

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

BayCare Long Term Acute Care, Inc. (CON #9755)

625 Court Street
Clearwater, Florida 33756

Authorized Representative: Frank V. Murphy, III, President
(727) 444-1402

SemperCare Hospital of Lakeland, Inc. (CON #9756)

2745 North Dallas Parkway
Plano, Texas 75093

Authorized Representative: Gary A. Kagan
(972) 836-1300

Select Specialty Hospital-Marion, Inc. (CON #9757)

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

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

2. Service District

District 6

B. PUBLIC HEARING

A public hearing was not held or requested with regard to the establishment of new and additional long-term care hospital beds in District 6. However, letters of support were submitted with the respective applications as follows:

CON Action Numbers: 9755-9757

BayCare Long Term Care Acute Care, Inc. (CON #9755) submitted 49 letters of support with its application specifically endorsing the applicant's establishment of a long-term care hospital within a hospital at St. Joseph's hospital located in Tampa, Hillsborough County. The letters consisted of: one letter each from the chief operating officer, chief executive officer, executive director, vice president of medical affairs, three letters from nurses, and two letters from St. Joseph's Baptist Health Care Hospital, one letter from the chairman of the board for South Florida Baptist Hospital, five letters from members of the board of trustees and Healthcare Board for St. Joseph's, 16 letters from area physicians, four letters from local health care administrative staff, nine letters from citizens (two of whom were local attorneys), one letter from a local pharmacist, one letter from Senator Victor D. Crist of the 12th District, one letter each from Gwendolyn Miller and Kevin White, District 1 At-Large Chairman Pro-Tem and Councilman for District 5 (in Tampa) respectively, and one letter from the Bishop of St. Petersburg.

In addition, a letter from Rhonda Storms, Hillsborough County Commissioner, District 4 and one letter from the president of a local medical group received by the Agency were submitted in support of this project.

In general the letters supported St. Joseph's Hospital as having served the community for many years. They indicate that there is a need for a LTCH at St. Joseph's hospital because other long-term care hospitals (LTCHs) are at or near capacity resulting in patients being placed outside the district. The letters state that these patients require intensive acute medical care for long periods of time and this care can not be provided in nursing homes rehabilitative hospitals or through home health care. In addition, there are issues regarding with length of stay and cost reimbursements when the patients are Medicaid recipients or have no insurance.

The letters contend that sometimes these patients are kept in the intensive care units (ICUs). This is costly and prevents other ICU patients from utilizing the beds. The creation of a LTCH within a hospital would avoid transfers of fragile patients and would provide for the availability of 24-hour medical back up.

SemperCare Hospital of Lakeland, Inc. (CON #9756) submitted 25 letters of support for the project. Two of the letters, one from the mayor of Lakeland, R.L. Fletcher and one from Senator Paula Dockery, District 15, offered their general support for Lakeland Regional Medical Center's (LRMC) efforts to develop a long-term care hospital within its facility. Twenty-three of the letters specifically supported SemperCare in its application to establish a long-term care hospital within LRMC. The 23

CON Action Numbers: 9755-9757

letters consisted of: six letters from administrators and doctors from LRMC including the president/chief executive officer, vice president/chief medical officer, and director of trauma services, nine letters from local area physicians, two Lakeland area nursing home administrators, one letter from a director of Lakeland home health care provider, one letter from the publisher of Lakeland's largest newspaper (The Ledger) who is also the chair for the Lakeland Area Chamber of Commerce and United Way campaign (2003), one letter from Dennis A. Ross, Representative, District 16, one letter from Congressman Adam. H. Putnam, District 12, one letter from the director of the Polk County Health Department, and one letter from the director of a United Way service for the elderly.

Several of the letters are similar in content and support the convenience, accessibility and continuity of care that will result from the proposed project. The letters state that in Lakeland (Polk County), the closest LTCH for ventilator-dependent patients is 37 miles away in Tampa. Other letters state that there are currently no facilities in Polk County that can effectively and efficiently treat patients who no longer require the intensity of treatment provided by critical care units, but are unable to be transferred to a skilled nursing unit. Several of the letters address the distance for Polk County residents who now travel to Tampa for services.

Select Specialty Hospital-Marion, Inc. (CON #9757) submitted a total of 60 unduplicated letters of support in its application. Five of the letters were general letters of reference for the applicant's parent company, Select Specialty. Fifty-five of the letters specifically supported Select Specialty-Marion, Inc. for this particular project. The 60 letters consisted of: 25 letters from medical staff at Winter Haven Hospital (including its chief executive officer and director of care management), three letters from staff at Lake Wales Medical Center (including the chief executive officer and director of case management), two letters from the chief executive officer and director of utilization management at Brandon Regional Hospital, one letter from the administrator of Tender Loving Care Home Health, 11 letters from nurses and social workers from the

CON Action Numbers: 9755-9757

Heart of Florida Regional Medical Center (including the assistant administrator), 14 letters from medical staff at Select Specialty facilities in: Miami (Florida), Columbus (Ohio), Nashville (Tennessee), and Durham (North Carolina), two letters from local area physicians, one letter from a former Select Specialty Hospital patient, one letter from the husband of a former Select Specialty Hospital patient in Miami, and one letter from a local physician whose father was a patient at a Select Specialty Hospital in Indiana.

One letter of support each was received directly by the Agency from a physician at Winter Haven Hospital and the risk manager of South Tampa Surgery Center that specifically support Select Specialty for approval of this CON application.

The letters submitted stated that patients in Winter Haven often fall between intensive care and acute care status and patients are either placed in an intensive care unit (ICU) for an extended period of time or they are placed in an acute care bed, burdening the staff with their level of care.

The letters referenced the travel time to the closest LTCH as a hardship for families in the area as well as being disruptive to the care given.

Letters from Select Specialty staff around the country support the idea that these patients often remain in an ICU unit and that Select Specialty LTCHs offer a needed discharge option. The letters state that Select Specialty provides a high acuity of care and serve a discharge venue for intensive care patients.

Letters of Opposition

Bud Wurdock, director of market planning for Kindred Healthcare submitted three letters of opposition, one for each of the three proposed CON projects. The letter regarding **BayCare Long Term Acute Care (CON #9755)** states that three Kindred Hospitals in Tampa and St. Petersburg have provided long-term care for residents in District 6, Hillsborough County, for many years and the approval of this project would result in a negative impact on the future of Kindred's area hospital and a duplication of services. According to the letter, 47 percent of the patients for Kindred's three hospitals reside in Hillsborough County; in particular the Tampa hospital obtains more than 75 percent of its patients from Hillsborough County. The letter contends that in 2003, 469 of Kindred's Tampa-St. Petersburg area hospital came from BayCare affiliated hospitals, equating to 33 percent of total Kindred admissions that produced \$24.7 million in net revenue.

CON Action Numbers: 9755-9757

With regard to **SemperCare Hospital of Lakeland, Inc. (CON #9756)** and **Select Specialty Hospital-Marion County, Inc. (CON #9757)**, the letters state that the two Kindred Hospitals in Tampa have provided long-term care for residents in District 6, Polk County, for many years and the approval of this project would result in a negative impact on the future of Kindred's area hospital and a duplication of services. According to the letter, 10 percent of the patients for Kindred's two Tampa Bay area hospitals reside in Polk County. Mr. Wurdock contends that in 2003, 50 admissions to Kindred's Tampa area hospitals came from Polk County hospitals. The 50 patients produced \$3.4 million in net revenue.

C. PROJECT SUMMARY

BayCare Long Term Care Acute Care, Inc. (CON #9755) proposes to establish a 36-bed long-term care hospital (LTCH), as a separate licensed facility, within St. Joseph's Hospital in Tampa, Florida, District 6. The applicant is owned by BayCare Health Systems, Inc, which also controls several hospitals through a joint operating agreement in the Bay area of Florida including St. Anthony's Hospital, South Florida Baptist Hospital, Morton Plant Hospital, and Trustees of Mease Hospital. Neither the applicant, nor its parent company, own or operate existing LTCHs. Unlike its co-batched applicants, BayCare Long Term Acute Care, Inc. is not also seeking to establish LTCHs in other areas of the state at this time.

The applicant is requesting that the project be conditioned on the facility's location at St. Joseph's Hospital, Hillsborough County, AHCA District 6, 3001 West Dr. Martin Luther King, Jr. Boulevard, Tampa, Florida 33607-6387. The applicant has also agreed to condition the award of the CON upon providing 10 percent of its patient days to Medicaid/Medicaid HMO/charity/self-pay patients. The applicant also agreed that 36 acute care beds would be delicensed at St. Joseph's Hospital if this project is approved. St. Joseph's Hospital submitted a letter as confirmation.

The applicant states that it is not undertaking any renovation or construction costs as they are being assumed by St. Joseph's hospital. The applicant listed its total cost of the project as \$544,980. The applicant listed St. Joseph's renovation cost as \$188,000 involving 17,850 of GSF renovation for this project.

CON Action Numbers: 9755-9757

SemperCare Hospital of Lakeland, Inc. (CON #9756) proposes the establishment of a new 30-bed long-term care hospital (LTCH) to be located within Lakeland Regional Medical Center (LRMC) in Polk County. SemperCare, the applicant's parent company, currently operates 17 long-term acute care hospitals with eight others in the process of start up or awaiting regulatory approval. In Florida, it has been approved for a 29-bed LTCH in Tallahassee. The applicant has a 35-bed LTCH located within Florida Hospital in Orlando and also operates a 30-bed LTCH facility at Bay Medical Center in Panama City. SemperCare has submitted two separate proposals during the current review cycle to develop LTCHs in the State of Florida. These involve new LTCHs in Districts 1 and 6.

The proposed LTCH will be comprised of 12,489 GSF of leased space on the fourth floor of Lakeland Regional Medical Center (LRMC). Renovation costs are expected to be \$226,332 and the total project cost is projected to be \$1,139,839.

The applicant agrees to condition award of the certificate of need on the provision of two percent of its patient days to Medicaid and a ratio of indigent/charity care to gross revenue that will average one percent.

Select Specialty Hospital-Marion, Inc. (CON #9757), a wholly owned subsidiary of Select Medical Corporation, proposes the establishment of a 44-bed freestanding long-term care hospital (LTCH) to be located in Polk County, Florida. The parent, Select Medical Corporation, currently has 79 LTCHs nationwide; four acute care medical rehabilitation hospitals in New Jersey and 790 outpatient clinics throughout the United States and Canada. Sixty-six of the applicant's outpatient rehabilitation clinics are located in Florida, 15 are in District 6, and six are in Polk County. Select Specialty has submitted five separate proposals in the current review cycle to develop LTCHs within the State of Florida. These involve new proposals in Districts 1, 3, 4, and 6.

The proposed hospital will be located on a selected site in the central eastern region of Polk County. The proposed LTCH will consist of 48,598 GSF of new construction. Renovation costs are estimated to be \$8,504,650. Total project cost is estimated to be \$14,373,624. The project will be funded from related company financing.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent of its patient days to Medicaid and indigent patients on a combined basis and upon becoming accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

CON Action Numbers: 9755-9757

However, Section 408.043(3), Florida Statutes, directs that “accreditation by a private organization may not be a requirement for the issuance or maintenance of a certificate of need”.

D. REVIEW PROCEDURE

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

Applications are analyzed to identify strengths and weaknesses in each proposal. If more than one application is submitted for the same type of project in the same district (subdistrict), applications are comparatively reviewed to determine which applicant best meet the review criteria. Chapter 59C-1.010(2)(b), Florida Administrative Code, allows no application amendment information subsequent to the application being deemed complete. The burden of proof to entitlement of a certificate rests with the applicant. As such, the applicant is responsible for the representations in the application. This is attested to as part of the application in the Certification of the Applicant.

As part of the fact-finding, the Consultant, Tina Mazanek, 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; and Local Health Plans.

1. Fixed Need Pool

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

Need is not published by the Agency for long-term acute care hospital (LTCH) beds. It is the applicant's responsibility to demonstrate need based on the topics 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 the June 2003 Medicare Payment Advisory Commission (*MedPAC*) Report to Congress, there has been substantial growth in the number of LTCHs over the past decade. Corresponding with the increase in the number of facilities is a rapid increase in Medicare spending on LTCHs. The *MedPAC* report suggests that skilled nursing facilities (SNFs) and LTCHs may be clinical substitutes for each other. In addition, there may be other overlaps between LTCH services and other health care venues. This potential for LTCHs to substitute for less costly SNF care is exacerbated by the fact that there are currently no clinical patient admission criteria for LTCHs except for the anticipated 25-day length of stay.

CON Action Numbers: 9755-9757

According to the June 2003 *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 LTCH has almost doubled since 1993 and Medicare spending for such care has also quintupled from 1993 – 2001, questions have arisen about whether beneficiaries using LTCHs are different from patients using other settings. Our analysis found patients in market areas with LTCHs had similar acute hospital lengths of stay regardless of whether they used LTCHs or not. Patients who used these hospitals were 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 LTCHs, total payments and mortality rates for LTCH patients were considerably higher.”¹

In view of these findings, it is important that the determination of specific clinical conditions being served in LTCHs be identified and that the establishment of a LTCH does not represent a more costly and possibly duplicative post-acute care option.

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.

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.

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

CON Action Numbers: 9755-9757

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. A proposed rule updating the LTCH annual payment rate and providing for certain policy changes was published in the Federal Register on January 30, 2004, (Vol.69, No.20).

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: 9755-9757

- 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.

Rehabilitation facilities are required to have 75 percent of their admissions in one of 10 specific diagnoses related to conditions requiring rehabilitation services. However, his requirements will be broadened to 65 percent with the upcoming change in federal CMR regulations. 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.

In addition to similarities to rehabilitation providers noted above, as previously stated, *MedPAC report to Congress*, indicated that data suggests that care provided in LTCHs is similar to that provided in skilled nursing facilities and that care in LTCHs is becoming a substitute for skilled nursing care rather than a different or higher level of care. However, despite similarities in care suggested by the data, payments for LTCH patients were 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. However, only 10 facilities (740 beds) reported utilization for the reporting period with Sister Emmanuel Hospital For Continuing Care (29 beds) located in District 11 and SemperCare (30 beds) located in District 2 (Panama City), licensed but not yet operational. There are an additional 166 beds approved but not yet optional LTCH beds. Sixty-six of these beds are approved for LTCHs in districts with existing facilities: Districts 4, 7 and 10. The remaining 100 beds will establish new LTCHs in Districts 2, 3 and 8. The following are the CON approved, but not yet licensed LTCH beds: 20 beds at

CON Action Numbers: 9755-9757

Kindred Hospital in District 4, six beds at Kindred in Fort Lauderdale in District 10 and the following approved new LTCH hospitals: SemperCare (29 beds) in Tallahassee, in District 2, Kindred Hospitals East, L.L.C. (31 beds) in District 3 at Munroe Regional in Ocala, HealthSouth (40 beds) in Sarasota in District 8; and Select Specialty (40 beds) in District 7, (Orlando).

The average occupancy of the operational programs reporting utilization was 73.23 percent for the period July 2002 through June 2003. With regard to the LTCH programs in operation for the total 12-month reporting period, occupancy ranged from a low occupancy rate of 52.59 percent for Specialty LTCH-Jacksonville to a high of 93.79 percent for Kindred LTCH-St. Petersburg.

The following table shows the beds, patient days and occupancy of Florida's operational LTCHs for the July 2002-June 2003 reporting period:

| Florida Long Term Care Hospitals Utilization Experience July 2002-June 2003 | | | | | |
|--|-----------------|-------------|-----------------|---------------------|------------------|
| Hospital | District | Beds | Bed Days | Patient Days | Occupancy |
| Kindred-North Florida | 4 | 60 | 22,080 | 19,848 | 89.89% |
| Specialty-Jacksonville | 4 | 107 | 39,376 | 20,706 | 52.59% |
| Kindred-St. Petersburg | 5 | 82 | 23,642 | 22,174 | 93.79% |
| Kindred-Central Tampa | 6 | 102 | 37,536 | 28,913 | 77.03% |
| Kindred-Tampa | 6 | 73 | 26,864 | 18,038 | 67.15% |
| *SemperCare Hospital of Orlando | 7 | 35 | 665 | -0- | -0- |
| Kindred-Hollywood | 10 | 124 | 45,632 | 31,523 | 69.08% |
| Kindred-Ft. Lauderdale | 10 | 64 | 23,552 | 21,102 | 89.60% |
| Kindred-Coral Gables | 11 | 53 | 19,504 | 17,469 | 88.57% |
| **Select Specialty-Miami | 11 | 40 | 7,720 | 782 | 10.13% |
| Florida Total | | 740 | 246,571 | 180,555 | 73.23% |

Source: Florida Hospital Bed Need and Service Utilization by District, 1/23/04.

Kindred-North Florida approved under CON #9650 to add 20 LTCH beds.

***SemperCare Hospital of Orlando was licensed on 6/12/03 with one-quarter operation shown.**

****Select Specialty-Miami was licensed 12/23/02, thus only six months of utilization is shown. A license was also issued on 7/15/03 for 29 beds for Sister Emmanuel Hospital For Continuing Care in Miami.**

As shown in above table, there are currently 175 long-term care hospital beds in District 6, distributed between two existing Kindred LTCHs, both located in Tampa, Florida (Hillsborough County). Kindred-Central Florida is licensed for 102 beds and Kindred-Bay Area-Tampa is licensed for 73 beds. The Kindred facilities in Tampa experienced average occupancy rates of 79.42 percent and 67.50 percent, respectively in for July 2002 to June 2003. There are also 82 LTCH beds in District 5, located at the Kindred-Bay Area-St. Petersburg facility.

The current bed complement, patient days and average occupancy of other forms of care in District 6 and District 5 are presented as follows:

CON Action Numbers: 9755-9757

| Acute Care and Post-acute Care Providers District 6 Beds and Utilization July 2002-June 2003* | | |
|--|-------------------|--------------------------|
| Facility Type | Total Beds | Average Occupancy |
| Long Term Hospital Care | 175 | 72.91% |
| Acute Care | 5,563 | 55.83% |
| Comprehensive Med. Rehab | 131 | 76.55% |
| Hospital Based Skilled Nursing | *110 | 39.95% |
| Skilled Care Community Nursing Homes | 9,087 | 86.27% |

Sources: Florida Hospital Bed Need Projections by District, published January 23, 2004 for LTCH, Acute Care, and CMR beds. Florida Hospital Based Skilled Nursing Unit Utilization by District and Subdistrict January 2003-December 2003, published April 9, 2004. Florida Nursing Home Utilization by District and Subdistrict July 2002-June 2003, published October 10, 2003.

*HBSNU bed total does not reflect approved CON to delicense 29 beds at St. Joseph's Hospital in Tampa. This will reduce total HBSNU beds to 81 beds. *With the exception of the HBSNU and skilled nursing utilization rate period, which is January 2003-December 2003.

| Acute Care and Post-acute Care Providers District 5 Beds and Utilization July 2002-June 2003 * | | |
|---|-------------------|---------------------------|
| Facility Type | Total Beds | *Average Occupancy |
| Long Term Hospital Care | 82 | 93.79% |
| Acute Care | 4,388 | 49.98% |
| Comprehensive Med. Rehab. | 170 | 66.09% |
| Hospital Based Skilled Nursing Unit (HBSNU) | 118 | 75.43% |
| Skilled Care Community Nursing Homes | 10,395 | 82.94% |

Sources: Florida Hospital Bed Need Projections by District, published January 23, 2004 for LTCH, Acute Care, and CMR beds. Florida Hospital Based Skilled Nursing Unit Utilization by District and Subdistrict January 2003-December 2003, published April 9, 2004. Florida Nursing Home Utilization by District and Subdistrict July 2002-June 2003, published October 10, 2003. *With the exception of the HBSNU and skilled nursing utilization rate, which is January 2003-December 2003.

As previously noted, LTCHs are designed to treat patients with medical conditions requiring hospital-level services, for a period of time of at least 25 days on average. The applicants state that their respective proposals will provide LTCH services to patients with complex and medically unstable conditions that cannot be adequately addressed in licensed acute care beds, comprehensive medical rehabilitation beds, hospital-based skilled nursing unit beds, and nursing home beds in the service planning area. However, the *MedPAC* report states that patients may have different levels of functional limitation, differences in severity of illness within a given DRG, or personal preferences. The supply of providers, Medicare's eligibility requirements, and local practice patterns also may influence what type of post-acute care patients receive. The *MedPAC* analysis of LTCHs 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 three to five times less likely to use skilled nursing care, suggesting that skilled nursing facilities and LTCHs may be substitutes. In other words, the *MedPAC* report suggests that the potential exists for substitution of services among alternative settings. Although the Medicare payment system now specifically recognizes the LTCH patient population as being distinct from the patient populations treated by traditional acute care hospitals and post-acute care providers, there may be overlap between

CON Action Numbers: 9755-9757

patient populations served, especially between the diagnoses and services provided to lower acuity LTCH patients.

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 (CMS), based on several studies, has 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. Although the applicants contend that LTCH services are distinct, none of them demonstrated that its proposal addressed a quantifiable distinct population or showed that there was need for additional services regardless of the venue of care, beyond those beds already licensed and operating in the area. A discussion of each applicant’s need analysis is presented below following general findings regarding expected population growth in Districts 5 and 6 within the next five years.

| Population Estimates for District 6 Counties and Percent Change by County For Total Population, 65 and over, and 75 and Over Population | | | | | |
|--|------------------------|------------------------|-----------------------|---------------------------|---------------------------|
| County | Total July 2004 | Total July 2009 | Percent Change | 65+ Percent Change | 75+ Percent Change |
| Hardee | 28,325 | 30,582 | 7.97% | 13.59% | 14.55% |
| Highlands | 93,083 | 101,197 | 8.72% | 12.03% | 10.23% |
| Hillsborough | 1,081,082 | 1,160,866 | 7.38% | 13.69% | 9.72% |
| Manatee | 287,116 | 311,931 | 8.64% | 10.41% | 6.75% |
| Polk | 521,182 | 558,548 | 7.17% | 13.44% | 12.61% |
| Total District 6 | 2,010,788 | 2,163,124 | 7.58% | 12.77% | 10.01% |
| State of Florida | 17,241,689 | 18,646,149 | 8.15% | 11.16% | 7.77% |

Source: AHCA Population Estimates.

As shown above, the overall population in District 6 is expected to increase by 7.58 percent during the next five years, with the 65 and over and 75 and over age cohort increasing by 12.77 percent and 10.01 percent, respectively. Polk County is expected to increase by 7.17 percent in total population, less than the district average. Hillsborough County is expected to increase by 7.38 percent, again, less than the district average. However, the 65 and over population for both counties is expected to increase at a rate higher than the district averages.

Below is a table illustrating the population growth estimates for District 5.

| Population Estimates for District 5 Counties and Percent Change by County For Total Population, 65 and over, and 75 and Over Population | | | | | |
|--|--|--|--|------------|------------|
| | | | | 65+ | 75+ |
| | | | | | |

CON Action Numbers: 9755-9757

| County | Total July 2004 | Total July 2009 | Percent Change | Percent Change | Percent Change |
|------------------|----------------------------|----------------------------|---------------------------|---------------------------|---------------------------|
| Pasco | 372,073 | 402,263 | 8.11% | 12.65% | 6.93% |
| Pinellas | 949,397 | 980,594 | 3.29% | 4.55% | -1.30% |
| Total District 5 | 1,321,470 | 1,382,857 | 4.65% | 7.19% | 1.33% |
| State of Florida | 17,241,689 | 18,646,149 | 8.15% | 11.16% | 7.77% |

Source: AHCA Population Estimates.

As shown above, the overall population in District 5 is expected to increase by an average of 4.65 percent during the next five years, with the 65 and over and 75 and over age cohort increasing by an average of 7.19 and 1.33 percent, respectively. Pinellas County is expected to increase by 3.29 percent in total population. Pasco County is expected to increase by 8.11 percent. The 65 and over population for Pasco County is expected to increase at a rate higher than both the district and state average at while the Pinellas County population expected percentage change is less than both the state and district average at 4.55 percent.

BayCare Long Term Care Acute Care, Inc. (CON #9755) is proposing to establish a 36-bed LTCH within St. Joseph’s hospital in District 6, Hillsborough County. Upon approval of this CON, St. Joseph’s hospital will delicense 36 of its acute care beds so that this project is less costly as it will be accomplished through renovation rather than new construction. It is the intent of the proposed project to meet the need for St. Joseph’s Hospital, South Baptist Hospital and other area acute care and post acute care providers, primarily from Hillsborough County. However, the applicant states that it also will accept patients from non-BayCare sources.

The applicant referenced population growth estimates for District 6, Hillsborough County and the State of Florida for the next 10 years. According to AHCA data provided by the applicant, the population of District 6 is expected to grow by 15.6 percent over the next 10 years, with Hillsborough County at 15.3 percent and the state at 16.6 percent. However, the population primarily served by the proposed LTCH, the 65 and older cohort, is expected to grow in the next 10 years by 30.03 percent for the state, 33.4 percent for District 6, and 32.4 percent for Hillsborough County. However, projections 10 years into the future for need for health care services are highly speculative primarily because this is a rapidly changing field, with often dramatic technological developments and frequently changing healing modalities.

The applicant referenced the utilization rate for Kindred Hospitals, the two LTCHs in District 6 of 72.91 percent for the 12-month period ending June 2003. The applicant provided data showing the utilization rates for these facilities since 1997 as shown below.

CON Action Numbers: 9755-9757

| CY Occupancy Rates for District 6 LTCH Providers | | |
|---|---------------------------------------|--|
| Year | Kindred Hospital-Central Tampa | Kindred Hospital-Bay Area Tampa |
| 2002 | 79.42% | 67.50% |
| 2001 | 75.01% | 68.63% |
| 2000 | 83.11% | 65.96% |
| 1999 | 81.55% | 67.04% |
| 1998 | 75.55% | 66.31% |
| 1997 | 84.93% | 76.73% |

Source: AHCA Utilization Rates, CON Application #9755, page 36.

As shown in the table above, Kindred Hospitals had an occupancy rate of between 67.04 percent and 84.93 percent from 1997 to 2002. The applicant concludes that, because of the consistent occupancy rates, that the long-term care hospital concept has been well received by clinical and lay communities.

The applicant alleges that patient availability issues with regard to ability to pay or complex clinical conditions has constrained their access to the LTCH providers in the District 6. Data reported to the Agency for 2002 by area LTCHs related to the provision of care to the medically indigent follows:

Medicaid and Charity Care Provided by Area LTCHs during Calendar Year 2002

| Facility | # Beds | Medicaid/Medicaid HMO | Adjusted Charity Days | Combined Medicaid/Charity |
|-----------------------------------|---------------|------------------------------|------------------------------|----------------------------------|
| Kindred Hospital – St. Petersburg | 60 | 13.3% | 1.5% | 14.8% |
| Kindred Hospital – Central Tampa | 102 | 0.7% | 3.4% | 4.1% |
| Kindred Hospital – Tampa | 73 | 0.2% | 2.6% | 2.8% |

Source: AHCA 2002 financial data

As noted earlier, the applicant is proposing to provide 10 percent of the patient days in its proposed 36-bed LTCH to the Medicaid/Medicaid HMO/charity and self-pay population. This commitment cannot be compared to what is provided in the chart above because it includes self-pay patients. The applicant's claims that access is constrained and that the medically indigent will be better served if its application is approved is not evidenced by data reported to AHCA and presented above.

The applicant states that patients referred to a LTCH usually have medically complex conditions that preclude admission to a rehabilitation hospital or nursing facility, but are candidates for post-acute care services. The applicant discussed one of the more difficult patient populations to place, those on ventilators, especially those with other medical co-morbidities such as renal failure/dialysis. The applicant referenced a survey done by the Department of Elder Affairs (DOEA) of facilities that (as of February 19, 2004) accept ventilator patients. Several of the skilled nursing facilities will not admit ventilator patients if

CON Action Numbers: 9755-9757

they are receiving dialysis, or have certain kinds of insurance. However, it is noted that all three Kindred facilities not only accept ventilator patients, they accept hard to wean ventilator patients with other medical co-morbidities. The applicant further indicates that the DOEA survey states that the Kindred facilities do not accept Medicaid patients. However, as discussed above, data reported to the Agency indicates that all three area Kindred facilities provided a percent of their patient days to Medicaid and charity patients in 2002. It is additionally noted, that at least one of the Kindred facilities provided more care to the medically indigent than is being proposed by the applicant. The applicant did not provide a copy of the actual DOEA survey.

The applicant reiterates that access problems result in discharge problems for patients in need of LTCH services. The applicant cites a review of a sample of medical records, for those patients who had a stay of 20+ days in FY 2003, done by the discharge planners at St. Joseph's and South Florida Baptist Hospitals (affiliate acute care hospitals in Hillsborough County, District 6) to identify patients who experienced access limitations to LTCH care. From an initial sample of 459 patients, the discharge planners identified 315 medically complex patients felt to be potentially appropriate for LTCH care. Of these, 126 patients were referred to a Kindred facility (applicant did not indicate which Kindred facilities).

It is noted that the applicant has identified possible patients totaling 315, yet it attempted to discharge only 126 of those patients to an existing LTCH. The applicant states that the remaining 189 patients were kept in an acute care setting until they could be discharged to a post-acute care level of care. However, there are LTCH hospitals in the area experiencing occupancy levels that would suggest beds are available on most days.

The applicant indicates that its affiliate's record show that of the 126 patients these hospitals sought to discharge to existing LTCH area providers, 65 were successfully discharged to an area LTCH. Records indicate that 10 were not discharged because of either patient or physician choice. The remaining 51 were denied admission for the following reasons:

CON Action Numbers: 9755-9757

- Kindred did not accept the patient's insurance (38 patients were denied admission for this reason). However, AHCA data reveal that Kindred has no complaint history of denying patients admission due to Medicaid status. Additionally, as discussed above, Kindred's facility in the area provided a relatively high level of care to the medically indigent.
- Kindred did not have an available bed (three patients were denied admission for this reason). (It is noted that CON #9605 approved 22 additional LTCH beds for Kindred Hospitals-St. Petersburg on September 9, 2001, bringing the bed total from 60 to 82).
- Other reasons (10 patients were denied for other reasons not stated by the applicant).

Therefore, the applicant has presented evidence that 51 patients needing and seeking LTCH services in the area were unable to obtain this service.

The applicant formulated a need methodology reflecting LTCH potential discharges for St. Joseph's and South Florida Baptist Hospitals and utilizing the actual experience of Florida's LTCH providers. The applicant first identified all patients with a length of stay of 15 days or more, excluding rehabilitation, skilled nursing and psychiatric patients, for the 12-month period ending September 2003, for St. Joseph's Hospital and South Florida Baptist Hospital. The applicant defined the 160 Diagnosis Related Group (DRG) out of a potential of 540 existing DRGs that were treated by Florida LTCH providers during the 12-month period ending June 2003 (and provided the list in its application) and also included invasive cardiology (both cardiac surgery and angioplasty) as the applicant intends to serve this patient sector. The applicant identified 99 patients at South Florida Baptist and 1,069 patients at St. Joseph's Hospital who met the length of stay and DRG categories criteria. The applicant then took the 15+ length of stay/LTCH DRG pool of potential patients and identify those patients with a length of stay three times the Medicare mean for the DRG. The applicant applied the 2004 DRG-specific Medicare geometric mean length of stay (GMLOS) as an evaluation point. The applicant then consolidated all of the DRG specific data into their medically diagnosed condition (MDC) (with the exception of DRGs 475, respiratory system diagnosis and tracheostomy with mechanical ventilator as the applicant contends that DRG 475 and DRG 483 are appropriate for independent review). The applicant provided a table summarizing the MDC categories and the number of patients by hospital per MDC category. According to the applicant, there are 659 potential LTCH patients from St. Joseph's and 57 potential LTCH patients from Baptist for a total of 716 potential LTCH patients. The applicant the applied a "referral factor", using 90 referral source from St. Joseph's and 66 percent from South Florida Baptist Hospital for a total forecast of 631 potential LTCH patients. (There was no reasoning given

CON Action Numbers: 9755-9757

for the “assumption” of the 90 and 60 percent referral rates, only that that the applicant contends that they are conservative percentages.) In order to forecast patient days, the applicant applied AHCA data for the actual length of stays for DRGs 475/483 (approximately $\frac{1}{4}$ the total of all the patients). Based on its methodology, the applicant forecasted 23,485 patient days. In order to forecast patient days, the applicant assumed that 25 percent of patient volume (“in-flow factor”) would originate from other providers that St. Joseph’s of South Florida Baptist Hospital (no reason was given for the specificity of these estimates). The applicant took the 23,485 patient-day base and applied its 25 percent in-flow factor for a potential total of 31,313 patient days. The applicant applied a 90 percent occupancy level (no reason was given for the specificity of using 90 percent for this rate) and then applied an average daily census (ADC) of 85.8 ($31,313/365 = 85.8$) for a result of 95 beds needed ($85.8 \text{ ADC}/90 \text{ percent target occupancy} = 95$). The applicant maintains that even without the in-flow factor that 71 beds are needed ($23,485 \text{ (patient days)}/365=64.3 \text{ ADC}$, $64.3 \text{ ADC}/90 \text{ percent target occupancy rate} = 71 \text{ beds}$). However, the only evidence that patients seeking LTCH services but not receiving needed care were the 51 patients discussed earlier. As previously discussed, the applicant’s estimation of patients needing care in a 12-month far exceeded that shown as actually needed. Using the applicant’s own records, of the 315 patients it considered potential, only 126 actually needed the care and of those, some declined. Therefore, it is likely that of the potential 631 patients identified, some would actually need LTCH services and of those some percentage would decline. The applicant has not demonstrated that the projections above are reasonable.

Potential access issues have been demonstrated by the applicant. Using the DOEA information presented by the applicant however, it is possible that some of the LTCH appropriate patients initially referred to Kindred might have been appropriately placed in community nursing homes. The applicant did not provide actual placement information for those denied access to Kindred’s facilities, other than to state that patients were denied because Kindred did not accept their insurance. It is also not known if these patients were denied access to other appropriate post-acute care providers.

SemperCare Hospital of Lakeland, Inc. (CON #9756) is proposing to create a 30-bed LTCH within leased space at Lakeland Regional Medical Center in Lakeland, Florida (Polk County). It states that it is open to referrals from all providers in the community.

The applicant contends that the closest LTCHs do not meet the needs of the long-stay acute care patient population of District 6 and attempts to demonstrate that clinical, socio-demographic, and utilization profiles of

CON Action Numbers: 9755-9757

the patient population in District 6 and specifically in Polk County supports the need for the proposed project.

In response to population demographics and dynamics, the applicant's analysis focuses on the historical population increase for Polk County and District 6 from January 1995 until January 2004 to show a significant increase in the 65 and over population group for both the county (21 percent) and the district (19 percent). Although Polk County, the second most populous county in District 6, is showing an increase in population, an examination of the January 2004 through July 2009 projections, indicate that Polk County will actually experience the lowest percentage increase in total population (7.17 percent) while having a 13.44 percent increase in the 65 and over and a 12.61 percent change in the and 75 and over population groups. These older age groups tend to use LTCH services at a higher rate than younger age groups. The increase in these age groups is expected to exceed the district averages. Polk County currently accounts for 26 percent of the total population and 29 percent of the total 65 and over population in District 6. Hillsborough County, contiguous to Polk County, accounts for 54 percent of the total population and 39 percent of the 65 and over population. District 6 is currently served by two LTCHs located in Hillsborough County and specifically in the Tampa area (Kindred Hospital-Bay Area-Tampa and Kindred Hospital-Central Tampa). The applicant acknowledges that residents from Polk County utilize these facilities located approximately 40 miles from the city of Lakeland. The applicant contends that, based on the analysis of what it considers to be LTCH appropriate patient days from discharged patients at LRMC, there were at least 629 patients discharged who would have benefited from LTCH services but did not or could not access the services in Tampa. There was no indication provided regarding the eventual placement of these patients. The applicant referenced the support of area physicians in further justification of the project. Support letters provided by physicians and other providers in the area attested to the appropriateness of LTCH services rather than other modes of post-acute care or extensive stays in ICUs. The applicant intends to serve the growing number of patients who require long-term management for multiple complex acute medical conditions. As noted in the co-batched applicant BayCare, LRMC could have done a study to demonstrate actual access problems. The applicant presented no study to demonstrate actual access problems.

SemperCare contends that other post-acute care providers are not appropriate sites for the delivery of the type and intensity of long-term care services it proposes. The applicant states that the intensity of care provided by LTCHs is generally much greater than care delivered by other post-acute care providers such as medical rehabilitation, hospital-

CON Action Numbers: 9755-9757

based skilled units, or nursing homes. The applicant further contends that LTCH patients can receive restorative care, such as aggressive ventilator weaning, and restorative care, such as rehabilitation, that other providers are ill-suited to provide or cannot provide. However, as previously noted, the June 2003 *MedPAC* Report to Congress indicates that patients in market areas with LTCHs had similar acute hospital lengths of stay regardless of whether they used LTCHs or not and that 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. Although the applicant states that its intention to generally serve medically complex patients, especially ventilator dependent patients, there are no clinical patient criteria under Medicare for entrance into a LTCH except the 25-day average length of stay required for Medicare reimbursement. In response to this lack of clinical criteria, the applicant references guidelines developed by McKesson Health Solutions, LLC's to recognize the characteristics that distinguish short-term acute care patients from LTCH patients. The applicant states that the severity of patients was measured by applying this patient refinement classification system to SNF and LTCH patient data, purported to be a more complex system than the CMS DRG patient classification system. Based on this system of identifying four levels of severity, the applicant contends that its patients fall into the two most severe categories, while the majority of SNF patients fall into the two least severe categories. The applicant states that it does treat a relatively high volume of respiratory-ventilator-dependent patients and that on average, long-stay patients treated in a SemperCare Hospital experience an average of 7.5 co-morbidities with multi-system complications. However, charts submitted by SemperCare (Exhibit 13, page 56 of the application) show that approximately 30 percent of its patient population's severity levels were considered "minor" or "moderate". While the majority of its patients may be considered "major" or "extreme" severity levels, it is clear that a significant percentage (30 percent) of its patient population could have received care in another post-acute venue. Additionally, the applicant provided no information to demonstrate that lengths of stay in acute care beds decreased for LTCH patients when it provided LTCH services in the same planning area.

CON Action Numbers: 9755-9757

The applicant discusses venues of post-acute care that include: comprehensive medical rehabilitation (CMR), community skilled nursing beds, and home health services indicating that none are appropriate for the patients it intends to serve. The applicant does not specifically address hospital-based skilled nursing unit beds (HBSNU), of which 110 are currently licensed in District 6 with a reported average utilization of 39.95 percent. Although CMS recognizes the differences in the clinical milieus through distinctly separate payment and certification systems for other forms of post-acute care, data used to define the number of LTCH patients the applicant indicates need LTCH services does not clearly show that these patients, or a large portion thereof, could not be appropriately treated in other post-acute settings.

The applicant took exception to several issues raised in a previous review regarding agency concerns as a result of the findings contained in the June 2003 *MedPAC* report. However, in view of the lack of any specific clinical patient criteria for LTCH admittance, the *MedPAC* report raises genuine concerns regarding LTCHs as a possible clinical substitution for other forms of post-acute care. The *MedPAC* report recognizes that more research is needed to determine the role that LTCHs play for Medicare patients and to understand quality outcomes in this setting. As part of its follow-up March 2004 meeting, *MedPAC* is recommending that LTCH and patient criteria be developed in order to define LTCHs and their patients. AHCA would be remiss not to consider the concerns and recommendations of the *MedPAC* report. And as noted above, the applicant has provided information that substantiates concerns expressed in the *MedPAC* report and failed to address some of the larger concerns in the report which were that acute care stays remained the same even when LTCH beds were available in an area and mortality rates of post-acute patients were not improved. Claims have long been made, but never demonstrated, by LTCHs that patients are inappropriately held in acute care beds and not receiving the best care as a result. LTCHs have also claimed that if LTCH care were available, the acute care length of stay would be reduced and the patient would receive more appropriate care. Neither of these was demonstrated by the applicant even though it operates several LTCHs in the United States and one in Florida. As noted above, the applicant summarized issues cited in its previous SAAR and the June *MedPAC* report respectively. It is noted that each CON application is reviewed independently.

The applicant proposes to establish a 30-bed long-term care hospital within LRMC. The applicant chose to use a Length of Stay (LOS) methodology to project the need for LTCH services at Lakeland Regional Medical Center Hospital. This methodology is based upon utilization data from the second half of CY 2002 and the first half of CY 2003 for the hospitals within District 6. The LOS methodology targets patients whose

CON Action Numbers: 9755-9757

lengths of stay are well above national averages for that DRG. This approach uses the GMLOS for each DRG provided as a part of the Medicare Prospective Payment System for acute care hospitals and applies the GMLOS to all potential discharges from the host hospital (LRMC) and other area hospitals. Since all DRGs are not appropriate for admission to a LTCH, the applicant provides a listing of inappropriate DRGs as well as individual patient utilization data with a length of stay less than the Medicare GMLOS plus 15 days. Based on this approach, the applicant arrived at 943 potentially appropriate LTCH patients representing a total of 23,436 LTCH appropriate patient days for hospitals in District 6.

This approach assumes that patients will not be held in acute care beds for this extended time, but rather discharged to its LTCH. As noted earlier, the *MedPAC* report found that this was not the case in the areas it studied and the applicant provided no documentation from areas where it currently operates to show that it was reasonable to expect these days beyond the GMLOS would be reduced. If days are not reduced, there is no reason to assume that these patients might be LTCH patients. They could easily be SNF or SNU or CMR patients or not be candidates of any post-acute care and be discharged directly home after an extended acute care stay.

These potential referral hospitals are shown as follows with the number of patients and aggregate number of patient days shown that represent a stay in acute care beds beyond the average for their particular diagnosis:

| Potential LTCH Referrals From Area Acute Care Hospitals | | |
|--|-----------------|---------------------|
| Facility | Patients | Patient Days |
| Lakeland Regional Medical Center | 629 | 15,789 |
| Bartow Memorial Hospital | 25 | 660 |
| Heart of Florida Regional Medical Center | 81 | 2,162 |
| Lake Wales Medical Center | 20 | 500 |
| Winter Haven Hospital | 188 | 4,325 |
| District 6 Total | 943 | 23,436 |

Source: CON #9755 Application, page 102, Exhibit 25.

Based on the above caseload of patients and projected patient days, the applicant is projecting a referral rate of 37 percent from Polk County.

CON Action Numbers: 9755-9757

The applicant notes that 67 percent of the total LTCH-appropriate days (15,789 patient days) in District 6 come from Polk County. Based on an 80 percent occupancy rate and an average length of stay of 25.35 days, the applicant arrived at a need for 30 LTCH beds. The applicant states that based on the parent company's experience, the proposed LTCH will have an average daily census of 15 patients during the DRG demonstration period (50 percent occupancy), 21 patients during year one (70 percent occupancy), and 25 patients during year two (83 percent occupancy).

With regard to the LOS methodological approach, the applicant's projections are based on assumed capture rates. It was not demonstrated by the applicant that patients that may meet the definition of a LTCH patient are not currently being placed or that an access problem exists in the district. The subsequent placement of these patients was not disclosed.

In response to AHCA comments in a previous SAAR regarding the LTCH appropriateness of identified patient data, the applicant states that it commissioned a study (Morrison Informatics, Inc.) to determine the proportion of current short-term acute care patients who are clinically appropriate for the proposed LTCH. The applicant states that the research project was based on an initial pilot study on two patients conducted at Lakeland Regional Medical Center to confirm need for the LTCH based on clinical admission criteria. It appears that in the first part of the research project, LRMC discharge planners reviewed 52 patient charts for one month and identified 29 patients who were clinically appropriate for LTCH services. The applicant states that LTCH appropriate case summaries were presented to clinical admissions staff at one SNF facility to determine whether the identified case studies would be appropriate candidates for admission to these post-acute care venues. The applicant states that of these 29 patients, 28 were found to be not acceptable for skilled nursing facility (SNF) admission, and one was appropriate for SNF admission. The actual commissioned research document was not provided for review. The applicant contends that, based on this study that four and five percent of the average monthly census at LRMC. For the month of the study, the LRMC census was 616. This resulted in 28 patients who were appropriate for LTCH placement who were suitable for other post-acute care providers. However, it is noted that basing projections for LTCH need on data from one month is not reasonable.

CON Action Numbers: 9755-9757

The applicant's hospital within a hospital projections are based on the potential LTCH patient base as identified by length of stay methodology. It was not disclosed how many of these patients met the criteria and were eligible for hospital-based skilled nursing care. The applicant did not demonstrate that patients who qualify for LTCH services are not currently being served or that any access problems to LTCH service in District 6.

Select Specialty Hospital-Marion, Inc. (CON #9757) proposes a freestanding 44-bed long-term care hospital to be located in the central eastern region of Polk County. The applicant contends that the proposed location of the LTCH will maximize convenience and continuity of care for patients, families and physicians. In support of the project, the applicant basically contends that LTCH appropriate patients are remaining in acute care hospitals in the county as no appropriate or available alternatives exist. The applicant identified 257 patients at the Winter Haven affiliated hospitals and Heart of Florida Regional Medical Center (257 patients combined) who may be appropriate for the proposed LTCH. The applicant contends that county wide there are nearly 650 LTCH appropriate patients remaining in general acute care beds. Again, as noted above in co-batched applicant, BayCare. The applicant could have worked with Heart of Florida Regional Medical Center and other area hospitals and reviewed discharge records to see if patients needing and wishing LTCH services were unable to obtain them. The applicant presented no evidence of this being done or evidence that patients needing and wishing LTCH services were unable to obtain them.

The applicant acknowledges the two Kindred facilities in the district but states that these facilities are located in Hillsborough County, approximately 50 miles in distance restricts access to Polk County residents. The applicant states that in aggregate, Winter Haven Hospital, Lake Wales Regional Medical Center and Heart of Florida had only 12 discharges to a LTCH during the 12 months ending September 2003. The applicant contends that this low number of discharges is directly related to the distance and travel times for Polk County residents in accessing LTCH services. The applicant did not demonstrate that patients are being denied services at the Tampa LTCHs or that access is limited due to nonavailability of LTCH beds and services.

The applicant addresses population estimates for the period January 2003 to January 2008 to demonstrate the expected increase in total population as well as an increase in the 65 and over and 75 and over age cohorts. Although Polk County, the second most populous county in District 6, is showing an increase in population, an examination of the July 2004 through July 2009 projections, indicates that Polk County actually experienced the lowest percentage increase in total population

CON Action Numbers: 9755-9757

(7.17 percent) but the third highest increase in the 65 and over (13.44 percent) and third highest for 75 and over (12.61 percent) population groups. The increase in these aged groupings is expected to exceed the district averages. Polk County currently accounts for 25.9 percent of the total population and 29.7 percent of the total 65 and over population in District 6. Hillsborough County, contiguous to Polk County, accounts for 53.8 percent of the total population and 39.4 percent of the 65 and over population.

The applicant presented four different methods for estimating need as discussed below.

The first method involves an extended length of stay analysis based on Polk County short-term acute care hospital long-stay discharges. The second method addresses the geometric mean length of stay plus 15 days and seven days, respectively. The fourth method uses a long-stay in short-stay acute care versus LTCH penetration model (which is defined by occupancy rates), and the fifth method focuses on a UB-92 (Universal Billing Form 92) patient discharge analysis for Polk County hospitals.

With regard to the extended length of stay analysis, the applicant analyzed discharges by DRG from Polk County hospitals to arrive at the top DRGs experienced by these hospitals in aggregate. The evaluation of the hospital discharges excluded lengths of stay of less than 24 days and patients under the age of 14, psychiatric diagnosis, substance abuse diagnosis, obstetric diagnosis, newborn diagnosis and rehabilitation diagnosis. The net number of discharges was then identified in an attempt to show potential need for LTCH beds. The applicant arrived at a total of 644 hospital discharges with a length of stay 24 days and greater. The applicant multiplied the potential number of patients by the average length of stay for LTCH hospitals in Florida (40.6 days) to arrive at total patient days and then divided this number by 365 to arrive at the average daily census (ADC) of 58 patients. Based on a 75 percent occupancy rate, the applicant arrived at a need for between 77 and 96 beds in support of its 44-bed request. The expected length of stay of 40.6 days may be overstated. The ALOS for LTCH patients in the state is inflated due to the Kindred facilities focus on ventilator/pulmonary services and a corresponding longer length of stay. Kindred currently

CON Action Numbers: 9755-9757

operates seven of the total 11 LTCHs in the state. A more realistic method using a 25 to 30-day length of stay supports an average daily census of 40 to 48 patients or a potential need, absent other factors, for 54 to 64 beds based on a 75 percent occupancy rate. As noted earlier, no evidence has been presented by the applicant indicating that area residents needed LTCH services but were unable to obtain them from one of the several venues of post-acute services currently available, within a reasonable distance, in District 6.

The second method starts by examining the geometric mean length of stay plus 15 days to arrive at 823 potential LTCH discharges from Polk County hospitals and a need for 122 beds based on an average length of stay of 40.6 days and 99 beds based on a length of stay of 33 days. The applicant also analyzed discharges using the GMLOS plus seven days to arrive at needed beds of between 375 and 462. GMLOS plus the seven-day method of calculating potential LTCH beds was not considered since it does not recognize the nationally accepted GMLOS as assigned by CMS. As noted earlier, the applicant could have provided evidence of access problems, but did not provide any evidence of access problems and if there were need for between 122 and 462 LTCH beds in District 6, it would be reasonable to expect occupancy in existing facilities to be higher. (Refer to the comparative chart at the beginning of this discussion).

The third method looks at a statewide analysis of all long stay patients by county residents to determine where acute care patients receive services. Based on this analysis, the applicant determined that total counties without LTCHs had 6.9 percent of long stay patients (24 plus days) receiving LTCH services outside of the county with Polk County residents receiving 9.6 percent outside the county. This is less than the counties with LTCHs that range from a low of 13.2 percent in Pinellas County to a high of 27.9 percent in Hillsborough County. It is not clear that these differences mean anything other than to suggest that, at least in Hillsborough County, more residents need and access LTCH services. Without looking at elderly populations, and differences in diagnosis, physician referral practices, and any number of other factors, these data alone are not indicators of any pattern or demonstration of any access issues. Additionally, the 2.7 higher percentage of Polk County residents receiving LTCH services outside the county as opposed to the statewide average for counties without LTCHs may be due at least to some extent to the existence of two LTCHs within the district in contiguous Hillsborough County. Again, an actual demonstration of access problems is possible, as partially demonstrated by co-batched BayCare, who showed denials to at least one of the four venues of post acute care and could have easily provided complete information on discharges. The applicant did not demonstrate that patients are being denied access to

CON Action Numbers: 9755-9757

the LTCH services offered at the two Kindred LTCHs located in Tampa. According to Agency utilization data Kindred-Central Tampa had an average utilization of 77.03 percent and Kindred-Bay Area-Tampa experienced an average occupancy rate of 67.15 percent for the 12-month period ending June 2003. These utilization averages do not indicate capacity constraints at either facility within District 6.

The fourth method looks at extended lengths of stay for Polk County hospital discharges with average length of stays greater than 24 days. For the period ending September 30, 2003, the applicant identified 644 discharges with 24 days or greater length of stay. According to this analysis, 16 percent of the patients had a length of stay exceeding 45 days and more than 92 percent had a length of stay exceeding 25 days or greater. The applicant contends that these patients were in a critical state and may have benefited from a stay at a LTCH. The applicant states that many of these patients were eventually discharged to a skilled nursing facility, after spending months in an acute care setting. This analysis does not provide a potential bed need but rather presents specific discharge data in support of the applicant's perceived need for LTCH services and to show that these patients are not candidates for other post-acute settings. There was no supporting documentation provided that patients would have actually been referred to an LTCH despite a long length of stay that they are being denied admission to LTCH services in the district and/or elsewhere in the state or that patients are being inappropriately cared for. As stated above, the applicant might have provided patient referral and discharge information, but chose to speculate about rather than demonstrate access issues.

This applicant also took exception to several issues in a previous review regarding agency concerns as a result of the findings contained in the June 2003 *MedPAC* report. However, as stated earlier, this report raises genuine concerns regarding LTCHs as a possible clinical substitution for other forms of post acute care and recognizes the need for research in order to determine the role that LTCH play for Medicare patients and to understand quality outcomes in this setting.

As discussed above, no evidence was presented that patients needing care were unable to obtain it in an appropriate setting. Had there been evidence that patients were unable to access care, the applicant's methodological approaches appear to overstate bed need in view of a questionable ALOS for the level of LTCH services proposed and the use of a low occupancy standard. In addition, the availability of LTCH services at the Kindred facilities located in District 6, specifically in adjacent Hillsborough County is evidence that access to this specific venue of care is not limited within reasonable travel distances to the identified patient population. The applicant did not demonstrate that patients are being

denied access to the LTCH services offered at the two Kindred LTCHs located in Tampa.

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 6 CON Allocation Factors Report, contains the following preference statements pertaining to long term care beds as well as appropriate generic preference statements:

Long Term Care Hospital Beds:

1. **Preference shall be given to Certificate of Need applicants who propose to convert underutilized acute care beds either for the establishment or the addition of a long-term care hospital within a hospital.**

BayCare Long Term Care Acute Care, Inc. (CON #9755)

proposes to establish a 36-bed long-term care hospital within St. Joseph's Hospital. The applicant states that St. Joseph's hospital will delicense 36 acute care beds if their CON is approved and had made this a condition for approval. The applicant provided a letter from the CEO of St. Joseph's Hospital stating it would delicense 36 acute care beds upon approval of this CON. The utilization rate for St. Josephs Hospital was 61.67 percent for the 12-month period ending June 2003.

SemperCare Hospital of Lakeland, Inc. (CON #9756) proposes to establish a 30-bed long-term care hospital Lakeland Regional Medical Center. However, no acute care beds will be delicensed at LRMC as a result of this project if approved.

Select Specialty Hospital-Marion, Inc. (CON #9757) proposes a new 44-bed freestanding long-term care hospital.

- 2. Certificate of Need applicants who have received accreditation from a voluntary accreditation organization, such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).**

BayCare Long Term Care Acute Care, Inc. (CON #9755) is a new corporate entity and does not operate an existing LTCH. This project will be developed with St. Joseph's Hospital, a Florida licensed, and JCAHO accredited facility. The applicant states it will seek JCAHO accreditation upon CON approval.

SemperCare Hospital of Lakeland, Inc. (CON #9756) is a new corporate entity and does not operate an existing LTCH. However, the applicant indicates that its parent corporation currently operates 17 LTCHs nationwide, all of which have or are currently seeking JCAHO accreditation. The applicant provided documentation to show that each of the SemperCare Hospitals that have become accredited have been scored above the national average by JCAHO. The applicant states that it intends to seek JCAHO accreditation for the proposed facility.

Select Specialty Hospital-Marion, Inc. (CON #9757) is a new corporate entity and does not operate an existing LTCH. However, the applicant's parent corporation does operation numerous JCAHO accredited hospitals nationwide. The applicant states its intention to seek JCAHO accreditation and implement appropriate protocols to maintain quality of care and has agreed to condition award of the CON upon receiving this accreditation. The applicant meets the intent of this preference through its agreement to condition award of the CON upon becoming JCAHO accredited.

Generic Preference Statements:

Access for Medicaid and Indigent

- 1. Preference shall be given to an applicant who proposes to locate a new facility in an area that will improve access for Medicaid and indigent patients.**

BayCare Long Term Care Acute Care, Inc. (CON #9755) states that it will admit patients regardless of their ability to pay. The applicant conditions this application for the provision of a 10 percent combined total for Medicaid/Medicaid HMO/charity/self-pay patients. Although self-pay patients often represent bad debt to the hospital, they are not considered indigent or Medicaid and as the applicant has proposed a condition that combines four

CON Action Numbers: 9755-9757

payer types, one of which is not Medicaid or indigent, it is not clear that this proposal will improve access to the Medicaid and indigent population. Further the applicant did not discuss its location in relation to this criterion

SemperCare Hospital of Lakeland, Inc. (CON #9756) states that its requested condition to provide a minimum of two percent Medicaid and one percent charity care is an indication that the project will improve access to LTCH services by Medicaid and indigent patients. In view of the high Medicare (80 percent), managed care (12 percent) and commercial insurance (five percent) reimbursement proposed for the project, any improvement in access for Medicaid and indigent patients (three percent) is considered minimal. Further the applicant did not discuss its location in relation to this criterion.

Select Specialty Hospital-Marion, Inc. (CON #9757) did not respond to this criterion. In view of similar proposed reimbursement as above, with primary emphasis on Medicare, any improvement in access for Medicaid and charity care (2.8 percent) is considered minimal. Further the applicant did not discuss its location in relation to this criterion.

Timely Project Completion

- 2. In cases where an applicant is a corporation with previously awarded certificates of need, preference shall be given to those which follow through in a timely manner to construct and operate the additional facilities or beds, and do not use them for later negotiations with other organizations seeking to enter or expand the number of beds they own or control.**

BayCare Long Term Care Acute Care, Inc. (CON #9755) is a new corporation with no previously awarded CONs. The applicant states that St. Joseph's (its host hospital) has a history of completing all AHCA approved projects in a timely and financially on-target manner.

CON Action Numbers: 9755-9757

SemperCare Hospital of Lakeland, Inc. (CON #9756) is a new corporation that has not previously applied for a certificate of need. However, its parent company affiliates have been awarded three certificates of need to develop LTCHs in Florida (SemperCare Hospital of Orlando/CON #9544, SemperCare Hospital of Panama City/CON #9596, and SemperCare Hospital of Tallahassee/CON #9644). The applicant states that the approved projects have been developed and/or expected to be completed on or before scheduled completion dates.

Select Specialty Hospital-Marion, Inc. (CON #9757) did not respond to this preference. While the applicant has a licensed facility in Florida, it was not obtained through the CON process. The applicant was only recently awarded (October 30, 2003) a CON to establish a LTCH within Lucerne Medical Center.

Agency Rule Criteria

The Agency does not currently have adopted preferences 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.**

BayCare Long Term Care Acute Care, Inc. (CON #9755) states that need is evidenced in District 6 for this project based on utilization of short-stay, general acute care hospitals, by long-term care patients and the utilization of long-term care providers in the district. The applicant referenced the utilization rates for Kindred-Central Tampa for the 12-month period ending June 2003 as 77.03 percent and for Kindred-Bay Area-Tampa as 67.15 percent. Although this is not evidence of capacity constraints as previously discussed, the applicant did show that within an unspecified 12-month period three attempted discharges to a local Kindred facility by its affiliate hospitals were denied due to bed availability. As also noted above, Kindred-St. Petersburg (District 5) was approved to add 22 beds bringing its bed capacity to 82.

CON Action Numbers: 9755-9757

The applicant also contends that, based on a review of a limited sample of St. Joseph's and South Florida data, that more than 80 patients were denied access to LTCH or other post-acute care settings due to financial reasons. It is unclear if this was the same study the applicant references in section E.1. of this report. The time frame for this study is unknown, as the study was not provided. As discussed above in the local health council preferences, the applicant has not clearly demonstrated that it will improve access to care to the medically indigent.

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 proposed service area.

SemperCare Hospital of Lakeland, Inc. (CON #9756) basically contends that Polk County is underserved with regard to the accessibility and availability of LTCH services. The applicant further states that the existing LTCHs in District 6 are located at a prohibitive travel distance from LRMC. However, it was not demonstrated that patients are being denied access to LTCH services, especially those provided at the two Kindred LTCHs located in Tampa. According to Agency utilization data Kindred-Central Tampa had an average utilization of 77.03 percent for the 12-month period ending June 2003 while Kindred-Bay Area-Tampa experienced an occupancy average of 67.15 percent. These utilization averages do not indicate capacity constraints at either facility within District 6. Travel distances to existing LTCHs, skilled nursing facilities, or comprehensive medical rehabilitation facilities were not demonstrated to be unreasonable.

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 proposed service area.

Select Specialty Hospital-Marion, Inc. (CON #9757) states that there are not normal circumstances with regard to need because there are no like and existing LTCHs in Polk County and that clinically appropriate patients are remaining in inappropriate bed situations. However, it was not shown that existing LTCH or other post-acute services in District 6 are not in sufficient supply or that Polk County residents are being denied access to LTCH or other appropriate post-acute services within reasonable travel times.

CON Action Numbers: 9755-9757

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 proposed 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.**

BayCare Long Term Care Acute Care, Inc. (CON #9755) is a newly formed not-for-profit corporation with no operating history. The applicant described the history of its host hospital, St. Joseph's, and states that St. Joseph's is accredited by JCAHO, is licensed by AHCA, is certified to participate in Medicare and Medicaid programs, and has been recognized as giving quality service as evidenced by several awards it has received. In addition, St. Joseph's hospital operates on a Total Quality Management (TQM) model that includes Team Improvement Plans (TIPs). The applicant also intends to enlist the services of Acuityhealthcare (consulting firm) to assist in the development of this project and provided a copy of Acuity's policies and procedures.

The Agency complaint file the six licensed BayCare Health System Inc. hospitals in the state dated May 20, 2004, indicate a combined listing of 46 confirmed complaints, including 11 without deficiencies. The 35 confirmed allegations involve: patient care (10), discharge planning (three), EMTALA/ER access (three), plan of care (three), medical problems/errors/formulary (three), infection control (two), falls/injury (two), physical plant (two) restraints (two), surgery wrong site (one), dietary (one), inappropriate discharge (one) failure to report and incident (one) and lack of assessment (one).

Because the applicant noted that Kindred had refused to admit certain patients, the reviewer examined Agency compliant files for Kindred. The Complaint Summary Reports for the seven licensed Kindred LTCHs in the state dated March 19, 2004 indicates a combined listing of 26 complaints, including 13 without deficiencies dating back to December 1999 through the present. The 13 confirmed allegations involve: patient care (four), restraints (two), staffing (two), patient abuse/neglect (one), nursing service (one), discharge planning (one), patient rights (one) and medicine problem/error (one). The majority of the allegations occurred

CON Action Numbers: 9755-9757

at Kindred Hospital-Bay Area Tampa with eight confirmed deficiencies, and at Kindred Hospital South Florida/Coral Gables with three confirmed allegations. The review of the files indicated that there have been allegations of patients being denied access to Kindred because of their insurance status, however none of these allegations were confirmed.

SemperCare Hospital of Lakeland, Inc. (CON #9756) is a new, development stage corporation with no operating history. The applicant states that its parent, SemperCare, Inc., has a variety of mechanisms that have been used to ensure and maintain quality care in its other facilities, which will be implemented by the applicant. These mechanisms include a comprehensive performance improvement system called QualMax, constant maintenance of regulatory compliance and readiness, outcomes measurement systems, utilization and risk management programs, credentialing and privileging systems, a corporate compliance program, and a customer satisfaction system. The applicant included the JCAHO survey results for five currently operational SemperCare facilities. AHCA data reveals no complaint history for the existing SemperCare LTCH Hospital in Orlando, Florida.

The applicant points out that the facility will be separately licensed and responsible for securing and completing all appropriate state licensure requirements, Medicare and Medicaid certification, and JCAHO accreditation. The applicant states that Lakeland Regional Medical Center, the host hospital, is currently fully licensed and accredited.

Select Specialty Hospital-Marion, Inc. (CON #9757) is a new, 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 79 existing facilities. The applicant does not indicate that all existing Select Medical facilities have current JCAHO accreditation. 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.

AHCA data reveals that its facility in Miami had four confirmed complaints from January 28, 2004 to April 5, 2004. There was one confirmed complaint in each of the following categories: Restraints, Medicine Problems/Errors/Formulatory, Infection Control and Patient Abuse/Neglect.

CON Action Numbers: 9755-9757

The applicant states that Quality Improvement Programs already in place at other Select locations nationwide will be implemented in the proposed facility. The applicant states its commitment to implementing an effective quality improvement program.

- 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.**

None of the applicants are proposing special health care services that are not reasonably and economically accessible in adjacent service areas.

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

None of the proposed projects will be located in 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 the applicants as of the balance sheet date and the financial strength of the operations for the applicants for the applicable period presented.

BayCare Long Term Care Acute Care, Inc. (CON #9755) provided a copy of the list of policies and procedures from its consulting firm, Acuityhealthcare, that included human resource policies. However, no actual policies pertaining to recruitment and retention were provided.

Audited financial statements of the applicant were analyzed for the purpose of evaluating their ability to provide the capital and operational funding necessary to implement the project.

The applicant is a start up company with \$100,000 in net assets as of March 31, 2004. It is owned by BayCare Health Systems, which had, at December 31, 2002, \$26.2 million in cash on hand, \$273.5 million in current assets and \$1.8 billion in total assets.

BayCare Health Systems, Inc. controls, through a Joint Operating Agreement (JOA), several acute care hospitals in the Tampa Bay area as

CON Action Numbers: 9755-9757

well as nursing homes, life care facilities, home health agencies, ambulatory care centers and physician practices. The JOA provides for the members to maintain ownership of their assets while agreeing to operate as one organization, with common governance and management.

Included under this agreement are:

- St. Joseph's Hospital, Inc.
- St. Anthony's Hospital, Inc.
- South Florida Baptist Hospital, Inc.
- Morton Plant Hospital, Inc.
- Trustees of Mease Hospital, Inc.

BayCare Long Term Acute Care, Inc will lease the space required to operate the hospital from St. Joseph's Hospital, Inc., one of the hospitals controlled by BayCare Health Systems, Inc., the owner of the applicant. The applicant did not provide a copy of the actual lease.

St. Joseph's Hospital, Inc. will be providing funding for the project. Audited financial statements were submitted for the period ended December 31, 2002. Those statements reported cash and short-term investments of \$182,000, current assets of \$76.7 million, with an operating profit of \$34.8 million and operating cash flows of \$39.9 million.

Capital requirements:

Total capital costs for this project from Schedule 1 are \$544,960. Schedule 2 indicates the applicant has capital projects totaling \$903,200.

Available capital:

Funding for the proposed project is coming from the host hospital, St. Joseph's Hospital, Inc. Both BayCare Health Systems, Inc. and St. Joseph's provided a letter in support of their commitment to fund the project.

Conclusion:

Funding for this project is likely to be available as needed.

CON Action Numbers: 9755-9757

SemperCare Hospital of Lakeland, Inc. (CON #9756) states that its parent organization recruits employees through its website, which has links about employment opportunities at each hospital. It also uses print media such as local and national publications and professional journals to advertise openings. In addition, it utilizes community and professional job fairs in its recruitment efforts. Its retention program includes a benefit package that includes health, vision, dental, life insurance, tuition reimbursement retirement plans and relocation assistance.

The audited financial statements were 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 start up company with \$100 in assets as of October 14, 2003.

SemperCare, Inc., the parent, was formed in 1999 for the purpose of developing a network of facilities providing long-term hospital care.

The company had, at June 30, 2002, \$13.7 million in cash on hand, \$20.1 million in current assets and \$23.3 million in total assets. Capital has been raised through the issuance of stock and long-term debt. The company has a shareholders' deficit of \$13.6 million, a net operating loss for the period of \$3.1 million with negative cash flows from operations of \$4.7 million. For the six-month period ended December 31, 2003 SemperCare, Inc. reported an operating loss of \$4.6 million on revenues of \$18.3 million, with negative cash flow of \$2.5 million. The shareholder deficit has increased to \$19.9 million.

SemperCare opened its first LTCH in April 2000. Currently, the company has twelve facilities operational as of the date of the balance sheet. The facilities are too new to judge the financial strength of the parent based on their revenue. The short-term financial position of the company depends on its continued ability to raise sufficient capital to support its operating losses. On August 18, 2003, the company established with General Electric Capital Corporation (GECC) a \$55 million credit facility to support its development strategy and ongoing working capital requirements. The long-term future of the company will depend on its being able to operate the facilities at a profit level that will support the company's debt. It is too early to determine the long-term financial strength of the parent.

CON Action Numbers: 9755-9757

SemperCare Hospital of Lakeland, Inc. will lease the space required to operate the hospital from Lakeland Regional Medical Center, Inc. with SemperCare paying no rent for the first six months and \$1,000 per month per licensed LTC bed thereafter. The initial term of the lease is for five years, with options to extend.

Lakeland Regional Medical Center, Inc. will be providing funding up to \$19,500 for the project. Audited financial statements were submitted for the period ended September 30, 2002. Those statements reported cash and short-term investments of \$359,000, current assets of \$52.8 million, with an operating profit of \$7.3 million and operating cash flows of \$44.6 million.

Capital requirements:

Total capital costs for this project from Schedule 1 are \$1,139,839. Schedule 1 did not include the estimated loss during the initial six months of operation of \$1,139,109, bringing the total project costs for the applicant to \$2,278,948. Schedule 2 indicates the applicant has no other capital projects.

Available capital:

Funding for the proposed project is coming from the parent, SemperCare, Inc. and Lakeland Regional Medical Center, Inc. Each provided a letter in support of their commitment to fund the project. LRMC agreed to provide up to \$19,500. The financial resources for SemperCare, Inc. are discussed above.

Conclusion:

Funding for this project is likely to be available as needed.

Select Specialty Hospital-Marion, Inc. (CON #9757) states that its recruitment activities include using their website and other employment-based websites, using videos, commercial advertisement on the radio, posting and direct solicitation to state licensees, colleges, universities and targeted association memberships. In addition it recruits at job fairs, trade fairs, industry conferences and open houses. Retention activities include benefits such as health, vision, dental and life insurance. The applicant also offers a variety of scholarships, tuition assistance, and continuing education opportunities.

The audited financial statements of the applicant were reviewed to assess the financial position as of the balance sheet date and the financial strength of its operations for the period presented. The applicant is a start up company with \$10 in assets as of February 4, 2003. Since the financial statements presented for Select Medical Corporation are the same as those submitted with the previous application, we accessed the

CON Action Numbers: 9755-9757

parent's latest publicly available 10-K report. The parent company had, at December 31, 2003, \$165.5 million in cash on hand, \$485.1 million in current assets and \$1.1 billion in total assets. Reported net operating revenue increased by 24 percent to \$1.4 billion, producing cash flows from operations of \$246.3 million, which is an increase of 104 percent over the previous year. This is a financially strong company.

Capital requirements:

Total capital costs for this project from Schedule 1 are \$14.4 million. Schedule 2 indicates the applicant has capital projects totaling \$26.7 million. Select Medical Corporation, the parent, in their 10-K filing, stated that they are committed to developing eight to 10 projects a year as part of their expansion strategy. No dollar figure was attached to the projected development plan, however, in previous applications the estimated cost per hospital project for a hospital within a hospital was in the range of \$2 to \$3 million, with significantly greater costs for freestanding hospitals such as this project.

Available capital:

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

Conclusion:

Funding for this project and all capital projects should be available as needed with the support of its parent.

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

A comparison of the applicant's estimates to the control group values provides for an objective evaluation of financial feasibility, (the likelihood that the services can be provided under the parameters and conditions contained in Schedules 7 and 8), and efficiency, (the degree of economies achievable through the management skills 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,

CON Action Numbers: 9755-9757

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 LTCH-DRG. The law requires that the LTCH PPS be budget neutral, which means that total payments must equal the amount that would have been paid if the PPS had not been implemented. Therefore, a comparison of the applicant's revenue estimates to the control group values, based on the reasonable cost-based reimbursement system, provide a rational basis for evaluating estimated revenues.

BayCare Long Term Acute Care (CON #9755): The estimated revenues submitted by the applicant for the project were developed based on the prospective payment system. In order to qualify for an exemption under 42 CFR Part 412.23 for reimbursement under the prospective payment system a long-term acute care facility, operating as a hospital within a hospital, must not exceed more than 15 percent of its total inpatient operating costs in services obtained under contract with the host hospital *or* at least 75 percent of the hospital's inpatient population must be referred from a source other than the host facility. The applicant stated they intend to comply with this provision. Failure to comply would have a material negative impact on revenues

This application appears to be in conflict with 42 CFR section 412.22(e), which prohibits a single entity from controlling both the host hospital and the long-term care hospital within a hospital. BayCare Health Systems, Inc. controls both the applicant and its host. This relationship appears to preclude the hospital being certified as a LTCH, which would make it ineligible for reimbursement under the LTCH-PPS program. If the hospital were to be reimbursed at acute care rates, this project would not be financially feasible.

CON Action Numbers: 9755-9757

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 12. Per Diem rates are projected to increase by an average of 3.7 percent per year. Inflation adjustments were based on 2003 4th Quarter Health Care Cost Review, New CMS Hospital Market Basket Index.

Projected net revenue per adjusted patient day (NRAPD) of \$962 in year one and \$1,102 in year two is between the control group median and lowest values of \$1,162 and \$885 in year one and \$1,200 and \$914 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 \$1,041 in year one and \$1,021 in year two is between the control group median and lowest values of \$1,081 and \$759 in year one and \$1,116 and \$784 in year two. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$903,576 computes to an operating margin per adjusted patient day of \$81, which falls between the peer group median and lowest values of \$125 and -\$31 respectively. The operating margin of 7.3 percent indicates that net revenues are proportional to costs.

This project appears to be financially feasible at long term care PPS reimbursement rates. However, as noted above, it is questionable that the applicant would meet Federal eligibility rules for long-term care hospitals within hospitals, making the financial feasibility of this project open to question.

CON Action Numbers: 9755-9757

Comparative Table

| CON # 9755 BayCare Long Term Acute Care, Inc. 2002 DATA Peer Group 12 | 2007 | YEAR 2 | VALUES ADJUSTED | | |
|--|------------|----------|---------------------|--------|--------|
| | YEAR 2 | ACTIVITY | FOR INFLATION | | |
| | ACTIVITY | PER DAY | Highest | Median | Lowest |
| ROUTINE SERVICES | 16,715,414 | 1,497 | 1,231 | 914 | 673 |
| INPATIENT AMBULATORY | 0 | 0 | 12 | 0 | 0 |
| INPATIENT ANCILLARY SERVICES | 23,548,831 | 2,108 | 3,838 | 2,940 | 2,389 |
| OUTPATIENT SERVICES | 0 | 0 | 227 | 2 | 0 |
| OTHER OPERATING REVENUE | 0 | 0 | 4 | 2 | 0 |
| TOTAL REVENUE | 40,264,245 | 3,605 | 4,814 | 3,878 | 3,064 |
| DEDUCTIONS FROM REVENUE | 27,958,630 | 2,503 | * | * | * |
| NET REVENUES | 12,305,615 | 1,102 | 2,227 | 1,200 | 914 |
| EXPENSES | | | | | |
| ROUTINE | 3,727,319 | 334 | 571 | 322 | 195 |
| ANCILLARY | 4,624,636 | 414 | 653 | 303 | 207 |
| AMBULATORY | 0 | | | | |
| OVERHEAD | 3,050,084 | 273 | 957 | 514 | 377 |
| OTHER | 0 | 0 | | | |
| TOTAL EXPENSES | 11,402,039 | 1,021 | 2,284 | 1,116 | 784 |
| OPERATING INCOME | 903,576 | 81 | 280 | 125 | -31 |
| | | 7.3% | | | |
| PATIENT DAYS | 11,169 | | VALUES NOT ADJUSTED | | |
| ADJUSTED PATIENT DAYS | 11,169 | | FOR INFLATION | | |
| TOTAL BED DAYS AVAILABLE | 13,140 | | | | |
| ADJ. FACTOR | 1.0000 | | | | |
| TOTAL NUMBER OF BEDS | 36 | | | | |
| PERCENT OCCUPANCY | 85.0% | | 100.2% | 84.2% | 52.2% |
| | | | | | |
| PAYER TYPE | PATIENT | % TOTAL | | | |
| | DAYS | | | | |
| MEDICARE | 5,655 | 50.6% | 97.3% | 75.4% | 67.4% |
| COMMERCIAL | 0 | 0.0% | | | |
| MEDICAID | 1,168 | 10.5% | 13.3% | 0.2% | 0.0% |
| PRIVATE | 545 | 4.9% | | | |
| HMO/PPO | 2,804 | 25.1% | 23.1% | 10.5% | 0.0% |
| OTHER | 997 | 8.9% | | | |
| TOTAL | 11,169 | 100.0% | | | |

SemperCare Hospital of Lakeland (CON #9756): The estimated revenues submitted by the applicant for the project were developed based on the prospective payment system. In order to qualify for an exemption under CFR Part 412.23 for reimbursement under the prospective payment system a long-term acute care facility, operating as a hospital within a hospital, must not exceed more than 15 percent of its total inpatient operating costs in services obtained under contract with the host hospital *or* at least 75 percent of the hospital's inpatient population

CON Action Numbers: 9755-9757

must be referred from a source other than the host facility. The applicant stated they intend to comply with this provision. Failure to comply would have a material negative impact on revenues.

The applicant submitted schedules for a six-month period (demonstration period) required for Medicare reimbursement under the LTCH PPS. This period is required to demonstrate a minimum 25-day average length of stay. During the demonstration period the hospital is reimbursed at the acute care rate. For the best estimation of long-range financial feasibility the two years subsequent to the demonstration period are being used in this analysis.

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 12. Per Diem rates are projected to increase by an average of 3.7 percent per year. Inflation adjustments were based on 2003 4th Quarter Health Care Cost Review, New CMS Hospital Market Basket Index.

Projected net revenue per adjusted patient day (NRAPD) of \$1,130 in year one and \$1,155 in year two is between the control group median and lowest values of \$1,146 and \$873 in year one and \$1,184 and \$902 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 \$1,049 in year one and \$1,057 in year two is between the control group median and lowest values of \$1,067 and \$749 in year one and \$1,102 and \$774 in year two. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$896,620 computes to an operating margin per adjusted patient day of \$98, which falls between the peer group median and lowest values of \$125 and -\$31 respectively. The operating margin of 8.5 percent indicates that net revenues are proportional to costs.

This project appears to be financially feasible.

CON Action Numbers: 9755-9757

Comparative Table

| CON # 9756 SemperCare Hospital of Lakeland, Inc. 2002 DATA Peer Group 12 | 2006 | YEAR 2 | VALUES ADJUSTED | | |
|---|------------|----------|---------------------|--------|--------|
| | YEAR 2 | ACTIVITY | FOR INFLATION | | |
| | ACTIVITY | PER DAY | Highest | Median | Lowest |
| ROUTINE SERVICES | 30,755,179 | 3,371 | 1,215 | 901 | 664 |
| INPATIENT AMBULATORY | 0 | 0 | 12 | 0 | 0 |
| INPATIENT ANCILLARY SERVICES | 0 | 0 | 3,788 | 2,901 | 2,358 |
| OUTPATIENT SERVICES | 0 | 0 | 224 | 2 | 0 |
| OTHER OPERATING REVENUE | 0 | 0 | 4 | 2 | 0 |
| TOTAL REVENUE | 30,755,179 | 3,371 | 4,751 | 3,826 | 3,023 |
| DEDUCTIONS FROM REVENUE | 20,219,100 | 2,216 | * | * | * |
| NET REVENUES | 10,536,079 | 1,155 | 2,197 | 1,184 | 902 |
| EXPENSES | | | | | |
| ROUTINE | 2,600,588 | 285 | 563 | 318 | 192 |
| ANCILLARY | 3,670,861 | 402 | 645 | 299 | 204 |
| AMBULATORY | 0 | | | | |
| OVERHEAD | 3,051,928 | 335 | 945 | 508 | 372 |
| OTHER | 316,082 | 35 | | | |
| TOTAL EXPENSES | 9,639,459 | 1,057 | 2,254 | 1,102 | 774 |
| OPERATING INCOME | 896,620 | 98 | 280 | 125 | -31 |
| | | 8.5% | | | 0 |
| PATIENT DAYS | 9,123 | | VALUES NOT ADJUSTED | | |
| ADJUSTED PATIENT DAYS | 9,123 | | FOR INFLATION | | |
| TOTAL BED DAYS AVAILABLE | 10,950 | | | | |
| ADJ. FACTOR | 1.0000 | | | | |
| TOTAL NUMBER OF BEDS | 30 | | | | |
| PERCENT OCCUPANCY | 83.3% | | 100.2% | 84.2% | 52.2% |
| | | | | | |
| PAYER TYPE | PATIENT | % TOTAL | | | |
| | DAYS | | | | |
| MEDICARE | 7,527 | 82.5% | 97.3% | 75.4% | 67.4% |
| COMMERCIAL | 274 | 3.0% | | | |
| MEDICAID | 182 | 2.0% | 13.3% | 0.2% | 0.0% |
| PRIVATE | 91 | 1.0% | | | |
| HMO/PPO | 1,049 | 11.5% | 23.1% | 10.5% | 0.0% |
| OTHER | 0 | 0.0% | | | |
| TOTAL | 9,123 | 100.0% | | | |

Select Specialty Hospital-Marion, Inc. (CON #9757): The estimated revenues submitted by the applicant for the project were developed based on the prospective payment system. In order to qualify for an exemption under CFR Part 412.23 for reimbursement under the prospective payment system a long-term acute care facility, operating as a hospital within a hospital, must not exceed more than 15 percent of its total inpatient operating costs in services obtained under contract with the host hospital *or* at least 75 percent of the hospital's inpatient population must be referred from a source other than the host facility. The

CON Action Numbers: 9755-9757

applicant did not disclose how they intend to comply with this provision. Failure to comply would have a material negative impact on revenues.

Medicare requires a six-month period (demonstration period) before a hospital is eligible for reimbursement under the LTCH PPS. This period is required to demonstrate a minimum 25-day average length of stay. During the demonstration period the hospital is reimbursed at the acute care rate. The applicant stated Medicare revenues during the first six months were estimated using short-term acute care rates.

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 12. Per Diem rates are projected to increase by an average of 3.7 percent per year. Inflation adjustments were based on the new CMS Market Basket, 4th Quarter, 2003.

Projected net revenue per adjusted patient day (NRAPD) of \$1,036 in year one and \$1,133 in year two is between the control group lowest and median values of \$865 and \$1,135 in year one and \$894 and \$1,173 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 (CAPD) of \$1,273 in year one is between the control group median and highest values of \$1,057 and \$2,161 with year two CAPD of \$1,019 between the control group lowest and median values of \$766 and \$1,091. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$1.4 million computes to an operating margin per adjusted patient day of \$114, which falls between the peer group lowest and median values of -\$31 and \$125 respectively. The operating margin of 10.0 percent indicates that net revenues are proportional to costs.

This project appears to be financially feasible.

CON Action Numbers: 9755-9757

Comparative Table

| CON # 9757 Select Specialty – Marion 2002 DATA Peer Group 12 | 2007 | YEAR 2 | VALUES ADJUSTED | | |
|--|--------------------|---------------------|---------------------|--------|--------|
| | YEAR 2 ACTIVITY | ACTIVITY PER DAY | Highest | Median | Lowest |
| ROUTINE SERVICES | 11,327,800 | 950 | 1,204 | 893 | 658 |
| INPATIENT AMBULATORY | 26,209,668 | 2,198 | 12 | 0 | 0 |
| INPATIENT ANCILLARY SERVICES | 290,222 | 24 | 3,752 | 2,874 | 2,336 |
| OUTPATIENT SERVICES | 0 | 0 | 222 | 2 | 0 |
| OTHER OPERATING REVENUE | 0 | 0 | 4 | 2 | 0 |
| TOTAL REVENUE | 37,827,690 | 3,172 | 4,706 | 3,791 | 2,995 |
| DEDUCTIONS FROM REVENUE | 24,320,125 | 2,040 | * | * | * |
| NET REVENUES | 13,507,565 | 1,133 | 2,177 | 1,173 | 894 |
| EXPENSES | | | | | |
| ROUTINE | 2,923,030 | 245 | 558 | 315 | 190 |
| ANCILLARY AMBULATORY | 4,848,565 | 407 | 639 | 296 | 202 |
| OVERHEAD | 4,379,211 | 367 | 936 | 503 | 368 |
| OTHER | | 0 | | | |
| TOTAL EXPENSES | 12,150,806 | 1,019 | 2,232 | 1,091 | 766 |
| OPERATING INCOME | 1,356,759 | 114 | 280 | 125 | -31 |
| | | 10.0% | | | |
| PATIENT DAYS | 11,924 | | VALUES NOT ADJUSTED | | |
| ADJUSTED PATIENT DAYS | 11,924 | | FOR INFLATION | | |
| TOTAL BED DAYS AVAILABLE | 16,060 | | | | |
| ADJ. FACTOR | 1.0000 | | | | |
| TOTAL NUMBER OF BEDS | 44 | | | | |
| PERCENT OCCUPANCY | 74.2% | | 100.2% | 84.2% | 52.2% |
| | | | | | |
| PAYER TYPE | PATIENT DAYS | % TOTAL | | | |
| MEDICARE | 9,251 | 77.6% | 97.3% | 75.4% | 67.4% |
| COMMERCIAL | 1,755 | 14.7% | | | |
| MEDICAID | 238 | 2.0% | 13.3% | 0.2% | 0.0% |
| SELF-PAY | 95 | 0.8% | 4.1% | 0.9% | 0.0% |
| HMO/PPO | 585 | 4.9% | 23.4% | 10.5% | 0.0% |
| OTHER | 0 | 0.0% | | | |
| TOTAL | 11,924 | 100.0% | | | |

CON Action Numbers: 9755-9757

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

A comparison of the applicants is presented as follows:

| District 6 Long-term Care Projects Second year of operation | BayCare Long Term Acute Care, Inc. | SemperCare Hospital of Lakeland, Inc. | Select Specialty Hospital of Marion, Inc. |
|--|---|--|--|
| CON Number | 9755 | 9756 | 9757 |
| Net Revenue per adjusted patient day | \$1,102 | \$1,155 | \$1,113 |
| Cost per adjusted patient day | \$1,021 | \$1,057 | \$1,019 |
| Operating profit per patient day | \$81 | \$98 | \$114 |
| Estimated Managed Care level | 25.10% | 11.50% | 4.90% |
| Estimated Medicaid level | 10.50% | 2.00% | 0.80% |

BayCare Long Term Care Acute Care, Inc. (CON #9755) projects managed care to represent 25.1 percent of its patient days. This is above the control group highest level of activity of 23.1 percent. The projected levels, if realized, will have a positive impact on competition to promote quality assurance and cost-effectiveness.

SemperCare Hospital of Lakeland, Inc. (CON #9756) projects managed care to represent 11.5 percent of its patient days. This is between the control group median and highest level of activity of 10.5 and 23.1 percent. The projected levels, if realized, will have a positive impact on competition to promote quality assurance and cost-effectiveness.

Select Specialty Hospital-Marion, Inc. (CON #9757) 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.

- 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 the proposal may be more advanced than required, they have been reviewed as schematics with the expectation that they will necessarily be revised and refined during the design development (preliminary) and contract document stages. The architectural review of the 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.

BayCare Long Term Care Acute Care, Inc. (CON #9755) proposes to convert an existing medical/surgical unit on the fourth floor of St. Joseph's Hospital to be a 36-bed long-term care hospital. St. Joseph's will delicense 36 beds to accommodate the new facility.

A unique situation is presented for this new facility in that the cost for the bulk of the demolition and renovation to accommodate the new hospital is going to be paid by St. Joseph's. Because of this, the costs shown are relatively minor, but there does not appear to be much renovation shown on the plans. The costs and schedules may be reasonable for a project of this scope.

The codes listed are essentially correct except that the Florida Building Code has 2003 revisions, which are not listed. There is also no specific reference to the guidelines, which are almost totally included, by reference in the Florida Building Code.

The patient rooms are almost evenly split between private and semi-private rooms and there will be two private isolation rooms. Three rooms are going to be renovated for handicapped accessibility with showers that will accommodate a patient in a wheelchair. This is not required, but desirable.

Most of the patient rooms have a handwashing station within the room itself in addition to the lavatory in the bathroom. All the patient rooms exist as patient rooms, so they will only be required to meet existing construction standards. However, a number of the semi-private rooms are somewhat small and the square footage shown does not state if it is net or gross.

The new facility has the requisite pharmacy but no space is specifically designated as the location for basic radiographic equipment. It was also

CON Action Numbers: 9755-9757

not readily apparent from the narrative that the facility will have its own radiographic equipment. This equipment may not be leased from the host hospital.

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

SemperCare Hospital of Lakeland, Inc. (CON #9756) proposes to convert an existing medical/surgical unit on the fourth floor of Lakeland Regional Medical Center to establish a 30-bed long-term care hospital.

There will be 12 semi-private rooms, four private rooms and two isolation rooms with vestibules. One existing patient room will be used as a rehab gym and will require minor renovations to the HVAC system. The applicant does not seem to realize that this system will need to be modified. There are also existing patient rooms which will be converted to an administrative suite and a conference room.

The new facility has the requisite pharmacy and a space for basic radiographic equipment. This equipment may not be leased from the host hospital. Two spaces for bathing are located off the corridor. One is large enough for a wheelchair and the other is large enough for a patient on a stretcher.

None of the patient rooms have a handwashing station within the room itself but all rooms exist as patient rooms, so they will only be required to meet existing construction standards.

The codes listed are basically correct and the costs and schedule seems workable.

It is required that schematic drawings be submitted as part of the CON application. Although the drawings for this proposal may be more advanced than required, they have been reviewed as schematics with the expectation that they will necessarily be revised and refined during the design development (preliminary) and contract document stages. The architectural review of the application shall not be construed as an in-depth effort to determine complete compliance with all applicable codes

CON Action Numbers: 9755-9757

and standards. The final responsibility for facility compliance ultimately rests with the owner.

Select Specialty Hospital-Marion, Inc. (CON #9757) proposes to build a freestanding long-term hospital in Polk County. The building is quite different than the ones previously submitted by the applicant for other facilities including CON #9647.

There are code issues in the surgical suite regarding the toilet/shower/locker spaces for the staff and doctors. These issues are not insurmountable. The guidelines, in paragraph 7.7.C11, state that “appropriate areas shall be provided for male and female personnel”. The same paragraph states the “these areas shall contain lockers, showers, toilets, lavatories equipped for hand washing, and space for donning surgical attire”. The plan only provides for one sex and there must be another toilet room for the opposite sex.

Although there is not a specific code issue regarding spaces used by physicians and staff, there is usually a degree of separation between the two groups that varies by facilities. Usually, physicians do not share spaces with nurses, orderlies and other employees. In this plan, there are separate locker and toilet rooms for physicians and staff indicating that the two do not share these spaces. But then, there is a toilet/shower room labeled PHY. TLT. that shows a degree of separation.

Depending on the facility’s extent of separation between staff and physicians, the plan should reflect the concept. The worse case scenario is that there would have to be a male and a female toilet/shower for both staff and physicians resulting in four toilet/shower rooms. It does not seem likely that a long-term hospital would want to provide so many spaces.

The area labeled PAT HOLDING does not specify whether it is for pre or post op. which does not particularly matter. The code issue relating to this space is that there is no way for the nurse station to monitor a patient in this holding space. Relocating the double doors to the PACU so that this space is part of that room or observable from the nurse station would be an acceptable solution unless there is some particularly reason for the current layout.

CON Action Numbers: 9755-9757

Due to the nature of the procedures that will take place in this facility, the surgical suite will probably be used less frequently than comparable facilities in a full service acute care hospital. However, the facility must comply with the guidelines, Section 7.7 and provide all the required spaces. It must be assumed that as J. C. indicates a janitor closet, H. C. must mean housekeeping. Some of both types of spaces do not have a floor receptor.

New hospital construction must meet the requirements of disaster preparedness in the Florida Building Code, Section 419.4. These provisions not only prescribe the protection of the exterior shell of the facility, but also affect the location and protection of the generator and other mechanical and electrical systems. The site for the proposed facility will have to be considered based on its elevation relative to the flood plain. No information specific to the disaster preparedness was readily apparent in the application. This information will have to be provided when and if the project is submitted to the AHCA Office of Plans and Construction for review.

There is a list of applicable building codes, and it is essentially correct. There were extensive outline specifications included in the application. The estimated project budget appears to be adequate based on the scope of the project. The project schedule is also reasonable.

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

- 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.

BayCare Long Term Care Acute Care, Inc. (CON #9755) is a newly formed not-for-profit corporation with no operating history. The applicant is proposing to condition the proposed project on the provision

CON Action Numbers: 9755-9757

of 10 percent Medicaid/Medicaid HMO/charity/self-pay patient days combined. Schedule 7B indicates that the applicant expects to deliver up to 10 percent of its total patient days to Medicaid and 4.20 percent to charity care in both the first and second year of operation. Because the applicant has included self-pay days in its combined condition, it cannot be determined if the proposed provision of indigent care exceeds the state average for either Medicaid or charity care.

SemperCare Hospital of Lakeland (CON #9756) is a new development stage company with no operating history.

The applicant agrees to condition award of the certificate of need on the provision of two percent of its patient days to Medicaid and a ratio of indigent/charity care to gross revenue that will average one percent. According to Financial Schedule 7A, the applicant also projects that two percent of total patient days will be provided to Medicaid patients and that one percent of total patient days will be provided to charity care patients in each of the first two years of operation. The applicant's proposed Medicaid provision exceeds the state average. As its charity care condition is based on a ratio of indigent care to gross revenues it cannot be compared. However, pro forms indicate that the charity care provision will be lower than the state average of 1.7 percent.

Select Specialty Hospital-Marion, Inc. (CON #9757) is a new development stage company with no operating history.

The applicant is proposing to condition the proposed project on the provision of 2.8 percent Medicaid and indigent patient days combined. Schedule 7A indicates that the applicant expects to deliver up to two percent of its total patient days to Medicaid patients and 0.8 percent for charity care in both the first and second year of operation. The applicant's proposed combined condition is less than the combined average for Medicaid (1.8 percent) and charity care (1.7 percent) for the state.

F. SUMMARY

BayCare Long Term Care Acute Care, Inc. (CON #9755) proposes the establishment of a 36-bed long-term care hospital (LTCH) to be located within St. Joseph's Hospital in Hillsborough County.

The proposed LTCH will consist of 17,850 gross square feet of new construction. Construction costs are estimated to be \$188,000. Total project cost is estimated to be \$544,980. The project will be funded from related company financing.

The applicant agrees to condition award of the certificate of need on the provision of 10 percent of its patient days to Medicaid/Medicaid HMO/charity/self-pay patients on a combined basis.

SemperCare Hospital of Lakeland, Inc. (CON #9756) proposes the establishment of a new 30-bed long-term care hospital (LTCH) to be located within Lakeland Regional Medical Center (LRMC) in Polk County.

The proposed LTCH will be comprised of 12,489 gross square feet of leased space on the fourth floor of LRMC. Renovation costs are expected to be \$226,332 and the total project cost is projected to be \$1,139,839.

The applicant agrees to condition award of the certificate of need on the provision of 2.8 percent of its patient days to Medicaid and a ratio of indigent/charity care to gross revenue that will average one percent.

Select Specialty Hospital-Marion, Inc. (CON #9757) proposes the establishment of a 44-bed freestanding long-term care hospital (LTCH) to be located on a site in the central region of Polk County, Florida.

The proposed LTCH will consist of 48,598 gross square feet of new construction. Renovation costs are estimated to be \$8,504,650. Total project cost is estimated to be \$14,373,624. The project will be funded from related company financing.

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

After weighing and balancing all applicable review criteria, the following relevant factors 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.

CON Action Numbers: 9755-9757

BayCare Long Term Care Acute Care, Inc. (CON #9755) contends that patients in Hillsborough, Pasco and Pinellas Counties have availability issues with regard to ability to pay or complex clinical condition has constrained their access to LTCH providers. However, the applicant did not demonstrate that Hillsborough, Pasco or Pinellas County residents are being denied access to existing post acute care services, including LTCH services. There are two licensed LTCHs with an average occupancy rate, for the 12-month period ending June 2003, below 75 percent located in District 6 (Hillsborough County) and one licensed LCTH located in District 5 (Pinellas County) with a utilization rate of 93.79 percent. Travel distances to existing LTCHs, skilled nursing facilities, comprehensive medical rehabilitation facilities, or any appropriate provider of post-acute care were not demonstrated to be unreasonable.

SemperCare Hospital of Lakeland, Inc. (CON #9756) contends that distance from Polk County to the LTCHs in Hillsborough County is prohibitive for Polk County residents. The applicant did not demonstrate that Polk County residents are being denied access to existing appropriate post-acute care services, including LTCH services. There are two licensed LTCHs with an average occupancy rate for the 12-month period ending June 2003 below 75 percent located in District 6, in adjacent Hillsborough County. Travel distances to existing LTCHs, skilled nursing facilities, comprehensive medical rehabilitation facilities, or any appropriate provider of post-acute care were not demonstrated to be unreasonable.

Select Specialty Hospital-Marion, Inc. (CON #9757) contends that Polk County LTCH appropriate patients remain in acute care hospitals within the county, as no appropriate or available alternative exists within an acceptable distance. The applicant did not demonstrate that Polk County residents are being denied access to existing appropriate post-acute care services, including LTCH services. There are two licensed LTCHs with an average occupancy rate for the 12-month period ending June 2003 below 75 percent located within District 6, in adjacent Hillsborough County. Travel distances to existing LTCHs, skilled nursing facilities, comprehensive medical rehabilitation facilities, or any appropriate provider of post-acute care were not demonstrated to be unreasonable.

Quality of Care:

BayCare Long Term Care Acute Care, Inc. (CON #9755) is a new development stage corporation with no significant operating experience. However, the Agency files for the six licensed BayCare Health System Inc. hospitals in the state for the past three years indicate a combined listing of 46 confirmed complaints, including 11 without deficiencies.

SemperCare Hospital of Lakeland, Inc. (CON #9756) is a new development stage corporation with no significant operating experience. However, AHCA data reveals no complaint history for the existing SemperCare Hospital in Orlando, Florida.

Select Specialty Hospital-Marion, Inc. (CON #9757) is a new development stage corporation with no significant operating experience. However, the AHCA data for its facility in Miami listed four confirmed complaints from January 28, 2004 to April 5, 2004.

Cost/Financial Analysis:

BayCare Long Term Care Acute Care, Inc. (CON #9755) is a start up company owned by BayCare Health Systems, Inc. Its host hospital, St. Joseph's Hospital, Inc., will be providing the funding for the project. Both BayCare Health Systems, Inc. and St. Joseph's Hospital provided a letter of support of their commitment to fund this project. The funding for the proposed project should be available.

However, this application appears to be in conflict with 42 CFR section 412.22(e), which prohibits a single entity from controlling both the host hospital and the long-term care hospital within a hospital. BayCare Health Systems, Inc. controls both the applicant and its host. This relationship appears to preclude the hospital being certified as a LTCH, which would make it ineligible for reimbursement under the LTCH-PPS program. If the hospital were to be reimbursed at acute care rates, this project would not be financially feasible.

The applicant projects managed care to represent 25.1 percent of its patient days. This is above the control group highest level of activity of 23.1 percent. The projected levels, if realized, will have a positive impact on competition to promote quality assurance and cost-effectiveness.

CON Action Numbers: 9755-9757

SemperCare Hospital of Lakeland, Inc. (CON #9756) is a start-up company with limited assets. Its parent is SemperCare, Inc. The financial strength of the applicant depends on the continued ability to raise capital to support operating losses. The impact of recently opened facilities in Florida is to soon to determine financial impact. It is therefore, too early to determine the long-term financial strength of the parent. The funding for the proposed project is likely to be available as needed.

The applicant projects managed care to represent 11.5 percent of its patient days. This is between the control group median and highest level of activity of 10.5 and 23.1 percent. The projected levels, if realized, will have a positive impact on competition to promote quality assurance and cost-effectiveness.

Select Specialty Hospital-Marion, Inc. (CON #9757) is a start-up company with limited assets. Its parent is Select Medical, Inc. is a financially strong company. The funding for the proposed project should be available, with the support of the parent company.

The applicant did not disclose how they intend to comply with the exemption provision under CFR Part 412.23 requiring that the facility not exceed more than 15 percent of its total operating costs in services obtained from the host hospital or at least 75 percent of the hospital's inpatient population must be referred from another source. Failure to comply would have a material negative impact on revenues.

The applicant projects managed care to represent 4.9 percent of its patient days. This is between the control group lowest and median level of activity of 0.0 and 10.5 percent. The projected levels, if realized, will have a minimal positive impact on competition to promote quality assurance and cost-effectiveness.

Architectural Analysis:

BayCare Long Term Care Acute Care, Inc. (CON #9755) proposes to establish a 36-bed long-term care hospital on the fourth floor of St. Joseph's Hospital. The space to be converted is currently used as medical/surgical beds acute care beds. St. Joseph's will delicense 36 acute care beds to accommodate the new facility.

CON Action Numbers: 9755-9757

The architectural review reveals that the applicable building codes are current, except that the 2003 revisions were not listed. A pharmacy is shown on the plans, but there is no space designated for basic radiographic equipment (which may not be leased from the host hospital). There does not appear to be much renovation shown on the plans and the cost for demolition and renovation will be paid for by the host hospital. The costs and schedule may be reasonable for a project of this scope.

SemperCare Hospital of Lakeland, Inc. (CON #9756) proposes to establish a 30-bed long-term care hospital on the fourth floor of Lakeland Regional Medical Center. The space to be converted is currently used as medical/surgical acute care beds.

The architectural review reveals that the applicable building codes appear to be current. A pharmacy is shown on the plans and a space for basic radiographic equipment, as required by code. The codes listed are basically correct and the costs and schedule seems workable.

Select Specialty Hospital-Marion, Inc. (CON #9757) proposes the construction of a 44-bed freestanding long-term care hospital to be located in Polk County. The applicable building codes appear to be mostly correct and architectural concerns noted with previous proposals submitted by the applicant appear to be satisfactorily addressed by this project.

The proposed building appears to be designed efficiently with all required spaces and equipment. The schedule for project completion and costs appear acceptable.

G. RECOMMENDATION

Deny CON #9755, CON #9756 and CON #9757

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