

**STATE AGENCY ACTION REPORT**  
**ON APPLICATION FOR CERTIFICATE OF NEED**

**A. PROJECT IDENTIFICATION**

1. Applicant/CON Action Number

**Select Specialty Hospital-Palm Beach, Inc./CON #9812**

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

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

**Kindred Hospital East, L.L.C. (CON 9813)**

680 South Fourth Street  
Louisville, Kentucky 40202

Authorized Representative: Bud Wurdock  
(502) 596-7718

2. Service District

District 9

**B. PUBLIC HEARING**

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

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)** submitted what appear to be the same 36 unduplicated letters as submitted with CON #9769 in support of the proposed project or attested to the LTCH services provided by Select Specialty in areas outside of Palm Beach County. Thirty-five of the letters appear to be exactly the same, while one of the letters (from JFK Medical Center in Atlantis, Florida) had updated information. In this support letter, JFK Medical Center's CEO provided the number of patients staying more than 24 days at the hospital for a three-year period as well as comments regarding other venues of post-acute care, and stating the belief that LTCHs provide a

**CON Action Numbers: 9812 & 9813**

unique service. Bethesda Healthcare System (Bethesda Memorial Hospital) also supported the project and identified 168 discharges in CY 2002, who remained in Bethesda Memorial for 24 or more days. Ms. Mary McClory, RN, CPHQ at Bethesda shared the CEO at JFK's belief that LTCH represents a unique service and rehabilitation and skilled nursing facilities do not represent the clinically appropriate setting for LTCH patients. A letter from Tenet South Florida Health System also supported the proposed project but was less specific in stating that the five acute care hospitals it operates in South Florida had "many" patients with lengths of stay greater than 15 days who could have benefited from LTCH services. Caregiver Services, Inc. d/b/a Friends Assisting Seniors & Families endorses the project indicating that there is a class of patients requiring LTCH services, whose needs cannot be met by in-home services. The Director of Case Management/Discharge Planning at Sebastian River Medical Center also supported the project stating that the hospital has patients on a daily basis that remain in the hospital for extended periods of time who could benefit from LTCH services within an accessible distance. However, none of the letters provided the disposition of these patients or provided evidence that patients were actually identified as needing LTCH services, but were not transferred to an existing LTCH for a specific reason. All letters speculated that patients in the area might have benefited from LTCH services based on their length of stay and primary diagnosis.

The applicant also submitted 14 letters of support from physicians with at least eight letters submitted by Miami physicians familiar with Select Specialty's Miami LTCH. The location of the physician's practices was not disclosed and it is not known if the identified physicians will utilize the proposed Palm Beach facility.

**Kindred Hospitals East, L.L.C. (CON #9813)** submitted 54 unduplicated letters of support for the project from various physicians and nurses/case workers in District 9. In addition, the Agency received one letter of support. The majority of the letters state that the proposed project will enhance health care services in District 9 and offer patients and their families continuity of care and improved access. Approximately 30 letters of support were submitted by area physicians, several indicating anywhere between a few and several hundred patients who could have benefited from a LTCH being located in Palm Beach County. Approximately 15 of the letters, the majority from case workers and nurses associated with Delray Medical Center (owned by Tenet), Palm Beach Garden's Medical Center, St. Lucie Hospital, and Wellington Medical Center, identified several hundred patients who could have benefited from a LTCH in the district. The subsequent disposition of these patients is not known. One letter was written by a Palm Beach Gardens resident who had been a patient at Kindred Fort Lauderdale and

indicated that the experience at Kindred Fort Lauderdale was “exceptional”, but complained about the 120-mile distance that the family traveled during the patient’s stay.

**C. PROJECT SUMMARY**

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)**, a wholly owned subsidiary of Select Medical Corporation, proposes to establish a 60-bed freestanding long-term care hospital to be located in Palm Beach County, Florida. The parent, Select Medical Corporation, currently operates 83 LTCHs in 25 states, including one operational LTCH in Miami that was licensed on December 23, 2002, and an approved 40-bed LTCH in District 7 (CON #9654). The applicant’s parent company recently acquired a LTCH in Texas from SemperCare, another large LTCH provider in the US. Select Specialty has two proposals in the current review cycle to develop LTCHs within the State of Florida. These involve new proposals in Districts 1 and 9.

The proposed hospital will consist of 54,090 gross square feet (GSF) of new construction and construction costs of \$9,348,500. Total project cost is estimated to be \$17,182,519.

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

**Kindred Hospitals East, L.L.C. (CON #9813)** proposes to construct a freestanding 60-bed LTCH to be located in the northeastern portion of Palm Beach County. Kindred Hospitals East is currently the licensee and operator of 22 LTCHs across the United States and its parent company, Kindred HealthCare, Inc., operates 72 facilities nationwide. Kindred also owns seven of the 12 licensed LTCHs in Florida and is approved to add 20 beds to Kindred Hospital-North Florida (District 4, Clay County) and construct a 31-bed LTCH in District 3.

The proposed project involves 45,896 gross square feet (GSF) of new construction, comprised of a six-bed intensive care unit, 32 private rooms and 11 semi-private rooms. The total construction costs is estimated to be \$8,778,240 with total project costs of \$18,382,652.

**CON Action Numbers: 9812 & 9813**

As a condition of approval, the applicant agrees to a combined provision of 2.8 percent of its total patient days to Medicaid and charity care patients beginning with the second year of operation. The applicant also agrees to delicense six beds at Kindred Hospital South Florida-Fort Lauderdale and 34 beds from Kindred Hospital South Florida-Hollywood.

**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; Local Health Plans.

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

**1. Fixed Need Pool**

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

Need is not published by the Agency for long-term acute care hospital (LTCH) beds. It is the applicant's responsibility to demonstrate need.

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 to the Medicare Payment Advisory Commission, in fiscal year 2004, for patients with the most common LTCH diagnosis, 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.

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 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.

## **CON Action Numbers: 9812 & 9813**

- 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 tracheotomy 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 that 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.

**CON Action Numbers: 9812 & 9813**

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.

**CON Action Numbers: 9812 & 9813**

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 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:

<b>Florida Long Term Care Hospitals Utilization Experience January 2003-December 2003</b>					
<b>Hospital</b>	<b>District</b>	<b>Beds</b>	<b>Bed Days</b>	<b>Patient Days</b>	<b>Occupancy</b>
Kindred-North Florida	4	60	21,900	19,868	90.72%
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-Ft. 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%
<b>Florida Total</b>		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.**

**A license was also issued for Sister Emmanuel Hospital For Continuing Care (utilization data is not available) in Miami on 7/15/03 for 29 beds, for SemperCare Hospital in Panama City on 1/05/04 for 30 beds.**

As shown above, there is a 68.17 percent average occupancy rate for LTCHs in the state of Florida for the 12-month period ending December 2003.

**CON Action Numbers: 9812 & 9813**

A discussion of each applicant’s need analysis is presented below following general findings regarding expected population growth in the district within the next five years.

<b>Population Estimates for District 9 Counties and Percent Change by County For Total Population, 65 and over, and 75 and Over Population</b>					
<b>County</b>	<b>Total January 2005</b>	<b>Total January 2010</b>	<b>Percent Change</b>	<b>65+ Percent Change</b>	<b>75+ Percent Change</b>
Indian River	124,099	135,197	8.94%	9.41%	4.30%
Martin	137,756	149,742	8.70%	10.20%	5.38%
Okeechobee	37,723	39,622	5.03%	13.91%	13.27%
Palm Beach	1,247,785	1,371,921	9.95%	10.70%	3.69%
St. Lucie	215,053	234,902	9.23%	10.21%	33.90%
Total District	1,762,416	1,931,384	9.59%	10.54%	6.90%

**Source: AHCA Pop. Projections, published March 2004.**

As shown above, the overall population in District 9 is expected to increase by 9.59 percent during the next five years, with the 65 and over and 75 and over age cohort increasing by 10.54 percent and 6.90 percent, respectively. Palm Beach County is the most populous county in the district and by the year 2010 is projected to have 71.03 percent of the total population, 68.67 percent of the 65 and over population and 69.99 percent of the 75 and over population in the district.

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)** has defined its service area for the purpose of demonstrating need as Palm Beach County. The applicant contends that Palm Beach County is an appropriate service area for LTCH services due to the lack of LTCHs within the county; the limited number of patients accessing LTCH services outside the county; and the number of long-stay acute care patients remaining in hospital beds in the county. The applicant does anticipate receiving referrals from other area hospitals including Delray Medical Center, St. Mary's Hospital, Palm Beach Gardens, Bethesda Memorial Hospital and Good Samaritan Medical Center. However, as discussed in detail below, the applicant did not show that patients needing LTCH services were unable to obtain them at existing area facilities.

The applicant states that while closest in proximity, the two Kindred LTCHs in Broward County are not accessible due to distance and travel times. Discharge data for Kindred-Fort Lauderdale for the period January 2003 to December 2003 shows that 133 of its 603 admissions (22.06 percent) originated from Palm Beach County. This number of

**CON Action Numbers: 9812 & 9813**

LTCH admissions originating from Palm Beach County alone would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents and specifically Palm Beach County residents.

In response to population and demographics, the applicant compares Agency population estimates for Palm Beach County with total District 9 estimates for the five-year period January 2003 to January 2008, to demonstrate both an increase in total population and elderly population. According to AHCA population projections, the percentage of growth in both total population and 65 and over population approximates the district average while the 75 and over population in Palm Beach County is estimated to be slightly less than the total overall growth of this age group in the district. Palm Beach County is the most populous county in the district and by the year 2008 is projected to have 71 percent of the total population, 68.7 percent of the 65 and over population and 70.1 percent of the 75 and over population in the district.

In the absence of an approved methodological approach to need for LTCH beds, the applicant presented five methods for estimating need. The first method involves an extended length of stay analysis based on Palm Beach County acute care hospital long-stay discharges. The second method addresses the geometric mean length of stay plus 15 days. The third method analyzes long-stay in acute care versus LTCH penetration, the fourth method employs a statewide use rate analysis applied to the Palm Beach County population, and the fifth method focuses on a UB-92 (Universal Billing Form 92) patient discharge analysis for Palm Beach County.

The long length of stay model evaluates hospital cases that are likely to result in long lengths of stay of 24 days or longer to determine how many cases are appropriate for LTCH services. The evaluation of the hospital discharges excluded lengths of stay of less than 24 days, patients under the age of 14, psychiatric diagnosis, substance abuse diagnosis, obstetric diagnosis, newborn diagnosis and rehabilitation diagnosis. The net number of discharges were then identified to show a purported need for LTCH beds. The applicant arrived at a total of 1,953 hospital discharges with a length of stay of 24 days and longer in Palm Beach County and 2,558 cases district wide for the 12-month period ending December 2003. The applicant multiplied the potential number of patients by the average length of stay for LTCHs in Florida (38 days) to arrive at a total patient days ( $1,953 \times 38 = 74,214$ ) and then divided this number by 365 to arrive at the average daily census of 203 patients for Palm Beach

**CON Action Numbers: 9812 & 9813**

County ( $74,214/365 = 203$ ). Based on an 80 percent occupancy rate (Select's average length of stay nationally), the applicant arrived at a need for 253 beds, 193 more than the 60 beds requested. The applicant used the same methodology for District 9 arriving at a 32-bed need.

In view of the applicant's intention to be located in close proximity to JFK Medical Center and accept long-stay admissions from that facility, the applicant applied the same analysis as above, based on 386 potential long-stay patients. According to the applicant's calculations, JFK patients alone would support a need for 40 beds ( $386 \times 30/365/80$  percent). However, the application of a 25 to 30-day length of stay results in a theoretical need for 17 to 21 beds to serve JFK only, less than the 60 beds requested. Using the national median length of stay of 31 days results in a need for 28 beds, still less than requested. The applicant also conducted a long-stay analysis of the five Tenet facilities in District 9 to arrive at a potential long-stay caseload of 890 patients. According to the applicant's calculations, these patients would support a LTCH of 91 beds. Assuming the Tenet facilities would discharge all long-stay appropriate patients to the proposed facility, a more realistic but also theoretical need for 61 beds can be shown based on the national median length of stay of 31 days ( $890 \times 31 = 27,590/365 = 75.589 \times .80 = 60.47$ ). However, it is unlikely that the proposed LTCH will capture all potential hospital discharges. It was also not demonstrated that patients in District 9, Palm Beach County, JFK Medical Center or any of the five Tenet facilities in District 9, needing LTCH services were unable to access them in a timely manner.

In further support of the project, Bethesda Healthcare System (Bethesda Memorial Hospital) identified 168 potential LTCH discharges in CY 2002. Support was also provided by Tenet South Florida Health System representing the five Tenet hospitals it operates in South Florida. However, other than potential discharges identified by JFK Medical Center and Bethesda Memorial, potential LTCH discharges were not identified for the Tenet hospitals. There were also numerous letters from area physicians, but again no specific admission data was provided with regard to potential LTCH patients. As noted earlier, a recent study of LTCH care shows that even when a LTCH is established in an area, lengths of stay at acute care hospitals are shortened by seven days and so care continues to be provided in the acute setting for many of these patients. Again, the applicant has not shown that patients in District 9, Palm Beach County or Bethesda Memorial Hospital needing LTCH services were unable to access them in a timely manner.

## **CON Action Numbers: 9812 & 9813**

The second method examines the patients discharged from Palm Beach acute care hospitals with a geometric mean length of stay (GMLOS) plus 15 days for the 12 months ending December 31, 2003, multiplying it by the average length of stay (ALOS), dividing it by 365 to determine the average daily census (ADC) and applying an 80 percent occupancy rate. For Palm Beach County the applicant identified 2,507 potential LTCH discharges with a resulting need for 258 beds based on an average length of stay of 30 days; 266 beds based on an average length of stay of 31 days, and 325 beds based on an average length of stay of 38 days. The applicant also analyzed the GMLOS plus 15 days for District 9 and arrived at 3,333 potential discharges for the district and a resulting need for 342 beds based with an ALOS of 30 days, a bed need of 354 based on an ALOS of 31 days and 433 beds based on an ALOS of 38 days. The applicant states that Palm Beach County accounts for 75 percent of the district supporting the Palm Beach location as a primary service area. Using the same method, the applicant subtracted the patient discharges of those who do not live in District 9. With 2,404 patients identified in Palm Beach County, the applicant contends that there is a bed need of 312 (38-day ALOS), a 255-bed need at (31-day ALOS) and 247-bed need (30-day ALOS). For the district, with 3,208 identified patients discharged, the applicant calculated the bed need of 416 (38-day ALOS), 341 beds (31-day ALOS) and 330 (30-day-ALOS). In this analysis Palm Beach again accounts for 75 percent of the cases. According to the applicant, applying this method to JFK results in needed beds of 68 (38-day ALOS), 56 beds (31-day ALOS) or 54 beds (30-day ALOS). However, as noted earlier, 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. Additionally, the applicant did not show that patients in District 9 or Palm Beach County or JFK Medical Center needing LTCH services were unable to access them in a timely manner.

The third method presented by the applicant looks at long-stay acute care versus LTCH penetration. The applicant basically contends that the apparent lack of referrals of Palm Beach patients to statewide LTCHs is clear evidence of an access and availability problem associated with LTCH services. To support this, the applicant states that a statewide analysis was conducted of all long-stay patients by county of residence to determine at what type of acute care facility they receive services. The applicant determined that counties with at least one existing LTCH had a higher percentage of LTCH admissions (ranging from 14.5 percent to 32.5 percent). The applicant states that Palm Beach County had actual LTCH discharges that accounted for 7.1 percent of total potential county

**CON Action Numbers: 9812 & 9813**

long-term discharges. However, as previously shown, discharge data for the Kindred-Fort Lauderdale LTCH, the closest to Palm Beach County, indicates that 22.06 percent of total admissions (133 admissions) to that facility originated from Palm Beach County. This would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for Palm Beach County, District 9 residents. There was no demonstration presented by the applicant that Palm Beach County patients requiring LTCH services cannot receive those services or that care is denied at LTCHs in contiguous districts.

The fourth method presented by the applicant addresses a use rate analysis by calculating the need for LTCH beds by determining the statewide use rate of LTCH patients by age and applying these use rates to the projected population in Palm Beach County. The applicant states that while this is not relied upon by AHCA, the use rate approach is based on the assumption that its proposed service area will perform, on average, the same as other areas with LTCHs. This approach uses varying use rates and is not considered a valid method of calculating need. In the Recommended Order arising out of Case No. 03-2484CON (Select Specialty Hospital-Sarasota, Inc. versus AHCA), the law judge found that *"a use rate methodology is not necessarily a reliable indicator of bed need because the existing LTCHs are not evenly distributed statewide and the utilization rates for the existing LTCHs vary significantly."* This method also does not take into account other variables that may impact utilization including changes in population growth of the various age groups, the availability of other care options and a change in referral patterns.

The applicant's fifth method of calculating need, involves a patient specific extended stay analysis that was conducted of JFK Medical Center's discharges with average length of stays greater than 24 days. As previously shown, JFK identified 813 potential LTCH discharges for the 12 months ending December 31, 2003 for patients with a length of stay of 24 days or greater. According to this analysis, approximately 73 percent of JFK's long-stay patients (24 days or longer) had a length of stay of between 25 to 45 days. The applicant maintains that these patients were in a critical state and may have benefited from a stay at a LTCH. The applicant provided summaries of six separate patient cases at JFK Medical Center, Delray Medical Center, Bethesda Memorial Hospital and St. Mary's Medical Center in which the patients were found to be appropriate candidates for LTCH services based on condition and lengths of stay. The applicant states that many of these patients were eventually discharged to a skilled nursing facility or other after-care options, after spending months in an acute care setting. The summaries indicate that the patients profiled stayed in an acute care setting between 46 days and 140 days. According to the letter of support submitted by

**CON Action Numbers: 9812 & 9813**

JFK Medical Center, the average length of stay of its long-stay patients (24 days and over) was 36 days. This analysis does not provide an estimated bed need but rather presents discharge data in support of the applicant's need estimates to demonstrate that these patients are not candidates for other post acute settings. However, MedPAC 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 more costly post-acute care setting at about three to 12 times that of SNFs.

In Summary: The various methods presented by the applicant do not account for other factors that may impact the applicant's conclusions of need. The need analysis presented by the applicant in all of its forms relies on speculation rather than demonstration of actual access problems. There was no supporting documentation provided that patients who the applicant contends were deemed LTCH appropriate were unable to access or denied access to LTCH services in District 10 LTCHs, specifically the Kindred-Fort Lauderdale LTCH. It was further not demonstrated that patients are unable to access other post-acute care options available within District 9 or that patients are being inappropriately cared for.

**Kindred Hospitals East, L.L.C. (CON #9813)** states that it intends to serve all counties in District 9 from the proposed 60-bed freestanding LTCH proposed to be located in Palm Beach County. The applicant intends to serve patients with complex needs requiring specialized medical, nursing and therapeutic services. However, like co-batched application Select Specialty Hospital – Palm Beach, Inc. and as discussed in detail below, the applicant did not show that patients needing LTCH services were unable to obtain them. This is clear in the applicant's proposal, which indicates it is willing to relocate existing LTCH beds in other districts to establish this new facility. It is noted that with recent changes to CON law, beds may be added to an existing LTCH facility without CON review and so the transfer or delicensing of hospital beds in one area to establish new services has little meaning.

In its description of the expected patient population in this proposed new hospital, the applicant notes that the average case mix index for the acute care hospitals in District 9 is 1.44 as compared to Kindred's facilities in Florida, which reported a case mix index of 2.36 for 2003. AHCA data reveals a case mix of 1.22 for acute care facilities in District 9

## CON Action Numbers: 9812 & 9813

and Kindred's facilities with a case mix of 2.22 for CY 2003. *(Note: The case mix index is a measure developed in conjunction with Medicare's prospective payment system (PPS) as a means of adjusting payments to hospitals based upon case complexity).* According to the applicant, this demonstrates that Kindred's Florida LTCHs care for a significantly sicker patient (on average) than do acute care hospitals. It is therefore anticipated that a similar patient mix will occur at the proposed Palm Beach County facility. The applicant intends to delicense six beds at its Kindred South Florida-Hollywood facility and 34 beds at its Kindred South Florida-Fort Lauderdale facility. It contends that this is an effort to distribute beds to the areas of south Florida where the beds will be most convenient for the patients it serves. As noted above, new beds can be added to LTCHs without CON review and so the promise to delicense existing beds has little meaning.

The applicant presented a use rate analysis to project potential LTCH patient days in District 9 based on the utilization of existing long-term care hospitals in Florida for the year ending December 2003. The applicant arrived at an average use rate of 69.95 days per 1,000 population for the age 65 and over population. This population group is expected to utilize LTCH services at a greater rate than younger ages. The application of this rate by the applicant to the 65 and over population in District 9 for the January 2008 horizon is expected to produce 29,509 LTCH patient days). The combined total for all ages is 35,416 patient days with a projected bed need of 114.1. The use rate approach is based on the assumption that the proposed service area will perform, on average, the same as other areas with LTCHs. This approach uses varying use rates and is not considered a valid method of calculating need. In arriving at the 114.1 per 1,000 use rate average for the state, the applicant used district averages ranging from 34.74/1,000 to 91.19/1,000. In the Recommended Order arising out of Case No. 03-2484CON (Select Specialty Hospital-Sarasota, Inc. versus AHCA), the law judge found that *"a use rate methodology is not necessarily a reliable indicator of bed need because the existing LTCHs are not evenly distributed statewide and the utilization rates for the existing LTCHs vary significantly."* This method also does not take into account other variables that may impact utilization including changes in population growth of the various age groups, the availability of other care options and a change in referral patterns.

In addition to the use rate approach, the applicant also presented an analysis of acute care discharge data to identify DRGs most frequently associated with long lengths of stay. The applicant arrived at 50 DRGs after deleting certain inappropriate DRGs (pediatric, psychiatric, heart transplants, obstetrics, etc.). The applicant then examined the geometric mean length of stay (GMLOS) plus seven days to arrive at an estimated

## **CON Action Numbers: 9812 & 9813**

32,714 potential LTCH patient days for an average daily census of 90 patients for the 12 months ending March 2004. The applicant states that the two Kindred facilities in Broward County had 8,787 patient days (24 patients each day) from patients who lived in District 9. The applicant contends that if half of those patients sought services in District 9, the bed need would rise to from 114.1 to 119. However, this analysis does not show that patients are not able to receive needed care.

In support of the project, the applicant presented numerous letters from physicians, nurses and caseworkers in District 9. The majority of the letters identify several hundred patients who could have benefited from a LTCH in the district. However, it is not known how many of these patients are actually appropriate for the services offered by Kindred or the subsequent disposition of these patients within or outside of the district.

The closest LTCHs to Palm Beach County are the Kindred LTCHs located in District 10 (Broward County). The 64-bed Kindred LTCH located in Fort Lauderdale (District 10), which is approximately 45 miles south of the West Palm Beach area is the most accessible to Palm Beach County residents. With regard to accessibility to LTCH services for residents in Martin, Indian River, Okeechobee, and St. Lucie Counties, the closest LTCH services are also located at the Kindred LTCH in District 10 ranging from one hour and 30 minutes from Stuart, Florida (Martin County) to two hours and 14 minutes from Okeechobee (Okeechobee County). Residents in Port St. Lucie and Fort Pierce (St. Lucie County) and Vero Beach (Indian River County) are in excess of one hour and 30 minutes from the District 10 LTCH. The existing LTCH in District 6 (Tampa) and the approved LTCH in District 7 (Orlando) are both in excess of two hours travel time for residents in Martin, Indian River, Okeechobee and St. Lucie Counties. According to AHCA data, Kindred-Fort Lauderdale and Kindred-Hollywood had an average occupancy rate of 82.12 percent and 68.22 percent respectively. According to the applicant, these two hospitals generated 8,787 patient days for 2003 that averaged 24 patients each day that originated from Palm Beach County. This reasonably high number of patient days from Palm Beach County alone would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents and specifically Palm Beach County residents.

In summary, the applicant contends that both its use rate methodology and GMLOS methodology support the need for the proposed 60-bed LTCH. The applicant failed to provide any specific discharge studies or data from area hospitals and/or other inpatient providers in the district identifying potential LTCH admissions by DRG or length of stay. There was also no supporting documentation provided that LTCH appropriate

patients were unable to access or were denied access to LTCH services in District 10 LTCHs, specifically its sister facility in Fort Lauderdale. It was further not demonstrated that patients are unable to obtain other post-acute care services available within District 9 or that patients are being inappropriately cared for.

**2. Agency Rule Criteria**

The Agency does not currently have adopted preferences or Rule criteria 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.**

Both co-batched applicants basically contend that its respective proposal will increase the availability and accessibility of LTCH services since patients deemed appropriate for LTCH services are presently having to travel outside District 9 for these services. As previously discussed, the closest LTCHs to Palm Beach County are the Kindred LTCHs located in District 10 (Broward County). The 64-bed Kindred LTCH located in Fort Lauderdale (District 10), which is approximately 45 miles south of the West Palm Beach area is the most accessible to Palm Beach County residents. With regard to accessibility to LTCH services for residents in Martin, Indian River, Okeechobee, and St. Lucie Counties, the closest LTCH services are also located at the Kindred LTCH in District 10 ranging from one hour and 30 minutes from Stuart, Florida (Martin County) to two hours and 14 minutes from Okeechobee (Okeechobee County). Residents in Port St. Lucie and Fort Pierce (St. Lucie County) and Vero Beach (Indian River County) are in excess of one hour and 30 minutes from the District 10 LTCH. The existing LTCH in District 6 (Tampa) and the approved LTCH in District 7 (Orlando) are both in excess of two hours travel time for residents in Martin, Indian River, Okeechobee and St. Lucie Counties. As previously discussed, discharge data for Kindred-Fort Lauderdale shows that 22.06 percent of total

**CON Action Numbers: 9812 & 9813**

admissions (133 admissions) to that facility originated from Palm Beach County. The number of LTCH admissions originating from Palm Beach County tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents and specifically Palm Beach County residents.

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)** contends that clinically appropriate patients are remaining in inappropriate bed situations and that the proposed project will provide Palm Beach County residents necessary LTCH services to improve the health status of the County. However, the applicant presented no studies demonstrating that the health status of an area is improved when LTCH services are available. The applicant basically refers to the factors previously presented in response to the "fixed need" section in support of the project. These various methods presented by the applicant do not account for other factors that may impact the applicant's conclusions of need. There was no supporting documentation provided that patients were unable to access LTCH services or were denied access to LTCH services. The number of District 10 LTCH admissions originating from District 9 would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents and specifically Palm Beach County residents. The applicant did not demonstrate that District 9 residents needing LTCH services were unable to receive them in the adjacent district or access post-acute care options available in District 9.

The applicant did not demonstrate need for the project as evidenced by the availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the applicant's service area.

**Kindred Hospitals East, L.L.C. (CON #9813)** also contends that the project will increase the availability and accessibility to care in District 9 due to the non-availability of LTCH services in the district. The applicant cites the projected increase in population in the district, especially with regard to the senior population. The applicant states that the typical patient seen at a Kindred hospital is frail with multiple complications, age 65 or older. The applicant contends that for these patients and family members to travel long distances to obtain LTCH services is often impractical. The applicant acknowledges that there are skilled nursing facilities, subacute care providers and acute care services available but states that they do not have the ability to provide the same level of care as provided in the proposed LTCH. As mentioned earlier, MedPAC's findings indicate that lower acuity patients within any DRG can appropriately be served in a SNF at a lower cost, as LTCHs are usually the most costly post-acute care setting at about three to 12 times that of

**CON Action Numbers: 9812 & 9813**

SNFs. The SNF utilization in District 9 averaged 87.06 percent for CY 2003. This utilization rate is below the benchmark for SNF care set in Florida Statutes at 94 percent.<sup>1</sup>

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

The number of LTCH patient days originating from District 9 would tend to indicate that access to LTCH services in contiguous District 10 (Broward County) is not constrained for District 9 residents and specifically Palm Beach County residents. The applicant did not demonstrate that District 9 residents needing LTCH services were unable to receive them.

The applicant did not demonstrate need for the project as evidenced by the availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the district.

- 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-Palm Beach, Inc. (CON #9812)** is a development stage corporation, and as such has no operating history. The applicant is a controlled entity of Select Medical Corporation, an existing provider of LTCH services nationwide with 83 existing facilities, including one in Miami, Florida that was licensed on December 23, 2002. Select Specialty has also been approved for a 40-bed LTCH in District 7.

According to the Complaint Summary, dated, September 15, 2004, Select Specialty in Miami had five confirmed complaints since January 2004, none without deficiencies. The confirmed complaints included: pressure sores (one), restraints (one), infection control (one), medicine problems/errors/formulary (one), patient abuse/neglect (one).

---

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

**Kindred Hospitals East, L.L.C. (CON #9813)** states that all of its currently licensed LTCHs are accredited by the JCAHO, an indication that quality of care is being delivered and that the necessary components are in place to ensure delivery of care. The applicant provided a reasonable description of the admission, care planning and discharge process. The quality management functions are contained in the Kindred Strategic Quality Plan, a copy of which is contained in the application as Appendix 6.

The complaint summary reports for the seven licensed Kindred LTCHs in the state dated September 15, 2004 indicates a combined listing of 12 confirmed complaints, including two without deficiencies for the past three years. The 10 confirmed allegations involve: patient care (four), medicine/problems/errors/formulary (two), restraints (one), staffing (one), nursing service (one), discharge planning (one).

- 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.**

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812):** The audited financial statements were reviewed to assess the financial position of both applicants as of the balance sheet date and the financial strength of the operations for the applicants for the applicable period presented. The applicant is a development stage company with \$10 in assets as of December 31, 2003. The applicant is a wholly owned subsidiary of Select Medical Corporation.

Select Medical 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 Corp. 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 will become a privately held, wholly owned subsidiary of EGL Holding Co. The deal is set to close in the first quarter of 2005, subject to approval by the holders of a majority of Select's shares and the closing of financing arrangements as set forth in bank commitment letters that have been received by EGL Holding Co. as well as other conditions.

## **CON Action Numbers: 9812 & 9813**

### **Capital requirements:**

Total capital costs for this project from Schedule 1 are \$17.3 million. Schedule 2 indicates Select Medical has \$42.4 million projects pending under CON numbers 9769, 9719, and 9661. The applicant stated it would implement only one of the four 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 10 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 applicant is anticipating that the 60-bed LTCH will require 66 FTE's in year one, increasing to 113 FTE's in year two. As a freestanding LTCH, all required staffing will be required with nursing staff/nursing aides comprising 36 FTE positions in year one and 69 FTE positions in year two. Select states that it is confident it will be able to effectively recruit and maintain appropriately qualified staff to meet the needs of its patients on a daily basis. The applicant anticipates employee benefits to be 26 percent. The applicant provided an overview of Select's inpatient recruitment strategies and resources (Attachment #25) including retention practices.

**Kindred Hospitals East, L.L.C. (CON #9813):** The audited financial statements for the periods ending December 31, 2003 and 2002 were analyzed for the purpose of evaluating the applicant's ability to provide the capital and operational funding necessary to implement the project. The following is a list of the accounts and ratios used in the analysis:

**CON Action Numbers: 9812 & 9813**

<b>Kindred Hospitals East, LLC</b>		
	12/31/2003	12/31/2002
Current Assets	\$ 115,343,532	95,586,452
Cash and Current Investment	\$ 929,338	2,556,678
Assets Restricted for Capital Projects	\$ 0	0
Total Assets	\$ 154,903,329	144,057,782
Current Liabilities	\$ 50,489,276	47,475,625
Total Liabilities	\$ 50,541,294	47,488,505
Total Equity	\$ 104,362,035	96,569,277
Net Operating Revenues	\$ 452,417,039	430,600,841
Interest Expense	\$ 804,668	143
Net Profit – Operations	\$ 21,902,494	12,439,445
Net Income	\$ 21,732,005	11,293,364
Cash Flow from Operations	\$ 12,286,483	48,507,659
Working Capital	\$ 64,854,256	48,110,827
Current Ratio (CA/CL)	2.3	2.0
Cash Flow to Current Liabilities (CFO/CL)	0.24	1.02
Long-Term Debt to Equity (TL-CL/TE)	0.0	0.0
Equity to Total Assets (TE/TA)	67.4%	67.0%
Operating Margin (NPO/NOR)	4.8%	2.9%
Total Margin (NI/NOR)	4.8%	2.6%
Return on Assets (NI/TA)	14.1%	8.6%
Operating Cash Flow to Assets (CFO/TA)	7.9%	33.7%

The applicant is a wholly owned subsidiary of Kindred Healthcare, Inc. (formerly Vencor, Inc)

**Short-term position:**

The applicant's current ratio of 2.3 approximates the 50<sup>th</sup> percentile of Florida Hospitals. The ratio of cash flow to current liabilities of 0.24 is weak. Working capital (current assets less current liabilities) of \$64.9 million is substantial in relation to the entity's size. Overall the applicant has an acceptable short-term position.

**Long-term position:**

The ratio of long-term debt to equity of 0.0 is the result of carrying no long-term debt on the books of the applicant. Long-term debt is carried on the books of the parent corporation. The ratio of cash flows to assets of 7.9 percent is below average. The most recent period had an operating profit of \$21.9 million, resulting in a margin of 4.8 percent. Total equity is \$104.4 million; the ratio of equity to assets is 67.4 percent. Overall, the applicant has an acceptable long-term position.

**Capital requirements:**

Schedule 2 indicates capital projects of \$26.5 million.

**Available capital:**

Funding for these projects will come from \$8.0 million in operating cash flows and \$18.5 million in cash in hand. The audited financial statements show \$929,338 in cash on hand, and \$12.3 million in cash flows.

The 10-K report for Kindred Healthcare, Inc., the parent, shows \$66.5 million in cash on hand, \$1.6 billion in assets and net worth of \$595.6 million for the period ended December 31, 2003. There were \$3.3 billion in revenues, a \$49.5 million profit from continuing operations and \$119.3 million in cash flows for 2003.

**Conclusion:**

Based on the audited financial statements of the applicant, and the parents 10-K report, cash on hand and cash flows, if they continue at 2003 levels, would be sufficient to fund this project as proposed. Funding for this project and all capital projects is likely to be available as needed.

**Staffing:**

As reflected in Schedule 6, the majority of FTEs required by the implementation of the project are direct caregivers consisting of a mix of RNs, LPNs and CNAs. The clinical staffing figures are based upon staffing levels at all Kindred hospitals. The project calls for recruitment of 68.4 FTEs in the first year of operation, increasing to 119.1 FTE's in year two. The nursing staff will consist of 22.2 FTE's in year one and 53.0 FTE's in year two. The applicant states that it allocates resources to attract and retain qualified staff, including competitive salary and benefit levels, and opportunities for recognition and promotion. Kindred uses a number of methods to attract employees, including media advertising, job fairs, direct marketing and Internet recruitment.

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

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

## CON Action Numbers: 9812 & 9813

that the project is feasible, because fewer economies must be realized to achieve the desired outcome. Conversely, as estimates approach the lowest in the group, it is less likely that the project is feasible, because a much higher level of economies must be realized to achieve the desired outcome. These relationships hold true for a constant intensity of service through the relevant range of outcomes. As these relationships go beyond the relevant range of outcomes, revenues and expenses may, either go beyond what the market will tolerate, or may decrease to levels where activities are no longer sustainable.

The Centers for Medicare and Medicaid Services (CMS) published a prospective payment system (PPS) rule for long-term care hospitals (LTCH) effective for cost reporting periods beginning or after October 1, 2002. Under the PPS for LTCH a payment for a Medicare patient will be made at a predetermined, per discharge amount for each LTC-DRG. The law requires that the LTCH PPS be budget neutral, which means that total payments must equal the amount that would have been paid if the 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. **Select Specialty-Palm Beach, Inc. (CON #9812)** states that revenue projections for the first six months were developed using acute care reimbursement rates adjusted for the local market wage index. **Kindred Hospitals East, L.L.C. (CON #9813)** states that revenue projections for the first six months were developed using acute care rates. The stated strategy was to keep the census low during this period in order to minimize lost revenue.

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 2<sup>nd</sup> Quarter of 2004 as published in the Health Care Cost Review.

## **CON Action Numbers: 9812 & 9813**

Only the 2<sup>nd</sup> year of operation will be considered for comparison with the control group because the hospitals will be operating at acute care reimbursement rates during the first six months of operations, resulting in distorting net revenues when compared to the control group.

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812):** Projected net revenue per adjusted patient day (NRAPD) of \$1,123 in year two is below the control group lowest value of \$1,277. The lowest value is generally viewed as the practical lower limit on economies of operation. It is doubtful that such economies of operation would be achieved in the first two years. NRAPD is most likely understated. (See Comparative Table).

Projected cost per adjusted patient day of \$1,030 in year two is below the control group lowest value of \$1,108. The lowest cost is considered the lower limit of cost-efficiency. Costs below this threshold would describe efficiencies that no other facility has been able to achieve. Compared to the control group these costs are too low to be efficient, raising doubt that the facility would be spending enough on services to provide adequate care. In analyzing the data submitted we noted that the overhead cost estimate of \$312 per patient day in year two is far below the lowest level of the group of \$548, while patient care costs are between the lowest and median levels. Costs are most likely understated. (See Comparative Table).

The year two operating profit for the hospital of \$1,436,336 computes to an operating margin per adjusted patient day of \$94, which falls between the peer group lowest and median values of \$-456 and \$128 respectively. The operating margin of 8.3 percent indicates that net revenues are proportional to costs.

**CON Action Numbers: 9812 & 9813**

With the support of the parent, Select Medical, Inc., this project is likely to be financially feasible; however both net revenues per adjust patient day and cost per adjusted patient day are likely to be higher than the estimates used in this application.

**Comparative Table**

<b>CON # 9812 Select Specialty - Palm Beach 2003 DATA Peer Group 12</b>	2008	YEAR 2	VALUES ADJUSTED		
	YEAR 2	ACTIVITY	FOR INFLATION		
	ACTIVITY	PER DAY	Highest	Median	Lowest
ROUTINE SERVICES	14,567,300	950	1,302	1,069	766
INPATIENT AMBULATORY	33,591,308	2,191	16	0	0
INPATIENT ANCILLARY SERVICES	373,242	24	4,466	3,456	2,222
OUTPATIENT SERVICES	-	0	81	0	0
OTHER OPERATING REVENUE	-	0	5	2	0
TOTAL REVENUE	48,531,850	3,165	5,780	4,458	3,389
DEDUCTIONS FROM REVENUE	31,312,614	2,042	*	*	*
NET REVENUES	17,219,236	1,123	1,919	1,481	1,277
EXPENSES					
ROUTINE	5,090,990	332	511	364	242
ANCILLARY	5,912,460	386	592	391	253
AMBULATORY		0			
OVERHEAD	4,785,450	312	943	635	548
OTHER		0			
TOTAL EXPENSES	15,788,900	1,030	2,000	1,398	1,108
OPERATING INCOME	1,430,336	93	333	128	-456
		8.3%			
PATIENT DAYS	15,334		VALUES NOT ADJUSTED		
ADJUSTED PATIENT DAYS	15,334		FOR INFLATION		
TOTAL BED DAYS AVAILABLE	21,900				
ADJ. FACTOR	1.0				
TOTAL NUMBER OF BEDS	60				
PERCENT OCCUPANCY	70%		90.7%	69.3%	30.4%
PAYER TYPE	PATIENT DAYS	% TOTAL			
MEDICARE	11,888	77.5%	97.0%	79.5%	65.0%
COMMERCIAL	2,262	14.8%			
MEDICAID	307	2.0%	11.5%	11.5%	11.5%
SELF-PAY	123	0.8%			
HMO/PPO	754	4.9%	27.2%	11.0%	0.0%
OTHER	-	0.0%			
TOTAL	15,334	100.0%			

**CON Action Numbers: 9812 & 9813**

**Kindred Hospitals East, L.L.C. (CON #9813):** Projected net revenue per adjusted patient day (NRAPD) of \$1,188 in year two is below the control group lowest value of \$1,252. The lowest value is generally viewed as the practical lower limit on economies of operation. It is doubtful that such economies of operation would be achieved in the first two years. This result is unusual in that the applicant is being compared to other Kindred facilities. (See Comparative Table).

Projected cost per adjusted patient day of \$1,186 in year two is between the control group lowest and median values of \$1,087 and \$1,371. (See Comparative Table). Compared to the control group these costs are considered cost-efficient.

The year two operating profit for the hospital of \$26,401 computes to an operating margin per adjusted patient day of \$2 which falls between the group lowest and median values of -\$456 and \$128. The computed operating margin ratio is 0.2 percent.

With the support of the parent, Kindred Healthcare, Inc., this project is likely to be financially feasible; however net revenues per adjusted patient day are likely to be higher than the estimates used in this application.

**CON Action Numbers: 9812 & 9813**

**Comparative Table**

<b>CON # 9813 Kindred Hospitals East, LLC 2003 DATA Peer Group 12</b>	2008	YEAR 2	VALUES ADJUSTED		
	YEAR 2	ACTIVITY	FOR INFLATION		
	ACTIVITY	PER DAY	Highest	Median	Lowest
ROUTINE SERVICES	8,834,098	784	1,276	1,048	751
INPATIENT AMBULATORY	-	0	16	0	0
INPATIENT ANCILLARY SERVICES	35,336,391	3,138	4,380	3,390	2,179
OUTPATIENT SERVICES	-	0	80	0	0
OTHER OPERATING REVENUE	-	0	5	2	0
TOTAL REVENUE	44,170,489	3,922	5,668	4,372	3,324
DEDUCTIONS FROM REVENUE	30,787,427	2,734	*	*	*
NET REVENUES	13,383,062	1,188	1,882	1,452	1,252
EXPENSES					
ROUTINE	3,620,429	321	501	357	238
ANCILLARY	3,370,232	299	581	383	248
AMBULATORY		0			
OVERHEAD	6,366,000	565	925	623	537
OTHER		0			
TOTAL EXPENSES	13,356,661	1,186	1,961	1,371	1,087
OPERATING INCOME	26,401	2	333	128	-456
		0.2%			
PATIENT DAYS	11,262		VALUES NOT ADJUSTED		
ADJUSTED PATIENT DAYS	11,262		FOR INFLATION		
TOTAL BED DAYS AVAILABLE	21,900				
ADJ. FACTOR	1.0				
TOTAL NUMBER OF BEDS	60				
PERCENT OCCUPANCY	51%		90.7%	69.3%	30.4%
PAYER TYPE	PATIENT DAYS	% TOTAL			
MEDICARE	7,395	65.7%	97.0%	79.5%	65.0%
COMMERCIAL	1,703	15.1%			
MEDICAID	144	1.3%	11.5%	0.0%	0.0%
SELF-PAY	-	0.0%			
HMO/PPO	1,885	16.7%	27.2%	11.0%	0.0%
OTHER	135	1.2%			
TOTAL	11,262	100.0%			

**CON Action Numbers: 9812 & 9813**

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

<b>District 9 Long-term Care Projects</b>		
	<b>Kindred Hospitals East, LLC</b>	<b>Select Specialty Hospital-Palm Beach, Inc.</b>
CON Number	9813	9812
Net Revenue per adjusted patient day	\$1,188	\$1,123
Cost per adjusted patient day	\$1,186	\$1,030
Operating profit per patient day	\$ 2	\$ 93
Estimated Managed Care level	16.7%	4.9%
Estimated Medicaid level	1.3%	2.0%

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)** 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.

**Kindred Hospitals East, L.L.C. (CON #9813)** projects managed care to represent 16.7 percent of its patient days. This is between the control group median and highest level of activity of 11.0 percent and 27.2 percent. The projected levels, if realized, are likely to increase 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 both projects may be more advanced than required, they have been reviewed as schematics with the expectation that they will necessarily be revised and refined during the design development (preliminary) and contract document stages. The architectural review of the applications shall not be construed as an in-depth effort to determine complete compliance with all applicable codes and standards. The final responsibility for facility compliance ultimately rests with the owner.*

## CON Action Numbers: 9812 & 9813

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812):** 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 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 in CON #9800, and the entire plan appears to be essentially the same.

More than 70 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.A3.

There is still one JC (janitor's closet) that does not show a floor receptor. Some similar spaces are labeled housekeeping closets and some janitor's closets. Unless these have different functions, it would be clearer if the nomenclature was 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 slightly higher than the earlier submissions for this prototype building and appear reasonable, as does the schedule. 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. In Schedule B, the applicant goes into detail, quoting from testimony about the disaster preparedness issue. Yet, in 46 pages of outline specifications, there is no mention of this issue in the sections dealing with doors, windows, louvers and other affected building components. The applicant assures that the building will be built to meet all building code requirements.

## **CON Action Numbers: 9812 & 9813**

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.

**Kindred Hospitals East, L.L.C. (CON #9813):** In the proposed facility, 32 of the patient rooms are private, 11 are semi-private rooms and there is a six-bed intensive care unit. There is an isolation room in the ICU in addition to the two in the general hospital area. All the patient rooms have the requisite hand washing station just inside the room near the door.

The isolation rooms are located at the end of one of the patient wings, whereas they are usually placed closer to the nurse station where the staff can more easily observe them. There is no specific requirement for their location. There are also physical therapy/occupational therapy spaces as well as other support spaces and programs typical for a long-term care hospital.

There was no large-scale plan of the ICU rooms and they must have 13' of clear width at the headwall as required by The Guidelines, Paragraph 7.3.A3. The ICU rooms may meet this requirement, but at the scale presented, it is difficult to tell.

The surgical suite has two operating rooms (ORs) and there is the preferred path that the staff must take through the toilet/shower/lounge area before entering the semi-restricted area. The suite is large for a hospital of this type, and it is well planned and appears to have all the required support spaces. There is usually a toilet associated with the recovery area, but this plan has none. There is a doctors' sleep room with a private toilet/shower room near the surgical suite.

The ORs must have a minimum of 400 square feet, but it is not possible to determine their actual size from the scale of the floor plan.

There is a one-room emergency department with space for one patient on a bed or gurney. There is no airborne infection isolation room as required by The Guidelines, Paragraph 7.9.C7. Also, the body holding room must have an exterior door: The Guidelines, Paragraph 7.16.

**CON Action Numbers: 9812 & 9813**

The narrative states that the emergency generator is located remote from the building, but the plan shows one in the corner of the building, adjacent to the mechanical and electrical rooms. The narrative also mentions a second generator, and this one may be the one that is remote from the building. This is acceptable as long as the requirements for disaster preparedness are met.

The square footage costs appear reasonable, as does the schedule. 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 and the narrative indicates that the applicant is aware of this.

- 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 .94 percent charity care patient days.

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)** is a development stage company with no operating history. According to the 2003 Financial Data Report, Select Specialty's facility in Miami provided no Medicaid patient days and 1.0 percent of its patient days to charity care.

As a condition of approval, the applicant agrees to condition award of the certificate of need on the combined provision of 2.8 percent of patient days to Medicaid and charity care patients on a combined basis. Financial Schedule 7A reflects the applicant's expectation to meet the requested condition in both the first and second year of operation by providing 2.0 percent of patient days to Medicaid and 0.8 percent to charity care. The applicant proposes to exceed the state Medicaid average for LTCH patient days but falls short of meeting the state average for charity care.

## CON Action Numbers: 9812 & 9813

**Kindred Hospitals East, L.L.C. (CON #9813)** has a history of providing Medicaid and/or charity care. According to the 2003 Financial Data Report, the applicant's licensed Florida facilities provided a percent of Medicaid patient days to total patient days, ranging from a low of zero percent (Kindred-Fort Lauderdale, Kindred-Central Tampa, and Kindred-North Florida) to a high of 11.5 percent (Kindred-St. Petersburg). Charity care patient days ranged from a low of zero percent (Kindred-Fort Lauderdale) to a high of 2.5 percent (Kindred-Coral Gables).

As a condition of approval, the applicant agrees to condition award of the certificate of need on the combined provision of 2.8 percent of patient days to Medicaid and charity care patients in the second year of operation. According to Financial Schedule 7A, the applicant intends to provide 1.6 percent of patient days to Medicaid and Medicaid HMO in year two. This is below the state average. The applicant did not specifically indicate any charity care on the schedule. Based on the information provided, it does not appear that the applicant's combined Medicaid and charity care provision will meet or exceed the state average for either payor grouping.

### F. SUMMARY

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)**, a wholly owned subsidiary of Select Medical Corporation, proposes to establish a 60-bed freestanding long-term care hospital to be located in Palm Beach County, Florida.

The proposed hospital will consist of 54,090 gross square feet of new construction and construction costs of \$9,348,500. Total project cost is estimated to be \$17,182,519. Funding for the proposed project will be provided by Select Medical Corporation.

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

**Kindred Hospitals East, L.L.C. (CON #9813)** proposes to construct a freestanding 70-bed long-term care hospital to be located in Palm Beach County.

The proposed project involves 45,896 gross square feet (GSF) of new construction, comprised of a six-bed intensive care unit, 32 private rooms and 11 semi-private rooms. The total construction cost is estimated to be \$8,778,240 with total project costs of \$18,382,652.

**CON Action Numbers: 9812 & 9813**

As a condition of approval, the applicant agrees to a combined provision of 2.8 percent of its total patient days to Medicaid and charity care patients beginning with the second year of operation. The applicant also agrees to delicense six beds at Kindred Hospital South Florida-Fort Lauderdale and 34 beds from Kindred Hospital South Florida-Hollywood.

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

**Need:**

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

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)**

- The applicant contends that Palm Beach County is an appropriate service area for LTCH services due to the lack of LTCHs within the county; the limited number of patients accessing LTCH services outside the county; and the number of long-stay acute care patients remaining in hospital beds in the county. The support letters in total express belief that there are many patients who would have benefited for LTCH services. However, discharge data would indicate that Palm Beach County residents are using the Kindred-Fort Lauderdale LTCH and account for 22.06 percent (133 patients) of that facility's total admissions. The applicant did not demonstrate that bed capacity and access is constrained for Palm Beach County residents utilizing the District 10 LTCH(s) or that care currently being provided was inappropriate.

**Kindred Hospitals East, L.L.C. (CON #9813)**

- The applicant intends to focus on the provision of complex LTCH services (many requiring ventilator/pulmonary services) and contends that patients are leaving District 9 for services or remaining in less appropriate settings within the district. Although support letters from area health care workers identify several hundred patients who could have benefited from a LTCH in the district, the disposition of these patients is not known and access problems were not shown. It was

## **CON Action Numbers: 9812 & 9813**

also not demonstrated that access to LTCH services in other districts and specifically in District 10 is constrained or denied to District 9 residents. The applicant failed to demonstrate that area residents were unable to access needed care or that care currently being provided was inappropriate.

### **Quality of Care:**

#### **Select Specialty Hospital-Palm Beach, Inc. (CON #9812)**

- 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 3-month period from January 28, 2004 until May 7, 2004. These confirmed complaints involved patient care issues and raise concerns about the applicant's ability to provide quality care.

#### **Kindred Hospitals East, L.L.C. (CON #9813)**

- The applicant has a history of providing quality of care and its current LTCHs are JCAHO accredited. The applicant provided a description of quality management functions to be incorporated at the proposed facility as currently used at other Kindred hospitals.

### **Cost/Financial Analysis:**

#### **Select Specialty Hospital-Palm Beach, Inc. (CON #9812)**

- 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.

## **CON Action Numbers: 9812 & 9813**

- 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 8.3 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.

### **Kindred Hospitals East, L.L.C. (CON #9813)**

- The applicant is a wholly owned subsidiary of Kindred Healthcare, Inc. Based on the financial statements, cash on hand and cash flows, (assuming the current level continues), funding for the proposed project and all capital projects is likely to be available as needed.
- Net revenues per adjusted patient day fall below the control group and it is doubtful that such economies would be achieved in the first two years. However, the project is considered to be financially feasible, with the parent sustaining working capital during the first two years of operation.
- The applicant projects managed care, including Medicare and Medicaid managed care days, to represent 16.7 percent of its patient days. This is above the control group highest level of activity. The projected levels, if realized, are likely to increase competition to promote quality assurance and cost-effectiveness.

**Architectural Analysis:**

**Select Specialty Hospital-Palm Beach, Inc. (CON #9812)**

- The applicant proposes to build a 60-bed freestanding LTCH in Palm Beach County. The ICU rooms will have to be revised to meet the requirement of 13' width at the headwall. One janitor's closet does not show a receptacle and here are fixtures missing on the schematic drawings of the public toilets. There is no mention of disaster preparedness issues dealing with windows, louvers and other affected building components. In addition, the site elevation for the proposed facility will have to be considered relative to the flood plain.
- The applicable codes appear to be essentially correct. The estimated project budget and schedule appear to be reasonable based on the scope of the project.

**Kindred Hospitals East, L.L.C. (CON #9813)**

- The project involves new construction of a 60-bed freestanding LTCH. Although there is no specific requirement for their location, the isolation rooms are usually placed closer to the nurse's station where staff can more easily observe them. It is difficult to tell if the ICU rooms have the required 13' clear width at the headwall as required. It is not possible to determine if the operating rooms have a minimum of 400 square feet, as required. There is no airborne infection isolation room, as required, and the body holding room must have an exterior door.
- The applicable codes appear to be essentially correct. The estimated project budget and schedule appear to be adequate based on the scope of the project.

**G. RECOMMENDATION**

Deny CON #9812 and CON #9813.

**AUTHORIZATION FOR AGENCY ACTION**

Authorized representatives of the Agency for Healthcare Administration adopted the recommendation contained herein and released the State Agency Action Report.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Karen Rivera  
**Health Services and Facilities Consultant Supervisor  
Certificate of Need**

\_\_\_\_\_  
Jeffrey N. Gregg  
**Chief, Bureau of Health Facility Regulation**