.31	49 min.
Sarasota Memorial	Sarasota	49	43.60%	83.52	1hr/28 min.
The Willough***	Naples	42	43.09%	43.67	53 min.

Source: AHCA Utilization/MapQuest

*Bon Secours-Venice Hospital delicensed 30 adult psychiatric beds as of 04/28/2003

*Charlotte Regional has 10 CON approved adult psychiatric beds.

***Corrected utilization data verified by the LHC on 11/14/2003.

NOTE: Schedule 9 indicates that the applicant is considering using an existing structure located at the corner of Park Windsor Drive and Meadowbrook Drive in Fort Myers, Florida

As shown above, Charlotte Regional Medical Center is the closest operational adult psychiatric provider to the proposed Ft. Myers site at 35.19 miles (39 minutes). Charlotte Regional's 26-bed adult unit was utilized at an average 102.10 percent occupancy for the reporting period however; it has been approved to add 10 adult psychiatric beds through CON exemption #0000240. The next closest facility, Naples Community, is underutilized at 42.39 percent.

In 2001, Lee Mental Health Center, Inc., d/b/a Ruth Cooper Center, was granted a CON #9448 to establish 56 adult psychiatric beds in Lee County; however, the approved project was never implemented. The applicant contends that the void in psychiatric care that existed in 2001 continues today and is exacerbated by the recent closure of the 30-bed psychiatric unit at Bon Secours-Venice Hospital

The following tables provide the occupancy in District 8 facilities providing adult psychiatric inpatient services in July 1999 through June 2000, when Ruth Cooper Center (CON #9448) was originally reviewed, compared to more recent January 2002 through December 2002 occupancy. As shown in the tables below, occupancy decreased in all but two of the currently licensed units: Charlotte Regional Medical

¹ Charter Glades Hospital closed 7/14/00. G. Pierce Woods Memorial Hospital closed 2/28/02.

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Center and The Willough at Naples. As previously noted, 20 percent of The Willow at Naples' occupancy is reflective of district patient days. When The Willow at Naples' occupancy is removed, district occupancy has increased from 49.15 percent to 52.29 percent, or by 3.14 percent even though the number of beds was reduced by 96, prior to Bon Secours Venice Hospital's unit closure. Predictions made in CON #9448 do not appear to have been correct.

**District 8 Adult Inpatient Psychiatric Utilization
July 1999-June 2000**

Facility	# Adult Beds	Adult Patient Days July 1999-June 2000	Adult Occupancy July 1999-June 2000
Charter Glade Behavioral Health System (Closed 7/2000)	96	15,363	43.72%
Bon Secours-Venice Hospital	30	2,229	20.30%
Charlotte Regional Medical Ctr.	26	9,116	95.80%
Naples Community Hospital	23	3,375	40.09%
Sarasota Memorial Hospital	49	10,110	56.37%
The Willough at Naples	42	2,920	19.00%
Totals	266	43,113	44.28%
Totals without The Willough at Naples	224	40,193	49.15%

Source: Florida Hospital Bed and Service Utilization by District January 2001 Batching Cycle.

**District 8 Adult Inpatient Psychiatric Hospital Utilization
January 2002-December 2002**

Facility	Adult Beds	Adult Patient Days Jan. 2002-Dec. 2002	Adult Occupancy Jan. 2002-Dec. 2002
Bon Secours-Venice Hospital*	30	3,987	36.41%
Charlotte Regional Medical Center**	26	9,689	102.10%
Naples Community Hospital	23	3,225	38.42%
Sarasota Memorial Hospital	49	7,798	43.60%
The Willough at Naples***	42	6,606	43.09%
TOTAL	170	31,305	50.45%
Totals without the Willough at Naples	128	24,699	52.29%

Source: Florida Hospital Bed and Service Utilization by District July 2003 Batching Cycle.

*Bon Secours-Venice Hospital delicensed 30 adult psychiatric beds as of 04/28/2003

**Charlotte Regional has 10 CON approved adult psychiatric beds.

***Corrected utilization data verified by the LHC on 11/14/2003.

To determine the number of beds needed in the area, the applicant applied the 1999 use rate of 5.28 to the Lee County adult population. This resulted in projected cases of 2,117 and 2,161 in 2005 and 2006, the first two years of operation, respectively. Applying an average length of 7.5, based on the 2002 Florida average, to the projected cases resulted in projected patient days of 15,880 and 16,209, for 2005 and 2006, respectively. This resulted in a bed need of 59 beds and 60 beds in the first two respective years of the proposed project and 62 beds in the planning horizon according to the applicant. The applicant used a use rate methodology in order to demonstrate a need for additional adult inpatient psychiatric beds. However, in spite of the need methodology

presented by the applicant, it does not supersede the Agency's promulgated rule. The published numeric need for this planning horizon was not challenged by the applicant. The development of a need methodology that is different from the Agency's need methodology promulgated in rule does not constitute special circumstances.

As previously discussed in Section B, Public Hearing, Samuel T. Pinosky, M.D., P.A. indicated in his letter of support that District 8 residents are having problems accessing needed care. Dr. Pinosky wrote that he has a waiting list for his patients and the beds that are available, are not licensed to treat the more severely incapacitated; involuntary patients. He indicates that this is notably problematic for the areas growing elderly population. He states that he has had multiple experiences with the area nursing homes refusing patients that have a history of psychiatric problems. Nevertheless, the applicant did not provided specific instances or quantify the number of patients being placed on waiting list, the length of time those patients are having to remain on waiting lists, or the number of patients being denied admission to inpatient psychiatric facilities. There was no indication that patients were having to travel outside the district to obtain to adult inpatient psychiatric services.

2. Local Health Plan Preferences

Is need for the project proposed supported by the applicable district plan? ss. 408.035(1); 408037(1), Florida Statutes.

The Health Planning Council of South West Florida, Inc's. July 2003 CON Allocation Factors Report provides the following preferences in the review of applications pertaining to psychiatric and substance abuse services:

- 1. Preference shall be given to applications for new beds that focus on population specific or target group need based on demographic data.**

The applicant proposes to provide a portion of its services to geriatric patients age 60 and older. LBHC will offer The Senior Care Program in a dedicated unit focused on the specific needs of the elderly population. The Senior Care Program will focus on three major areas:

- Senior Memory Options
- Senior Enhancement Options
- Senior Addiction Options

The elderly population of Lee County is critically underserved in the area of mental health and substance abuse according to the applicant.

The proposed project targets the elderly population, age 65 and over. The following table shows District 8's elderly population estimates from 2003 through 2009.

**District 8 Population Estimates Age 65 and over
2003-2009**

County	2003	2009	Percent Change
Lee	119,324	132,094	10.70%
Charlotte	50,187	53,530	6.66%
Collier	71,426	87,814	22.94%
DeSoto	6,610	7,700	16.49%
Glades	2,135	2,493	16.77%
Hendry	3,884	4,531	16.66%
Sarasota	107,854	117,473	8.92%
Total	361,421	405,635	12.23%

Source: AHCA Population Estimates and Projections, published June 2003

As shown above, the elderly population in Lee County and District 8 is expected to continue to increase by 10.70 percent and 12.23 percent, respectively between 2003 and 2009. Refer to E. 1. c. for a discussion of the availability of adult psychiatric services to Lee County residents.

2. Preference shall be given to applications proposing to provide services where there is currently no provider in the county.

As previously discussed, there is currently no provider of adult inpatient psychiatric services in Lee County.

3. Preference shall be given to applications that demonstrate compliance with CON conditions relating to service to the medically indigent or underserved, or in the event the applicant has no CON history, the applicant must commit to measurable levels of care to the medically indigent and the underserved in the application.

As noted earlier, and discussed below in E. 4. e., the applicant is a development stage corporation and has no history in Florida. According to the applicant's *Certificate of Need Predicated on Conditions* page, it will set aside a minimum of 2.0 percent of its patient days to charity care patients.

4. **Preference shall be given to applications for psychiatric and substance abuse care that accept all persons in need, especially the medically underserved.**

The applicant maintains that it will accept all persons in need of care, regardless of ability to pay and has committed to provide 2.0 percent of its patient days to charity care. As a freestanding facility, LBHS is not eligible for Medicaid reimbursement.

5. **Preference shall be given to applications that demonstrate the utilization of a continuum of care approach that offers a community-based network of services extending from early problem intervention to health maintenance and supportive after-care services.**

The applicant states that the proposed project is based on a continuum of care approach that will allow patients to be treated in an inpatient environment and help them to reenter the community through numerous outpatient and support services. According to the applicant, LBHS will utilize a partial hospital program to help patients transition smoothly back into the community while remaining in a supportive therapeutic environment. In addition to maintaining strong affiliations with local mental health professionals for additional treatment opportunities after discharge, LBHC will also offer weekly aftercare groups to its former patients.

3. **Agency Rule Preferences**

Does the project respond to preferences stated in agency rules? Indicate how each applicable criteria for the type of service proposed is met. Ch. 59C-1.031-.044, Florida Administrative Code.

- a. **Priority Considerations for hospital inpatient general psychiatric services (59C-1.040(i), Florida Administrative Code) (NOTE: All references to child/adolescent psychiatric services are deleted) In weighing and balancing statutory and rule review criteria, preference will be given to both competing and non-competing applicants who:**
 1. **Provide Medicaid and charity care days as a percentage of their total patient days of total patient days provided by other hospitals in the district, as determined for the most recent calendar year prior to the year of the application for which data are available from the Health Care Board**

As a freestanding psychiatric hospital, the proposed facility cannot receive Medicaid reimbursement. The applicant does state that it will accept all persons in need of care, regardless of ability to pay, and has committed to provide 2.0 percent of total patient days for charity care.

- 2. Propose to serve the most seriously mentally ill patients to the extent that these patients can benefit from a hospital-based organized inpatient treatment program.**

The applicant states that it will serve all mentally ill patients, including the most seriously mentally ill patients as part of its program.

- 3. Propose to serve Medicaid-eligible persons.**

No. As a freestanding psychiatric facility the applicant would not be eligible for Medicaid reimbursement. See Item (1) above.

- 4. Propose to serve individuals without regard to their ability to pay.**

Refer to Item (1) above.

- 5. Agree to be a designated public or private receiving facility.**

Even though the applicant agrees to be designated as a public receiving facility as part of the proposed project. However, it did not indicate the anticipated date of the designation. Although not formally listed as a condition of award of the CON on Schedule C, pursuant to 408.040(1)(a) Florida Statutes, any representation of a commitment given in the CON application may be placed on the face of the CON if awarded. Should the CON be awarded, it will be conditioned upon the applicant becoming a public receiving facility.

- 6. Provide a continuum of psychiatric services for children and adolescents, including services following discharge.**

The applicant's proposed project will focus on adult psychiatric services. Therefore, this rule preference is not applicable.

- b. **Minimum Size of Specialty Hospitals (59C-1.040(3)(e) Florida Administrative Code).** A specialty hospital providing hospital inpatient general psychiatric services shall have a minimum total capacity of 40 beds. The minimum capacity of a specialty hospital providing hospital inpatient general psychiatric services may include beds used for hospital inpatient substance abuse services regulated under Rule 59C-1.041, Florida Administrative Code. The separately organized units for hospital inpatient general psychiatric services for adults in specialty hospitals shall have a minimum of 15 beds (59C-1.040(5), Florida Administrative Code).

The applicant proposes to develop a 55 adult inpatient psychiatric beds in a freestanding specialty hospital. Thus, the above rule preference is met.

- c. **Access Standard. Hospital inpatient general psychiatric services should be available within a maximum ground travel time of 45 minutes under average travel conditions for at least 90 percent of the district's total population (59C-1.040(6), Florida Administrative Code).**

The applicant states that its proposed project will expand the accessibility of general psychiatric services in District 8.

- d. **Quality of Care.**

1. **Compliance with Agency Standards. Hospital inpatient general psychiatric services for adults shall comply with the agency standards for program licensure. Applicants who include a statement in their certificate of need application that they will meet applicable agency licensure standards are deemed to be in compliance with this provision (59C-1.040(a), Florida Administrative Code).**

The applicant states its intention to comply with all licensure standards described in Chapter 59A-3 Florida Administrative Code.

2. **Continuity. Providers of hospital inpatient general psychiatric services shall also provide outpatient services, either directly or through written agreements with community outpatient mental health programs, such as local psychiatrists, local psychologists, community mental health programs, or other local mental health outpatient programs (59C-1.040(7)(d), Florida Administrative Code).**

The applicant maintains its commitment to a full continuum of care. LBHS will utilize a partial hospital program to help patients make a smooth transition back into the community while still in a supportive therapeutic environment. Additional services provided by the applicant will include aftercare groups, which are offered weekly to former LBHS patients. LBHS also maintains strong affiliations with local mental health professionals to make additional treatment opportunities available to patients after discharge according to the applicant.

- 3. Screening Program. All facilities providing hospital inpatient general psychiatric services shall have a screening program to assess the most appropriate treatment for the patient. Patients with a dual diagnosis of a psychiatric disorder shall be evaluated to determine the types of treatment needed, the appropriate treatment setting, and, if necessary, the appropriate sequence of treatment for the psychiatric and substance abuse disorders (59C-1.040(7)(e), Florida Administrative Code).**

The applicant acknowledges that it does not have admissions policies and procedures in place at this time. However, it will utilize a screening program for all patients in evaluating the appropriate treatment setting. The applicant provided a reasonable discussion of the screening process and included copies of all admissions policies, including screening policies, for Springbrook Hospital, which is owned by the same parent company. The applicant contends that its policies will be similar to those at Springbrook Hospital.

- e. Services Description (59C-1.040(8), Florida Administrative Code). An applicant for hospital inpatient general psychiatric services shall provide a detailed program description in its certificate of need application including:**

- 1. Age groups to be served.**

The applicant intends to provide psychiatric services for individuals aged 18 years and older.

- 2. Specialty programs to be provided.**

The applicant intends to offer three distinct treatment programs.

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- ***The Senior Care Program.*** This program is designed to meet the specific needs of the elderly population and will focus on three major areas:

1. Senior Memory Options
2. Senior Enhancement Options
3. Senior Addiction Options

The treatment modalities that will be utilized by this program include individual, group, and family therapies provided by licensed mental health providers. Seniors will also have access to psycho-educational groups, physical, occupational and speech therapy, therapeutic recreational activities, and 12-step groups specific to several issues.

- ***The Dual Diagnosis Program.*** This inpatient treatment program is designed to treat the dually diagnosed patient, who suffers a mental illness in conjunction with chemical dependency. The treatment program will be based on a holistic concept of health, focusing on helping patients acquire the necessary skills and knowledge to prevent illness and maintain a sober and productive lifestyle. The treatment modalities that will be utilized by this program include individual, group, and family therapies, psycho-educational groups, self-help groups, and therapeutic activities. According to the applicant, the target treatment population for this program is adults over age 18 who live within 45 minutes of the facility. Priority in treatment will be given to individuals who suffer from the concurrent disabilities of mental illness and substance abuse with documented failure of outpatient treatment.
- ***General Adult Psychiatric Unit.*** This program will address acute and/or chronic psychiatric patients who require stabilization in a secure environment. This unit will accept both voluntary and involuntary patients for care and treatment of psychiatric and behavioral disorders. Treatment modalities will include individual and group psychotherapy and allied therapies. In addition, active participation, goal setting, and personal responsibility will be stressed. Reintegration into the family and workplace will also be planned along with aftercare outpatient treatment.

3. **Proposed staffing, including the qualifications of the clinical director and a description of staffing appropriate for any specialty program.**

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According to Schedule 6, the project will require a total of 69.65 FTE staff for the first year of operation, including 12.8 registered nurses, 3.6 licensed practical nurses, 15.0 nurses aides, and 2.0 “other” nursing staff. The project will require a total of 79.9 FTE staff for the second year of operation, including 15.25 registered nurses, 4.5 licensed practical nurses, 17.4 nurses aides, 2.0 “other” nursing staff. The medical director for the proposed project will be Ivan L. Mazzorana, Jr., M.D. Dr. Mazzorana holds the following board certifications:

- American Board of Psychiatry and Neurology
- American Board of Geriatric Psychiatry
- American Board of Medical Specialist
- State of Florida Division of Worker’s Compensation

A curriculum vita for Dr. Mazzorana is provided in attachment D of the application.

The applicant states that as a subsidiary of Ogelthorpe Corporation, it doesn’t anticipate any problems recruiting the necessary staff to support its proposed project. Nevertheless, the applicant did not discuss the availability of staff in the Lee County area or how they plan to retain staff once hired.

4. Patient groups by primary diagnosis ICD-9 code that will be excluded from treatment.

The applicant states that it does not propose to exclude any patients from treatment who have a primary diagnosis of a psychiatric disorder or a dual diagnosis patient with one diagnosis being a psychiatric disorder.

5. Therapeutic approaches to be used.

The applicant intends to use a therapeutic milieu approach in its general psychiatric program. Specific therapeutic approaches that will be utilized include:

- ***Psychological Services.*** A consultant psychologist will work closely with the treatment team providing various services based on the individual patient’s need.

- **Individual Psychotherapy.** Individual psychotherapy assists patients in identifying and resolving distorted thought processes, as well as interpersonal difficulties and internal conflicts.
- **Group Psychotherapy.** Various group techniques and styles will be utilized to accommodate the needs of all patients. The following types of group psychotherapy will be offered:
 - Group therapy
 - Psychodrama
 - Specialty and educational discussion groups
- **Social Services.** A social work coordinator, along with a case manager, will participate in the patient's treatment and discharge planning.
- **Patient Education.** LBHS's multidisciplinary team members will continuously provide patients and their families with education. Lectures will be held on topics relevant to clients' recovery and emotional stability.
- **Nursing Services.** The nursing staff provides the necessary structure to carry out the scheduled therapies. The nursing staff will supervise all MHT groups, lead weekly medication teaching and discharge planning groups, participate in weekly treatment planning meetings, and assure that the patient's physical and emotional needs are met within the safest, most therapeutic environment possible.
- **Special Precautions.** All staff will actively participate in the maintenance of a safe and therapeutic environment. These precautions include: suicidal precautions, elopement precautions, close observation for patients with severe disorders who are likely to experience dramatic changes in mood and behavior, seizure precautions, and fall precautions.

6. Expected sources of patient referrals.

The applicant expects referrals from several different sources, including private practitioners, state services, judicial systems, private industry (employee assistance programs), direct client referrals, and community general hospitals and mental health centers.

7. Expected average length of stay for the hospital inpatient general psychiatric services discharges by age group.

The average length of stay for adult psychiatric beds in Florida for CY 2002 was 7.5 days according to the applicant. In keeping with this average, it is anticipated that the average length of stay in the proposed project will also be 7.5 days. However, the applicant did not discuss the expected length of stay by age group as specified in this preference.

8. Projected number of hospital inpatient general psychiatric services patient days by payer type, including Medicare, Medicaid, Baker Act, private insurance, self-pay and charity care patient days for the first two years of operation after completion of the proposed project.

The following table relates to the applicant's projected number of patient days by payer type for the first two years of operation after the completion of the proposed project:

Payer	Self-pay	Medicare	Insurance	HMO/PPO	Total
Year 1 - 2006					
Patient Days	749	5,665	2,077	1,146	9,637
Percent	7.8%	58.8%	21.6%	11.9%	100%
Year 2 - 2007					
Patient Days	1,201	8,479	2,987	1,654	14,321
Percent	8.4%	59.2%	20.9%	11.5%	100%

Source: CON # 9712, Schedule 7B

As previously discussed, LBHS is not eligible to receive Medicaid reimbursement as a freestanding psychiatric facility.

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

The applicant states its intention to provide services to patients who are unable to pay for services. Since LBHS is a new entity, admission policies have not been created to date. However, once developed, the applicant intends to have policies that will provide for the treatment of charity care patients. The applicant does commit to provide 0.2 percent of its total annual patient days charity care.

- f. **Quarterly Reports (59C-1.040(10), Florida Administrative Code). Facilities providing licensed hospital inpatient general psychiatric services shall report to the agency or its designee, within 45 days after the end of each calendar quarter, the number of hospital inpatient general psychiatric services admissions and patient days by age and primary diagnosis ICD 9 code.**

The applicant states its intention to comply with this provision.

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), 408.035(7), Florida Statutes.**

As previously discussed, there are currently no adult psychiatric beds located in Lee County. The applicant notes that the recent closure of facilities, admission restrictions on existing facilities, and a lack of adequate number of beds to serve a population the size of District 8 have contributed to the current need for additional adult psychiatric services in the district.

However, it should be emphasized that despite the recent closer at Bon Secours-Venice Hospital, the major closures of facilities were not recent occurrences and the largest closure in Lee County, Charter Glade Hospital, occurred three years ago. Despite the closure of Charter Glade and G. Pierce Wood State Hospital, Bon Secours-Venice Hospital continued to struggle with low occupancy for several years and delicensed its 30 adult inpatient psychiatric beds in April 2003. The table below demonstrates the five-year utilization rate for Bon Secours-Venice Hospital.

**Utilization Rate For Bon Secours—Venice Hospital
CY 1998-CY 2002**

Year	# of Beds	Adult Bed Days	Adult Pt. Days	Adult Occupancy
1998	30	10,950	2,625	23.97%
1999	30	10,950	2,373	21.67%
2000	30	10,980	2,510	22.86%
2001	30	10,950	4,318	39.43%
2002	30	10,950	3,987	36.41%

Source: AHCA's Publication *Florida Hospital Bed and Services Utilization by District*, for the periods shown.

Bon Secours Venice Hospital appears to have absorbed patients from the closed Charter Glades facility. But between calendar year 2001 and 2002, occupancy declined.

According to the applicant, the lack of available services has impacted residential use rates in District 8 and especially in Lee County. However, this was not demonstrated. The applicant maintains that this decrease in utilization is not attributable to lack of need but rather a geographical lack of access to appropriate mental health services. As previously discussed in Section B, Public Hearing, a support letter from Dr. Pinosky states that he has a waiting list for his patients and has encountered area nursing homes refusing to admit patients with a history of psychiatric problems. Nevertheless, no documentation has been provided to quantify the number of patients not being able to access services. The applicant did not provide an explanation as to where patients are seeking psychiatric care since the closure of area inpatient psychiatric facilities.

The applicant maintains that locating this project in an existing vacant space previously operated as an assistant living facility is an efficient means of adding a specialty psychiatric hospital to Lee County. The architectural review of the project (See Item 4.h.) shows that while cost data and schedules submitted seem to be reasonable for what renovation is planned, there are architectural concerns that must be addressed. The applicant states that having an inpatient psychiatric provider in Lee County will improve efficiency since patients in need of these services will no longer have to travel outside of Lee County to receive them. It is again noted that need for psychiatric services is based on district, not county, utilization and population.

The proposed project will improve accessibility and availability of adult inpatient psychiatric services in District 8. However, need for additional services has not been demonstrated. Based on the financial review the (See Items 4.e.f.g.), funding and financial feasibility of the project is open to question. In addition, this project will not have a positive impact on competition to promote quality assurance and cost-effectiveness.

- b. Does the applicant have a history of providing quality of care and has the applicant demonstrated the ability of providing quality care? ss. 408.035(1)(c), Florida Statutes and Rule 59C-1.031-044, Florida Administrative Code.**

The applicant, Lee Behavioral Health System, Inc., is a new entity and therefore, has no history in providing quality of care. However, the applicant states that its administration has significant experience in providing psychiatric care, demonstrating its ability to provide quality care at LBHS, a subsidiary of Oglethorpe, Inc. The applicant states that since the Oglethorpe Group took control of The Willough at Naples in

2002, The Willough has remained a viable and profitable facility with full compliance of state license, Medicare conditions, and JCAHO standards. Documentation of accreditation and licensure for The Willough is provided in Attachment B.

According to the JCAHO web site², The Willough at Naples received accreditation with full standards compliance as of November 12, 2002. The Willough at Naples has had two confirmed complaints regarding billing/refunds since the Oglethorpe Group took control in 2002. However, one of the complaints was confirmed without deficiencies.

The applicant reasonably demonstrated its ability to provide quality care.

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

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

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

The proposed project will not be located in a teaching or research hospital nor will it affect the clinical needs of health professional training programs in the service area.

- e. What resources, including health manpower, management personnel, and funds for capital and operating expenditures, are available for project accomplishment and operation? ss. 408.037(6), Florida Statutes.**

The audited financial statements of Lee Behavioral Health Systems, Inc. for the period ended October 10, 2003 was analyzed for the purpose of evaluating the applicant's ability to provide the capital and operational funding necessary to implement the project.

The applicant is a development stage corporation with \$1,000 in assets and no revenues or cash flows.

² <http://www.jcaho.org>.

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The applicant is a subsidiary of Oglethorpe Inc., which owns The Willough at Naples. An unaudited balance sheet and income statement for the Willough was provided for the eight-month period ending August 31, 2003. Those statements showed cash of \$35,673 and net income of \$732,349. No cash flow statement as provided.

The applicant also provided an unaudited balance sheet and profit and loss statements for Springbrook Hospital, an affiliate of Oglethorpe Inc. The balance sheet showed \$112,559 in cash and the profit and loss statement, which covered May 19 through July 31, 2003, showed a loss from operations of \$24,945. No cash flow statement as provided.

Neither the short-term or long-term financial position of the applicant or its parent can be determined from the information submitted.

Capital requirements:

Schedule 2 indicates the applicant has capital projects totaling \$2.3 million.

Available capital:

The applicant stated that funding for capital the project would come from \$1,000 cash in hand, and \$2.2 million from the proceeds of loans with \$500,000 coming from Regions Bank, \$150,000 each from The Willough at Naples and Springbrook Hospital. A letter of interest from Regions Bank was provided, but no loan commitment was offered. Letters of commitment from The Willough at Naples and Springbrook Hospital were provided.

The building used for the hospital will be leased, with the lessor funding \$1.4 million of the required renovations and new constructions necessary to convert the existing building, a former 34-bed ALF, into a 55-bed adult psychiatric hospital. A letter of interest in providing the funding for the lessor's \$1.4 million portion of the renovation costs from Orion Bank was provided. No loan commitment was offered.

The ability of the lessor to provide \$1.4 million of the capital required was not disclosed.

A copy of a letter from the lessor, outlining the basic lease terms proposed for the lease was provided. The actual terms of the lease have not been determined.

Conclusion:

Funding for this project is open to question.

f. What is the immediate and long-term financial feasibility of the proposal? ss.408.037(8), Florida Statutes.

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

Comparative data were derived from hospitals in peer groups that reported data in 2002; the applicant will be compared to the hospitals in peer group 15. Per diem rates are projected to increase by an average of 3.6 percent per year. Inflation adjustments were based on the 3rd Quarter 2002 New CMS Hospital Market Basket Index.

Projected net revenue per adjusted patient day (NRAPD) of \$610 in year one and \$595 in year two is between the control group median and highest values of \$416 and \$641 in year one and \$429 and \$662 in year two. The highest level is generally viewed as the practical upper limit on economies of operation. With net revenues falling between the median and highest level, 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 \$638 in year one and \$551 in year two is between the group median and highest values of \$475 and \$1,002 in year one and \$490 and \$1,034 in year two. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$629,971 computes to an operating margin per adjusted patient day of \$44 which is far above the control group highest level of \$28. The computed operating margin ratio is 7.4 percent.

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Occupancy level is estimated during the second year at 71.3 percent.

The projected operating margin of \$44 per adjusted patient day in year two is so much greater than reported levels it casts doubt on the reasonableness of the financial projections as a whole.

The financial feasibility of the project is open to question.

Comparative Table

CON # 9712 Lee Behavioral Health Systems, Inc. 2002 DATA Peer Group 15	2007	YEAR 2	VALUES ADJUSTED		
	YEAR 2	ACTIVITY	FOR INFLATION		
	ACTIVITY	PER DAY	Highest	Median	Lowest
ROUTINE SERVICES	16,225,693	1,133	2,142	699	395
INPATIENT AMBULATORY	0	0	0	0	0
INPATIENT ANCILLARY SERVICES	0	0	398	62	0
OUTPATIENT SERVICES	0	0	88	8	0
OTHER OPERATING REVENUE	0	0	75	1	0
TOTAL REVENUE	16,225,693	1,133	2,364	958	425
DEDUCTIONS FROM REVENUE	7,708,302	538	*	*	*
NET REVENUES	8,517,391	595	662	429	70
EXPENSES					
ROUTINE	3,408,398	238	618	196	65
ANCILLARY	1,304,390	91	200	27	0
AMBULATORY	0				
OVERHEAD	3,051,632	213	446	245	119
OTHER	123,000	9			
TOTAL EXPENSES	7,887,420	551	1,034	490	312
OPERATING INCOME	629,971	44 7.4%	28	-77	-330
PATIENT DAYS	14,321		VALUES NOT ADJUSTED		
ADJUSTED PATIENT DAYS	14,321		FOR INFLATION		
TOTAL BED DAYS AVAILABLE	20,075				
ADJ. FACTOR	1.0000				
TOTAL NUMBER OF BEDS	55				
PERCENT OCCUPANCY	71.3%		92.1%	60.6%	28.2%
PAYER TYPE		PATIENT DAYS			
MEDICARE	8,479	59.2%	78.5%	45.7%	20.2%
COMMERCIAL	2,987	20.9%			
MEDICAID	0	0.0%	4.8%	0.0%	0.0%
PRIVATE	1,201	8.4%			
HMO/PPO	1,654	11.5%	58.2%	26.5%	7.7%
OTHER	0	0.0%			
TOTAL	14,321	100.0%			

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

The applicant forecasts managed care levels at 11.9 percent, between the lowest and median level of the control group of 7.7 and 26.5 percent. This level, if realized, will not have a positive impact on competition to promote quality assurance and cost-effectiveness.

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

The applicant seeks to establish a 55-bed psychiatric hospital by renovating a building that was once an assisted living facility. Also, additional space would be created by a new wing located between the two wings of the “U” shaped building. This new wing would be basically devoted to housing the administrative, dietary and other non-patient room spaces.

Since the existing building was never a hospital or nursing home, codes necessitate that it meet all requirements for new construction including those for disaster preparedness. As submitted, the plans for this project could not be recommended for licensure as a hospital by the AHCA Office of Plans and Construction.

Chapter 11 of the Guidelines For Design and Construction of Hospitals and Health Care Facilities published by the American Institute of Architects has many requirements for psychiatric hospitals. This publication is included by reference in the Florida Buildings Code. There are numerous provisions in the guidelines, which this applicant has not met and it may be that the design professional is unaware that the guidelines are now part of the applicable codes.

Proposed patient room configurations vary from private to semi-private with three beds but a semi-private room may not have more than two patients unless they are children under 12 years old. There are four consultation rooms shown in the addition, but the guidelines require one space for each 12 patients, which mean that an additional room is needed. Also, these spaces must have a minimum of 100 square feet and the ones shown appear to be smaller than this.

All patient room doors must be a minimum of 3'-8” wide and the existing doors are too narrow to meet applicable codes.

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The semi-private room that backs up to the soiled workroom and the janitor's closet (at the intersection of the new wing and the existing facility) has no windows and a window is required for all patient bedrooms. There is only one seclusion room to serve 55 patients, and two are required by the guidelines, Chapter 11. This room also must have a window, but none is shown. The facility does not have a pharmacy. Since this review is not intended as a comprehensive in-depth code analysis, the applicant and his design professional will benefit from reviewing the building codes that must be met when this project is submitted to the AHCA Office of Plans and Construction for review. Attention is especially directed to the guidelines. The list of applicable codes on the drawings was up to date at the time of the architectural review.

Part of the reason for some of the renovation is to provide the correct percentage of handicapped accessible toilet/shower rooms. Cost data and schedules submitted seem to be reasonable for what renovation is planned, but to be acceptable as a licensed hospital, the architectural concerns in this review must be addressed. To make the building conform to all codes, the costs and schedule will necessarily change.

Although the application stated that more than 21,000 square feet for renovation, this appears to be the size of the existing facility. In fact, the renovated areas seem to be mostly located in the patient toilet spaces. Some other existing spaces are proposed to undergo a change in function and this may have mechanical ramifications relating to relative air pressures of the spaces.

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.**

As a new entity, LBHS has no history of provisional care to Medicaid and medically indigent care patients. Nevertheless, the applicant does propose to provide 2.0 percent of its total patient days to charity care patients.

F. SUMMARY

Lee Behavioral Health System, Inc. (CON #9712) proposes to establish a new 55-bed adult psychiatric hospital in Fort Myers, Florida. The proposed project cost is estimated to be \$2,184,000. Construction costs are projected at \$1,150,000 and the project will involve 21,461 gross square feet (GSF) of renovated space and 8,024 gross square feet (GSF) of new construction.

According to the applicant's *Certificate of Need Predicated on Conditions* page, it will set aside a minimum of 2.0 percent of its patient days to charity care patients. Although not stated on this page, the applicant also commits to becoming a Baker Act facility. However, the applicant did not indicate when it would be seeking this designation.

After weighing and balancing all relevant criteria, the following issues are presented.

Need:

The applicant does not respond to the fixed need pool which projects a zero need for additional adult psychiatric beds in District 8.

The applicant submitted a support letter from an area physician that indicated that some of his patients were being placed on a waiting list for and his elderly patients who had a history of mental illness being refused admission by some of the area nursing homes. However, the number of patients unable to access services was not quantified nor was the amount of time patients had to spend on a waiting lists. Special circumstance need was not demonstrated.

Quality of Care

Lee Behavioral Health System, Inc. is a new entity and has no history of providing care. However, it is a subsidiary of Oglethorpe, Inc., which operates The Willough at Naples.

The applicant reasonably demonstrated its ability to provide quality care.

Cost/Financial Analysis

The financial review concludes that neither the short-term or long-term financial position of the applicant or its parent can be determined from the information submitted. Funding for this project and its financial feasibility is open to question. This project will not have a positive impact on competition to promote quality assurance and cost-effectiveness.

Medicaid/Indigent Charity Care Commitment

The proposed project, as a specialty inpatient psychiatric hospital, cannot participate in the Medicaid program. The applicant does make a commitment of 2.0 percent of its total annual patient days to charity care patients.

Architectural Analysis

The applicant seeks to establish a 55-bed psychiatric hospital by renovating a building that was once an assisted living facility. Also, additional space would be created to house the administrative, dietary and other non-patient room spaces.

As submitted, the plans for this project could not be recommended for licensure as a Hospital by the AHCA Office of Plans and Construction. Chapter 11 of the Guidelines For Design and Construction of Hospitals and Health Care Facilities published by the American Institute of Architects has many requirements for Psychiatric Hospitals. There are numerous provisions in the guidelines, which this applicant has not met.

Cost data and schedules submitted seem to be reasonable for what renovation is planned, but to be acceptable as a licensed hospital, the architectural concerns in this review must be addressed. To make the building conform to all codes, the costs and schedule will necessarily change.

G. RECOMMENDATION

Deny CON #9712.

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