

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Kindred Hospital East, L.L.C. (CON 9718)
680 South Fourth Street
Louisville, Kentucky 40202

Authorized Representative: Bud Wurdock
(502) 596-7718

Select Specialty Hospital-Palm Beach, Inc./CON #9719
2021 Church Street, Suite 202
Nashville, Tennessee 37203-2016

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

2. Service District

District 9

B. PUBLIC HEARING

A public hearing was not held or requested with regard to the establishment of the proposed long-term care hospitals in District 9. However, letters of support were submitted for each applicant as follows:

Kindred Hospitals East, L.L.C. (CON #9718) submitted 121 letters of support for the project from various physicians and nurses/case workers in District 9. The majority of letters appear to be form letters stating that the proposed project will enhance health care services in District 9 and offer patients and their families continuity of care and improved access. Approximately 41 of the letters, the majority from case workers associated with Delray Medical Center and Indian River Hospital, identified a total of "more than" 788 patients who could have benefited

CON Action Numbers: 9718 & 9719

from a LTCH in the district. It is not known how many of these patient numbers are duplicative, if their length of stay exceeded the mean length of stay, or the disposition of these patients. It is interesting to note that there were no specific letters of support provided by any of the area hospitals or other health care facilities in the district.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719) submitted 11 letters, only one of which is supportive of the proposed Palm Beach LTCH. The remaining letters were submitted by health care providers and family members outside of the district attesting to the services provided by Select Specialty Hospitals at other locations, including the recently opened Select Specialty LTCH in Miami. The one letter of specific support for the proposed project was submitted by the chief executive officer at JFK Medical Center in Atlantis, Florida. According to this letter, an evaluation of the hospital's "long stay" patients identified 401 calendar year 2002 discharges who remained in the hospital for 24 or more days. The average length of stay for these patients was 38.6 days and the average age was 67.8 years. Circulatory system diseases represented more than one-quarter of the total long-stay patient count. The letter further states that the aforementioned facts are not a single year phenomenon and that a review of similar data for the past three years reveals that JFK Medical Center had 335 long-stay patient discharges in CY 2000 and 377 in CY 2001. The letter further states that rehabilitation services and skilled nursing home services do not represent alternatives to LTCH services.

C. PROJECT SUMMARY

Kindred Hospitals East, L.L.C. (CON #9718) proposes to construct a freestanding 70-bed LTCH to be located in the north central portion of Palm Beach County. Kindred Hospitals East is currently the licensee and operator of 16 LTCH's across the United States, and its parent company Kindred Healthcare, Inc., operates 66 facilities nationwide. Kindred also owns seven of the 11 licensed LTCHs in Florida and was recently approved to add 20 beds to Kindred Hospital-North Florida (District 4/Clay County).

The proposed project involves 45,896 gross square feet (GSF) of new construction, comprised of a six-bed intensive care unit, 12 private rooms and 26 semi-private rooms. The total construction costs is estimated to be \$7,617,009 with total project costs of \$13,762,419.

CON Action Numbers: 9718 & 9719

As a condition of approval, the applicant agrees to condition award of the certificate of need on a combined provision of 2.8 percent of its total patient days to Medicaid and charity care patients.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719), a wholly-owned subsidiary of Select Medical Corporation, proposes the creation of a 60-bed freestanding long-term care hospital to be located in Palm Beach County, 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 new proposals in Districts 1, 3, 4, 6, 8 and 9.

The proposed hospital will consist of 44,434 gross square feet of new construction and construction costs of \$7,892,500. Total project cost is estimated to be \$13,478,139. The funding for the proposed project will be provided by Select Medical Corporation.

As a condition of approval, the applicant agrees to condition award of the certificate of need on a combined provision of 2.8 percent of its total patient days to Medicaid and charity care patients and upon Joint Commission Accreditation of Healthcare Organizations (JCAHO) accreditation. 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.

CON Action Numbers: 9718 & 9719

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

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

E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA

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

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

1. Fixed Need Pool

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

Need is not published by the Agency for long-term acute care hospital (LTCH) beds. It is the applicant's responsibility to demonstrate need on the criteria provided in rule and listed in Item b below.

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.

According to a recent *MedPac* report to Congress:

*"LTCHs are the post-acute 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 LTC hospitals or not. Patients who used these hospitals were three to five times less likely to use SNF care, suggesting that SNFs and LTCHs may be substitutes. Compared with similar patients who did not use LTHCs, total payments and mortality rates for LTCH patients were considerably higher."*¹

b. 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 needs 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:

- 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.

¹ June 2003 MedPac Report to Congress: *Variations and Innovation in Medicare*, page 72.

CON Action Numbers: 9718 & 9719

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 LTCHs as separate and distinct from the populations treated by short-term acute care and post acute care providers that each have their own prospective payment system in recognition of the material differences in patient populations, cost of care, and health care delivery. Under this system, each patient admitted to a LTCH is assigned a DRG with a corresponding payment rate that is weighted based upon the patient's diagnosis and acuity. The LTCH will be reimbursed the pre-determined payment rate for that DRG, regardless of the cost of care.

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

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

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

- 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.

CON Action Numbers: 9718 & 9719

- 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.

In addition, rehabilitation facilities are required to have 75 percent of their admissions in one of 10 specific diagnoses related to conditions requiring rehabilitation services. LTCHs only condition of participation in addition to those required of all hospitals is to have an average Medicare length of stay greater than 25 days.

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.

In addition to similarities to rehabilitation providers noted above, as previously stated, *MedPac*, in a June 2003 *Report to Congress* indicted that data suggests that care provided in LTCHs is similar to that provided in skilled nursing facilities and that care in LTC hospitals is becoming a substitute for skilled nursing care rather than a different or higher level of care. Further, that the lengths of stay in acute care beds was not reduced when LTCH beds were available in the area. However, despite similarities in care suggested by the data, payments for LTCH patients were considerably higher as were mortality rates.

At present there are 11 long-term care hospitals with 769 beds licensed to operate in the State of Florida. These facilities are located in seven of the 11 AHCA health planning areas and are in the following counties: Dade (Miami), Hillsborough (Tampa), Broward (Fort Lauderdale and Hollywood), Duval, Clay, Orange (Orlando) and Pinellas (St. Petersburg).

CON Action Numbers: 9718 & 9719

There are an additional 165 beds approved but not yet operational: 20 beds at Kindred Hospital in District 4, six beds at Kindred in Fort Lauderdale in District 10 and the following approved new LTCH's: SemperCare (30 beds) in Panama City and SemperCare (29 beds) in Tallahassee both in District 2, Select Specialty (40 beds) at Lucerne Medical Center in Orlando/District 7, and HealthSouth (40 beds) in Sarasota in District 8. The average occupancy of the operational programs was 76.84 percent for the period January 2002 through December 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 LTCHs for the calendar year CY 2002 reporting period:

**Florida Long Term Care Hospitals
Utilization Experience January 2002-December 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-Tampa	6	73	26,645	17,986	67.50%
Kindred-Hollywood	10	124	45,260	32,300	71.37%
Kindred-Ft. Lauderdale	10	64	23,360	21,409	91.65%
Kindred-Coral Gables	11	53	19,345	17,197	88.90%
***Select Specialty-Miami	11	40	360	-0-	0.00%
Florida Total		683	235,055*	180,607*	76.84%

Source: Florida Hospital Bed Need and Service Utilization, 1/24/03

**Kindred-North Florida has been approved under CON #9650 to add 20 beds.*

***Kindred-St. Pete added 22 licensed beds on 04/23/03 increasing total beds to 82.*

****Select Specialty-Miami was licensed 12/23/02, reporting zero utilization for the quarter. Not listed but recently licensed LTCHs include Sister Emmanuel Hospital for Continuing Care (29 beds) licensed 07/15/03 in District 11 and SemperCare (35 beds) in Orlando in District 7 licensed 06/12/03.*

There are currently no existing long-term care hospitals (LTCHs) located in District 9.

The current bed complement, patient days and average occupancy of other distinct forms of care in District 9 shown below:

CON Action Numbers: 9718 & 9719

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

Facility Type	Total Beds District 9	District 9 Average Occupancy
Acute Care	4,316	65.98%
Comprehensive Med. Rehab	256	80.90%
Hospital Based Skilled Nursing	68	38.14%
Skilled Care Community Nursing Homes	8,760	87.19%

**Source: Hospital Bed Need Projections 07/03 for LTCH, acute care and CMR beds
By District CY 2002**

**Skilled care community nursing home and hospital based skilled nursing utilization for July 2002-
June 2003.**

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, as noted earlier, studies recently conducted suggest the opposite.

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 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 Report referenced above also found that 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.

CON Action Numbers: 9718 & 9719

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 following general findings regarding expected population growth in the district within the next five years.

Population Estimates for District 9 Counties and Percent Change by County For Total Population, 65 and over, and 75 and Over Population

County	Total July 2003	Total July 2008	Percent Change	65+ Percent Change	75+ Percent Change
Indian River	119,769	131,215	9.55%	8.00%	7.56%
Martin	133,006	146,570	10.19%	9.16%	9.10%
Okeechobee	36,856	39,446	7.02%	14.71%	17.33%
Palm Beach	1,195,507	1,328,126	11.09%	8.74%	6.49%
St. Lucie	206,026	227,223	10.29%	8.86%	9.81%
Total District	1,691,164	1,872,580	10.73%	8.82%	7.31%

Source: AHCA Pop. Projections, published June 2003.

As shown above, the overall population in District 9 is expected to increase by 10.73 percent during the next five years, with the 65 and over and 75 and over age cohort increasing by 8.82 percent and 7.31 percent, respectively. Palm Beach County is the most populous county in the district and by the year 2008 is projected to have 41 percent of the total population, 46 percent of the 65 and over population and 43 percent of the 75 and over population in the district.

Kindred Hospitals East, L.L.C. (CON #9718) states that the proposed 70-bed freestanding LTCH represents a cost-effective means of providing the most appropriate, high quality services to the medically complex patient. The applicant points out that the average length of stay of patients at Kindred Florida LTCH's for year-to-date (August 2003) was 43.7 days compared to an average length of stay of 4.0 days in short-term acute care hospitals in District 9 (Treasure Coast Health Council Health Plan, 2003 Edition). The applicant also points out that the average case mix index for the short-term acute care hospitals in District 9 is 1.42 as compared to Kindred's facilities in Florida, which reported a case mix index of 2.33 for year to date (August 2003) (*Note: The case mix index is a measure developed in conjunction with Medicare's prospective payment system (PPS) as a means of adjusting payments to hospitals based upon case complexity.*)

CON Action Numbers: 9718 & 9719

The applicant anticipates a similar patient mix at the proposed facility as that provided at other freestanding Kindred hospitals. According to the applicant, approximately 47 percent of LTCH patient days at other Kindred facilities are related to diseases and disorders of the respiratory system, followed by diseases and disorders of the skin (10 percent). The applicant states that the majority of patients entering a Kindred hospital are admitted directly from the intensive care unit of a general acute care hospital.

The applicant contends that LTCH appropriate patients in District 9 are leaving the area for LTCH services or seeking placement in a less appropriate health care setting. These less appropriate settings may include remaining in a short-term acute care bed, comprehensive rehabilitation and/or long-term community nursing homes. The applicant states that due to the complex nature of its patients (many requiring ventilator services), comprehensive medical rehabilitation facilities are not appropriate due to the required therapy involved. The applicant also states that skilled nursing units/subacute facilities are also not appropriate since they are geared toward less intensive therapies.

The applicant references the letters of support from physicians and nurses/hospital case workers stating that LTCH appropriate patients cannot be cared for appropriately in the post-acute settings currently available in District 9. The applicant states that physicians, nurses and case managers identified a total of 568 patients who could have benefited from LTCH services had such services been available in the district. As previously noted in the Public Hearing section, this reviewer's analysis of those letters identified a minimum of 788 LTCH appropriate patients, the majority identified by case workers associated with Delray Medical Center and Indian River Hospital in District 9. It is not known how many of these patient numbers are duplicative, if their length of stay exceeded the mean length of stay, how many are actually appropriate for the primarily ventilator focused services proposed by the applicant, or the final disposition of these patients within or outside of the district. The closest LTCHs to Palm Beach County are the Kindred LTCH's located in District 10 (Broward County). The 64-bed Kindred LTCH located in Fort Lauderdale (District 10), which is approximately 45 miles south of the West Palm Beach area is the most accessible to Palm Beach County residents. With regard to accessibility to LTCH services for residents in Martin, Indian River, Okeechobee, and St. Lucie Counties, the closest LTCH services are also located at the Kindred LTCH in District 10 ranging from one hour and 30 minutes from Stuart, Florida (Martin County) to two hours and 14 minutes from Okeechobee (Okeechobee County). Residents in Port St. Lucie and Fort Pierce (St. Lucie County)

CON Action Numbers: 9718 & 9719

and Vero Beach (Indian River County) are in excess of one hour and 30 minutes from the District 10 LTCH. The existing LTCH in District 6 (Tampa) and the approved LTCH in District 7 (Orlando) are both in excess of two hours travel time for residents in Martin, Indian River, Okeechobee and St. Lucie Counties. According to CY 2002 hospital reporting data, Kindred-Ft. Lauderdale had an average occupancy rate of 91.65 percent. The Discharge Data Summary Report for this Kindred facility indicates that approximately 53 percent of total admissions originated from District 10 (279 admissions). It is interesting to note however, that District 9 admissions accounted for approximately 31 percent of total admissions (166 admissions) to the facility. This is considerably more than the six percent that were admitted to the Ft. Lauderdale LTCH from District 11 (Miami/Dade County). This reasonably high number of LTCH patients at the Kindred-Ft. Lauderdale LTCH would tend to indicate that access to that facility is not constrained for District 9 residents and specifically Palm Beach County residents. The other Kindred facility in Hollywood (Broward County) is a 124-bed LTCH that experienced an average occupancy rate of 71.37 percent for CY 2002. According to the 2002 Discharge Data Summary Report, this LTCH served only 16 patients from District 9 representing approximately two percent of total patients admitted. The majority of admissions originated from District 10 (53 percent) and District 11 (44 percent). The applicant contends that essentially all of the proposed facility's patients will originate from within District 9.

The applicant states that Palm Beach County was determined to be the most appropriate market for the proposed LTCH in view of the size and growth of its population and the number of referral hospitals in the area. As previously shown, Palm Beach County is the most populous county in the district and by the year 2008 is projected to have 41 percent of the total population, 46 percent of the 65 and over population and 43 percent of the 75 and over population in the district.

In an effort to project the number of potential LTCH patient days in District 9, the applicant presented a use rate methodology based on the usage of LTCH's in the state and expected population growth of the 65 and over population in the district. Based on the 2002 historical use rate of 124.33 patient days per 1,000 population age 65 and older, the applicant projects that LTCH patient days in District 9 in the second year of operation will be 50,800 or a daily census of 139 patients. The application of the same methodology for the total population in year 2006 results in a projected daily census of 100 patients. In an effort to demonstrate bed need, the applicant applied a population-based methodology (0.5 beds per 10,000 total population) utilized by the Office of Health Policy with the Tennessee Department of Health in conjunction

CON Action Numbers: 9718 & 9719

with AHCA population projections to demonstrate a need for 89 beds. However, 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. For example, certain variations in patient characteristics can alter need assumptions. These may include the patient's functional ability, availability of caretakers at home, ethnicity, age, socio-demographics, and dependence on technology.

In addition to the above population based approach, the applicant also estimated need based on the short-term acute care discharges and patient days occurring in District 9 that may be appropriate for LTCH services. The applicant arrived at a list of 50 DRGs that it considers most likely to produce LTCH referrals. The applicant then assumed that all adult patients assigned one or more of the listed DRGs and discharged from a district hospital with a length of stay of at least the GMOS plus 17 days results in approximately 26,522 potential LTCH patient days in District 9, for an average daily census of 73.

In summary, the applicant contends that the three methodologies presented above support the need for the proposed 70-bed LTCH. However, based on the applicant's own admission, it anticipates a similar patient mix as found at other Kindred LTCHs. That is, approximately 47 percent of the total patient days at other Kindred hospitals are related to diseases and disorders of the respiratory system (respiratory/pulmonary) requiring a higher amount of ventilator services as opposed to circulatory (six percent), infectious/parasitic (five percent), musculoskeletal (five percent), etc. According to the Discharge Data Summary Report for CY 2002 for Kindred-Ft. Lauderdale, the closest LTCH for Palm Beach County residents, approximately 78 percent of the patient population at that facility had respiratory disease. In order to obtain a more accurate projection of potential area LTCH discharges, focus should have been placed on actual discharges involving respiratory/pulmonary patients with extended lengths of stay in district hospitals. In view of the applicant's intent to focus on complex services, primarily involving a high number of respiratory distressed patients, an analysis of area intensive care admission data from acute care hospitals would appear to be a more accurate approach to determining potential LTCH admissions. As previously noted, the applicant provided an estimate of potential LTCH patients based on estimated numbers provided by district area hospital case workers and physicians. However, the applicant failed to provide any specific discharge studies or data from area hospitals and/or other inpatient providers in the district identifying potential LTCH admissions by DRG or length of stay. Furthermore, it was not shown, based on the

CON Action Numbers: 9718 & 9719

reasonably high number of District 9 admissions to the Kindred-Ft. Lauderdale LTCH, that patients are being denied access or experiencing any significant delays in receiving LTCH services.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719) contends that the Palm Beach County population is at a severe disadvantage with respect to LTCH services and has been forced to go without appropriate and effective care. The applicant further contends that it has quantified the number of LTCH beds that can be supported by Palm Beach County acute care hospitals including JFK Medical Center. The applicant has defined its service area, for the purposes to demonstrating need, as Palm Beach County.

The applicant also references the closest LTCH's for Palm Beach County residents, stating that while closest in proximity, the two Kindred LTCH's in Broward County are not accessible due to distance and travel times. As previously discussed, the Kindred-Ft. Lauderdale LTCH has the greatest impact on the proposed Palm Beach proposal in view of both distance and admissions from Palm Beach County. The Discharge Data Summary Report for this Kindred facility indicates that approximately 31 percent of total admissions (166 admissions) to that facility originated from District 9. This reasonably high number of LTCH admissions originating from District 9 would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents and specifically Palm Beach County residents.

In response to population and demographics, the applicant compares Agency population estimates for Palm Beach County with total District 9 estimates for the five-year period July 2002 to July 2007, to demonstrate both an increase in total population and elderly population. Although the actual percentage of growth in both the 65 and over and 75 and over population groups is estimated to less than the total overall growth of these groups in the district, Palm Beach County is the most populous county in the district and by the year 2008 is projected to have 41 percent of the total population, 46 percent of the 65 and over population and 43 percent of the 75 and over population in the district.

In the absence of an approved methodological approach to need for LTCH beds, the applicant presented six methods for estimating need as discussed below:

CON Action Numbers: 9718 & 9719

The first method involves an extended length of stay analysis based on Palm Beach County short-term acute care hospital long stay discharges. The second and third methods address the geometric mean length of stay plus 15 days and seven days, respectively. The fourth method analyzes long-stay in short-term acute care (STAC) versus LTCH penetration, the fifth method employs a statewide use rate analysis applied to the Palm Beach County population, and the sixth method focuses on a UB-92 (Universal Billing Form 92) patient discharge analysis for Palm Beach County.

The long length of stay model evaluates hospital cases that are likely to result in long lengths of stay of 24 days or longer to determine how many cases are appropriate for LTCH services. The evaluation of the hospital 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 1,852 hospital discharges with a length of stay of 24 days and longer. The applicant multiplied the potential number of patients by the average length of stay for LTCH's in Florida (42.7 days) to arrive at a total patient days and then divided this number by 365 to arrive at the average daily census of 217 patients for Palm Beach County. Based on a 75 percent occupancy rate, the applicant arrived at a need for 289 beds, substantially more than the 60 beds requested. In view of the applicant's intention to provide a wide range of LTCH services and not concentrate just on ventilator/pulmonary services, the use of the statewide average length of stay (42.7 days) would appear to overstate need.

In view of the applicant's intention to be located in close proximity to JFK Medical Center and accept long-stay admissions from that facility, the applicant applied the same analysis as above based on 401 potential long-stay patients. According to the applicant's calculations, JFK patients alone would support a need for 62 patients. A more realistic method using a 25 to 30-day length of stay results in a theoretical need for 37 to 44 beds, less than the 60 beds requested. The applicant also conducted a long stay analysis of the five Tenet facilities in District 9 to arrive at a potential long-stay caseload of 781 patients. According to the applicant's calculations, these patients alone would support a LTCH of 122 beds. Assuming the Tenet facilities would discharge all of its long-stay appropriate patients to the proposed facility, a more realistic but also theoretical need for 71-86 beds can be shown based on both a 25-day and 30-day length of stay. However, it is unlikely this will occur.

CON Action Numbers: 9718 & 9719

Although the applicant presented several letters from case workers associated with both Delray Medical Center and Indian River Hospital, providing estimates of potential LTCH patients, there were no letters of support from Tenet Hospital administrators or hospital specific discharge studies or data regarding potential long-stay patients. As noted earlier, a recent study of LTCH care shows that even when a LTCH is established in an area, lengths of stay at acute care hospitals do not decrease.

The second method examines the geometric mean length of stay (GMLS) plus 15 days to arrive at 2,305 potential LTCH discharges from Palm Beach County hospitals and a resulting need for 360 beds. The applicant used the same 42.7 day average length of stay applied to these potential discharges to arrive at the estimated bed need. The application of a more reasonable 25-30 day length of stay would result in a need for less beds. The applicant applied the same analysis to JFK Medical Center discharges only resulting in a need for approximately 75 beds. Again, using the more likely lengths of stay of 25 days and 30 days results in a theoretical need for 44-52 beds based on JFK discharges only. *(Note: The GMLS plus seven-day method of calculating potential LTCH beds was not considered since it does not recognize the nationally accepted GMLS as assigned by CMS.*

The next method presented by the applicant looks at long-stay short-term acute care (STAC) versus LTCH penetration. The applicant basically contends that the apparent lack of referrals of Palm Beach patients to statewide LTCH's is clear evidence of an access and availability problem associated with LTCH services. To support this, the applicant states that a statewide analysis was conducted of all long-stay patients by county of residence to determine at what type of acute care facility they receive services. The applicant determined that counties with at least one existing LTCH had a higher percentage of LTCH admissions (ranging from 13.7 percent to 29.7 percent) than counties without a LTCH. The applicant states that Palm Beach County had actual LTCH discharges that accounted for 6.5 percent of total potential county long-term discharges. However, as previously shown, the Discharge Data Summary Report for the Kindred-Ft. Lauderdale LTCH, the closest to Palm Beach County, indicates that approximately 31 percent of total admissions (166 admissions) to that facility originated from District 9 counties. This would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents. There was no demonstration presented by the applicant that District 9 patients requiring LTCH services cannot receive those services or that care is denied at LTCH's in contiguous districts.

CON Action Numbers: 9718 & 9719

The applicant also provided a use rate analysis by calculating the need for LTCH beds by determining the statewide use rate of LTCH patients by age and applying these use rates to the projected population in Palm Beach County. The use rate approach is based on the assumption that its proposed service area will perform, on average, the same as other areas with LTCH's. It does not take into account other variables that may impact utilization including changes in population growth of the various age groups, the availability of other care options and a change in referral patterns.

In an effort to further support the need for the proposed LTCH, the applicant states that a more detailed, patient specific extended stay analysis was conducted of JFK Medical Center's discharges with average length of stays greater than 24 days. As previously shown, JFK identified 401 potential LTCH discharges in CY 2002 for patients with 24 days or greater length of stay. According to this analysis, 18 percent of the patients had a length of stay exceeding 46 days and nearly 54 percent had a length of stay exceeding one month. The applicant states 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 at JFK as well as Delray Medical Center, Bethesda Memorial Hospital and St. Mary's Medical Center in which the patient was not discharged to an appropriate setting due to what it considered a 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 an estimated bed need but rather presents specific discharge data in support of the applicant's perceived need estimates to show that these patients are not candidates for other post acute settings. It is again noted that a recent study has shown that despite the close proximity of LTCHs, length of stay in acute care beds does not decrease. This is somewhat evidenced in this area by the occupancy in existing LTCHs in District 10.

The various methods presented by the applicant do not account for other factors that may impact the applicant's conclusions of need. The need analysis presented by the applicant in all of its forms relies on unsupported speculation rather than demonstration of actual access problems. There was no supporting documentation provided that patients are being denied admission to LTCH services in other districts and specifically the Kindred-Ft. Lauderdale LTCH or that patients are being inappropriately cared for.

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 2003 District 9 CON Allocation Factors Report does not contain any preference statements pertaining to long-term care beds or generic preferences that may be applicable.

3. Agency Rule Criteria

The Agency does not currently have adopted preferences or Rule criteria relating to LTCHs

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 #9718) contends that the project will increase the availability and accessibility to care in District 9 due to the non-availability of LTCH services in the district. The applicant cites the projected increase in population in the district, especially with regard to the senior population. The applicant states that the typical patient seen at a Kindred hospital is frail with multiple complications, age 65 or older. The applicant contends that for these patients and family members to travel outside of the district to obtain LTCH services is often impractical. The applicant acknowledges that there are skilled nursing facilities, subacute care providers and short-term acute care services available but states that they do not have the ability to provide the same level of care as provided in the proposed LTCH. However, as discussed above in E. 1., a recent study of LTCH and other post-acute services indicates that LTCH care is most likely a substitute for skilled nursing care.

CON Action Numbers: 9718 & 9719

The applicant states that efficiency will be improved by sharing services with other area Kindred facilities and utilizing centralized services at the corporate office, such as purchasing, project management, clinical and quality management, medical records and other services. However, the applicant did not specifically demonstrate what efficiencies will be achieved as a result of the project.

As previously discussed, agency data indicates that the closest LTCH facility for Palm Beach County residents (Kindred-Ft. Lauderdale) receives approximately 31 percent of its total admissions (166 admissions) from District 9. This reasonably high number of LTCH admissions originating from District 9 would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents and specifically Palm Beach County residents. The applicant did not demonstrate that District 9 residents needing LTCH services were unable to receive them. Specific documentation from area providers with regard to delays in care would have been supportive and beneficial in showing an access problem to LTCH services for area residents.

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 district.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719) contends that clinically appropriate patients are remaining in inappropriate bed situations and that the proposed project will provide Palm Beach County residents necessary LTCH services to improve the health status of the County. The applicant basically reiterates the factors previously presented in response to bed need to identify a sufficient number of adult patients in the county with a length of stay of 24 days or greater (or with a GMLOS plus 15 days). However, as noted above, a recent study has shown that in areas with access to LTCH services, acute care average length of stay has not decreased. Additionally, there was no supporting documentation provided that patients are being denied admission to LTCH services in other districts and specifically the Kindred-Ft. Lauderdale LTCH or that patients are being inappropriately cared for. 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.

- 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 #9707) states that all of its currently licensed LTCH's are accredited by the JCAHO, an indication that quality of care is being delivered and that the necessary components are in place to ensure delivery of care. The applicant provided a reasonable description of the admission, care planning and discharge process. The quality management functions are contained in the Kindred Strategic Quality Plan, a copy of which is contained in the application as Appendix 5. The applicant states that quality care is delivered through consistent monitoring and evaluation of patient care, objective and systematic identification of potential or existing problems in service delivery, identification of opportunities to resolve or prevent these problems at both clinical and managerial levels, activate participation by all members of the health care team in the review process, and improved communication, education and follow-up.

The Complaint Summary Reports for the seven licensed Kindred LTCH's in the state had a combined listing of 23 confirmed complaints (10 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-Palm Beach, Inc. (CON #9719) is a development stage corporation, and as such has no operating history. 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. Select Specialty has also been approved for a 40-bed LTCH in District 7. The applicant states that all existing Select Medical facilities have current JCAHO accreditation, except those that have recently opened and are awaiting survey. The JCAHO accreditation is an indication that quality of care is being delivered and that the components are in place to ensure the delivery of quality of care.

Select's Quality Improvement Programs already in place at other Select locations nationwide will be implemented in the proposed facility.

- 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 proposes 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.**

The projects are not affiliated in any way with a statutorily defined teaching hospital nor will the primary purpose of the proposed projects involve research or physician education.

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

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

Kindred Hospitals East, L.L.C. (CON #9718) is a wholly-owned subsidiary of Kindred Healthcare, Inc. (formerly Vencor, Inc.). 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.

The audited financial statements for the period 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:

CON Action Numbers: 9718 & 9719

Financial Accounts and Ratios

	<u>12/31/2002</u>
Current Assets	\$ 95,586,452
Cash and Current Investment	\$ 2,556,678
Assets Restricted for Capital Projects	\$ 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	\$ 11,293,364
Net Income	\$ 11,293,364
Cash Flow from Operations	\$ 48,507,659
Working Capital	\$ 48,110,827
Current Ratio (CA/CL)	2.0
Cash Flow to Current Liabilities (CFO/CL)	1.02
Long-Term Debt to Equity (TL-CL/TE)	0.0
Equity to Total Assets (TE/TA)	67.0%
Operating Margin (NPO/NOR)	2.6%
Total Margin (NI/NOR)	2.6%
Return on Assets (NI/TA)	7.8%
Operating Cash Flow to Assets (CFO/TA)	33.7%

Short-term position:

The applicant's current ratio of 2.0 approximates the 50th percentile of Florida Hospitals in 2001. The ratio of cash flow to current liabilities of 1.02 is strong. 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. The ratio of cash flows to assets of 33.7 percent is very strong. The most recent period had an operating profit of \$11.3 million, resulting in an operating margin of 2.6 percent. Total equity is \$96.6 million; the ratio of equity to assets is 67.0 percent. Overall, the applicant has a strong long-term position.

Capital requirements:

Schedule 2 indicates capital projects of \$23.8 million. Missing from that schedule was CON #9605, a previously awarded 20-bed addition to this hospital. Total capital projects, including CON Number 9605 would be \$26.7 million.

CON Action Numbers: 9718 & 9719

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 \$2.5 million in cash on hand, and \$48.5 million in cash flows.

Staffing:

As reflected in Schedule 6, the majority of FTEs required by the implementation of the project are direct care givers consisting of a mix of RNs, LPNs and CNAs. The clinical staffing figures are based upon staffing levels at all Kindred Hospitals. The project calls for recruitment of 105 FTEs by the end of the second year of operation, including 69.5 licensed nursing and therapy staff. The applicant states that it allocates substantial resources to attract and retain qualified staff. These incentives include competitive salary and benefit levels, and opportunities for recognition and promotion. Kindred uses a number of methods to attract employees, including media advertising, job fairs, direct marketing and Internet recruitment.

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 the projects as proposed. Funding for this project and all capital projects is likely to be available as needed.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719), a wholly-owned subsidiary of Select Medical, Inc., is a start-up company with \$10 in assets as of February 4, 2003. The applicant submitted Form 10K for Select Medical, Inc. for the period ended December 31, 2002. The company reported \$56.1 million in cash on hand, \$346.9 million in current assets and \$739.1 million in total assets. For the same period, Select Medical had earnings from operations of \$74.8 million on net revenues of \$1.1 billion, with total operating expenses of \$1.0 billion. Cash flows from operations totaled \$120.8 million. This is a financially strong company.

Capital requirements:

Total capital costs for this project are \$13.5 million.

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.

Staffing:

According to Schedule 6, the applicant is anticipating that the 60 bed LTCH will require 66 FTE's in year one, increasing to 122 FTE's in year two. As a freestanding LTCH, all required staffing will be required with nursing staff/nursing aides comprising 30 FTE positions in year one and 61 positions in year two. Select states that it is confident it will be able to effectively recruit and maintain appropriately qualified staff to meet the needs of its patients on a daily basis. The applicant did not specify how it intends to recruit and retain staff.

Conclusion:

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

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

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

The Centers for Medicare and Medicaid Services (CMS) published a prospective payment system (PPS) rule for long-term care hospitals (LTCH) effective for cost reporting periods beginning or after October 1, 2002. Under the PPS for LTCH a payment for a Medicare patient will be made at a predetermined, per discharge amount for each LTC-DRG. The law requires that the LTCH PPS be budget neutral, which means that total payments must equal the amount that would have been paid if the

CON Action Numbers: 9718 & 9719

PPS had not been implemented. Therefore, a comparison of the applicant's revenue estimates to the control group values, based on the reasonable cost-based reimbursement system, provide a rational basis for evaluating estimated revenues.

Comparative data were derived from hospitals in peer groups that reported data in 2002. The 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 2003 2nd Quarter New CMS Hospital Market Basket Index.

Both applicants submitted schedules that included the six-month period (demonstration period) required for Medicare reimbursement under the LTCH PPS in the first year's estimates. This period is required to demonstrate a minimum 25-day average length of stay. During the demonstration period both hospitals will be reimbursed at the acute care rate.

Kindred Hospitals East, L.L.C. (CON #9718) projects net revenue per adjusted patient day (NRAPD) of \$973 in year one and \$1,043 in year two is between the control group lowest and median values of \$945 and \$1,240 in year one and \$975 and \$1,280 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 \$1,837 in year one and \$1,055 in year two is between the control group median and highest values of \$1,154 and \$2,360 in year one and the lowest and median values of \$836 and \$1,191 in year two. (See Comparative Table). Compared to the control group these costs are considered cost-efficient.

The year two operating loss for the hospital of \$136,203 computes to an operating margin per adjusted patient day of -\$12 which falls between the group lowest and median values of -\$31 and \$125. The computed operating margin ratio is -1.2 percent.

The applicant stated that profitability would be reached during the last months of the second year of operation as the census increased. No supporting schedule was provided to substantiate this claim. However, the \$136,203 loss estimated for the second year was based upon an average occupancy of only 44.1 percent. Achieving the median occupancy level of the group of 75.4 percent would likely result in the hospital operating at a profit.

CON Action Numbers: 9718 & 9719

This project is considered financially feasible.

Comparative Table

CON # 9718 Kindred Hospitals East, LLC 2002 DATA Peer Group 12	2007	YEAR 2	VALUES ADJUSTED		
	YEAR 2 ACTIVITY	ACTIVITY PER DAY	FOR INFLATION		
			Highest	Median	Lowest
ROUTINE SERVICES	7,823,521	695	1,313	974	717
INPATIENT AMBULATORY	-	0	13	0	0
INPATIENT ANCILLARY SERVICES	31,294,084	2,779	4,093	3,135	2,548
OUTPATIENT SERVICES	0	0	242	2	0
OTHER OPERATING REVENUE	0	0	4	2	0
TOTAL REVENUE	39,117,605	3,473	5,134	4,135	3,267
DEDUCTIONS FROM REVENUE	27,370,274	2,430	*	*	*
NET REVENUES	11,747,331	1,043	2,375	1,280	975
EXPENSES					
ROUTINE	3,436,829	305	608	344	208
ANCILLARY	3,370,232	299	697	323	221
AMBULATORY					
OVERHEAD	5,076,473	451	1,021	549	402
OTHER		0			
TOTAL EXPENSES	11,883,534	1,055	2,435	1,191	836
OPERATING INCOME	-136,203	-12 -1.2%	280	125	-31
PATIENT DAYS	11,262		VALUES NOT ADJUSTED		
ADJUSTED PATIENT DAYS	11,262		FOR INFLATION		
TOTAL BED DAYS AVAILABLE	25,550				
ADJ. FACTOR	1.0000				
TOTAL NUMBER OF BEDS	70				
PERCENT OCCUPANCY	44.1%		100.2%	84.2%	52.2%
PAYER TYPE	PATIENT DAYS	% TOTAL			
MEDICARE	7,377	65.5%	97.3%	75.4%	67.4%
COMMERCIAL	1,703	15.1%			
MEDICAID	144	1.3%	13.3%	0.2%	0.0%
SELF-PAY	0	0.0%	4.1%	0.9%	0.0%
HMO/PPO	1,880	16.7%	23.4%	10.5%	0.0%
OTHER	158	1.4%			
TOTAL	11,262	100.0%			

CON Action Numbers: 9718 & 9719

Select Specialty Hospital-Palm Beach, Inc. (CON #9619) projects net revenue per adjusted patient day (NRAPD) of \$931 in year one is below the lowest level of the control group of \$962 and \$997 in year two is between the control group lowest and median values \$993 and \$1,304 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 \$1,237 in year one and \$968 in year two is between the control group median and highest values of \$1,175 and \$2,404 in year one and the control group lowest and median values of \$852 and \$1,213 in year two. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$434,056 computes to an operating margin per adjusted patient day of \$29, which falls between the peer group median and lowest values of \$125 and \$-31 respectively. The operating margin of 2.9 percent indicates that net revenues are proportional to costs.

This project appears to be financially feasible.

CON Action Numbers: 9718 & 9719

Comparative Table

CON # 9719 Select Specialty Hospital - Palm Beach	2007	YEAR 2	VALUES ADJUSTED		
	YEAR 2	ACTIVITY	FOR INFLATION		
	ACTIVITY	PER DAY	Highest	Median	Lowest
ROUTINE SERVICES	14,308,900	950	1,338	992	731
INPATIENT AMBULATORY	31,532,435	2,094	13	0	0
INPATIENT ANCILLARY SERVICES	366,665	24	4,170	3,194	2,596
OUTPATIENT SERVICES	0	0	247	2	0
OTHER OPERATING REVENUE	0	0	4	2	0
TOTAL REVENUE	46,208,000	3,068	5,230	4,213	3,329
DEDUCTIONS FROM REVENUE	31,190,717	2,071	*	*	*
NET REVENUES	15,017,283	997	2,419	1,304	993
EXPENSES					
ROUTINE	2,952,850	196	620	350	211
ANCILLARY	5,274,865	350	710	329	225
AMBULATORY					
OVERHEAD	6,355,512	422	1,040	559	409
OTHER		0			
TOTAL EXPENSES	14,583,227	968	2,481	1,213	852
OPERATING INCOME	434,056	29	280	125	-31
		2.9%			
PATIENT DAYS	15,062		VALUES NOT ADJUSTED		
ADJUSTED PATIENT DAYS	15,062		FOR INFLATION		
TOTAL BED DAYS AVAILABLE	21,900				
ADJ. FACTOR	1.0000				
TOTAL NUMBER OF BEDS	60				
PERCENT OCCUPANCY	68.8%		100.2%	84.2%	52.2%
PAYER TYPE	PATIENT DAYS	% TOTAL			
MEDICARE	11,679	77.5%	97.3%	75.4%	67.4%
COMMERCIAL	2,221	14.7%			
MEDICAID	301	2.0%	13.3%	0.2%	0.0%
SELF-PAY	120	0.8%	4.1%	0.9%	0.0%
HMO/PPO	741	4.9%	23.4%	10.5%	0.0%
OTHER	0	0.0%			
TOTAL	15,062	100.0%			

CON Action Numbers: 9718 & 9719

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

District 9 Long-term Care Projects Comparison Table		
	Kindred Hospitals East, LLC	Select Specialty Hospital Palm Beach, Inc.
CON Number	9718	9719
Net Revenue per adjusted patient day	\$1,043	\$997
Cost per adjusted patient day	\$1,055	\$968
Operating profit per patient day	(\$12)	\$ 29
Estimated Managed Care level	16.7%	4.9%
Estimated Medicaid level	1.3%	2.0%

Kindred Hospitals East, L.L.C. (CON #9718) projects managed care to represent 16.7 percent of its patient days. This is between the control group median and highest level of activity of 10.5 percent and 23.4 percent. The projected levels, if realized, are likely to increase competition to promote quality assurance and cost-effectiveness.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719) projects managed care days, including Medicare and Medicaid managed care days, 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 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.**

It is required that schematic drawings be submitted as part of the CON application. Although the drawings for both projects 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 applications 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 #9718) proposes to establish a new freestanding single-story 70-bed long-term care hospital in the north central portion of Palm Beach County.

CON Action Numbers: 9718 & 9719

There was a plan of the proposed facility in the application along with large-scale plans of typical patient rooms. The patient room sizes meet current applicable codes and there is a mix of private and semi-private rooms. Only six rooms are semi private, but all patient rooms have a shower that will accommodate a stretcher. The four proposed smoke compartment walls are also shown. The majority of the applicable codes are listed on the drawings and the applicant is aware of the Florida Building Code and the requirements for disaster preparedness as well as the guidelines that have been recently adopted.

All new patient rooms must have a hand washing station within the rooms in addition to the lavatory in the bathroom. The facility meets this requirement. There are two operating rooms and they both appear to meet the square footage and minimum dimension requirements of the guidelines. The floor plan was at 1/16" = 1'-0" and it is somewhat difficult to verify the actual sizes. The design professional should ensure that all requirements of the guidelines are met.

The traffic flow between restricted, semi-restricted and non-restricted areas is well defined. There are locker/toilet/shower facilities for both males and females adjacent to the surgical suite, but there is only one of each, indicating that the doctors and nurses will share these spaces. There is a dead-end corridor that leads into the area with the radiology and future CAT scan spaces and this is not permitted.

The projected costs and schedules appear to be reasonable.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719) proposes to establish a freestanding 60-bed long-term care hospital on a site to be determined in Palm Beach County.

Obviously new construction standards will be applied when and if the AHCA Office of Plans and Construction reviews the proposed building. The 2003 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 essentially correct.

The building is laid 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, additional patient rooms and required support spaces.

CON Action Numbers: 9718 & 9719

In the 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 also a sizable administrative/dining/visitor area.

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

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.

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 not mentioned in the outline specifications.

CON Action Numbers: 9718 & 9719

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

According to the 2002 Hospital Financial Data Report, LTCHs in the state averaged 1.8 percent Medicaid patient days and 1.7 percent charity care patient days.

Kindred Hospitals East, L.L.C. (CON #9718) has a history of providing Medicaid and/or charity care. According to the 2002 Financial Data Report, the applicant's licensed Florida facilities provided a percent of Medicaid patient days to total patient days, ranging from a low of zero percent (Kindred-Ft. Lauderdale) to a high of 13.3 percent (Kindred-St. Petersburg). Charity care patient days ranged from a low of zero percent (Kindred-Ft. Lauderdale) to a high of 4.1 percent (Kindred-Coral Gables).

As a condition of approval, the applicant agrees to condition award of the certificate of need on the provision of 2.8 percent of patient days to Medicaid and charity care patients. Financial Schedule 7A reflects the applicant's expectation to meet the requested condition in the second full year of operation, providing 1.6 percent of patient days to Medicaid/Medicaid HMO and 1.4 percent to charity care. The applicant's proposed Medicaid and charity care provisions will not exceed the state average for either payor grouping.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719) is a development stage company with no operating history. As a condition of approval, the applicant agrees to condition award of the certificate of need on the provision of 2.8 percent of patient days to Medicaid and charity care patients. Financial Schedule 7A reflects the applicant's expectation to meet the requested condition in both the first and second year of operation by providing 2.0 percent of patient days to Medicaid and 0.8 percent to charity care. The applicant proposes to exceed the state Medicaid average for LTCH patient days but falls short of meeting the state average for charity care.

F. SUMMARY

Kindred Hospitals East, L.L.C. (CON #9718) proposes to construct a freestanding 70-bed long-term care hospital to be located in the north central portion of Palm Beach County.

The proposed project involves 45,896 gross square feet (GSF) of new construction. The total construction costs is estimated to be \$7,617,009 with total project costs of \$13,762,419.

As a condition of approval, the applicant agrees to condition award of the certificate of need on a combined provision of 2.8 percent of total patient days to Medicaid and charity care patients.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719) proposes the development of a 60-bed freestanding long-term care hospital to be located in Palm Beach County, Florida.

The proposed hospital will consist of 44,434 gross square feet of new construction and construction costs of \$7,892,500. Total project cost is estimated to be \$13,478,139.

As a condition of approval, the applicant agrees to condition award of the certificate of need on a combined provision of 2.8 percent of total patient days to Medicaid and charity care patients and upon Joint Commission Accreditation of Healthcare Organizations (JCAHO) accreditation.

After weighing and balancing all applicable review criteria, the primary issues are summarized below:

Need:

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

Kindred Hospitals East, L.L.C. (CON #9718)

- The applicant intends to focus on the provision of complex LTCH services (many requiring ventilator/pulmonary services) and contends that patients are leaving District 9 for services or remaining in less appropriate settings within the district.

CON Action Numbers: 9718 & 9719

- The letters of support identify a minimum of 788 LTCH appropriate patients in the district. However, it is not known how many patient numbers are duplicative and how many patients would be appropriate for the primarily complex services proposed by the applicant. It was not demonstrated that access to LTCH services in other districts and specifically in District 10 is constrained or denied to District 9 residents.
- The applicant failed to demonstrate that area residents were unable to access needed care or that care currently being provided was inappropriate.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719)

- The applicant contends that Palm Beach County is at a severe disadvantage with respect to the availability of LTCH services. The applicant further contends that the Broward County LTCH's in District 10 are not accessible due to distance and travel times. The discharge data would indicate that District 9 residents are using the Kindred-Ft. Lauderdale LTCH and account for 31 percent of that facility's total admissions. The applicant did not demonstrate that bed capacity and access is constrained for District 9 residents utilizing the District 10 LTCH(s).
- The applicant failed to demonstrate that area residents were unable to access needed care or that care currently being provided was inappropriate.

Quality of Care:

Kindred Hospitals East, L.L.C. (CON #9718)

- The applicant appears to have a reasonable history of providing quality of care and its current LTCH's are JCAHO accredited. The applicant provided a description of quality management functions to be incorporated at the proposed facility as currently used at other Kindred hospitals. The applicant had a minimal number of confirmed complaints between 1999 and the 2003.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719)

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

Cost/Financial Analysis:

Kindred Hospitals East, L.L.C. (CON #9718)

- The applicant is a wholly-owned subsidiary of Kindred Healthcare, Inc. The parent emerged from bankruptcy proceedings in 2001. In compliance with the plan of Reorganization, the prior period financial statements are not comparable to the current period statements of the company and are not considered. Based on current financial ratios, the applicant is reasonably strong with total equity of \$96.6 million. Based on the financial statements, cash on hand and cash flows, (assuming the current level continues), it appears that there are sufficient funds for the proposed projects. Funding for the project and all capital projects is likely to be available as needed.
- With net revenues per adjusted patient day falling between the lowest and median level, the facility is expected to consume health care resources in proportion to the services provide. Projected cost per adjusted patient days is between the control group median and highest values in year one and the lowest and median values in year two. The projected operating margin falls between the control group lowest and median values. The project is considered to be financially feasible.
- The applicant projects managed care to represent 16.7 percent of its patient days. This is between the control group median and highest level of activity. The projected levels, if realized, are likely to increase competition to promote quality assurance and cost-effectiveness.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719)

- 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 earnings from operations of \$74.8 million on net revenues of \$1.1 billion. The funding for the proposed project is available from the parent company.

CON Action Numbers: 9718 & 9719

- 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 2.9 percent indicates that net revenues are proportional to costs. The project appears to be financially feasible.
- The applicant projects managed care to represent 4.9 percent of its patient days. This is between the control group lowest and median level of activity of 0.0 and 10.5 percent. The projected levels, if realized, will not have a positive impact on competition to promote quality assurance and cost-effectiveness.

Architectural Analysis:

Kindred Hospitals East, L.L.C. (CON #9718)

- The project involves new construction of a 70-bed freestanding LTCH. The majority of the applicable codes are listed and the applicant appears to be aware of the Florida Building Code, disaster preparedness requirements, and recently adopted guidelines.
- The project appears to be designed efficiently with all required spaces and functions shown as well as a well designed traffic flow pattern.

Select Specialty Hospital-Palm Beach, Inc. (CON #9719)

- The project involves new construction of a 60-bed freestanding LTCH. The list of applicable building codes appear to be essentially correct but new construction standards will be applied when promulgated.
- The proposed project appears to be designed efficiently with all required spaces and functions shown, including surgery, pharmacy and space for radiographic equipment. The costs and schedule appear to be reasonable.

G. RECOMMENDATION

Deny CON #9718 and CON #9719.

AUTHORIZATION FOR AGENCY ACTION

Authorized representatives of the Agency for Healthcare 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