

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Select Specialty Hospital-Escambia, Inc. (CON #9800)
2021 Church Street, Suite 202
Nashville, Tennessee 37203-2016

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

2. Service District

District 1

B. PUBLIC HEARING

A public hearing was not held or requested with regard to the establishment of new long-term care hospital beds in District 1. However, letters of support were submitted for the applicant as follows:

Select Specialty Hospital-Escambia, Inc. (CON #9800) submitted 33 unduplicated letters of support with its application. These letters were previously submitted with its **CON #9746** application in April 2004. However, the applicant did not resubmit the approximately 120 form letters that were written on Sacred Heart Health System letterhead. Those letters were signed by individuals whose affiliation with Sacred Heart was largely unclear. The 33 letters submitted consisted of: 14 letters from physicians, one letter each from the president of Sacred Heart Hospital-Pensacola and Sacred Heart Hospital-Emerald Coast; one letter each from the chief executive officer of North Okaloosa Medical Center, the clinic operation manager at Nova Care Rehabilitation, the chief medical officer at Baptist Hospital, the executive director of Ohio State University Medical Center, and the associate administrator of Emory University Hospital; one letter each from a nurse who is a manager at Sacred Heart Hospital and a nurse who is a case manager at Vanderbilt University Medical Center. One letter was submitted by Ronald P. Townsend, City of Pensacola Council Member, District 7, and

Joseph D. Smith, Deputy Mayor, City of Pensacola. In addition there were five letters submitted by local businesses, two thank you letters submitted by family members of patients at the Select Specialty Miami Hospital-Miami and one letter submitted by a family member of a patient at Select Specialty Hospital in Nashville, Tennessee.

The letters contend that the location of a long-term care hospital (LTCH) in District 1 will enhance services and accessibility for residents. Several of the letters addressed the inability to place acute care patients that qualify for LTCH services and that seriously ill patients remain in this setting as they are too sick to go to a skilled nursing facility, rehabilitation unit, or home with home health care staff.

C. PROJECT SUMMARY

Select Specialty Hospital-Escambia, Inc. (CON #9800), a wholly owned subsidiary of Select Medical Corporation, proposes to establish a 54-bed freestanding LTCH to be located in District 1, Escambia County, Pensacola, Florida proximate to area acute care hospitals. Select Medical Corporation currently has 82 long-term care hospitals nationwide, including a LTCH in Miami (Dade County), an approved CON to open a 40-bed LTCH located in District 7, and an approved CON to open a 31-bed LTCH in Alachua County to be affiliated with Shands Medical Center. On November 19, 2004, Select Medical Corporation announced that it has signed an agreement to acquire SemperCare, Inc., which operates 17 LTCHs in 11 states¹. Select Specialty has submitted two proposals in the current review cycle to develop LTCHs within the State of Florida. These involve proposals in Districts 1 and 9.

The proposed hospital will consist of 54,090 gross square feet of new construction with construction costs of \$9,348,500. The total project cost is estimated to be \$17,072,613. Select Medical Corporation will provide the funding for the proposed project.

The applicant proposes to condition award of the certificate of need on the provision of 2.0 percent of the facility's total annual patient days to Medicaid patients and 0.8 percent to charity care patients.

¹ *CNN Money* published on-line, November 19, 2004 per Mechanicsburg, PA. (PRNewswire).

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.

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 care hospital (LTCH) beds. It is the applicant's responsibility to demonstrate need.

A long-term care hospital is defined as a hospital licensed under Chapter 395, Florida Statutes, which meets the requirements of Part 412, subpart B, paragraph 412.23(e), Code of Federal Regulations; seeks exclusion from the acute care Medicare prospective payment system for inpatient hospital services, and are usually the most costly post-acute care setting. For example, according the Medicare Payment Advisory Commission in Fiscal Year 2004, for patients with the most common LTCH diagnoses, Medicare rates for LTCHs range from 0.9 to 4.4 times as much as estimated rates for inpatient rehabilitation facilities, and about three to almost 12 times as much as estimated rates for skilled nursing facilities. A long-term care hospital has an average length of inpatient stay greater than 25 days for all hospital beds. -

The Medicare Payment Advisory Commission (MedPAC) is a commission that makes recommendations to Congress and the Secretary of the federal Department of Health and Human Services regarding reimbursement for long-term hospital and other services. Medicare is the primary payer for LTCH services, especially in newer LTCHs, and under the current reimbursement system, which although it does account for case-mix differences between patients, does not account for differences within each case-mix category and therefore provides an incentive to admit patients with the least need for resources among those in the same diagnostic group.

In its June 2004 report to Congress, MedPAC recommended that long-term care hospitals should be defined by patient and facility criteria that ensure that patients admitted to these facilities are medically complex and have a good chance of improvement. Further:

- Facility-level criteria should characterize this level of care by features such as staffing, patient evaluation and review processes, and mix of patients.
- Patient-level criteria should identify specific clinical characteristics and treatment modalities.
- Quality Improvement Organizations should be required to review long-term care hospital admissions for medical necessity and monitor that these facilities are in compliance with defining criteria.

These recommendations were made based on the commission's findings that this type of post-acute care is provided to a small number of medically complex patients and that acute care and skilled nursing facilities are the principle alternatives to LTCHs. Additionally, that LTCH patients cost Medicare more than similar patients using alternative settings. However, when LTCH care is targeted to patients of the highest severity, the cost is comparable.

In its June 2004 report, MedPAC also looked at the role long-term care hospitals play in providing care and determined that most LTCH patients are discharged to the LTCH from an acute care facility and that a small number are medically complex, more stable than patients in an acute care intensive care unit, but still have complex medical conditions. These complex conditions typically include need for ventilator support for respiratory problems including tracheostomy diagnosis, failure of two or more major organ systems, neuromuscular damage, contagious infections, or complex wounds that need extended care.

MedPAC also studied where clinically similar patients, who lived in areas with no LTCHs received care and found the following:

- Patients transferred to LTCHs have shorter acute care stays by approximately seven days, suggesting that when there is no LTCH in an area, patients might stay an additional seven days on average in an acute care facility.
- Freestanding skilled nursing facilities are the primary alternative to LTCH care.
- Even when there is no LTCH in an area, some patients needing this service travel to receive it.
- Between seven and eight percent of patients with the highest probability of using LTCHs used rehabilitation hospital services in markets both with and without LTCHs.

Several facility and patient criteria recommendations were made in the report involving clinical characteristics of the patient, minimum staffing levels based on patient characteristics including patient mix and severity levels, admission assessment tools, physician availability, length of stay, and multidisciplinary team requirements. Because these parameters have not been assigned, MedPAC concludes that the role of LTCHs is unclear.

The report further suggests that if its recommendations are developed, that facilities that typically serve one primary hospital will need to broaden its base presumably because it will not have sufficient patient volume otherwise.

In view of these findings, it is important that the determination of specific clinical complexity and severity of conditions of patients 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. It is further important that sufficient appropriate staff be identified and that sufficient patient volume based on need for services be demonstrated.

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.

At present there are 12 long-term care hospitals with 799 beds licensed to operate in the State of Florida. However, only 10 facilities (740 beds) reported utilization for the reporting period. No utilization data is available for Sister Emmanuel Hospital For Continuing Care (29 beds) located in District 11 and SemperCare (30 beds) located in District 2 (Panama City). There are an additional 160 beds approved but not yet optional LTCH beds.

The following new approved LTCHs are: SemperCare (29 beds) in District 2, HealthSouth (40 beds) in District 8, Select Specialty (40 beds) in District 7 and Kindred (31 beds) in District 3. There are 20 CON approved LTCH beds at Kindred Hospital in District 4.

The average occupancy of the operational programs reporting utilization was 68.17 percent for the period January 2003 through December 2003. With regard to the LTCH programs in operation for the total 12-month reporting period, occupancy ranged from a low occupancy rate of 32.67 percent for Select Specialty Hospital-Miami Specialty to a high of 90.72 percent for Kindred-North Florida.

The following table shows the beds, patient days and occupancy of Florida's operational LTCHs for the January 2003 through December 2003 reporting period:

| Florida Long-Term Care Hospitals Utilization Experience January 2003-December 2003 | | | | | |
|---|-----------------|-------------|-----------------|---------------------|------------------|
| Hospital | District | Beds | Bed Days | Patient Days | Occupancy |
| Kindred-North Florida | 4 | 60 | 21,900 | 19,868 | 90.72% |

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| | | | | | |
|---------------------------------|----|-----|--------|---------|--------|
| Specialty-Jacksonville | 4 | 107 | 39,055 | 21,175 | 54.22% |
| Kindred Bay Area-St. Petersburg | 5 | 82 | 27,950 | 21,703 | 77.65% |
| Kindred-Central Tampa | 6 | 102 | 37,230 | 26,184 | 70.33% |
| Kindred-Bay Area-Tampa | 6 | 73 | 26,645 | 17,567 | 65.93% |
| *SemperCare Hospital of Orlando | 7 | 35 | 9,240 | 2,551 | 27.61% |
| Kindred-Hollywood | 10 | 124 | 45,260 | 30,876 | 68.22% |
| Kindred-Fort Lauderdale | 10 | 64 | 23,360 | 19,184 | 82.12% |
| Kindred-Coral Gables | 11 | 53 | 19,345 | 16,498 | 85.28% |
| Select Specialty-Miami | 11 | 40 | 14,600 | 4,770 | 32.67% |
| Florida Total | | 740 | 64,585 | 180,376 | 68.17% |

Source: Florida Hospital Bed Need and Service Utilization by District, Volume II, published 07/23/04 Kindred-North Florida approved under CON #9650 to add 20 LTCH beds.

***SemperCare Hospital of Orlando was licensed on 6/12/03 with three quarters of operation shown.**

Utilization data is not available for Sister Emmanuel Hospital For Continuing Care in Miami (licensed on 7/15/03 for 29 beds) or for SemperCare Hospital in Panama City (licensed for 30 beds on 1/05/04).

The applicant expects to serve the residents of District 1 and some non-Florida residents who live near the Florida–Alabama border. As noted above, there is one LTCH located in Panama City. That LTCH is expected to serve a portion of this service area, therefore the applicant, to be conservative, has excluded the Walton County residents from some of its needs models. In addition, there is also a LTCH located in Mobile, Alabama, less than 60 miles from Pensacola, Escambia County.

The current bed complement, patient days and average occupancy of other forms of care in District 1 is presented as follows:

**Acute Care and Post-acute Care Providers
District 1 Beds and Utilization**

| Facility Type | Total Beds District 1 | District 1 Average Occupancy |
|--------------------------------------|------------------------------|-------------------------------------|
| Acute Care | 1,813 | 52.40% |
| Comprehensive Medical Rehabilitation | 78 | 63.63% |
| Hospital-Based Skilled Nursing | 77 | 47.65% |
| Skilled Care Community Nursing Homes | 3,243 | 83.64% |

Source: Acute care, CMR beds for January 1, 2003 through December 31, 2003. Skilled care community nursing home, and HBSNU beds by district for July 2003-June 2004.

As previously noted, LTCHs are designed to treat patients with medical conditions requiring extended hospital-level services, for a period of time of at least 25 days on average. The applicant states that its proposal 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, it did not demonstrate that these patients could not be served in those settings. The MedPAC analysis of LTCHs found that between seven and eight percent of patients with the highest probability of using LTCHs used rehabilitation hospital services in markets both with and without LTCHs. Rehabilitation utilization during the most recent reporting period of 63.63 percent in District 1 is significantly below the benchmark for that service of 80 percent set forth in the Florida

Statutes.² As MedPAC points out, the diagnostic related group (DRG) itself or the length of stay in any particular group is not necessarily an indicator of need. MedPAC's findings indicate that lower acuity patients within any DRG can appropriately be served in a skilled nursing facility (SNF) at a lower cost as LTCHs are usually the most costly post-acute care setting at about three to 12 times that of SNFs. As noted above, SNF utilization in District 1 averaged 83.64 percent for the most recent reporting period. This utilization rate is significantly below the benchmark for SNF care set in the Florida Statutes at 94 percent.³

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. Applicants for LTCH services must therefore show that there is need based upon the availability, utilization and quality of LTCH, skilled nursing and comprehensive medical rehabilitation services in the district.

Although the applicant contends that LTCHs serve a distinct population it did not show that the patient population it expects to serve cannot appropriately be served in other post-acute care settings. A discussion of the applicant's need analysis is presented below following general findings regarding expected population growth in the district within the next five years.

Population Estimates for District 1 Counties and Percent Change by County

| County | Total January 2005 | Total January 2010 | Percent Change | 65+ Percent Change | 75+ Percent Change |
|------------------------|---------------------------|---------------------------|-----------------------|---------------------------|---------------------------|
| Escambia | 306,389 | 318,985 | 4.11% | 6.32% | 5.70% |
| Okaloosa | 184,107 | 197,049 | 7.03% | 8.62% | 17.40% |
| Santa Rosa | 133,355 | 149,323 | 11.97% | 25.67% | 28.48% |
| Walton | 49,353 | 56,823 | 15.14% | 32.67% | 35.11% |
| Total District | 673,204 | 722,180 | 7.28% | 13.12% | 15.14% |
| Total State of Florida | 17,451,994 | 18,900,419 | 8.30% | 12.08% | 7.60% |

Source: AHCA Population Projections, published March 2004.

As shown above, the overall population in District 1 is expected to increase by 7.28 percent during the next five years, with the 65 and over and 75 and over age cohort increasing by 13.12 percent and 15.14 percent, respectively. Escambia County, the most populous county in the district and the proposed site of the LTCH, is expected to have the smallest percent increase in total population as well as in the 65 and over and 75 and over population categories for the five-year projection

² Subsection 408.034 (3)(i), Florida Statutes, as amended July 1, 2004, sets the occupancy standard for additional comprehensive medical rehabilitation beds through CON exemption at 80 percent. Section 59C-1.039 Florida Administrative Code sets the occupancy standard at 85 percent for fixed need pool calculations.

³ Subsection 408.034 (5), Florida Statutes, as amended July 1, 2004, sets the skilled nursing occupancy standard at 94 percent.

period. As noted earlier, there are LTCHs approved in District 2 nearer Walton County, the county with the highest expected rate of growth overall, age 65 and over and age 75 and over, and nearer Santa Rosa County, with a high rate of expected growth in the 75 and older population. As noted below, the applicant has excluded Walton County residents from need projections.

As noted above, the applicant indicates that its proposed 54-bed LTCH will primarily serve Escambia County and surrounding area residents. The applicant contends that District 1 residents have no access to long-term care hospital services, pointing out that patient origin data show that just one person from Okaloosa County received care at any of the state's LTCHs for calendar year 2003. The applicant presents an analysis of discharges for the reporting period for 11 of the 12 LTCHs in the state to demonstrate that the majority of patients served by LTCHs reside in the same county in which the LTCH is located. The notable exception is Kindred Hospital-North Florida in Clay County, a largely rural area serving surrounding counties. The applicant also discussed the use of other post-acute care options and the distinguishing criteria for each to demonstrate that LTCHs do not represent a substitute for other forms of post-acute care services. However, as previously discussed, the June 2004 MedPAC Report to Congress indicates concern over current LTCH practice of serving patient populations with lower acuity levels that could appropriately and more cost-efficiently be served in SNFs or other post-acute care settings, suggesting that broader bases for LTCHs primarily serving one acute care facility will be required should reimbursement policies change. As discussed above, the applicant has not demonstrated that its patient population will consist only of high acuity, medically complex patients and therefore it is likely that not only are other forms of post-acute care appropriate, less costly settings for some portion of its projected patient population, but that its service base will need to be broader than anticipated to sustain the 54-bed facility. This is not only true for the applicant's proposed project, it is also true for existing LTCHs particularly those serving one acute facility, which will most likely mean that the North Florida Kindred model, noted above, will become more of a statewide model than it currently is under existing Medicare reimbursement policies.

Additionally, the area proposed for service by the applicant is similar to the Kindred North Florida facility as it is largely rural. That is also true of the recently opened SemperCare Bay County facility and the CON approved SemperCare Leon County facility, which as noted in the project summary were recently acquired by this applicant.

The length of stay methodology projects patient days for a new LTCH using the ALOS for LTCH appropriate patients in acute care hospitals to calculate an estimated number of patient days that may be generated by area hospitals. The applicant used Florida's hospital discharge data for calendar year 2003 for hospitals within its proposed service area to identify patient days appropriate for LTCH services.

The applicant provided two options under the length of stay methodology: (1) patients with a length of stay of GMOS + 15 days or greater and (2) patients with a geometric mean plus seven days which adds seven days to each of the 527 DRGs' GMLOS. *(Note: The GMLOS represents an adjusted value for all cases for a given DRG, assigned by the CMS).* It is therefore assumed that if patients stayed in the acute care hospital more than a few days beyond the GMLOS, they are potential candidates for a LTCH.

The applicant states that demand is demonstrated by matching DRGs treated in Florida's LTCHs with those long-stay patients in acute care hospitals in District 1. The applicant identified LTCH cases by DRG for calendar year 2003 and for the same time period identified acute care patients with a length of stay of 25 days or longer in acute care hospitals in District 1. There were certain exclusions made (newborns, mental diseases, alcohol/drug abuse, etc.) to ensure comparability. The result was the identification of 500 acute care cases from acute care hospitals that had a length of stay of at least 15 days over the geometric mean in acute care hospitals in District 1 and that matched the DRGs treated at Florida's LTCHs. The top 50 DRGs were associated with 43 percent of District 1's long-stay cases and represent 91 percent of the cases in LTCHs in Florida. The applicant increased the 500 cases by nine percent to complete the comparison using the statewide experience. A length of stay of 37.9 days (average for Florida LTCHs) was used to generate patient days for 2004. For subsequent years, the cases were increased at the compounded annual growth rate of the elderly population with and without Walton County. The results of the applicant's computation is shown in the following table:

Forecast of the Demand for LTCH Services in District 1 Counties of Escambia, Okaloosa, and Santa Rosa (Excluding Walton County) by Year 2003-2008

| Year | Forecasted LTCH Cases | Forecasted LTCH Days | Average Daily Census, ADC | Beds Needed @ 75 Percent |
|------------------------------------|------------------------------|-----------------------------|----------------------------------|---------------------------------|
| District 1 Excluding Walton County | | | | |
| 2003 | 635 | 21,338 | 58 | 78 |
| 2004 | 643 | 21,599 | 59 | 79 |
| 2005 | 651 | 21,862 | 60 | 80 |
| 2006 | 659 | 22,129 | 61 | 81 |
| Year 1 2007 | 667 | 22,399 | 61 | 82 |
| Year 2 2008 | 675 | 22,673 | 62 | 83 |
| District 1 Including Walton County | | | | |
| 2003 | 645 | 21,672 | 59 | 79 |
| 2004 | 654 | 21,963 | 60 | 80 |
| 2005 | 662 | 22,259 | 61 | 81 |
| 2006 | 662 | 22,259 | 61 | 81 |
| Year 1 2007 | 671 | 22,558 | 62 | 82 |
| Year 2 2008 | 680 | 22,862 | 63 | 84 |
| Escambia County | | | | |
| 2003 | 424 | 14,262 | 39 | 52 |
| 2004 | 428 | 14,369 | 39 | 52 |
| 2005 | 431 | 14,477 | 40 | 53 |
| 2006 | 434 | 14,586 | 40 | 53 |
| Year 1 2007 | 437 | 14,696 | 40 | 54 |
| Year 2 2008 | 441 | 14,807 | 41 | 54 |

Source: CON #9800 Application, pages 1-44 and 1-45.

The applicant contends that the above results indicate that sufficient demand will occur to establish a LTCH in District 1. The applicant anticipates that the average daily census in 2007 will actually correspond to the year within which the 54-bed facility is expected to open. As shown above, the applicant expects that the majority of patients (ADC of 40 in 2007) will originate from residents of Escambia County. As noted earlier, the applicant presented no evidence that these projections include only patients that cannot be appropriately and less costly served in other post-acute venues. The acute care length of stay difference noted in the MedPAC report and discussed above for patients discharged from acute care settings to LTCHs is around seven days. This suggests that although patients may stay in excess of the GMLOS in an acute care hospital by any number of days, from seven up to 25, that even if an LTCH were in the area, this alone does not demonstrate need for the service as patients would likely remain in acute beds anyway and could be discharged to another type of post-acute setting or home. The use of DRGs with extended days past the GMLOS alone is therefore not a clear indicator that the patient needed LTCH services or that LTCHs are the most appropriate post-acute care setting for these patients. The acuity level of a patient is not discussed by the applicant. These projections therefore cannot be accepted as reasonable, based on July 2004 MedPAC findings, as they do not demonstrate that these patients were likely appropriate LTCH patients.

The applicant then analyzed the top 50 DRGs that Florida's LTCHs treat that represent the 91 percent of long stay patients in acute care hospitals, selecting the cases that exceeded the GMOS + seven days. According to the applicant, adding seven days to each DRG establishes thresholds that capture the diversity of patients treated in long-term care hospitals, assuring that long-stay cases are extracted. However, as noted above, that is not consistent with MedPAC's findings as presented in its June 2004 report to Congress for reason discussed above. The applicant presented data capturing "excess days" for patient exceeding the geometric mean plus seven days that provides the applicant's estimate of potential long-term care hospitals patient days. According to the applicant, 24,012 excess days occurred in District 1 hospitals for calendar year 2003, yielding an ADC (average daily census) of 66 persons. Excluding Walton County, 20,262 excess patient days remain, yielding an ADC of 56 persons. According to the applicant, employing a target occupancy rate of 80 percent yields a LTCH need of 70 beds. Using this method, an ADC of 61 persons is projected by 2007. Forty of those persons are expected to come from hospitals in Escambia County. The beds needed to achieve a 70 percent occupancy rate is 82 and 54 of those will be associated with care in Escambia County.

However, as discussed above, this need model cannot be accepted given recent MedPAC findings. Had the applicant shown the severity of illness for these patients, it would have been better illustration of potential need for services. In addition to need methodologies not being valid, given June 2004 MedPAC findings, because they do not demonstrate that the patient population projected would be most appropriately served in a LTCH, there is no indication given that hospital caseworkers in the area were contacted with regard to potential cases, especially from within the Sacred Heart Healthcare System, comprised of Northwest Florida Community Hospital, North Okaloosa Medical Center, Sacred Heart Hospital-Pensacola, and Sacred Heart-Emerald Coast.

It was not demonstrated by the applicant that patients are being denied access to LTCH services offered outside of District 1 or that other post-acute care options are not being utilized efficiently. Access to LTCH care is available to residents on the western side of the district with the opening of SemperCare's Bay County facility in January of 2004 and is also currently available to residents on the eastern side of the district within reasonable travel times at the Mobile, Alabama LTCH. As noted in the project summary, the applicant announced that it has signed an agreement to acquire SemperCare, Inc.

2. Agency Rule Criteria

The Agency does not currently have adopted preferences relating to LTCHs.

3. Statutory Review Criteria

- a. Is need for the project evidenced by the availability, quality of care, efficiency, accessibility, and extent of utilization of existing health care facilities and health services in the applicant's service area? ss. 408.035(2) and 408.035(7), Florida Statutes.**

Select Specialty Hospital-Escambia, Inc. (CON #9800) states that the proposed LTCH will result in improved access to all persons, not just those traditionally underserved, such as the medically indigent. The applicant further states that due to the location of the existing LTCHs, few residents of District 1 use long-term acute care hospital services because of the lack of availability and accessibility of LTCH services. However, the applicant appears not to consider SemperCare's Bay County facility, which it is acquiring as previously discussed and states that it has not opened and is still pending licensure. As noted earlier, this facility opened in January and is expected to serve a larger patient population than previously projected for reasons discussed earlier. Although the applicant has excluded Walton County from much of its need analysis, based on recent MedPAC findings, it is likely that if the LTCH is approved and federal reimbursement policies conform to MedPAC recommendations, the applicant would need to serve Walton County residents as well as residents from further west and further east in Alabama as well to achieve pro forma projections. (Refer to financial review in E.3. c. through e. below.)

The applicant described Select Medical Corporation's organizational quality efforts and states that it will use their protocols as a model for this project. The applicant's ability to and history of providing quality care is discussed below under E. 3. b.

The applicant presented data showing the occupancy rates for the LTCHs in the state; however, it did not demonstrate need for the project as evidenced by the availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the applicant's service area particularly considering the January 2004 opening of SemperCare's Bay County facility and the existing LTCH at USA Knollwood Park Hospital in Mobile, Alabama.

- b. **Does the applicant have a history of providing quality of care? Has the applicant demonstrated the ability to provide quality care? ss. 408.035(3), Florida Statutes.**

Select Specialty Hospital-Escambia, Inc. (CON #9800) 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 with 79 long-term care hospitals nationwide, including one in Miami, Florida that was licensed on December 23, 2002, and an approved 40-bed LTCH in Orlando. The applicant states that the proposed Escambia County LTCH will be JCAHO (Joint Commission on Accreditation of Health Care Organizations) accredited like other Select hospitals. The applicant contents that JCAHO accreditation is an indication that quality of care is being delivered and that the components are in place to ensure the delivery of quality of care.

The applicant 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 and described the various elements of the QI Program.

AHCA data reveals that its facility in Miami had five confirmed complaints from January 28, 2004 to May 7, 2004. There was one confirmed complaint in each of the following categories: pressure sores, restraints, medicine problems/errors/formulatory, infection control and patient abuse/neglect. The majority of the confirmed complaints at its only operational facility in Florida involve patient care issues.

- c. **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 of **Select Specialty Hospital-Escambia, Inc. (CON #9800)** 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 development stage company with \$10.00 in assets as of December 31, 2003. The applicant is a wholly owned subsidiary of Select Medical Corporation.

Select Medical Corporation had, based on their 10-K report for the period ended 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.

Select Medical Corporation announced on October 18, 2004 that a new company will acquire it, formed by a private equity firm, for \$18 per share in cash or about \$2.3 billion. Under terms of the agreement, Select Medical Corporation will become a privately held, wholly owned subsidiary of EGL Holding Company. The deal is set to close in the first quarter of 2005, subject to approval by the holders of a majority of Select Medical Corporation's shares and the closing of financing arrangements as set forth in bank commitment letters that have been received by EGL Holding Company as well as other conditions.

Capital requirements:

Total capital costs for this project from Schedule 1 are \$17.9 million. Schedule 2 indicates the applicant has a \$7.8 million project pending under **CON #9746**, a 54-bed LTCH hospital with the space required to operate the hospital leased from Sacred Heart Hospital of Pensacola. The applicant would not be awarded both projects, so this analysis will only consider the cost of this project as the maximum that would be incurred. The applicant's parent, Select Medical Corporation, stated in their 10-K filing that they are committed to developing eight to ten projects a year as part of their expansion strategy. No dollar figure was attached to the projected development plan.

Available capital:

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

Conclusion:

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

Staffing:

According to Schedule 6, the proposed project will require a total of 69 FTE staff in year one, increasing to 107 FTE staff in year two. The nursing staff, including aides will fill 38 FTE positions in year one, increasing to 66 FTE positions in year two. Ancillary positions, including therapists will fill 12 positions in year one, increasing to 18 positions in year two. The applicant states that the staffing models are based upon the anticipated occupancy and programs to be provided at the LTCH, and

that salaries are based on an evaluation of the area and its own experience in staff recruitment. The applicant states that it is confident it will be able to effectively recruit and maintain appropriately qualified staff to meet the needs of its patients. Benefits are calculated at 26 percent of employee's annual salary. The applicant provided a reasonable discussion of recruitment and staff retention plans to be utilized.

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

A comparison of **Select Specialty Hospital –Escambia, Inc.’s (CON #9800)** 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 that are 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, either go beyond what the market will tolerate, or may decrease to levels where activities are no longer sustainable.

On August 30, 2002, the Centers for Medicare and Medicaid Services (CMS) published a prospective payment system (PPS) rule for long-term care hospitals (LTCH) effective for cost reporting periods beginning or after October 1, 2002. Under the PPS for LTCH a payment for a Medicare patient will be made at a predetermined, per discharge amount for each LTC-DRG. The law requires that the LTCH PPS be budget neutral, which means that total payments must equal the amount that would have been paid if the PPS had not been implemented. Therefore, a comparison of the applicant’s revenue estimates to the control group values, based on the reasonable cost-based reimbursement system, provide a rational basis for evaluating estimated revenues.

Medicare requires a six-month period (demonstration period) before a hospital is eligible for reimbursement under the LTCH PPS. This period is required to demonstrate a minimum 25-day average length of stay. During the demonstration period the hospital is reimbursed at the acute care rate. The applicant states that revenue projections for the first six months were developed using acute care reimbursement rates adjusted for the local market wage index.

Comparative data were derived from hospitals in peer groups that reported data in 2003; the applicant will be compared to the hospitals in peer group 12. Per diem rates are projected to increase by an average of 3.4 percent per year. Inflation adjustments were based on the New CMS Hospital Market Basket Index for the 2nd Quarter of 2004 as published in the Health Care Cost Review.

Projected net revenue per adjusted patient day (NRAPD) of \$1,147 in year two is between the control group lowest and median values of \$1,135 and \$1,316. 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 \$1,058 in year two is between the control group lowest and median values of \$985 and \$1,242. Compared to the control group these costs are efficient. (See Comparative Table).

The year two operating profit for the hospital of \$1,261,997 computes to an operating margin per adjusted patient day of \$90, which falls between the peer group lowest and median values of \$-456 and \$128 respectively. The operating margin of 7.8 percent indicates that net revenues are proportional to costs.

With the support of the parent, Select Medical Corporation, Inc., this project is financially feasible.

CON Action Number: 9800

| CON # 9800 Select Specialty - Escambia 2003 DATA Peer Group 12 | 2008 | YEAR 2 | VALUES ADJUSTED | | |
|--|--------------|----------|---------------------|--------|--------|
| | YEAR 2 | ACTIVITY | FOR INFLATION | | |
| | ACTIVITY | PER DAY | Highest | Median | Lowest |
| ROUTINE SERVICES | 13,351,300 | 950 | 1,157 | 950 | 680 |
| INPATIENT AMBULATORY | 30,443,472 | 2,166 | 14 | 0 | 0 |
| INPATIENT ANCILLARY | | | | | |
| SERVICES | 342,028 | 24 | 3,970 | 3,072 | 1,975 |
| OUTPATIENT SERVICES | 0 | 0 | 72 | 0 | 0 |
| OTHER OPERATING | | | | | |
| REVENUE | 0 | 0 | 4 | 2 | 0 |
| TOTAL REVENUE | 44,136,800 | 3,141 | 5,137 | 3,962 | 3,012 |
| DEDUCTIONS FROM | | | | | |
| REVENUE | 28,011,865 | 1,993 | * | * | * |
| NET REVENUES | 16,124,935 | 1,147 | 1,706 | 1,316 | 1,135 |
| EXPENSES | | | | | |
| ROUTINE | 4,844,983 | 345 | 454 | 323 | 215 |
| ANCILLARY | 5,239,007 | 373 | 526 | 347 | 224 |
| AMBULATORY | | | | | |
| OVERHEAD | 4,778,948 | 340 | 838 | 564 | 487 |
| OTHER | | 0 | | | |
| TOTAL EXPENSES | 14,862,938 | 1,058 | 1,778 | 1,242 | 985 |
| OPERATING INCOME | 1,261,997 | 90 | 333 | 128 | -456 |
| | | 7.8% | | | |
| PATIENT DAYS | 14,054 | | VALUES NOT ADJUSTED | | |
| ADJUSTED PATIENT DAYS | 14,054 | | FOR INFLATION | | |
| TOTAL BED DAYS AVAILABLE | 19,710 | | | | |
| ADJ. FACTOR | 1.0000 | | | | |
| TOTAL NUMBER OF BEDS | 54 | | | | |
| PERCENT OCCUPANCY | 71.3% | | 90.7% | 69.3% | 30.4% |
| PAYER TYPE | PATIENT DAYS | % TOTAL | | | |
| MEDICARE | 10,880 | 77.4% | 97.0% | 79.5% | 65.0% |
| COMMERCIAL | 2,086 | 14.8% | | | |
| MEDICAID | 281 | 2.0% | 11.5% | 0.0% | 0.0% |
| SELF-PAY | 112 | 0.8% | | | |
| HMO/PPO | 695 | 4.9% | 27.2% | 11.0% | 0.0% |
| OTHER | 0 | 0.0% | | | |
| TOTAL | 14,054 | 100.0% | | | |

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

Select Specialty Hospital-Escambia, Inc. (CON #9800) projects managed care to represent 4.9 percent of its patient days. This is between the control group lowest and median level of activity of 0.0 and

11.0 percent. The projected levels, if realized, will have little positive impact on competition to promote quality assurance and cost-effectiveness.

f. 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 with the owner.

Select Specialty Hospital-Escambia, Inc. (CON #9800) is proposing to build a 54-bed long-term care hospital in Pensacola, Escambia County. This CON application has a floor plan that is almost identical to that presented for **CON #9746** and several other applications in June of 2004. The new plan corrects all the code deficiencies that were noted in previous architectural reviews and includes some changes that appear to be in response to architectural comments that were merely questions about facility procedures.

The surgical wing, which was unacceptable in previous reviews, is much better arranged, satisfies the code requirements and presents no architectural problems. The wing is identical to the one presented on CON #9812, and the entire plan appears to be essentially the same.

Seventy percent of the patient rooms are private and the ambiance of the facility will be more residential than institutional. The patient rooms are more than 25 percent larger than required and those requiring more staff attention, such as isolation rooms are placed closer to the nurse station. The facility will also have a six-bed intensive care unit and physical therapy/occupational therapy spaces.

The ICU patient rooms will have to be revised to provide the 13' width at the headwall required by the Guidelines, paragraph 7.3.A.3.

There is still one janitor's closet that does not show a floor receptor. Some similar spaces are labeled housekeeping closets and some janitors' closets. Unless these have different functions, it would be clearer if the nomenclature were consistent. Of the two public toilets serving the main waiting area, only one has been developed to show the fixtures and the

other one is shown as an empty space. Since the plan is schematic, this is acceptable and is probably just a drafting omission.

The square footage costs for this facility are essentially the same as the earlier submissions for this prototype building and appear reasonable, as does the Schedule 10 of the application, which provides time frames for project implementation. There is a list of applicable building codes, and it is essentially correct.

New hospital construction must meet the requirements of disaster preparedness in the Florida Building Code, Section 419.4. No information specific to these requirements 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.

The disaster preparedness 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 elevation for the proposed facility will have to be considered relative to the flood plain.

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.

- g. 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 2003 Hospital Financial Data Report, LTCHs in the state averaged 1.24 percent Medicaid patient days and 0.94 percent charity care patient days.

Select Specialty Hospital-Escambia, Inc. (CON #9800) is a new development stage company with no operating history.

The applicant proposes to condition award of the certificate of need on the provision of 2.0 percent of the facility's total annual patient days to

Medicaid patients and 0.8 percent to charity care patients. Schedule 7A indicates that the applicant expects to deliver up to 2.0 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 Medicaid provision exceeds the state average but the charity care provision is slightly lower than the state average of 0.94 percent.

F. SUMMARY

Select Specialty Hospital-Escambia, Inc. (CON #9800) proposes to establish a 54-bed freestanding LTCH to be located in District 1, Escambia County, Pensacola Florida.

The proposed hospital will consist of \$54,090 of new construction with construction costs of \$9,348,500. The total project cost is estimated to be \$17,072,613. Select Medical Corporation will provide the funding for the proposed project.

The applicant proposes to condition award of the certificate of need on the provision of 2.0 percent of the facility's total annual patient days to Medicaid patients and 0.8 percent to charity care patients.

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. It was not demonstrated by the applicant that patients are being denied access to LTCH services or that other post-acute care options are not being utilized effectively.

- The applicant contends that District 1 LTCH appropriate patients are remaining in acute care hospitals within the county, as no appropriate or available alternatives exist within an acceptable distance. Access to LTCH care will be available to residents on the western side of the district and is currently available to residents on the eastern side of the district within reasonable travel times. The applicant did not demonstrate that patients that may meet the definition of a LTCH patient are not currently being placed or that an access problem exists in the area.

Quality of Care:

- The applicant is a new development stage corporation with no significant operating experience. However, the applicant is affiliated with Select Specialty Hospital – Miami, a 40-bed facility that had five confirmed complaints during what is effectively a three-month period from January 28, 2004 until May 7, 2004. These confirmed complaints involved patient care issues.-

Cost/Financial Analysis:

- The applicant is a start-up company with limited assets. However, the parent, Select Medical Corporation, is a financially strong company with total assets of \$1.1 billion, revenue from operations of \$1.4 billion, and cash flows of \$246.3 million. The funding for the proposed project should be available, with the support of the parent company. It is noted that Select Medical Corporation announced in October 2004 that it is schedule to be acquired by EGL Holding Company in the first quarter of 2005.
- With net revenues per adjusted patient day falling between the lowest and median values, the facility is expected to consume health care resources in proportion to the services provided. Projected cost per adjusted patient day is considered efficient in comparison to the control group. The projected operating margin of 7.8 percent indicates that net revenues are proportional to costs. With the support of the parent company, the proposed project is considered to be financially feasible.
- The applicant projects managed care to represent 4.9 percent of its patient days. This is between the control group lowest and median level of activity of 0.0 and 11.0 percent. The projected levels, if realized, will have a slight positive impact on competition to promote quality assurance and cost-effectiveness.

Architectural Analysis:

- The applicant proposes to establish a 54-bed LTCH in District 1, Escambia County, Pensacola, Florida. No information specific relative to disaster preparedness was found in the application. The applicable building codes appear to be essentially correct and architectural concerns noted with previous proposals submitted by the applicant appear to be addressed by this project. However, the labeling of closets and the omission of toilet fixtures in the main waiting area should be reviewed for clarity.
- The schedule for project completion and costs appear reasonable.

G. RECOMMENDATION

Deny CON #9800

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