

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

**A. PROJECT IDENTIFICATION**

1. Applicant/CON Action Number

**Kindred Hospitals East, L.L.C. (CON #9876)**

680 South Fourth Street  
Louisville, Kentucky 40202

Authorized Representative: Mr. Bud Wurdock  
(502) 596-7718

2. Service District

District 7/ Brevard, Orange, Osceola, and Seminole Counties

**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 7.

Kindred Hospitals East, L.L.C. submitted 10 unduplicated letters of support for the project, most them form letters. The Agency for Health Care Administration received one letter of opposition.

Four identical letters were from physicians with Pulmonary Disease Specialists, P. A., stating their patients have to go to the Kindred facility in Tampa. The letters do not state how many patients were admitted to either of the Tampa LTCHs.

Two similar letters from physicians associated with the Central Florida Pulmonary Group, P.A.<sup>1</sup> stating they are aware of patients who could have benefited from admission to a long-term care hospital. The patients were too ill to go to nursing home, their relatives declined transfer to a

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<sup>1</sup> One letter says dozens of patients and the other letter states 50 patients.

facility outside the county, or the patients were too unstable to risk a transport which may exceed one hour. The letter does not explain why unstable patients are being relocated.

One letter from Dr. Jaime Garrizosa, an infectious disease specialist, stating most of his patients can not be transferred out of Central Florida which reinforces the need for the facility. However, the letter does not explain why the patients have to remain within central Florida, nor does it say how many patients were denied LTCH care because they could not be transferred.

There were two letters from Heart of Florida Regional Medical Center which is located in eastern Polk County. One letter from Ann Barnhart, Chief Executive Officer, stating families often reject transfers to far away facilities due to distance and reluctance to change physicians. The second letter is from Robin M. Luten, Director of Case Management, supporting the project as an alternative provider for patients who require prolonged recovery time.

One form letter from Osceola Internal Medicine, Inc. states they are aware of many patients who could have benefited from admission to a long-term care hospital. The patients were too ill to go to nursing home, their relatives declined transfer to a facility outside the county, or the patients were too unstable to risk a transport which may exceed one hour.

These letters did not provide the time frame to support the number of patients they felt would have been appropriate for long-term care hospital services, and did not state how and where these patients were treated. The applicant did not submit information on the proposed site, so it is not possible to determine driving distances or time from the local hospitals to the proposed facility.

The letter of opposition is from Mr. Karl W. Hodges, Vice-president of Business Development for Orlando Regional Healthcare (ORH). The letter states ORH's strategic planning includes developing a comprehensive plan for the integration of long-term acute care with inpatient and outpatient rehabilitation. The plan would enhance quality and provide a continuum of care. The services would be collocated at the Orlando Regional Rehabilitation Institute. The letter also states there is a need for the long-term care hospital services but the community would be better served by a local provider.

**C. PROJECT SUMMARY**

**Kindred Hospitals East, L.L.C. (CON #9876)** proposes to establish a 60-bed long-term care hospital (LTCH) in District 7. Kindred indicates it owns and operates 23 long-term care hospitals including seven freestanding hospitals in Florida. In addition, it has received certificate of need approval for a 70-bed facility in Palm Beach County (District 9) and has recently licensed a 31-bed hospital within a hospital in Ocala (Marion County, District 3). The applicant has submitted two additional proposals for the current review cycle to develop LTCHs. These proposals are for a 60-bed facility in Miami-Dade County (District 11) and a 60-bed facility in St. Lucie County (District 9).

The proposed project involves 69,706 GSF of new construction. The total construction costs are estimated to be \$16,034,127 with total project costs of \$26,533,458.

As a condition of approval, the applicant agrees to a combined provision of 2.2 percent of its total patient days to Medicaid and charity cases.

The proposed facility will be located in Orange County and is targeted to serve the residents of Orange, Osceola, and Seminole Counties.

**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, Ana Garcia-Quevedo, analyzed the application in its entirety with consultation from the Financial Analyst, John Williamson, who evaluated the financial data, and the Architect, James Gregory, 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 and applicable rules of the State of Florida, Chapter 59C-1 and 59C-2, and 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 is 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. Kindred proposes to provide 78.6 percent of its services to Medicare and Medicare HMO patients in its second year of operation.

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 tracheotomy diagnosis, failure of two or more major organ systems, neuromuscular damage, contagious infections, or complex wounds that need extended care.

The applicant describes the LTCH patients as “medically complex” and high acuity patients. The applicant also indicated that the LTCH was the appropriate placement for these patients and that patients should not or could not be seen in a freestanding skilled nursing facility or a comprehensive medical rehabilitation hospital or bed (CMR).

As noted by MedPAC, some of LTCH patients fit the described characteristics, while others are of a lesser acuity level and could be treated in another post-acute care setting.

As discussed below, it is the burden of any CON applicant applying outside of a state published fixed need pool to define its patient population and base need projections on that defined patient population. If, as here, the applicant proposes to serve a medically complex, high acuity patient population, then need projections should clearly identify that population and the medically complex high acuity population should be the only target.

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.

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.

Earlier this year CMS responded to MedPAC's comments regarding recommendations that its Secretary evaluate LTCHs by establishing facility and patient criteria and LTCH monitoring protocols by Quality Improvement Organizations. CMS awarded a contract to Research Triangle Institute (RTI), International entitled "Long Term Care Hospital (LTCH) Payment System Refinement/Evaluation," for a thorough examination of the feasibility of implementing MedPAC's recommendations. That report was originally due in October of 2005, but extensions have been granted and as of this writing, the report has not been published.

According to documents posted on CMS's LTCH website the purpose of the RTI report is to:

*"...protect the integrity of the Medicare program by insuring that Medicare is a prudent purchaser of LTC services. This will be accomplished by obtaining professional and technical services for the purpose of:*

- 1) Performing policy and analytic analysis of LTCH patients and LTCHs for purposes of evaluating the feasibility of both patient and facility-level criteria to assure appropriate and cost-effective utilization of LTCHs as a provider category as recommended in MedPAC's June 2004 RTC;*
- 2) Designing specific patient and facility-level criteria; This shall include an implementation approach, timelines, and estimated costs.*
- 3) Developing a plan to implement improvements to the LTCH PPS. This shall include short-term and long-term actions/recommendations, defining monitoring and refinement techniques, and the like.*

*The MedPAC recommendations focus on development and monitoring of patient and facility criteria. They also raise several long-term and short-term questions for consideration and provide suggested patient and facility criteria. Medicare costs for episode of care at LTCHs are the highest for any provider type and therefore, it is vital that we establish an appropriate measure of what patients can best be treated at these hospitals and what the hospitals be required to provide."*

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.

**a. 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 14 long-term care hospitals (LTCHs) with 876 beds licensed to operate in the State of Florida.

<b>Florida Long-Term Care Hospitals</b>		
Hospital	District	# Beds
Select Specialty Hospital – Panama City	2	30
Kindred Hospital-Ocala**	3	31
Kindred Hospital - North Florida	4	60
Specialty Hospital Jacksonville	4	107
Kindred Hospital - Bay Area - St. Petersburg	5	82
Kindred Hospital - Central Tampa	6	102
Kindred Hospital - Bay Area-Tampa	6	73
Select Specialty Hospital-Orlando, Inc.	7	35
HealthSouth Lakeridge*	8	40
Kindred Hospital - South Florida – Hollywood	10	124
Kindred Hosp.-South Florida-Ft. Lauderdale	10	70
Kindred Hospital South Florida Coral Gables	11	53
Select Specialty Hospital-Miami	11	40
Sister Emanuel Hospital for Continuing Care	11	29
State Total		876

**Source: Florida Hospital Bed Need Projections & Service Utilization by District published 07/29/05 and licensure records**

**\*Licensed June 2005.**

**\*\*Licensed October 2005.**

As shown in the next table, there are an additional 317 approved, but not yet licensed LTCH beds distributed throughout Florida in Districts 1, 2, 3, 5, 7, and 9.

<b>Florida Approved-Not Yet Licensed Long-Term Care Hospital Beds</b>		
Hospital	District	Beds
Select Specialty Hospital- Escambia	1	54
SemperCare Hospital of Tallahassee	2	29
Select Specialty Hospital-Alachua, Inc	3	44
Kindred Hospital North Florida*	4	20
Select Specialty Hospital- Orange	7	40
Kindred Hospitals East -LLC	9	70
Select Specialty Hospital – Palm Beach	9	60
Total		317

**Source: Florida Hospital Bed need Projections and Service Utilization by District published 7/29/05.**

As noted above, there have been two recently licensed and several recently approved LTCHs. The number of LTCHs in Florida has almost tripled in the past 10 years. In 1995, there were seven LTCHs in the state. By 2004 that number had increased to 12 and as of this writing there are six CON approved, not yet licensed LTCHs, bringing the total number of licensed and approved LTCH from seven in 1995 to 20 in 2005. Following is an inventory of existing, recently licensed, and CON approved LTCH beds by district:

<b>Florida Long-Term Care Hospital Bed Inventory by District As of 11/2005</b>			
Hospital	District	# Beds	Status
Select Specialty Hospital - Escambia, Inc.	1	54	CON approved
SemperCare Hospital of Tallahassee	2	29	CON approved
Select Specialty Hospital – Panama City	2	30	Operational in 2004
Select Specialty Hospital - Alachua, Inc.	3	44	CON approved
Kindred Hospital – Ocala	3	31	Licensed 10/05
Kindred Hospital - North Florida	4	60 *	Operational in 2004
Specialty Hospital Jacksonville	4	107	Operational in 2004
Kindred Hospital - Bay Area - St. Petersburg	5	82	Operational in 2004
Kindred Hospital - Central Tampa	6	102	Operational in 2004
Kindred Hospital - Bay Area-Tampa	6	73	Operational in 2004
Select Specialty Hospital-Orlando, Inc.	7	35	Operational in 2004
Select Specialty Hospital – Orange	7	40	CON Approved
HealthSouth Lakeridge	8	40	Licensed 6/05
Select Specialty Hospital – Palm Beach, Inc.	9	60	CON Approved
Kindred Hospitals East, LLC	9	70	CON Approved
Kindred Hospital - South Florida – Hollywood	10	124	Operational in 2004
Kindred Hosp.-South Florida-Ft. Lauderdale	10	70	Operational in 2004
Kindred Hospital South Florida Coral Gables	11	53	Operational in 2004
Select Specialty Hospital-Miami	11	40	Operational in 2004
Sister Emanuel Hospital for Continuing Care	11	29	Operational in 2004
State Total		1,113*	

**Source: Florida Hospital Bed Need Projections & Service Utilization by District published 07/29/05 and licensure records**

**\* Kindred North Florida has 20 CON approved, not yet licensed beds, for a total of 80 licensed and CON approved beds, making the state total of licensed and approved 1133.**

LTCH services in Florida are not overall well utilized. During 2004, the most utilized beds were those at Kindred’s North Florida facility, where 20 beds have been approved, but are not yet licensed.

The following tables show the population in District 7 is expected to increase by 11.76 percent during the next five years. The 65 and over group will increase by 17.69 percent and the 75 and over age group will increase by 12.8 percent. All three groups (total, 65+, and 75+) show a rate of increase higher than the state average growth which is projected to be 9.16 percent.<sup>2</sup>

<b>Total Population Estimates for District 7 Counties and Percent Change by County</b>			
<b>County</b>	<b>Total July 2005</b>	<b>Total July 2010</b>	<b>Percent Change</b>
Orange	1,043,846	1,173,409	12.41%
Osceola	231,417	277,271	19.81%
Seminole	415,004	457,917	10.34%
Subtotal	1,690,267	1,908,597	12.9%
Brevard	527,680	570,098	8.04%
Total District 7	2,217,947	2,478,695	11.76%
Total State of Florida	17,844,137	19,478,414	9.16%

**Source: AHCA Population Projections, published October 2005.**

<b>Population Estimates for District 7 Counties and Percent Change by County For Population, 65 and over, and 75 and Over</b>						
<b>County</b>	<b>65+ July 2005</b>	<b>65+ July 2010</b>	<b>Percent Change</b>	<b>75+ July 2005</b>	<b>75+ July 2010</b>	<b>Percent Change</b>
Orange	105,852	127,252	16.8%	49,767	56,815	14%
Osceola	28,191	37,831	34.1%	13,020	16,688	28%
Seminole	44,366	53,123	19.7%	20,586	22,786	10.6%
Subtotal	178,409	218,206	22%	83,373	96,289	15.4%
Brevard	103,710	113,812	9.7%	50,058	54,226	8.3%
Total District 7	282,119	332,018	17.6%	133,431	150,515	12.8%
Total State of FL	3,153,525	3,601,571	14.2%	1,588,881	1,727,557	8%

**Source: AHCA Population Projections, published October 2005.**

The applicant analyzed the population growth patterns by combining the three counties it has identified as its service area. The applicant states the total population for Orange, Osceola, and Seminole Counties is 1,688,418 of with 175,453 residents over the age of 65. In addition, Orange County will account for 53 percent of the population growth. The applicant does not provide a basis for locating the project in Orange County when the population of Osceola County will increase at a much faster rate. The applicant states that as a result of the increase in the senior population, the financial and capacity burdens of the short-term care hospitals will increase.

<b>Florida Long-Term Care Hospital Bed Utilization</b>
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**CON Action Number: 9876**

<b>Calendar Year 2004</b>					
<b>Hospital</b>	<b>District</b>	<b># Beds</b>	<b>Bed Days</b>	<b>Patient Days</b>	<b>Occupancy</b>
Select Specialty Hospital – Panama City*	2	30	10,860	3,314	30.52%
Kindred Hospital - North Florida	4	60	21,960	19,660	89.53%
Specialty Hospital Jacksonville	4	107	39,162	21,776	55.60%
Kindred Hospital - Bay Area - St. Petersburg	5	82	30,012	20,143	67.12%
Kindred Hospital - Central Tampa	6	102	37,332	25,953	69.52%
Kindred Hospital - Bay Area-Tampa	6	73	26,718	16,737	62.64%
Select Specialty Hospital-Orlando, Inc.	7	35	12,810	9,131	71.28%
Kindred Hospital – South Florida – Hollywood	10	124	45,384	27,114	59.74%
Kindred Hosp.-South Florida-Ft. Lauderdale**	10	70	24,984	16,591	66.41%
Kindred Hospital South Florida Coral Gables	11	53	19,398	15,921	82.08%
Select Specialty Hospital-Miami	11	40	14,640	12,208	83.39%
Sister Emmanuel Hospital for Continuing Care	11	29	10,614	8,771	82.64%
<b>State Total***</b>		805	293,874	197,319	67.14%

**Source: Florida Hospital Bed Need Projections & Service Utilization by District published 07/29/05.**

**Notes: \*Select Specialty Hospital - Panama City was license effective 1/5/04.**

**\*\*Kindred Hospital – South Florida - Ft. Lauderdale added six beds effective 4/16/04.**

**\*\*\*State Total & District 11 facility occupancy adjusted as 3<sup>rd</sup> & 4<sup>th</sup> quarter Bed Days per facility were incorrect.**

<b>District 7 Acute Care and Post-Acute Care Providers Bed Count &amp; Utilization 2004</b>		
<b>Facility Type</b>	<b>Total Beds</b>	<b>Average Occupancy</b>
Long-Term Care Hospital	35	71.28%
Acute Care	4,788	68.49%
Comprehensive Medical Rehabilitation	192	67.67%
Hospital Based Skilled Nursing	38	69.46%
Community Nursing Homes	9,057	89.19%

**Sources: Florida Hospital Bed Need Projections by District, published 7/29/05 for LTCH, Acute Care and CMR beds. Florida Hospital Based Skilled Nursing Unit Utilization by District and Subdistrict July 2004-June 2005, published 10/07/05. Florida Nursing Home Utilization by District July 2004-June 2005, published 10/08/05.**

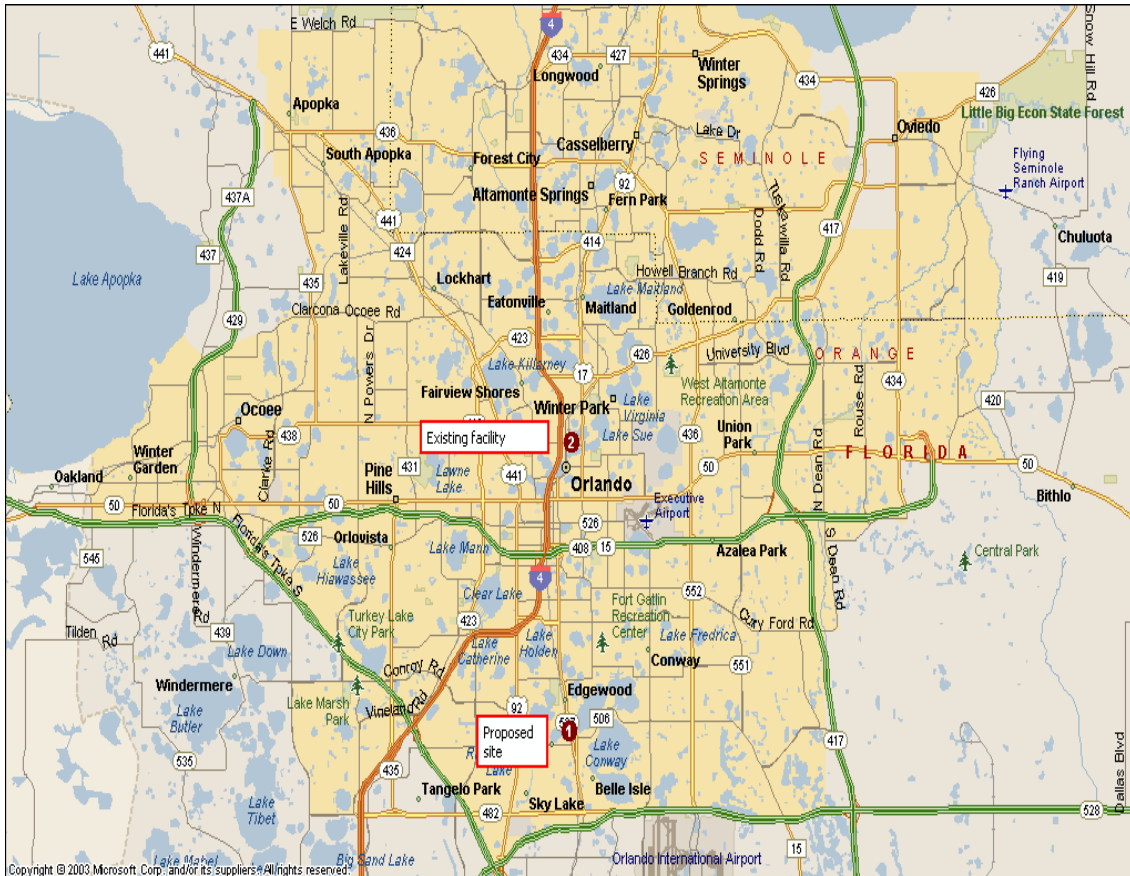
As noted above, SNF utilization in District 7 averaged 89.19 percent for the most recent reporting period. This utilization rate is below the benchmark for SNF care set in the Florida Statutes at 94 percent.<sup>3</sup> Comprehensive medical rehabilitation (CMR) utilization in District 7 averaged 74.04 percent during CY 2004. This percentage is below the 85 percent benchmark for that service.<sup>4</sup> Some of the long stay discharges described by the applicant may be appropriate for these other post acute care options.

The applicant did not submit a specific site for the project but states it intends to serve Orange, Osceola, and Seminole Counties. The following map shows the operational facility and the CON approved not yet licensed proposed site. The distance between the two facilities is 6.82 miles.

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

<sup>4</sup> Section 59C-1.039 Florida Administrative Code sets the occupancy standard at 85 percent for fixed need pool calculations.

**ORLANDO LTCHs MAP**



Source: Microsoft MapPoint

1. Proposed site for approved facility
2. Operational facility

The applicant states patients will have to travel at least 90 miles one way to obtain care<sup>5</sup>. The 2004 utilization rate for the existing 35-bed facility was 71.28 percent. As previously mentioned, there is a CON approved not yet licensed 40-bed facility for Orange County. The 40-bed CON approved, not yet licensed District 7 LTCH by Select Specialty Hospital – Orange is proposed to be located at 5579 S. Orange Avenue in Edgewood, Florida. This facility will more than double the bed availability for District 7. The applicant did not address the impact of the approved not yet licensed facility.

Following is a chart showing District 7 LTCH discharges for calendar year 2004:

<sup>5</sup> The 90-mile distance is to one of the Tampa, (District 6) facilities.

LTCH Discharges by District Calendar Year 2004														
District	LTCH	Unknown	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10	D11	Facility Total
2	Select Hospital Of Panama City	3		108										111
4	Kindred Hospital - North Florida	25	1	3	142	244	1	2	22	1				441
4	Specialty Hospital Jacksonville	86	2	2	36	592	1		4		3	1		727
5	Kindred Hospital - Bay Area St. Petersburg	10			4	1	274	62		63	2			416
6	Kindred Hospital - Bay Area - Tampa	11			16	3	18	240	22	49	1	3	1	364
6	Kindred Hospital - Central Tampa	14			48	1	75	503	2	4				647
7	Select Hospital Of Orlando	4		2	9	23		29	247	1				315
10	Kindred Hospital - South Florida - Ft. Lauderdale	24		1	1	1		1	9	9	194	308	21	569
10	Kindred Hospital - South Florida - Hollywood	17				1					18	490	361	887
11	Kindred Hospital South Florida Coral Gables	6									1	8	440	455
11	Select Specialty Hospital - Miami	4							1			11	490	506
11	Sister Emmanuel Hospital For Continuing Care	1								1	1	3	293	299
	District Total	205	3	116	256	866	369	837	307	128	220	824	1,606	5,737

Source: State Center for Health Statistics

During 2004, 307 District 7 residents were discharged from LTCHs in Florida. Two hundred forty-seven of these discharges are from the existing District 7 LTCH. There were 26 discharges from Area 6 facilities and an additional 26 discharges from District 4 facilities at a time when the existing District 7 facility had available beds. The applicant did not submit documentation that these out of district discharges were as a result of access problems. District 6 and District 4 border District 7. The applicant failed to provide any evidence that LTCH appropriate patients were unable to access or were denied LTCH services in District 7.

Kindred presented a long-term care hospital bed need based on acute care discharges and utilization data from local hospitals<sup>6</sup>. Kindred contends utilization (patient days) is affected by timing of referrals and length of time a patient stays at the LTCH. Kindred assumes patients will be referred five days after they have passed the DRG-specific geometric mean length of stay (GMLOS). Kindred does not provide the basis for these assumptions. The length of stay impact is considered since Medicare requires an average length of stay of 25 days or more.

The process consists of five steps.

The first step is to exclude patients who are not appropriate because they require care not usually provided at a LTCH. These discharges contain all diagnosis related groups (DRGs) within the major diagnostic categories (MDC) of: 13-female reproductive system, 14-pregnancy, 15-newborns and other neonates, 19-mental disease and disorders, 20-alcohol and substance abuse, 22-burns, 23-factors influencing health factors, specific to pediatric patients and all categories of transplants. Kindred provided a list of the 390 acute care DRGs representing potential LTCH admissions<sup>7</sup>.

The second step is to identify discharges that are:

- Assigned to one of the 390 LTCH potential referral DRGs;
- Patients are 18 years or older; and
- Have a length of stay exceeding the GMLOS<sup>8</sup> by 15 days.

The third step is to determine the potential long-term care hospital days produced by this group of discharges. For calendar year 2004, Kindred estimates 52,105 potential long-term hospital days were provided by the 16 local acute care hospitals which results in an average daily census of 142. The estimate was adjusted downward by excluding the 9,135 patient days provided at the existing LTCHs. However, agency records show that the actual number of patient days provided by in the existing District 7 facility in CY 2004 was 9,687. The applicant's calculations did not incorporate the 40-bed CON approved not yet licensed facility which would mitigate the future bed need.

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<sup>6</sup> Utilization was based on length of stay.

<sup>7</sup> CON application #9876, Tab 4

<sup>8</sup> GMLOS is the length of time an average patient would stay at the hospital given the injury or illness being treated. It is a nationally calculated, statistically adjusted value applied to each DRG.

The fourth step is to incorporate 13.1 percent average population growth projections for Seminole, Osceola, and Orange County from 2004 through 2010. This creates 18 additional patients added to the average daily census (ADC) for a total of 160 in 2010.

The final step is to apply an 85 percent occupancy rate to the ADC of 160 yielding a projected need of 188 beds.

The applicant looked at discharges based on a group of diagnosis codes and length of stay. Not all patients requiring in-patient hospitalization past the GMLOS estimate is a candidate for LTCH services. The applicant did not specify why all the long stay discharges were not analyzed based on additional characteristics such as acuity level.

The applicant states the 65+ population will increase by an average of 13.1 percent for the three selected counties. Kindred claims traveling long distances for extended periods of time imposes a great burden to the patient and their family and is often impractical. However, the application did not specify the proposed site for this facility so the burden on the families could not be determined by analyzing the driving distances. LTCH services are the most expensive post-acute care service and are generally provided to patients with complex medical conditions and therefore are not generally needed in each acute care planning area or dedicated to each acute care hospital. They are similar to comprehensive medical rehabilitation hospitals in this way and a planning area larger than a subdistrict planning area is more appropriate for LTCH services.

The applicant has not met its burden to demonstrate that the patient population it has identified is not already receiving needed care.

**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.**

Kindred cites the current facility does not have the capacity to meet the increasing needs for service. Its conclusion is based on the occupancy rates which increased from 50 percent for the fourth quarter of 2003 to 74 percent for the fourth quarter of 2004. The existing Orlando facility was licensed June 12, 2003 therefore the fourth quarter of 2003 was its second operational quarter. Schedule 7A of this application states Kindred expects an occupancy rate of 21 percent the first year and 61 percent the second year. This shows a 40 percent increase in a year which is almost double the 24 percent increase for the periods compared by the applicant. The second operational quarter is not a reliable threshold as the basis to illustrate increased need. In fact, the utilization pattern for District 7 is flat with a decline for the first two quarters of 2005 with the first quarter average of 79.71 percent and the second quarter at 75.83 percent.

As previously mentioned, there is a CON 40-bed approved not yet licensed facility for District 7. The application did not analyze the impact from this LTCH when it begins operations.

Kindred also mentions the health care providers do not believe long-term care patients can adequately be treated at the other available settings such as acute care hospitals skilled nursing facilities and inpatient rehabilitation facilities. All the physician support letters submitted with the application are form letters. The letters did not contain any patient specific data establishing the unavailability of services for their patients.

Kindred provided a chart comparing LTCHs, rehabilitation facilities and skilled nursing facilities. One of the comparison factors is ability to manage critically ill patients. According to the chart skilled nursing facilities do not accept dialysis patients. A search of facility characteristics<sup>9</sup> revealed most nursing homes in District 7 would accept patients requiring dialysis. In addition, unless the patient has a different primary diagnosis, end stage renal disease (ESRD) requiring any form of dialysis may be treated on an outpatient basis. Without other complications this diagnosis alone does not require the services of a LTCH to appropriately treat renal failure.

Another factor compares availability of respiratory therapy on a 24-hour/seven-day a week basis. Respiratory therapy includes a wide range of treatments, some of which are provided at both inpatient rehabilitation facilities and nursing homes.

Kindred states the number of long-term care hospitals has grown nationwide which demonstrates increasing awareness and demand for

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<sup>9</sup> Nursing home guide <http://www.floridahealthstat.com>

the services across the country. Kindred concludes that the need exceeds the current supply of beds preventing local physicians from taking advantage of the service. However, as noted earlier, access problems were not clearly demonstrated given that an additional LTCH has been approved for the area.

According to the applicant, the proposed facility will improve efficiency of LTCH services by integrating the continuum of care to ensure patients are placed in the most independent setting for their condition.

Efficiency will be demonstrated by the fact it will be able to share services with other area Kindred facilities and utilize centralized services such as purchasing, project management, clinical and quality management, medical records and other services. However, the applicant did not demonstrate what efficiencies would be achieved as a result of this proposed project.

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.

As discussed in the need section, this proposal appears to be a duplication of existing services and if approved, then it may negatively impact the existing and approved Select Specialty Corporation facilities.

If, as here, the applicant proposes to serve a medically complex, high acuity patient population, then need projections should clearly identify that population and the medically complex high acuity population should be the only target.

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

Kindred states all of its currently licensed LTCHs are Joint Commission on the Accreditation of Health Organizations (JCAHO) accredited and the necessary components are in place to ensure delivery of care. The applicant provided descriptions of case management plan, admission and assessment process, care planning, discharge process and quality initiatives.

The goal of the case management plan is to ensure delivery of appropriate high quality care to all patients. The plan components include:

- Appropriate utilization of resources to deliver quality and cost-effective care
- Ensure continuity through the multiple levels of care
- Provide optimal social, physical, emotional, and spiritual functioning
- Compliance
- Accurate medical record documentation

The admission process incorporates a comprehensive assessment with the participation of the referring physician.

Kindred uses both acute physiology and chronic health evaluation (APACHE) to estimate patient risk for mortality and InterQual screening guidelines to determine appropriateness of placement. An interdisciplinary team of specialists develops patient care plans complemented with patient care conferences. The discharge plan identifies psychosocial needs of the patient and his family and coordinates post hospital care with community based programs.

The company's vision is to provide a level of service and quality unequalled in the field. Customer service programs and consumer satisfaction surveys are a vital component of the quality improvement plan. The applicant included tabulated results from its 2002, 2003, and 2004. There is no indication on the usefulness of responses which have remained essentially unchanged. The applicant did not include a summary of the findings from the comments page. The applicant did not provide documentation it uses the consumer satisfaction survey results to identify trends or opportunities for improvement.

Agency records indicate 12 confirmed complaints for the seven Kindred licensed LTCHs in the state for the three-year period ending October 5, 2005: patient care (five); medicine problems/errors/formulary (three); patient rights (one); untrained/unqualified staff (one); discharge planning (one); and nursing service (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.**

This review is for Kindred Hospitals East, L.L.C. applying to establish a freestanding 60-bed long-term care hospital in District 7, Orange

**CON Action Number: 9876**

County, Florida. The financial impact of the project will include the project cost of \$26,533,458 and year two operating costs of \$18,006,094.

The audited financial statements of the applicant for the period ending December 31, 2004, were analyzed for the purpose of evaluating the applicant's ability to provide the capital and operational funding necessary to implement the project. Schedule 2 of the application indicates that Kindred Healthcare, Inc. (Parent) will provide funding for the project. Therefore, the audited financial statements of the parent for the period ending December 31, 2004, were also analyzed. The following is a list of the accounts and ratios used in the analysis:

	<b>Applicant</b>	<b>Parent</b>
	<u>12/31/2004</u>	<u>12/31/2004</u>
Current Assets	\$ 104,609,085	\$ 874,343,000
Cash and Current Investment	\$ 1,170,425	\$ 69,128,000
Assets Restricted for Capital Projects	\$ -	\$ -
Total Assets	\$ 143,654,847	\$ 1,593,293,000
Current Liabilities	\$ 38,565,440	\$ 577,766,000
Total Liabilities	\$ 40,211,844	\$ 873,508,000
Net Assets	\$ 103,446,003	\$ 719,785,000
Total Revenues	\$ 489,103,572	\$ 3,531,223,000
Interest Expense	\$ -	\$ 12,814,000
Net Profit – Operations	20,680,700	85,923,000
Net Income	\$ 21,241,435	\$ 70,580,000
Cash Flow from Operations	\$ 31,083,886	\$ 268,129,000
Working Capital	\$ 66,043,645	\$ 296,577,000
Current Ratio (CA/CL)	2.7	1.5
Cash Flow to Current Liabilities (CFO/CL)	0.8	0.5
Long-Term Debt to Equity (TL-CL/TE)	0.0	0.4
Equity to Total Assets (TE/TA)	0.7	0.5
Operating Margin (NPO/NOR)	4.2%	2.4%
Total Margin (NI/NOR)	4.3%	2.0%
Return on Assets (NI/TA)	14.4%	5.4%
Operating Cash Flow to Assets (CFO/TA)	21.6%	16.8%

**Short-Term Position:**

Applicant: The applicant's current ratio of 2.7 is above average and indicates that current assets are over two and a half times current liabilities, a good position. The ratio of cash flow to current liabilities of 0.8 is above average and a good position. Working capital (current assets less current liabilities) of \$66 million is a measure of excess liquidity that could be used to fund capital projects. Overall the applicant has a good short-term position.

Parent: The parent's current ratio of 1.5 is below average and indicates that current assets are one and a half times current liabilities, an adequate position. The ratio of cash flow to current liabilities of 0.5 is also below average and a moderately weak position. Working capital (current assets less current liabilities) of \$296.6 million is a measure of excess liquidity that could be used to fund capital projects. Overall the parent has an adequate short-term position.

**Long-Term Position:**

Applicant: 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 flow to assets of 21.6 percent is above average and a strong position. The most recent period had an operating profit of \$20.7 million, resulting in a margin of 4.2 percent. Overall, the applicant has a good long-term position.

Parent: The ratio of long-term debt to equity of 0.4 is well below average and a good position. The ratio of cash flow to assets of 16.8 percent is above average and a strong position. The most recent period had an operating profit of \$85.9 million, resulting in a margin of 2.4 percent. Overall, the parent has a good long-term position.

**Capital Requirements:**

Schedule 2 indicates the applicant has capital projects totaling \$146.5 million. In addition, the applicant is projecting a year one net operating loss of \$3.5 million for this project. The applicant would have to fund this operating loss in addition to the capital projects and maturities of long-term debt discussed above.

**Available Capital:**

As discussed above, funding for this project and all capital projects will come from the parent. The ratio analysis of the parent discussed above indicates that operating cash flows for the most recent year was \$268.1 million with \$296.6 million in working capital.

**Conclusion:**

Based on the audited financial statements of the applicant, and the financial strength of the parent, funding for this project and all capital projects is likely to be available as needed.

**Staffing:**

This project calls for the recruitment of 80.4 FTEs in the first year of operation, increasing to 127.4 FTEs in year two. The nursing staff will consist of 28.8 FTEs in year one and 64.5 FTEs in year two. The applicant states that its employment recruitment and retention programs consist of allocation of substantial resources to attract highly qualified staff and incentives to help the stay. The incentives include competitive salary and benefits, tuition reimbursement, and opportunities for promotion. The recruitment methods include media advertising, participation in 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 applicant's estimates to the control group values provides for an objective evaluation of financial feasibility, (the likelihood that the services can be provided under the parameters and conditions contained in Schedules 7 and 8), and efficiency, (the degree of economies achievable through the skill and management of the applicant). In general, projections that approximate the median are the most desirable, and balance the opposing forces of feasibility and efficiency. In other words, as estimates approach the highest in the group, it is more likely that the project is feasible, because fewer economies must be realized to achieve the desired outcome. Conversely, as estimates approach the lowest in the group, it is less likely that the project is feasible, because a much higher level of economies must be realized to achieve the desired outcome. These relationships hold true for a constant intensity of service through the relevant range of outcomes. As these relationships go beyond the relevant range of outcomes, revenues and expenses may, either go beyond what the market will tolerate, or may decrease to levels where activities are no longer sustainable.

The applicant will be compared to the hospitals in Group 12 (LTCH Group). Per diem rates are projected to increase by an average of 4.1 percent per year. Inflation adjustments were based on the new CMS Market Basket, 3<sup>rd</sup> Quarter, 2005. Gross revenues, net revenues, and costs were obtained from Schedules 7 and 8 in the financial portion of the application and were compared to the control group as a calculated amount per patient day. It should be noted that seven of the 11 facilities in Group 12 are Kindred facilities.

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. Only the second year of operation will be considered for comparison with the control group because the hospital will be operating at acute care reimbursement rates during the first six months of operations, thereby distorting net revenues when compared to the control group.

Projected net revenue per patient day (NRPD) of \$1,355 in year two is between the control group median and lowest values of \$1,481 and \$1,308. With net revenues between the control groups median and lowest values the facility is expected to consume health care resources in proportion to the services provided. (See Comparative Table). NRPD appears reasonable.

Projected cost per patient day (CPD) of \$1,343 in year two is between the group median and lowest values of \$1,412 and \$1,059. With projected CPD between the median and lowest values of the group, costs appear reasonable. (See Comparative Table).

The year two projected operating income is \$165,924, which computes to an operating margin per adjusted patient day of \$12. This is between the control group median and lowest values of \$160 and -\$17.

Virtually all of the revenue projections and a majority of expense projections are dependant on the applicant's occupancy assumptions. An overstatement of the level of occupancy could have a materially negative affect on the projected financials.

The applicant is projecting a relatively thin operating margin in year two; however, the financial strength of the parent and applicant appears to be sufficient to support the project until greater occupancy and margin can be reached. Based on the above analysis, financial feasibility of this project appears likely.



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

Competition to promote quality and cost-effectiveness is driven primarily by the best combination of high quality and fair price. Competition forces health care facilities to increase quality and reduce charges/cost in order to remain viable in the market.

This application is for a 60-bed freestanding LTCH in District 7, Orange County. Currently, there are 35 licensed LTCH beds in District 7 and 40 additional LTCH beds have been approved in the district. The applicant and the other two LTCHs will compete directly for LTCH-patients in District 7.

Price-based competition will be limited by the amount of patient days that are represented by fixed government payers like Medicare. The applicant is projecting that a material portion of its patient days (72.4 percent) are expected to come from Medicare, Medicare HMO, and Medicaid.

This project is not likely to foster competition to promote quality and cost-effectiveness. Further, even if a material shift in market share that resulted in a material adverse financial impact on the competitors' operations were to occur, competition to promote cost-effectiveness would be minimized by the large share of fixed government payers.

**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.**

The applicant proposes to establish a new 60-bed freestanding long-term care hospital (LTCH) located in Orange County, Florida. This new hospital will be designed as a two-story, protected, non-combustible building. Although not specified by the submission, it is assumed the building will be fully sprinklered to meet the minimum codes and standards.

Thirty of the 60-bed LTCH medical patient rooms are private and appear to exceed the minimum size requirements for new hospitals. Two of these rooms are designated to be isolation rooms. Ten of the medical patient rooms are semi-private and there are 10 ICU rooms. Each medical bedroom has a private toilet room with a lavatory and shower. It appears that more than 10 percent of the new bed rooms are meant to be

made accessible. Because of the insufficient information provided on the plan, it is impossible to tell if the patient support spaces will meet all of the space requirements of the current edition of the Florida Building Code (FBC).

According to the application and the submitted plan, this new hospital will consist of two medical bed wings, and a 10-bed intensive care unit (ICU). The medical beds are supported from large centralized nursing stations.

The ICU wing, (it is too large to be considered as suite) contains 10 beds. At least four of the ICU rooms do not appear to be large enough to meet the minimum codes and standards. The ICU unit appears to have some space blocked out for the support functions required, such as soiled utility, clean utility, nourishment room, and medication room. However, because the plan is insufficient in the amount of detail that it provides, it is impossible to verify whether or not these functions can fit into that allotted space.

There is space on the first floor blocked out for an operating suite but there is no detailed information provided regarding number or size of the operating rooms, or support spaces so it is impossible to verify whether or not these functions can fit into that allotted space.

There are supporting service areas such as administration, dietary, maintenance, storage, emergency treatment, class rooms, pharmacy, therapy, radiology and other spaces blocked out on the first floor but it is impossible to determine whether or not these functions can fit into the allotted space without additional plan details.

The plans indicate compliance with out of date codes, such as the Florida Building Code and Life Safety Code. There is no indication the building is intended to be in compliance with the hurricane provisions of the FBC, Chapter 4, and Section 419.4 including onsite water storage, and protection of all utilities. There is no information regarding building utilities.

There is insufficient information presented on this plan to determine whether or not the cost estimated for the construction of the new LTCH is reasonable.

There is insufficient information presented on this plan to determine whether or not the time schedule for construction from the time of building permit to final inspection is reasonable.

The plans submitted with this application did not give enough detail to determine whether or not this facility will be meeting all codes and standards or whether the design is feasible. Further plan development will be necessary before such determinations can be made.

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.**

As a condition of approval, Kindred agrees to a combined provision of 2.2<sup>10</sup> percent of its total patient days to Medicaid and charity care patients. According to Financial Schedule 7A, the applicant intends to provide 0.5 percent of patient days to Medicaid and Medicaid HMO patients during the first operational year and 1.2 percent in year two. The applicant did not specifically indicate any charity care on this schedule.

According to the 2004 Hospital Financial Data Report, LTCHs in the state averaged 0.8 percent of their total patient days to Medicaid and Medicaid HMO patients and 1.7 percent charity days.

The table below summarizes the pertinent information.

<b>Kindred Facilities</b>		
<b>Percent Medicaid Days &amp; Percent Charity Care Days for CY 2004</b>		
<b>Hospital</b>	<b>Medicaid</b>	<b>Charity Care</b>
Kindred Hospital-North Florida	0.2%	1%
Kindred Hospital-Bay Area-St. Petersburg	4.1%	1.1%
Kindred Hospital-Central Tampa	0.1%	1.1%
Kindred Hospital-Bay Area-Tampa	2.1%	4.9%
Kindred Hospital-South Florida-Hollywood	0.1%	0.6%
Kindred Hospital-South Florida-Ft. Lauderdale	1.1%	1.7%
Kindred Hospital-Coral Gables	0.3%	0.8%
Kindred Average	1.1%	1.68%
State of Florida	0.8%	1.7%

**Source: CY 2004 AHCA Financial Data**

<sup>10</sup> As reported in schedule C of the application.

As shown in the table above, charity care patient days ranged from a low of 0.6 percent (Kindred Hospital-Hollywood) to a high of 4.9 percent (Kindred Hospital-Bay Area, Tampa). Medicaid and Medicaid HMO patient days ranged from 0.2 percent at Kindred-North Florida to 4.1 percent at Kindred-Bay Area, St. Petersburg.

Based on the information provided, it appears the applicant's combined Medicaid and charity care provision will not meet or exceed the state average for either payer grouping.

**F. SUMMARY**

**Kindred Hospitals East, L.L.C. (CON #9876)** proposes to establish a 60-bed long-term care hospital (LTCH) in District 7. The proposed project involves 69,706 GSF of new construction. The total construction costs are estimated to be \$16,034,127 with total project costs of \$26,538,458.

As a condition of approval, the applicant agrees to a combined provision of 2.2 percent of its total patient days to Medicaid and charity cases.

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

**Need:**

The applicant used a need methodology based on long-stay discharges with a limited number of exclusions. The exclusions were based on diagnosis related groups (DRG), age, or services. The need methodology did not use a discriminating approach to select the types of patients which accurately represent good candidates for LTCH services. The applicant did not incorporate the additional CON approved not yet licensed facility in its need analysis. The applicant alleges it will focus on provision of care to medically complex patient requiring multiple services. Kindred contends these patients are not appropriate for other post-acute care settings.

There is a CON approved not yet licensed facility for Orange County. The applicant acknowledges this fact, but disregards the impact this facility may impose.

The applicant has not met its burden to demonstrate that the patient population it has identified is not already receiving needed care.

**Quality of Care:**

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. The applicant's history of confirmed complaints may be an indicator of areas of concern as opportunities for improvement.

**Cost/Financial Analysis:**

Based on the audited financial statements of the applicant, and the financial strength of the parent, funding for this project and all capital projects is likely to be available as needed.

**Architectural Analysis:**

There is insufficient information presented on this plan to determine whether or not the cost estimated for the construction of the new LTCH is reasonable.

There is insufficient information presented on this plan to determine whether or not the time schedule for construction from the time of building permit to final inspection is reasonable.

The plans submitted with this application did not give enough detail to determine whether or not this facility will be meeting all codes and standards or whether the design is feasible. Further plan development will be necessary before such determinations can be made.

**RECOMMENDATION:**

Deny CON #9876.

**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**

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