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MARYLAND HEALTH CARE COMMISSION

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MEMORANDUM

TO: Commissioners

FROM: Paul E. Parker, Director *pep*
Center for Hospital Services

DATE: July 19, 2012

SUBJECT: ManorCare Health Services, LLC
Establishment of a Comprehensive Care Facility
Docket No. 11-16-2324

ManorCare Health Services, LLC (ManorCare) proposes to construct and operate a new 110-bed Comprehensive Care Facility in the Bowie area of Prince George's County. The new facility will be called ManorCare Health Services – Fairwood. All of the beds for the new facility will be relocated from three existing nursing facilities in Prince George's County operated by affiliates of ManorCare Health Services. No additional licensed beds are requested. The relocation of these beds from the three facilities will allow ManorCare to achieve its goal of eliminating all triple- and quadruple-occupancy rooms in its Prince George's County nursing homes, and will increase the availability of private rooms at each location. The total project is estimated to be \$16,042,836 funded from cash on hand and internally-generated and/or borrowed funds from HCR Healthcare, LLC, the applicant's parent.

Commission Staff recommends approval of this project with a condition.

IN THE MATTER OF

MCHS – FAIRWOOD

DOCKET NO. 11-16-2324

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BEFORE THE

MARYLAND HEALTHCARE

COMMISSION

Staff Report and Recommendation

July 19, 2012

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I. INTRODUCTION

Project Description

ManorCare Health Services, LLC, a wholly-owned subsidiary of HCR Healthcare, LLC, proposes to construct and operate a new 110-bed Comprehensive Care Facility (CCF) on a 6.86 acre site located on Fairwood Parkway, approximately one-fourth of a mile west of Church Road in the Bowie area of Prince George's County. The new facility will be called ManorCare Health Services – Fairwood (MCHS-Fairwood).

All of the beds for the new facility will be relocated from three existing nursing facilities in Prince George's County operated by affiliates of ManorCare Health Services. No additional licensed beds are requested. The donor facilities are: Heartland Health Care Center – Adelphi (65 beds); Heartland Health Care Center – Hyattsville (30 beds); and ManorCare Health Services – Largo (15 beds). The applicant notes that the relocation of these beds from the three facilities will allow ManorCare to achieve its goal of eliminating all triple- and quadruple-occupancy rooms in its Prince George's County nursing homes, and will increase the availability of private rooms at each location.

The new two-floor, 60,250 square foot facility will include 44 private and 33 semi-private rooms, with each bed in the facility capable of providing long-term, skilled nursing or rehabilitative care. Each floor in the facility will have a separate dining area and a dedicated rehabilitation and therapy space, and an "Internet Café" on the first floor will service the entire facility. Each bedroom will have its own toilet and 34 of the private rooms will have individual showers, with a centralized shower facility on each floor to serve the remaining residents. The facility has been designed to accommodate limited future expansion, with 10 private rooms of sufficient size to be converted to semi-private rooms at a later date, thus raising MCHS-Fairwood's maximum capacity to 120 residents.

The ManorCare program model will emphasize post-acute rehabilitation and skilled-nursing care, as the applicant anticipates that approximately 90% of admissions will come directly from area hospitals. A range of therapeutic services, coordinated through a multidisciplinary team, will be provide with the goal of discharging patients to their homes, generally within 30 days. Longer-term intermediate care, restorative, hospice and respite care will also be provided.

The applicant projects that Medicare will account for 36 percent of MCHS-Fairwood's patient days and 52% of its gross revenue in its first year of full utilization, reflecting the facility's focus on high-acuity post-hospital care. Medicaid residents are anticipated to account for 46% of patient days and 31% of revenues, respectively.

The total project budget of \$16,042,836 includes \$6.6 million in building construction, \$0.9 million for fixed equipment, and \$3.1 million for land purchase and site preparation. The balance of the capital costs includes fees, permits, movable equipment, contingencies and other construction-related expenses. Funding for the project will be provided from cash on hand and internally-generated and/or borrowed funds from HCR Healthcare, LLC. Construction would commence in August 2013, with facility opening scheduled for November 2014.

Summary of Staff Recommendation

Staff analyzed the proposed project's compliance with the applicable State Health Plan criteria and standards in COMAR 10.24.01.08, State Health Plan: Long Term Care Service, and the remaining criteria at COMAR 10.24.01.08G(3) and recommends **APPROVAL** with the following condition:

At the time of first use review, MCHS-Fairwood shall provide the Commission with a completed Memorandum of Understanding with the Maryland Medical Assistance Program agreeing to maintain the minimum proportion of Medicaid patient days required by Nursing Home Standard COMAR 10.24.08.05A(2).

II. PROCEDURAL HISTORY

A. Review Record

Jack C. Tranter, Esquire, filed a letter of intent for a project modification on August 5, 2011: staff acknowledged receipt of the letter of intent on August 10, 2011 (Docket Item ("D.I." #1).

On October 2, 2011, Mr. Tranter filed, on behalf of the applicant, a Certificate of Need Application. (D.I.#2).

On October 11, 2011 staff requested that the *Maryland Register* publish notice of receipt of the proposed project changes to application. (D.I. #3).

Receipt was acknowledged by letter of October 12, 2011 and assigned Matter No. 11-16-2324 (D.I. #4). On that same day, staff requested that the *Washington Examiner* publish notice of receipt of the application. (D.I. 5).

On October 18, 2011 MHCC received proof of receipts of posting request from *Washington Examiner* (D.I. #6).

Staff asked completeness questions on October 24, 2011. (D.I. #7).

On October 27, 2011 staff responded to applicant's October 26, 2011 letter requesting additional time to respond. (D.I. #8).

On November 28, 2011 the applicant responded to the completeness questions (D.I. #9).

On November 28, 2011 the applicant submitted a modified CON (D.I. #10).

On December 19, 2011 Staff responded to applicant's request that MHCC refrain from docketing the application until the project site has been confirmed (D.I. #11).

Docket Item 12 letters of support (D.I.#12)

On January 27, 2012 the applicant requested application to be docketed since they have decided to retain the Fairwood Parkway site and responded to additional questions. (D.I. #13).

On February 16, 2012 Gloria B. Wims, Resident board member of Fairwood Community Association ("FCA"), sent a letter to MHCC wishing to initiate the process of being designated "Person of interest". (D.I. # 14)

On February 16, 2012 Paul E. Parker responded by email to Michelle Jackson, member of the Fairwood Executive Committee, to her email of the same date requesting information on the status of the of HCR Manor Care Fairwood project and docketing information (D.I. #15).

On February 21, 2012 staff sent a letter informing the applicant that the CON application would be docketed for formal review as of March 9, 2012 (D.I. #16).

On February 21, 2012 staff requested that the *Washington Examiner* post legal notice of the docketing of the CON application (D.I. #17).

On February 21, 2012 staff requested that the *Maryland Register* post legal notice of the docketing of the CON application (D.I. #18).

On February 21, 2012 the Health Officer of Prince George was sent a copy of the application and given the opportunity to provide comments (D.I. #19).

On February 24, 2012 Geraldine Valentino-Smith, Member of House of Delegates, Sent an email to Paul E. Parker requesting he gives the community association specific direction as to how to ensure it is recognized as an interested party (D.I. #20).

On February 28, 2012 certification of publication was received from *Washington Examiner* (D.I. #21).

On March 7, 2012, Mr. Tranter filed, on behalf of the applicant, a letter stating the reasons why the Fairwood Community Association does not qualify for participating entity status or interested party status in this review. (D.I. #22)

On April 4, 2012 Suellen Wideman, Esquire, responded by email to Philip F. Diamond, Esquire, relating to the matter of Fairwood Community Association filing for interested party status (D.I. #23)

On April 4, 2012 Fairwood Community Association sent a letter to MHCC requesting Interest Party Status for the proposed project. (D.I. #24)

On April 11, 2012 Applicant filed a Motion in Opposition to the FCA request for Interested Party Status. (D.I. #25)

On April 13, 2012 Applicant filed a corrected and revised Motion in Opposition to the FCA request for Interested Party Status. (D.I. #26)

On April 24, 2012 Applicant responded to comments of FCA on the Certificate of Need application. (D.I. #27)

On April 25 - 26, 2012, Cheryle Mines, Fairwood Community Association, exchanged e-mails with staff regarding submitting a response to the letters from Jack Tranter, Esq. (D.I. #s 28-29).

On April 27, 2012, Paul E. Parker notified the applicant and Fairwood Community Association of the appointment of Commissioner Glenn E. Schneider, MPH, as reviewer to determine whether Fairwood Community Association qualifies as an interested party in this review (D.I. #30).

On May 3, 2012, Cheryl Mines submitted response on behalf of Fairwood Community Association requesting interest party status for the review of the application (D.I. # 31).

On May 4, 2012, Philip F. Diamond, Esq., submitted a motion to strike the response to the motion of opposition filed by the Fairwood Community Association to the CON review (D.I. #32).

On June 13, 2012, staff provided a response to the inquiry from Fairwood Community Association regarding the status of when the reviewer would issue the ruling on their interested party status (D.I. #33).

On June 13, 2012, Commissioner Glenn Schneider issued his finding that Fairwood Community Association does not qualify as an interested party (D.I. #34).

On June 13, 2012, staff provided a response to an inquiry from Fairwood Community Association regarding next steps after the reviewer has issued his findings (D.I. # 35).

B. Local Government Review and Comment

No comments on this project have been received from the Prince George's County Health Department or other local government entities.

Three letters of support for this project were filed by the applicant during the course of this review.

C. Interested Parties in Review

There are no interested parties in this review. Fairwood Community Association sent a letter to MHCC requesting Interested Party Status. That status was denied. See Appendix F for this decision.

III. DEMOGRAPHIC BACKGROUND

Prince George's County's Population: Growth Patterns and Age Composition

Prince George's County's has a younger population than the State overall and this pattern will persist. Its population is growing more slowly than the State's total population. (See the following Table.). However, the County is projected to be aging at a faster pace than the State as a whole. The County's population aged 65 to 69 is projected to increase over 161 percent between 2000 and 2030; the 70 to 74 population is projected to increase 188 percent over the same period and the 75 and older population is projected to increase 216 percent. The 75 years and older Population in Prince George's County, as a proportion of total population, is projected to grow from 3.1% to 8.5% between 2000 and 2030.

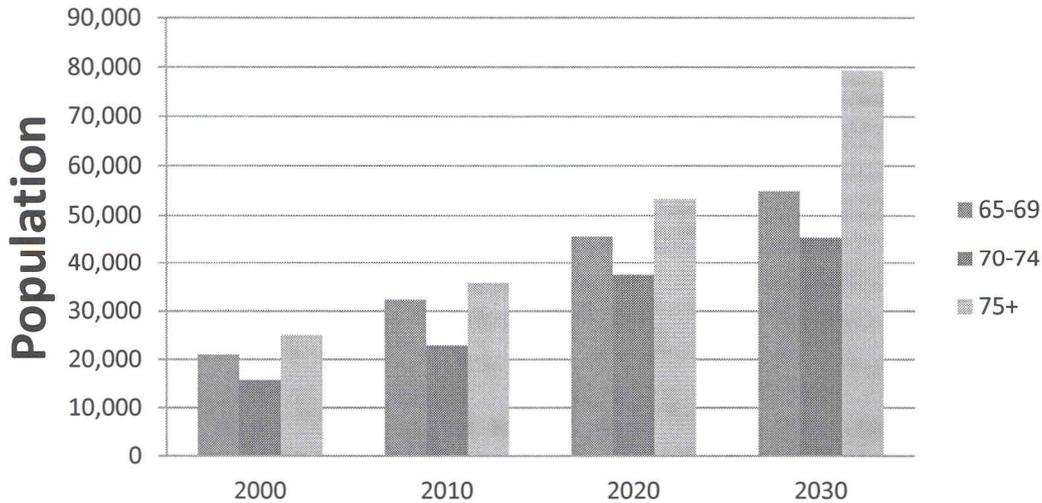
**Table 1: TRENDS IN POPULATION BY AGE GROUP,
Prince George's County and Maryland, CY 2000 – 2030**

Prince George's County	Population				% Change			
	2000	2010	2020	2030	2000- 2010	2010- 2020	2020- 2030	2000-2030
TOTAL	801,515	850,200	895,751	928,296	6.1	5.4	3.6	15.8
0-14	181,768	171,945	179,063	179,818	(5.4)	4.1	0.4	(1.7)
15-44	380,677	357,615	348,445	371,245	(6.1)	(2.6)	6.5	(2.5)
45-64	177,119	229,594	231,628	197,436	29.6	0.9	(14.8)	11.5
65-69	21,035	32,365	45,748	54,941	53.9	41.4	20.1	161.2
70-74	15,778	22,927	37,528	45,517	45.3	63.7	21.3	188.5
75+	25,138	35,754	53,339	79,339	42.2	49.2	48.7	215.6
Maryland	Population				% Change			
	2000	2010	2020	2030	2000- 2010	2010- 2020	2020- 2030	2000-2030
TOTAL	5,296,486	5,779,379	6,339,292	6,684,256	9.1%	9.7%	5.4%	26.2%
0-14	1,136,846	1,147,314	1,257,913	1,291,496	0.9%	9.6%	2.7%	13.6%
15-44	2,334,925	2,305,791	2,431,633	2,619,963	-1.2%	5.5%	7.7%	12.2%
45-64	1,225,408	1,600,200	1,623,028	1,436,835	30.6%	1.4%	-11.5%	17.3%
65-69	168,242	232,249	338,339	395,450	38.0%	45.7%	16.9%	135.0%
70-74	153,043	162,923	269,369	338,424	6.5%	65.3%	25.6%	121.1%
75+	278,022	330,902	419,010	602,088	19.0%	26.6%	43.7%	116.6%

Source: Maryland Department of Planning

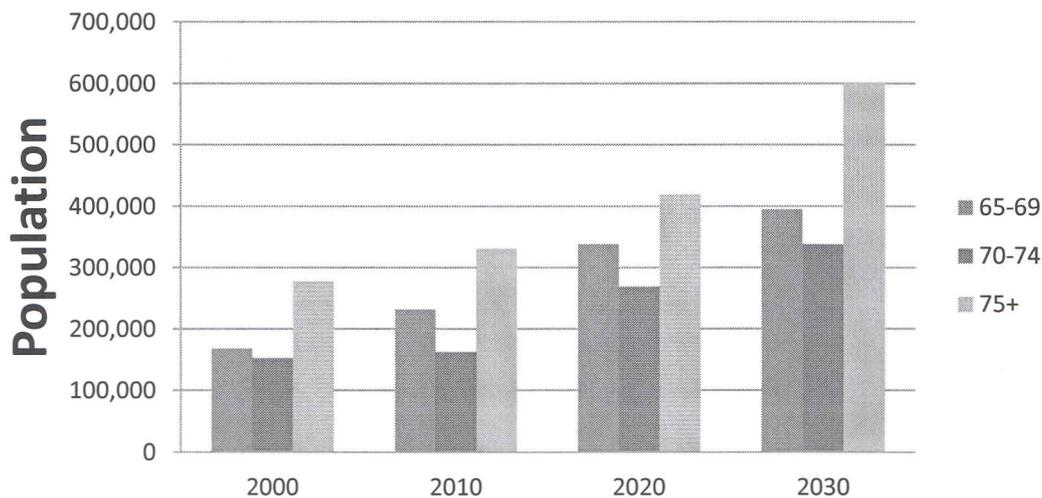
Prince George's County Population Trends by Age Cohort

Source Maryland Department of Planning, November 2010



State Population Trends by Age Cohort

Source Maryland Department of Planning, November 2010



Long-Term Care Facilities in Prince George's County

There are currently 21 comprehensive care facilities in Prince George's County with a total of 2,777 licensed beds and 69 temporarily delicensed beds. There are 25 "waiver" beds that have not been put into service. The County has two continuing care retirement communities that operate 161 licensed CCF beds.

Utilization of Comprehensive Care Facility Beds in Prince George's County

Overall demand for comprehensive care facility bed capacity at CCFs in Prince George's County has been relatively flat in recent years. The jurisdiction's average annual CCF bed occupancy rate has ranged between 89.5% and 91.0% in recent years, slightly above the state average.

**Table 2: Patient Days
Prince George's County Nursing Homes 2006-2010**

Facility	2006	2007	2008	2009	2010	Change 2006- 2010
Bradford Oaks Nursing And Rehabilitation Center	59,721	60,764	60,468	61,582	NA	NA
Cherry Lane Nursing Center	53,523	54,085	52,074	51,816	52,903	-1.2%
Clinton Nursing & Rehab	90,024	84,765	88,625	85,384	90,801	0.9%
Collington Episcopal Life Care Community	12,366	13,067	13,050	13,155	14,188	14.7%
Crescent Cities Center	46,243	47,091	45,628	46,798	46,683	1.0%
Forestville Health & Rehab. Ctr.	53,423	56,578	56,853	55,838	48,832	-8.6%
Fort Washington Health & Rehab. Ctr.	51,584	52,818	52,480	52,064	47,988	-7.0%
Futurecare-Pineview	65,120	64,306	62,445	63,208	63,353	-2.7%
Gladys Spellman Specialty Hospital & Nursing Ctr.	18,967	18,593	16,917	17,057	19,792	4.3%
Heartland Health Care Center - Adelphi	56,002	57,097	55,623	55,167	51,438	-8.1%
Heartland Health Care Center - Hyattsville	50,976	52,998	51,306	46,677	44,354	-13.0%
Hillhaven Assisted Living Nursing & Rehabilitation	23,641	23,282	23,041	22,464	22,611	-4.4%
Larkin Chase Nursing And Rehabilitation Center	41,833	41,945	42,857	42,261	41,460	-0.9%
Magnolia Center	35,195	35,488	34,845	35,617	35,612	1.2%
Manor Care Health Services - Largo	41,992	42,173	43,031	40,673	40,839	-2.7%
Patuxent River Health And Rehabilitation Center	58,379	56,510	51,548	46,697	48,250	-17.4%
Riderwood Village	29,447	34,916	39,772	37,320	39,359	33.7%
Sacred Heart Home, Inc.	34,152	35,519	35,205	36,070	36,005	5.4%
Southern Maryland Hospital Center	6,576	6,381	6,344	6,650	6,951	5.7%
St. Thomas More Medical Complex	78,812	79,226	82,438	83,274	85,109	8.0%
Villa Rosa Nursing Home	34,193	34,883	34,662	33,165	33,096	-3.2%
TOTAL	942,169	952,485	949,212	932,937	929,345	-1.4%

Source: MHCC LTC Survey

Table 3: Facility, County and State CCF Occupancy, Prince George’s County, 2006 – 2010

	Beds (Current and Waiver Approved)	2006	2007	2008	2009	2010
Bradford Oaks Nursing And Rehabilitation Center	180	90.9%	92.5%	91.8%	93.7%	90.9%
Cherry Lane Nursing Center	155	94.6%	95.6%	91.8%	91.6%	93.5%
Clinton Nursing & Rehab	268	92.4%	95.1%	90.7%	89.9%	94.0%
Collington Episcopal Life Care Community	44	77.0%	81.4%	81.0%	81.9%	88.3%
Crescent Cities Center	140	90.5%	92.2%	89.1%	91.6%	91.4%
Forestville Health & Rehab. Ctr.	160	93.4%	96.9%	97.1%	95.6%	83.6%
Fort Washington Health & Rehab. Ctr.	150	94.2%	96.5%	95.6%	95.1%	87.7%
Futurecare-Pineview	202	92.9%	91.8%	91.8%	94.7%	90.4%
Gladys Spellman Specialty Hospital & Nursing Ctr.	61	94.5%	92.6%	84.0%	85.0%	83.4%
Heartland Health Care Center - Adelphi	170	70.4%	71.8%	87.3%	88.9%	82.9%
Heartland Health Care Center - Hyattsville	160	93.1%	91.0%	87.6%	79.9%	76.0%
Hillhaven Assisted Living Nursing & Rehabilitation	66	98.1%	96.7%	95.4%	93.3%	93.9%
Larkin Chase Nursing And Rehabilitation Center	120	95.5%	95.8%	97.6%	96.5%	94.7%
Magnolia Center	104	92.7%	93.5%	91.5%	93.8%	93.8%
Manor Care Health Services - Largo	140	88.5%	88.9%	90.4%	85.7%	86.1%
Patuxent River Health And Rehabilitation Center	153	90.4%	87.5%	82.9%	80.0%	83.9%
Riderwood Village	117	93.8%	55.1%	64.3%	77.5%	89.4%
Sacred Heart Home, Inc.	102	91.7%	95.4%	94.3%	96.9%	96.7%
Southern Maryland Hospital Center	28	75.1%	72.8%	72.2%	75.9%	79.4%
St. Thomas More Medical Complex	250	98.2%	98.5%	97.9%	96.9%	97.2%
Villa Rosa Nursing Home	101	92.8%	94.6%	93.8%	90.0%	89.8%
Prince George’s County	2,871	91.0%	89.5%	89.8%	90.3%	89.5%
Maryland	28,197	89.8%	89.3%	88.8%	89.1%	89.2%

Source: MHCC Public Use Database (includes temporarily delicensed beds)

Quality Indicators for Comprehensive Care Facilities in Prince George’s County

Staff reviewed the “5 Star” ratings assigned to the Prince George’s County nursing facilities by the quality rating program of the Center for Medicare and Medicaid Services (“CMS”) that was initiated in October, 2011. Four are rated as “1 Star” facilities, four are rated as “2 Star” facilities, five are rated as “3 Star” facilities (Including MCHS-Fairwood). Two facilities, have “4 Star” ratings and six have a “5 Star” rating. The distribution of the Stars is allocated as follows: 28.6% of all facilities are rated as 5 Star; 52.4% fall within the middle range of 2 to 4 Stars; and 19.1% are rated as 1 Star.

Table 4: CMS Quality Rating

	Star Rating
Bradford Oaks Center	4
Cherry Lane Nursing Center	3
Clinton Nursing & Rehab	1
Collington Episcopal Life Care Community	5
Crescent Cities Center	2
Forestville Health & Rehab. Ctr.	2
Fort Washington Health & Rehab. Ctr.	3
FutureCare-Pineview	3
Gladys Spellman Specialty Hospital & Nursing Ctr.	4
Heartland Health Care Center - Adelphi	4
Heartland Health Care Center - Hyattsville	2
Hillhaven Assisted Living Nursing & Rehabilitation	5
Larkin Chase Nursing and Rehabilitation Center	1
Magnolia Center	2
Manor Care Health Services - Largo	2
Patuxent River Health and Rehabilitation Center	3
Riderwood Village	5
Sacred Heart Home, Inc.	5
Southern Maryland Hospital Center	5
St. Thomas More Medical Complex	2
Villa Rosa Nursing Home	1

Source: CMS <http://www.medicare.gov/NHCompare> (Verified May 8, 2012)

IV. PROJECT CONSISTENCY WITH REVIEW CRITERIA AND STANDARDS

A. STATE HEALTH PLAN

COMAR 10.24.01.08G(3)(a) State Health Plan. An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.

The applicable section of the State Health Plan for this review is COMAR 10.24.08, the State Health Plan for Facilities and Services: Nursing Home, Home Health Agency, and Hospice Services. The specific standards to be addressed include COMAR 10.2408.05A and .05B, the Nursing Home General Standards and Standards for New Construction or Expansion of Beds or Services for nursing home projects.

PART ONE: STATE HEALTH PLAN STANDARDS

COMAR 10.24.08.05: Nursing Home Standards

A. General Standards. The Commission will use the following standards for review of all nursing home projects.

- (1) Bed Need. The bed need in effect when the Commission receives the letter of intent for the application will be the need projection applicable to the review.**

The proposed project is the establishment of a new 110-bed CCF bed facility in Prince George's County. No need for additional CCF bed capacity is currently identified in the State Health Plan for this jurisdiction. The 110 beds at this facility will be relocated from three existing CCFs affiliated with the applicant. Therefore, no new beds will be added to the State's bed inventory.

The proposed project is consistent with the standard.

- (2) Medical Assistance Participation. Except for short-stay hospital-based skilled nursing facilities required to meet .06B of this Chapter, the Commission may approve a Certificate of Need for a nursing home only for an applicant that participates, or proposes to participate, in the Medical Assistance Program, and only if the applicant documents a written Memorandum of Understanding with Medicaid to maintain the proportion of Medicaid patient days required by .05A2(b) of this Chapter.**

- (a) Each applicant shall agree to serve a proportion of Medicaid patient days that is at least equal to the proportion of Medicaid patient days in all other nursing homes in the jurisdiction or region, whichever is lower, calculated as the weighted mean minus 15.5%, based on the most recent Long Term Care survey data and Medicaid cost reports available to the Commission, as shown in the supplement to COMAR 10.24.08: Statistical Data Tables, or in subsequent updates published in the Maryland Register.**
- (b) An applicant shall agree to continue to admit Medicaid residents to maintain its required level of participation when attained, and have a written policy to this effect.**
- (c) Prior to licensure, an applicant shall execute a written Memorandum of Understanding with the Medicaid Assistance Program of the Department of Health and Mental Hygiene to:**
- (i) Achieve or maintain the level of participation required by .05A2(b) of this Chapter; and**

- (ii) **Admit residents whose primary source of payment on admission is Medicaid.**
- (iii) **An applicant may show evidence why this rule should not apply.**

MCHS-Fairwood has agreed to the requirement for executing a Memorandum of Understanding (MOU) to participate in the Medicaid Assistance Program at the most recently published minimum level of participation for Prince George's County. Consistent with this requirement, the applicant has forecasted Medicaid beneficiary utilization to be 46% of total patient days, above the 45.94% average for all Prince George's County nursing homes as published in the Long Term Care Survey. Based on this agreement, Staff recommends that approval of this application, should that be the result of this review, be conditioned on documentation that the MOU is in place when the project is complete and first use approval is requested. The proposed condition is as follows:

At the time of first use review, MCHS-Fairwood shall provide the Commission with a completed Memorandum of Understanding with the Maryland Medicaid Assistance Program agreeing to maintain the minimum required proportion of Medicaid patient days required for a comprehensive care facility located in Prince George's County.

(3) Community-Based Services. An applicant shall demonstrate commitment to providing community-based services and to minimizing the length of stay as appropriate for each resident by:

- (a) **Providing information to every prospective resident about the existence of alternative community-based services, including, but not limited to, Medicaid home and community-based services waiver programs and other initiatives to promote care in the most appropriate settings.**
- (b) **Initiating discharge planning on admission; and**
- (c) **Permitting access to the facility for all "Olmstead" efforts approved by the Department of Health and Mental Hygiene and the Department of Disabilities to provide education and outreach for residents and their families regarding home and community-based alternatives.**

The applicant states that "All prospective patients of MCHS-Fairwood will receive information on community-based services, including but not limited to, the Medicaid home and community-based waiver program and other initiatives." The applicant also states that discharge planning will begin upon admission, and that MCHS-Fairwood will also permit access to the facility for all "Olmstead" efforts approved by the Department of Health and Mental Hygiene and other governmental agencies to provide education and outreach for residents and their families.

The project meets the standard.

- (4) **Nonelderly Residents.** An applicant shall address the needs of its nonelderly (<65 year old) residents by:
- (a) **Training in the psychosocial problems facing nonelderly disabled residents; and**
 - (b) **Initiating discharge planning immediately following admission with the goal of limiting each nonelderly resident's stay to 90 days or less, whenever feasible, and voluntary transfer to a more appropriate setting.**

The applicant states that MCHS-Fairwood will address the needs of non-elderly residents in a variety of ways. First, staff will be trained in the psychosocial problems facing non-elderly residents, and an outline of ManorCare's system-wide staff training program addressing the specific needs of the non-elderly resident has been provided. The applicant also notes that these patients will be placed near each other to the extent feasible and consistent with good patient care. Further, as with all residents, discharge planning will begin upon the admission of the non-elderly, and vocational rehabilitation, recreational and art therapy, and social activities appropriate to the interests of non-elderly residents will be provided. MCHS-Fairwood cites the planned "Internet Café" as one example of a service intended to appeal to these residents.

Staff recommends that the project be found to be consistent with the standard.

- (5) **Appropriate Living Environment.** An applicant shall provide to each resident an appropriate living environment, including, but not limited to:
- (a) **In a new construction project:**
 - (i) **Develop rooms with no more than two beds for each patient room;**
 - (ii) **Provide individual temperature controls for each patient room; and**
 - (iii) **Assure that no more than two residents share a toilet.**

The proposed project will be a 110-bed 2-story building with a total of 44 private rooms and 33 semi-private rooms. All bedrooms will have bathrooms, assuring that toilets are not shared by more than two residents. Most of the single-occupancy rooms will have private showers, and a centralized shower facility will be located on each floor for the other residents. Each room will have individually controlled heating and air conditioning.

Beyond meeting the standard for the proposed project, the applicant asserts that residents of the three ManorCare "donor" facilities will also benefit from the relocation of beds to MCHS-Fairwood, as the resulting decrease in beds will eliminate all triple- and quadruple-occupancy rooms and increase the number of private rooms at each facility. Room capacities for each facility, before and after project implementation, are shown in Table 5 below:

**Table 5
Room Capacities of ManorCare CCFs in Prince George's County
Before and After Project Implementation**

	HHCC-Adelphi		HHCC-Hyattsville		MCHS-Largo	
	Current	Post-Implementation	Current	Post-Implementation	Current	Post-Implementation
Private	1	7	13	20	11	17
Semi-private	29	49	62	55	46	49
Triple	37	0	5	0	9	0
Quadruple	0	0	2	0	0	0
Total Beds	170	105	160	130	130	115

Source: Application

The applicant states that the relocation of beds from the three donor facilities will have no negative impact on the residents of those facilities, but will rather improve the personal and therapeutic environments for their residents. ManorCare plans to open MCHS-Fairwood with an initial 40 beds on the first floor, including 30 beds from Adelphi and 10 beds from Hyattsville. As occupancy builds at Fairwood, incremental bed transfers will be made from the 3 facilities. The current average number of vacant beds at both HHCC-Hyattsville and MCHS-Largo equal or exceed the planned number of beds to be transferred from those facilities to MCHS-Fairwood, obviating the need to reduce census or to transfer residents to other facilities to accomplish the planned bed relocations. The average vacancy at HHCC-Adelphi is 33 beds, and while that facility is slated to relocate 65 beds to Fairwood, ManorCare's management believes that reductions in admission flow prior to the planned, phased bed transfers will permit only unoccupied beds to be relocated, a principle to which the applicant has committed.

MCHS-Fairwood meets the standard.

(b) In a renovation project:

- (i) Reduce the number of patient rooms with more than two residents per room;**
- (ii) Provide individual temperature controls in renovated rooms; and**
- (iii) Reduce the number of patient rooms where more than two residents share a toilet.**

(c) An applicant may show evidence as to why this standard should not be applied to the applicant.

Standards (b) and (c) do not apply to this project.

(6) Public Water. Unless otherwise approved by the Commission and the Office of Health Care Quality in accordance with COMAR 10.07.02.26, an applicant for a nursing home shall demonstrate that its facility is, or will be, served by a public water system.

The proposed project meets this standard. MCHS-Fairwood will be served by a public water supply.

(7) Facility and Unit Design. An applicant must identify the special care needs of the resident population it serves or intends to serve and demonstrate that its proposed facility and unit design features will best meet the needs of that population. This includes, but is not limited to:

- (a) Identification of the types of residents it proposes to serve and their diagnostic groups;**
- (b) Citation from the long term care literature, if available, on what types of design features have been shown to best serve those types of residents;**
- (c) An applicant may show evidence as to how its proposed model, which is not otherwise documented in the literature, will best serve the needs of the proposed resident population.**

MCHS-Fairwood notes that ManorCare has over 40 years experience in designing, constructing and equipping nursing facilities, having built over 120 CCFs and renovated more than 300 others. The proposed facility design has been used by ManorCare throughout the country, and the applicant asserts that this prototype is constantly updated to enhance patient comfort and to respond to trends in changing patient profiles and clinical treatment protocols. MCHS-Fairwood has identified its targeted resident population as post-acute rehabilitation and skilled-nursing residents, along with long-term care residents, and has provided an extensive description of the facility features designed to meet their needs, including: overall layout; room sizes and configurations; color schemes; furnishings and decorations; communications and security capabilities; and other features designed to enhance privacy and independence.

The applicant asserts that the facility will meet all Americans with Disabilities Act requirements, and will additionally provide two specially-equipped private bariatric care rooms to provide care for clinically obese residents.

The proposed project is consistent with the standard.

(8) Disclosure. An applicant shall disclose whether any of its principals have ever pled guilty to, or been convicted of, a criminal offense in, any way connected with the ownership development, or management of a health care facility.

The applicant states that “none of principals involved in this project has ever been convicted of a felony or fraud.” Based on this assertion, the project is consistent with this standard.

(9) Collaborative Relationships. An applicant shall demonstrate that it has established collaborative relationships with other types of long term care providers to assure that each resident has access to the entire long term care continuum.

The applicant states that “MCHS-Fairwood will establish collaborative relationships and referral agreements with hospitals, and community-based and long-term care service providers to ensure that persons seeking long-term care services receive the appropriate level of care and have access to the entire continuum of care.” Such relationships currently exist between the ManorCare CCFs in Prince George’s and Montgomery counties and hospitals, hospice and home health care organizations, homemaker services, adult day care centers, meals-on-wheels, other nursing homes, assisted living facilities, physicians and advocacy groups.

The proposed project meets the standard.

B. New Construction or Expansion of Beds or Services. The Commission will review proposals involving new construction or expansion of comprehensive care facility beds, including replacement of an existing facility or existing beds, if new outside walls are proposed, using the following standards in addition to .05A(1)-(9):

(1) Bed Need.

(a) An applicant for a facility involving new construction or expansion of beds or services, using beds currently in the Commission’s inventory, must address in detail the need for the beds to be developed in the proposed project by submitting data including, but not limited to: demographic changes in the target population; utilization trends for the past five years; and demonstrated unmet needs of the target population.

(b) For a relocation of existing comprehensive care facility beds, an applicant must demonstrate need for the beds at the new site, including, but not limited to: demonstrated unmet needs; utilization trends for the past five years; and how access to and/or quality of needed services will be improved.

The proposal does not involve the expansion of beds or services in Prince George’s County, but rather the relocation of 110 beds from three existing CCFs to a new facility to be built in Bowie. Thus, criterion (b) is more applicable to this project.

MCHS-Fairwood presents a justification of need for the new facility based upon an analysis of the distribution of CCF beds within Prince George’s County, comparing existing

ratios of beds per 1,000 elderly populations in the areas surrounding the “donor” facilities with the corresponding ratio in the greater Bowie area. These “areas” are defined as being within a 5-mile radius of the existing and proposed CCF sites. Population estimates and projections are provided by Pitney Bowes, Inc, a normally-reliable demographics data consultant to businesses internationally. The applicant’s analysis is presented in Table 6, below:

Facility/Site Location	Current Licensure			Projection with Bed Relocation		
	Total CCF Beds	2010 65+ Pop	Beds/ 1,000 65+	Total CCF Beds	2015 65+ Pop	Beds/ 1,000 65+ Pop
MCHS-Fairwood Site	265	10,834	24.5	375	12,576	29.8
HHCC-Adelphi	2,630	50,854	51.7	2,535	57,867	43.8
HHCC-Hyattsville	2,559	65,322	39.2	2,464	73,480	33.5
MCHS-Largo	435	11,423	38.1	420	13,483	31.2
Prince George’s County	2,858	63,391	45.1	2,858	73,210	39.04
State of Maryland	27,688	634,771	43.6	27,688	725,912	38.14

Sources: Maryland Office of Health Care Quality (licensed beds); Pitney Bowes, Inc. (population projections).

Unfortunately, the population estimates and projections provided in the application were apparently completed prior to the release of actual 2010 U.S. Census Bureau data. The application notes the estimated 2010 county age 65+ population as 63,391, while actual census figures reveal that number to be 81,513, a significant underestimation of 26.8 percent.¹ Further, the projection of the county’s 2015 elderly population provided by the applicant shows an expected 73,210 residents, which in fact is significantly lower than the actual census count in 2010. The statewide estimate is similarly, but less significantly, underestimated, with actual census figures showing an elderly population of 707,642, an 11.5% variance.

Verification of the actual populations and population projections for the geographic areas surrounding the donor facilities is not possible through the Maryland Department of Planning, as population projections based upon actual 2010 census data are unavailable.

Despite the inaccuracies of the population estimates and the contingent projections, however, the applicant’s argument regarding the distribution of CCF beds within the county is not without merit. Assuming that the Pitney Bowes 2010 population estimates of the site areas are *proportionally* accurate relative to the countywide population, then the corresponding beds/1,000 65+ population estimates are similarly proportional to the countywide figure. This supports the MCHS-Fairwood assertion that the project would improve the distribution and accessibility of CCF beds within the county, although still leaving the Bowie area with the

¹ Source: U.S. Census Bureau: <http://2010.census.gov/2010census/popmap/ipmtext.php?fl=24>

lowest bed-to-population ratio of the four ManorCare sites and significantly below both the county and state ratios.

Beyond geographic accessibility, the applicant also notes that the proposed project would improve the therapeutic and operational efficiency of each of the “donor” CCFs, and greatly enhance resident comfort and privacy, by eliminating all triple- and quadruple-occupancy rooms within those facilities. Please see the discussion under (5) Appropriate Living Environment, above.

Staff recommends that the Commission find the project to be consistent with the standard.

(2) Facility Occupancy.

(a) The Commission may approve a nursing home for expansion only if all of its beds are licensed and available for use, and it has been operating at 90 percent, or higher, average occupancy for the most recent consecutive 24 months.

(b) An applicant may show evidence why this rule should not apply.

The standard is not applicable, as the project will relocate all 110 proposed beds from ManorCare-affiliated CCFs within Prince George’s County, and not expand bed inventory.

(3) Jurisdictional Occupancy.

(a) The Commission may approve a CON application for a new nursing home only if the jurisdictional occupancy for all nursing homes in that jurisdiction equals or exceeds a 90 percent occupancy level for at least the latest fiscal year, or the latest Maryland Long Term Care Survey, if no Medicaid Cost Report is filed. Each December, the Commission will issue a report on nursing home occupancy.

(b) An applicant may show evidence why this rule should not apply.

MCHS-Fairwood correctly notes that the most recent Long Term Care Survey Occupancy Report relates that CCF occupancy in Prince George’s County averaged 90.27% for the most recent 12-month period. The proposed relocation of beds within the county is unlikely to impact overall occupancy rates, and the project is consistent with the standard.

(4) Medicaid Assistance Program Participation.

- (a) An applicant for a new nursing home must agree in writing to serve a proportion of Medicaid residents consistent with 05A2(b) of this Chapter.**
- (b) An applicant for new comprehensive care facility beds has three years during which to achieve the applicable proportions of Medicaid participation from the time the facility is licensed, and must show a good faith effort and reasonable progress toward achieving this goal in years one and two of its operation.**
- (c) An application for nursing home expansion must demonstrate either that it has a current Memorandum of Understanding (MOU) with the Medical Assistance Program or that it will sign an MOU as a condition of the Certificate of Need.**
- (d) An applicant for nursing home expansion or replacement of an existing facility must modify its MOU upon expansion or replacement of its facility to encompass all of the nursing home beds in the expanded facility, and to include a Medicaid percentage that reflects the most recent Medicaid percentage rate.**
- (e) An applicant may show evidence as to why this standard should not be applied to the applicant.**

MCHS-Fairwood agrees to sign a Memorandum of Understanding with the Medical Assistance Program committing to the required minimum rate of Medicaid participation. As previously noted, a condition stating that this MOU will be put in place prior to first use approval is recommended, should a CON be awarded.

PART ONE: STATE HEALTH PLAN STANDARDS COMAR 10.24.08.05A(2) Medical Assistance Participation of the Report.

- (5) Quality. An applicant for expansion of an existing facility shall demonstrate that it has no outstanding Level G or higher deficiencies, and that it will maintain a demonstrated program of quality assurance.**

The standard is not applicable as the proposal is for the construction of a new Comprehensive Care Facility. In response to staff questioning, however, MCHS-Fairwood notes that within the past two years, one Level G or higher deficiency was found at its HHCC-Adelphi facility. In this instance, CPR was administered to a patient in full code, contradicting the resident's advanced directives. This deficiency was cited as "past non-compliance," and no additional action was required from, or taken by, the facility.

- (6) Location. An applicant for the relocation of a facility shall quantitatively demonstrate how the new site will allow the applicant to better serve residents than its present location.**

The standard is inapplicable. The project calls for the construction of a new CCF that will derive beds from facilities that will continue in operation. The project will arguably enhance the distribution of CCF beds in Prince George's County, however, as discussed under (1) Bed Need, above.

PART TWO: REMAINING CERTIFICATE OF NEED REVIEW CRITERIA

The project's compliance with the five remaining general review criteria in the Regulations governing Certificate of Need is outlined below:

B. NEED

COMAR 10.24.01.08G(3)(b) Need. The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

For a more complete evaluation of the need for the project, please see the discussion under B. (1) Bed Need, above.

The current State Health Plan projects the need for CCF beds through 2011 and does not identify a net need for additional CCF beds in Prince George's County. The proposed project is consistent with the standard in that it does not propose additional beds in the jurisdiction.

In its interested party filing, Fairwood Community Association expressed its view that the project is not needed because it does not believe it meets a need for more innovative and less conventional long term care services. While it is accurate to depict the proposed project as a fairly conventional yet contemporary nursing home facility, staff believes that priority should be given to the need to allow modernization of aging nursing home physical plant that responds to the changing patient demands on long-term care facilities that this project represents. It is not reasonable to deny the applicant the opportunity to achieve this objective. The applicant is in the business of operating nursing homes. Staff does not believe that allowing replacement and reconfiguration of nursing home facilities by firms such as ManorCare, in and of itself, inhibits projects or actions designed to provide alternative means or settings for provision of long-term care services. Such efforts have the potential to inhibit growth in demand for nursing home care and may have already succeeded to some extent in that regard, as illustrated by the decline in nursing home use rates seen throughout the U.S. in recent decades.

C. AVAILABILITY OF MORE COST-EFFECTIVE ALTERNATIVES

COMAR 10.24.01.08G(3)(c) Availability of More Cost-Effective Alternatives. The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.

No CON applications have been submitted to compete with the MCHS-Fairwood proposal.

The applicant states that it considered five alternatives when weighing the proposed project, including the current proposal.

First, the “do nothing” option was rejected, as it would not address ManorCare’s goal of eliminating the triple- and quadruple-occupancy rooms at its Adelphi, Hyattsville and Largo facilities.

Secondly, the option of expanding an existing nursing facility was ruled out because each of the existing ManorCare facilities is essentially “land-locked”, having inadequate acreage to build a facility of sufficient size to achieve both the room capacity reduction goal and meet the company’s facility design standards for post-acute treatment.

The third option, that of purchasing or leasing an existing nursing home, was rejected because it would be unlikely to meet the room capacity reduction goal, as the average occupancy of all CCFs in Prince Georges County exceeds 90%, and because existing facilities are not designed to accommodate ManorCare’s post-acute care therapeutic programs.

Finally, the option of purchasing or leasing a building to convert to a nursing facility was eliminated due to cost concerns, with anticipated purchase and renovation expense estimates exceeding those of new construction.

MHCC staff requested additional information regarding alternatives to building a new facility, inquiring why the option of renovation and/or expansion of the 3 CCFs that ManorCare operates in Prince George’s County would not be viable. In response, the applicant noted that it would not be possible to renovate the existing facilities to meet the room capacity reduction goal or to accommodate ManorCare’s post-acute design prototype without significant building expansion at each location. The applicant’s response provides additional details of the acreage limitations at each of these facilities, supporting its assertion that a renovation and expansion alternative is not feasible.

Fairwood Community Association, in opposing this project, believes the project is not effective because the applicant has not achieved the highest quality ratings possible in two evaluation forums: the Center for Medicare and Medicaid Services (“CMS”) *Nursing Home Compare* Five Star Rating System and the *U.S. News and World Report* magazine’s list of Best Nursing Homes in the U.S.A.

In this case, staff believes that these findings, while an indication that ManorCare has room for improvement in its Maryland operations, do not establish a basis for finding that this project is not a cost-effective approach to meeting the applicant's objectives for a better distribution of its facilities in the County, modernization of a portion of its oldest facilities, and development of a more effective facility for short-stay rehabilitative service provision. Commission staff finds that the applicant has reasonably addressed the cost and effectiveness of alternatives for achieving the objectives of the proposed project and demonstrated that developing a new facility through bed relocation from the three existing ManorCare facilities in Prince George's County is the most cost effective alternative for achieving those objectives.

D. VIABILITY OF THE PROPOSAL

COMAR 10.24.01.08G(3)(d) Viability of the Proposal. The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

Project Cost

MCHS-Fairwood Gardens, LLC. estimates the cost of the project to be \$16,042,836, with \$16,042,836 of this funding coming from MCHS-Fairwood Gardens, LLC in the form of cash. The budget estimate and sources for funds for the proposed project are outlined in the following table.

Table 9: Project Budget Estimate - Uses and Sources of Funds

A. Uses of Funds	Cost Estimate
Building	\$ 6,645,855
Fixed Equipment	910,000
Land Purchase	2,141,000
Site Preparation	1,000,000
Architect/Engineering Fees	360,000
Permits	50,000
Subtotal	\$ 11,106,855
Major Movable Equipment	\$ 1,572,000
Minor Movable Equipment	-
Other Capital Costs	\$ 1,621,783
Contingencies	\$332,293
Subtotal	\$ 3,526,076
Total-Current Capital Costs	\$ 14,632,931
Inflation	\$ 418,689
Capitalized Interest	\$ 491,216
Subtotal	\$ 909,905
Total Capital Costs	\$ 15,542,836

Legal Fees (CON related)	-
Legal Fees (Other)	-
CON Application Assistance	-
Subtotal-Financing and Other Cash	-
Working Capital/ Startup Costs	\$ 500,000
Total Uses of Funds	\$ 16,042,836
B Sources of Funds	
Cash	\$ 16,042,836
Mortgage	-
Working Capital Loans	-
Health Care REIT	-
Total Sources of Funds	\$ 16,042,836

Source: CON application. (DI #2)

MCHS-Fairwood provided audited financial statements for MCHS-Fairwood Gardens, LLC for Fiscal Years ending December 31, 2009 and 2010. MCHS-Fairwood financial statements indicate cash and cash equivalents at the end of FY 2010 and 2009 to be \$380 million and \$ 421 million respectively.

Revenues and Expenses

MCHS-Fairwoods projected per Diem revenues and expenses for the first three years of operation of the replacement facility, FY 2014 to 2016 (first year of full utilization), are as follows

Table 10: Projected Performance for MCHS-Fairwood, FY 2014-2016

	2014	2015	2016
Beds	110	110	110
Admissions	248	413	495
Patient Days	18,068	30,113	36,135
Average Annual Occupancy Rate	45.00%	75.00%	90.00%
Gross Revenue/Patient Day	348.17	348.17	348.18
Net Revenue/Patient Day	333.55	333.55	333.55
Expense/Patient Day	402.30	328.95	317.55
Income/Patient Day	(68.75)	4.60	16.01
Assumed Payor Mix (Patient Days)			
Medicare	36.00%	36.00%	36.00%
Medicaid	46.00%	46.00%	46.00%
Commercial Insurance	10.00%	10.00%	10.00%
Self Pay	8.00%	8.00%	8.00%

Source: Response to additional questions. (DI #13)

As shown in the above table, MCHS-Fairwood projects the ability to reach profitability in the second year of operation of the facility at a payor mix of 36% Medicare patient days and 46% Medicaid days.

As can be seen in Table 10, the applicant has assumed a high proportion of Medicare patient days. In 2009, Medicare accounted for only 18% of total CCF patient days reported in Prince George County CCFs. The applicant provided an alternative performance projection based on a more conservative set of assumptions with respect to payor mix and this projection is summarized in the following table.

**Table 11: Alternative Projected Performance
MCHS-Fairwood Gardens, LLC, First Three Years of Operation FY 2014-2016**

	2014	2015	2016
Beds	110	110	110
Admissions	248	413	495
Patient Days	18,068	30,113	36,135
Average Annual Occupancy Rate	45.00%	75.00%	90.00%
Gross Revenue/Patient Day	296.19	296.19	296.20
Net Revenue/Patient Day	283.75	283.75	283.76
Expense/Patient Day	332.02	287.41	280.68
Income/Patient Day	(48.27)	(3.66)	3.07
Assumed Payor Mix (Patient Days)			
Medicare	18.50%	18.50%	18.50%
Medicaid	61.50%	61.50%	61.50%
Commercial Insurance	8.00%	8.00%	8.00%
Self Pay	12.00%	12.00%	12.00%

Source: Response to additional questions. (DI #13)

As shown in the above table, MCHS-Fairwood still projects the ability to reach profitability in the third year of operation of the replacement facility at a payor mix of 18.5% Medicare patient days and 61.5% Medicaid days.

Staffing

MCHS-Fairwood Gardens, LLC, projected the following staffing pattern and cost for its payroll employees for FY 2016.

**Table 12: Projected FY 2016 Staffing – Payroll Staff Employees Only
MCHS-Fairwood Gardens, LLC. Project**

Position	# of FTEs	Salary		Total
<i>Administration</i>				
Administrator	1	\$ 116,480		\$ 116,480
Nurse Liaison	1	\$ 68,328		\$ 68,328
Admissions Coordinator	1	\$ 45,760		\$ 45,760
Human Resources	1	\$ 61,194		\$ 61,194
Book Keeper	3	\$ 49,920		\$ 149,760
Staff Dev. Coordinator	1	\$ 38,480		\$ 38,480
Secretary	2.5	\$ 26,770		\$ 66,925
<i>subtotal</i>	10.5			\$ 546,927
<i>Direct Care</i>				
Director of Nursing	1	\$ 106,288	\$ 8,541	\$ 114,829
Clinical Care NRS (RN)	11	\$ 70,720	\$ 62,513	\$ 840,433

Position	# of FTEs	Salary		Total
Clinical Care NRS (LPN)	13.5	\$ 52,000	\$ 56,412	\$ 758,412
Clinical Care Asst.	35	\$ 26,000	\$ 73,127	\$ 983,127
MDS Coordinator	1.5	\$ 74,880	\$ 9,026	\$ 121,346
ADON	3	\$ 79,040	\$ 19,055	\$ 256,175
subtotal	65		\$ 228,674	\$ 3,074,322
<i>Ancillary</i>				
Medical Records	1	\$ 45,302	\$ 3,640	\$ 48,942
Licensed PT	4	\$ 94,349	\$ 30,327	\$ 407,723
PT Assistant	2	\$ 79,893	\$ 12,840	\$ 172,626
Occup Therapist	3	\$ 83,200	\$ 20,058	\$ 269,658
COTA	1	\$ 66,560	\$ 5,349	\$ 71,909
Therapy Director	1	\$ 103,771	\$ 8,339	\$ 112,110
Speech Therapist	1	\$ 93,600	\$ 7,522	\$ 101,122
Ancillary Clerk	1	\$ 36,920	\$ 2,967	\$ 39,887
Social Services	2	\$ 62,774	\$ 10,089	\$ 135,637
subtotal	16		\$ 101,131	\$ 1,359,614
<i>Activity / Social Serv.</i>				
Activity Director	1	\$ 50,731	\$ 4,077	\$ 54,808
Activity Assistant	2	\$ 23,296	\$ 3,744	\$ 50,336
subtotal	3		\$ 7,821	\$ 105,144
<i>Dietary</i>				
Manager and Diet	2	\$ 58,240	\$ 9,360	\$ 125,840
Cooks	2	\$ 27,352	\$ 4,396	\$ 59,100
Dietary Aides	9.5	\$ 20,197	\$ 15,419	\$ 207,291
subtotal	13.5		\$ 29,175	\$ 392,231
<i>House Keeping</i>				
Manager	1	\$ 44,990	\$ 3,615	\$ 48,605
House Keeping Aides	6	\$ 19,885	\$ 9,588	\$ 128,898
Laundry Aide	2	\$ 22,880	\$ 3,677	\$ 49,437
subtotal	9		\$ 16,880	\$ 226,940
<i>Plant Operations</i>				
Plant Operations	1	\$ 52,000	\$ 4,179	\$ 56,179
subtotal	1		\$ 4,179	\$ 56,179
TOTAL SALARIES	118.00		\$ 387,860	\$ 5,761,357
Fringe Benefits				\$ 863,521
Total Salaries and Fringe				\$ 6,624,877

Source: Response to additional questions. (DI #13)

MCHS-Fairwood projects the following nurse staffing pattern:

Table 13: Nurse Staffing by Shift
MCHS-Fairwood Gardens, LLC.,

Total Weekday	Day	Evening	Night
RN	4.4	2.5	1
LPN	4.6	3.0	2.0
Aides	11.0	10.0	4.0

Source: Response to additional questions. (DI #13)

The applicant has projected a direct care staffing schedule that will deliver an overall average ratio of 3.09 nursing hours per bed per day of care for all units for weekdays and 3 weekends alike. These staffing ratios are consistent with those required in COMAR 10.07.02.12, a minimum of two hours per bed per day.

Summary

The applicant has reasonably demonstrated it can obtain the resources necessary for project development and its assumptions with respect to utilization, revenues, expenses, staffing and payor mix are within acceptable ranges. Staff recommends a finding that the project is viable.

E. COMPLIANCE WITH CONDITIONS OF PREVIOUS CERTIFICATES OF NEED

COMAR 10.24.01.08G(3)(e) Compliance with Conditions of Previous Certificates of Need. An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.

ManorCare's record of compliance with the conditions of previous Certificates of Need has been acceptable.

Staff requested additional information from the applicant regarding the reasons why ManorCare has again chosen to seek approval for a CCF in Bowie, considering that in 2010 it relinquished a CON for a similar project at the same site. The applicant responded that at that time, a great deal of uncertainty surrounded the provisions of the Patient Protection and Affordable Care Act that would impact Medicare reimbursement for CCFs, and management was unwilling to make investments in new nursing homes at that time. In the two years since, many of these concerns have been resolved, and the company is now confident of the financial and operational success of MCHS-Fairwood. It further notes that ManorCare is currently in the process of developing several post-acute nursing facilities in Washington, Ohio and Michigan, all of which are scheduled to open by the end of 2013.

F. IMPACT ON EXISTING PROVIDERS AND THE HEALTH CARE DELIVERY SYSTEM

COMAR 10.24.01.08G(3)(f) Impact on Existing Providers and the Health Care Delivery System. An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.

In response to additional questions from MHCC staff, the applicant has provided a description of the CCFs within a 5-mile radius of the proposed MCHS-Fairwood site, with detailed driving distance and utilization data (Appendix D). MCHS-Fairwood notes that the

relatively strong utilization at these facilities, which averages over 90%, indicates that the proposed project will have an insubstantial impact on the occupancy or the financial performance of these CCFs. Further, the applicant asserts that these facilities have moderate Medicare utilization and do not provide the same level of post-acute services that will be provided at MCHS-Fairwood.

As noted in the discussion under B. (1), Bed Need, above, geographic and demographic access to long-term care services is likely to be enhanced by the project. Relocation of beds from the three ManorCare donor facilities to Fairwood will elevate the beds per 1,000 elderly population ratio in the Bowie area, which is significantly lower than that of Prince George's County and the State of Maryland.

Commission staff notes that MHCC has received no letters of objection to the proposed project from potentially-affected CCFs, and does not find that the proposed project will have a significant negative impact on these existing providers or the health care delivery system that should bar its approval.

IV. SUMMARY AND STAFF RECOMMENDATION

Staff has analyzed the proposed project's compliance with the applicable State Health Plan criteria and standards in COMAR 10.24.01.08.05A and B, and with Certificate of Need review criteria, COMAR 10.24.01.08G(3)(a)-(f).

In summary, the applicant has provided a reasoned argument that the physical plants of the three ManorCare facilities in Prince George's County are inadequate to meet the needs of an increasingly transitional resident population that requires skilled nursing and rehabilitative care in a resident-centered, discharge-focused therapeutic environment. Staff finds that the applicant has demonstrated that a new 110-bed CCF, designed with the capability to treat higher-acuity residents, would better meet the needs of this growing segment of the long-term care population, would not impact geographic or financial access to care in the service area, and would not have an significantly negative impact on other service providers. Further, staff agrees with the applicant that completion of the project will improve the residential and therapeutic environments of the donor facilities by eliminating all triple- and quadruple-occupancy rooms and by decompressing treatment, living and dining areas at those sites.

The applicant has reasonably demonstrated it can obtain the resources necessary for project development and its assumptions with respect to utilization, revenues, expenses, staffing and payor mix are within acceptable ranges. Staff recommends a finding that the project is viable.

Staff analyzed the proposed project's compliance with the applicable State Health Plan criteria and standards in COMAR 10.24.01.08, State Health Plan: Long Term Care Service, and the remaining criteria at COMAR 10.24.01.08G(3) and recommends **APPROVAL** with the following condition:

At the time of first use review, MCHS-Fairwood shall provide the Commission with a completed Memorandum of Understanding with the Maryland Medical Assistance Program agreeing to maintain the minimum proportion of Medicaid patient days required by Nursing Home Standard COMAR 10.24.08.05A(2).

IN THE MATTER OF * BEFORE THE
MCHS – FAIRWOOD * MARYLAND HEALTHCARE
DOCKET NO. 11-16-2324 * COMMISSION
*

FINAL ORDER

Based on Commission Staff’s analysis, it is this 19st day of July, 2012, **ORDERED** that:

The application for Certificate of Need submitted by MCHS-Fairwood Gardens, L.L.C. to build a new 110-bed comprehensive care located on Fairwood Parkway, approximately one-fourth of a mile west of Church Road in the Bowie area of Prince George’s County, Docket No. 11-16-2324, be **APPROVED**, subject to the following condition:

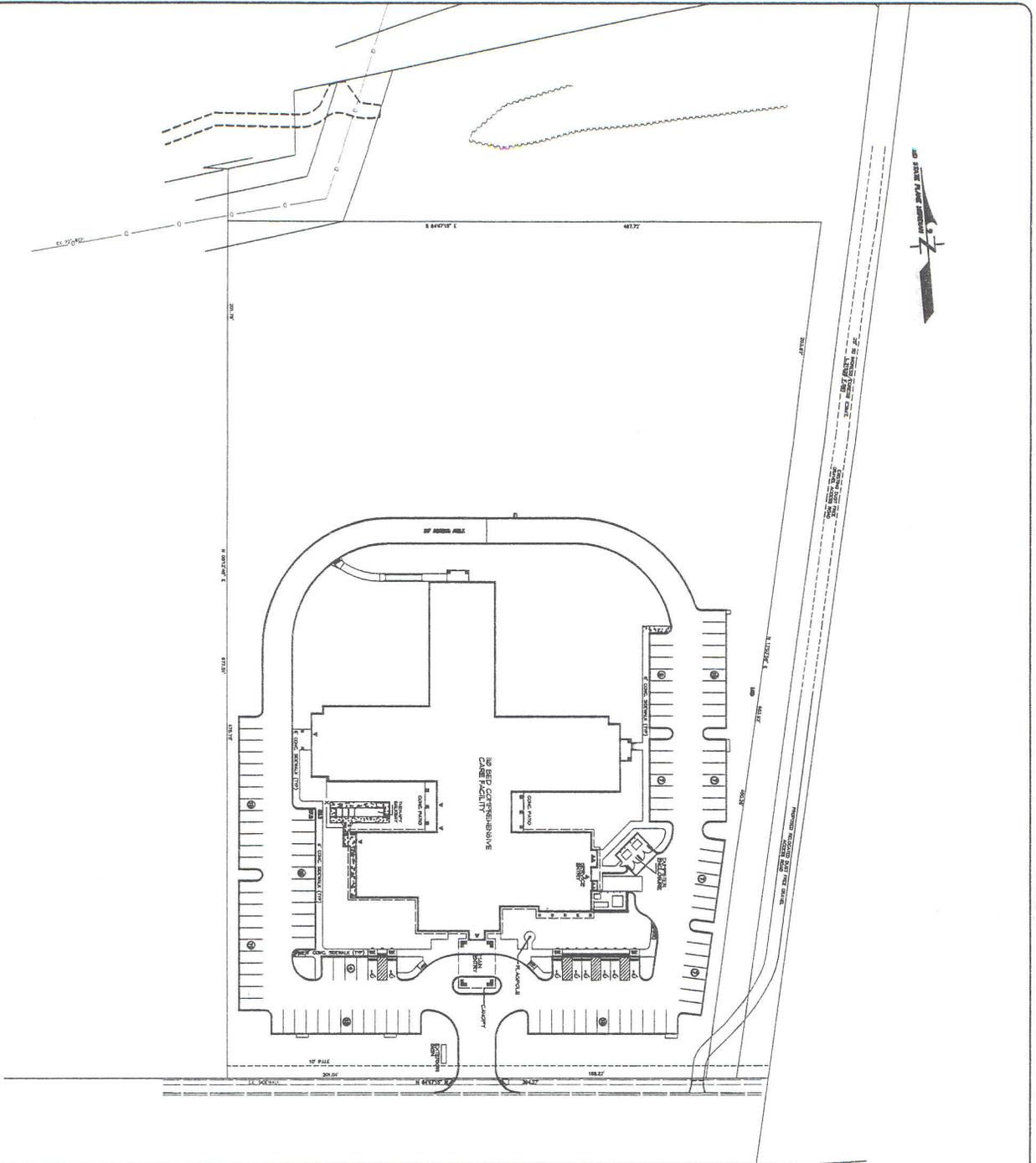
At the time of first use review, MCHS-Fairwood shall provide the Commission with a completed Memorandum of Understanding with the Maryland Medicaid Assistance Program agreeing to the minimum required level of Medicaid participation for Prince George’s County.

MARYLAND HEALTH CARE COMMISSION

July 19, 2012

Appendix A

Site Plan



FAIRWOOD PARKWAY

MANORCARE HEALTH SERVICES-FAIRWOOD
NEW 110-BED COMPREHENSIVE CARE FACILITY

FIRST FLOOR

23 PRIV. BEDS 23 PRIV. ROOMS
32 SEMI-PRIV. BEDS 16 SEMI-PRIV. ROOMS
55 TOTAL BEDS 39 TOTAL ROOMS
TOTAL 3686 GROSS SQFT.

SECOND FLOOR

21 PRIV. BEDS 21 PRIV. ROOMS
34 SEMI-PRIV. BEDS 11 SEMI-PRIV. ROOMS
55 TOTAL BEDS 32 TOTAL ROOMS
TOTAL 23854 GROSS SQFT.

TOTAL FACILITY

44 PRIV. BEDS 44 PRIV. ROOMS
66 SEMI-PRIV. BEDS 33 SEMI-PRIV. ROOMS
110 TOTAL BEDS 110 TOTAL ROOMS
TOTAL 60310 GROSS SQFT.

SITE PLAN

SCALE: 1" = 40'-0"



REVISIONS		
NO.	DATE	DESCRIPTION

PROJECT TITLE	PROPOSED SITE PLAN
DRAWING TITLE	SHEET NO. 1 OF 4
PLANT FILE DRAWING NO.	
CHECKED BY:	
DRAWN BY:	
PLANT DATE	

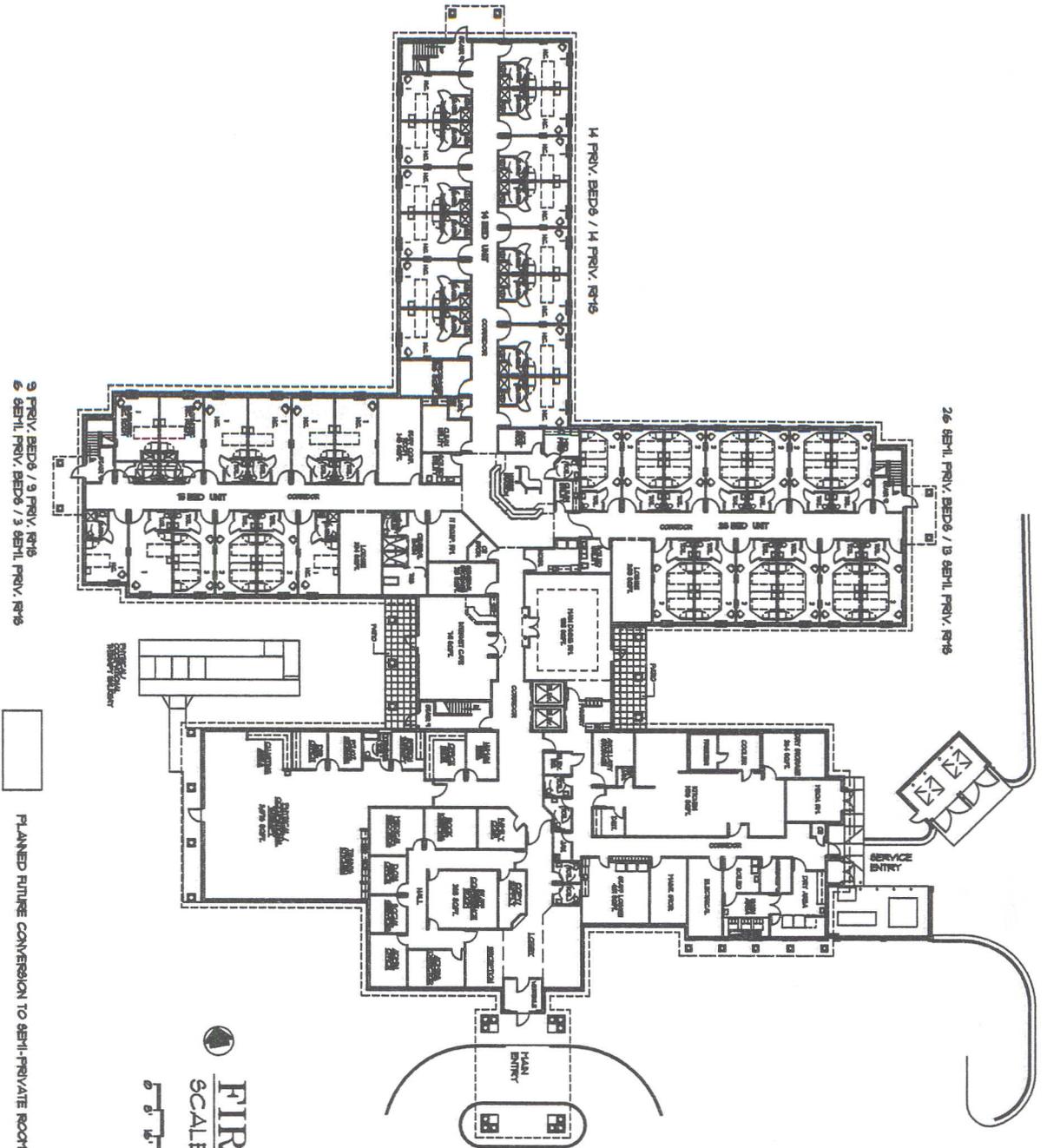
TITLE
MANORCARE
HEALTH SERVICES-FAIRWOOD
NEW 110 BED
COMPREHENSIVE CARE FACILITY

HCR ManorCare
Health Services
Architecture Dept.
7361 CALHOUN PLACE
SUITE 300
ROCKVILLE, MD 20855
TEL: (301) 453-8888
FAX: (301) 453-8360

HCR ManorCare
Health Services
7361 Calhoun Place, Suite 300
Rockville, MD 20855

Appendix B

Floor Plan



PLANNED FUTURE CONVERSION TO SEMI-PRIVATE ROOMS

FIRST FLOOR PLAN
 SCALE: 1/16" = 1'-0"
 0' 6" 12" 30" 48"

MANORCARE HEALTH SERVICES-FAIRWOOD
 NEW 110-BED COMPREHENSIVE CARE FACILITY

FIRST FLOOR	
23 PRIV. BEDS	23 PRIV. ROOMS
32 SEMI-PRIV. BEDS	16 SEMI-PRIV. ROOMS
55 TOTAL BEDS	39 TOTAL ROOMS
TOTAL	36,856 GROSS SQ.FT.

SECOND FLOOR	
21 PRIV. BEDS	21 PRIV. ROOMS
34 SEMI-PRIV. BEDS	17 SEMI-PRIV. ROOMS
55 TOTAL BEDS	38 TOTAL ROOMS
TOTAL	23,654 GROSS SQ.FT.

TOTAL FACILITY	
44 PRIV. BEDS	44 PRIV. ROOMS
66 SEMI-PRIV. BEDS	33 SEMI-PRIV. ROOMS
110 TOTAL BEDS	77 TOTAL ROOMS
TOTAL	60,510 GROSS SQ.FT.

FIRST FLOOR PLAN
 SHEET NO. 4
 REV. 2 OF 4

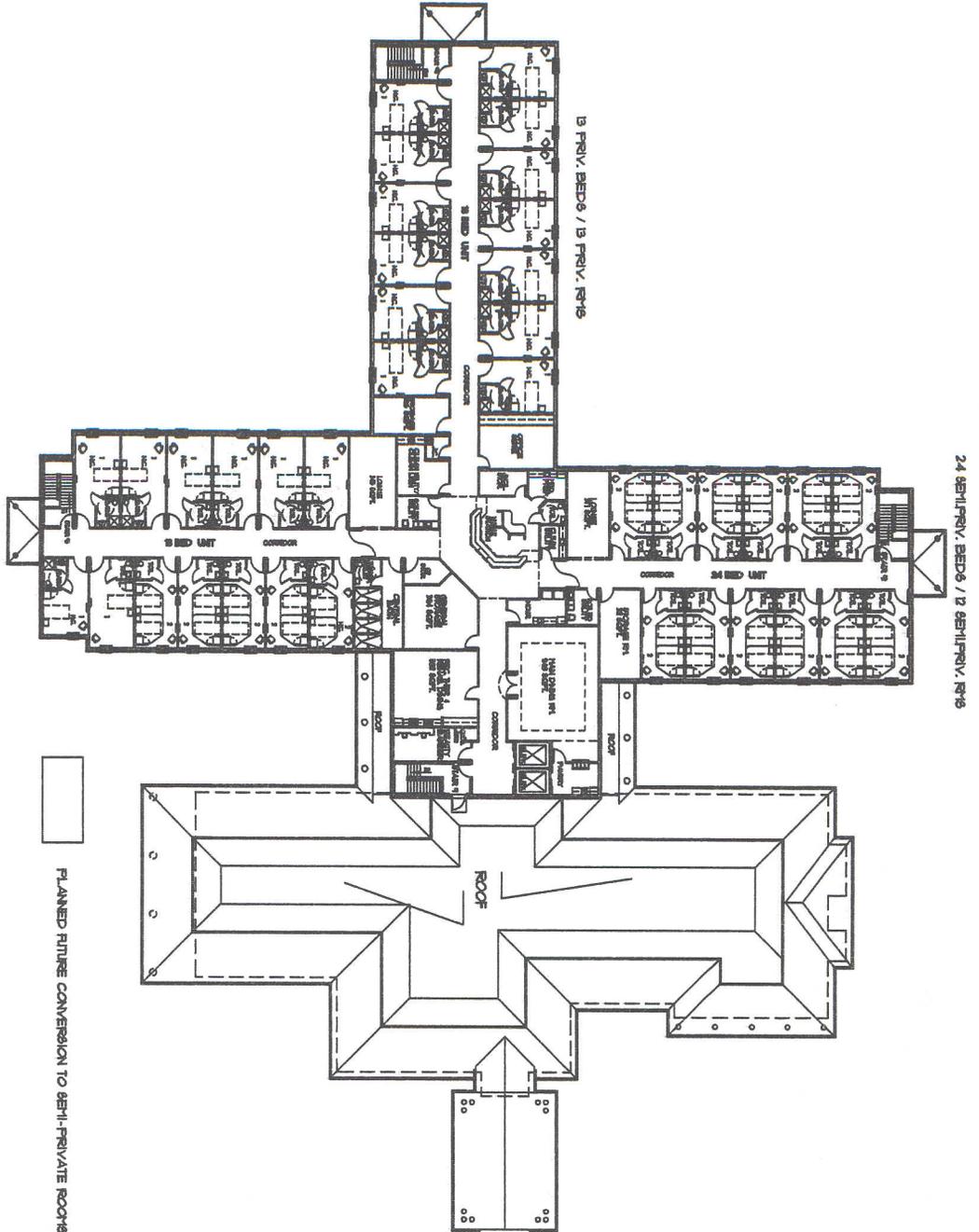
DATE	DESCRIPTION

NO.	DATE	DESCRIPTION

TITLE
 MANORCARE HEALTH SERVICES-FAIRWOOD
 NEW 110 BED COMPREHENSIVE CARE FACILITY

HCR ManorCare Health Services
 Architecture Dept.
 ONE CALHOUN PLACE
 ROCKVILLE, MD 20855
 301-983-3300

HCR ManorCare Health Services
 7361 Calhoun Place, Suite 300
 Rockville, MD 20855



SCALE: 1/16" = 1'-0"

SECOND FLOOR PLAN

MANORCARE HEALTH SERVICES-FAIRWOOD NEW 110-BED COMPREHENSIVE CARE FACILITY	
FIRST FLOOR	
23 PRIV. BEDS	23 PRIV. ROOMS
32 SEMI-PRIV. BEDS	16 SEMI-PRIV. ROOMS
55 TOTAL BEDS	39 TOTAL ROOMS
TOTAL	36,866 GROSS SQFT.
SECOND FLOOR	
21 PRIV. BEDS	21 PRIV. ROOMS
34 SEMI-PRIV. BEDS	17 SEMI-PRIV. ROOMS
55 TOTAL BEDS	38 TOTAL ROOMS
TOTAL	23,654 GROSS SQFT.
TOTAL FACILITY	
44 PRIV. BEDS	44 PRIV. ROOMS
66 SEMI-PRIV. BEDS	33 SEMI-PRIV. ROOMS
110 TOTAL BEDS	77 TOTAL ROOMS
TOTAL	60,520 GROSS SQFT.

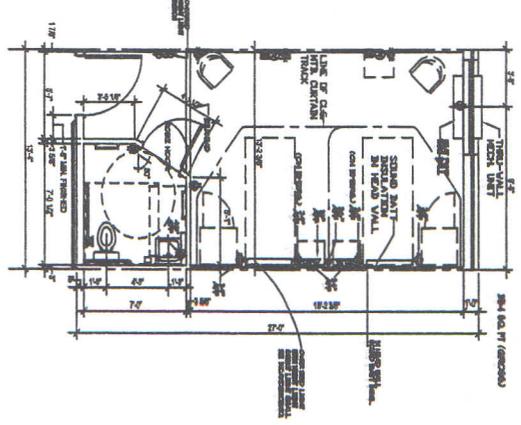
DRAWING TITLE SECOND FLOOR PLAN SHEET NO. REV. 3 OF 4	CHECKED BY: DATE:	DRAWN BY: DATE:	PROJECT DATE:
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NO.	DATE	DESCRIPTION

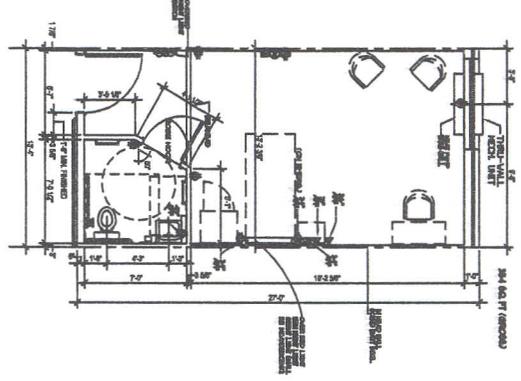
TITLE
**MANORCARE HEALTH SERVICES-FAIRWOOD
 NEW 110 BED
 COMPREHENSIVE CARE FACILITY**

HCR ManorCare
 Health Services
 Architecture Dept.
 7961 CALHOUN PLACE, SUITE 300
 ROCKVILLE, MD 20855
 TEL: 301-770-7000
 FAX: 301-770-7001

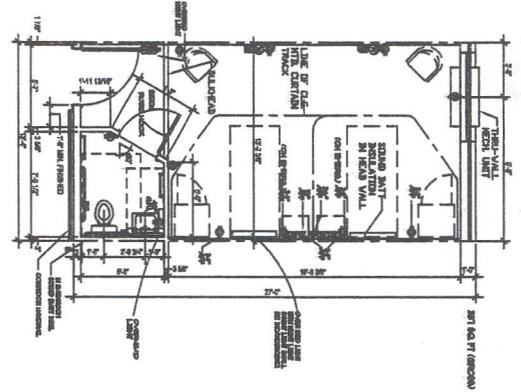
HCR ManorCare
 Health Services
 7961 Calhoun Place, Suite 300
 Rockville, MD 20855



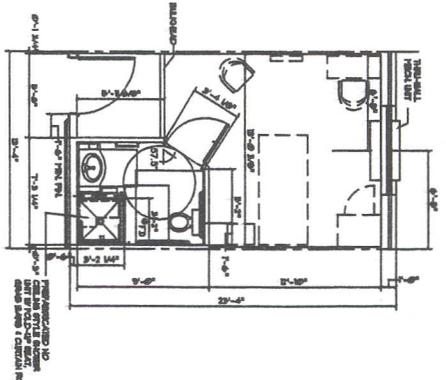
1 HANDICAPPED SELF-PRIVATE ROOM
 AREA 020-300 SF
 NET - 300 SF
 SCALE 1/4"=1'-0"



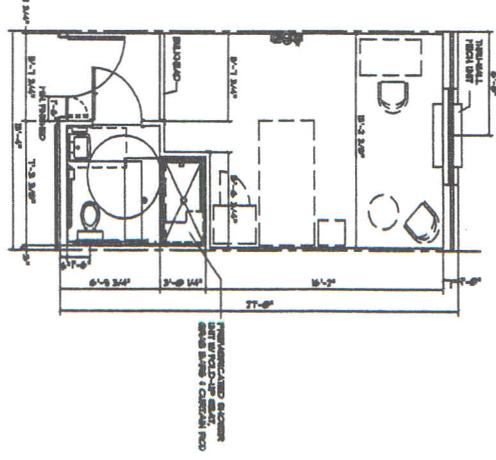
2 HANDICAPPED PRIVATE ROOM W/SHOWER
 AREA 020-300 SF
 NET - 300 SF
 SCALE 1/4"=1'-0"



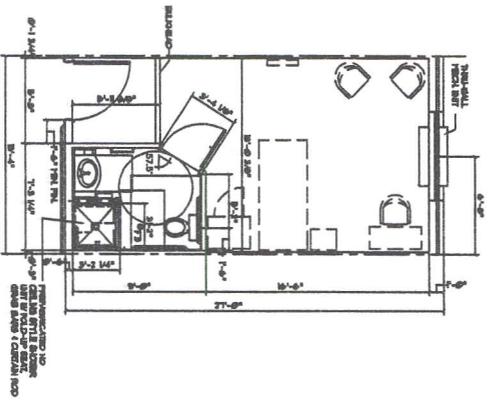
3 SELF-PRIVATE ROOM
 AREA 020-300 SF
 NET - 300 SF
 SCALE 1/4"=1'-0"



4 HANDICAPPED PRIVATE ROOM WITH SHOWER
 AREA 020-300 SF
 NET - 300 SF
 SCALE 1/4"=1'-0"



5 HANDICAPPED PARATITIC PRIVATE ROOM W/SHOWER
 AREA 020-300 SF
 NET - 300 SF
 SCALE 1/4"=1'-0"



6 HANDICAPPED PRIVATE ROOM W/SHOWER
 AREA 020-300 SF
 NET - 300 SF
 SCALE 1/4"=1'-0"

LEGEND: (SHOWN ON PLANS)

- AROUND LAMPON LIGHT
- ◇ NAME CALL 148"
- ▲ TELEPHONE 148"
- TX 148"
- COMMON NAME CALL LIGHT
- RESPECTABLE (DUNED)
- OPEN BED LIGHT (CENTERED ON BED)
- ▷ NAME CALL PULL CHAIN 127"

NOTES

1. AREAS INDICATED:
 A. AREAS TO FACE OF PARTITION BETWEEN PATIENT TO OTHER PATIENT OR TO CLINIC FLOOR OR EXTERIOR WALL.
 B. NET - EXCLUDING VESTIBULES, ENTRY & CLOSETA.

ISSUED TITLE
 PATIENT ROOM PLANS
 SHEET NO. 4 OF 4

DATE
 CHECKED BY
 DRAWN BY
 TOTAL SHEETS 100

NO.	DATE	BY	REVISIONS

TITLE
MANORCARE HEALTH SERVICES-FAIRWOOD
 NEW 110 BED COMPREHENSIVE CARE FACILITY

HCR ManorCare Health Services
 Architects Dept.
 700 CALHOUN PLACE, SUITE 300
 ROCKVILLE, MD 20855

HCR ManorCare Health Services
 7361 Calhoun Place, Suite 300
 Rockville, MD 20855

Appendix C

The Star Quality Rating System

Strengths and Limitations of the Five-Star Ratings

Like any information, the Five-Star rating system has strengths and limits. Here are some things to consider as you compare nursing homes.

Health Inspection Results

Strengths:

- Comprehensive: The nursing home health inspection process looks at all major aspects of care in a nursing home (about 180 different items).
- Onsite Visits by Trained Inspectors: It is the only source of information that comes from a trained team of objective surveyors who visit each nursing home to check on the quality of care, inspect medical records, and talk with residents about their care.
- Federal Quality Checks: Federal surveyors check on the state surveyors' work to make sure they are following the national process and that any differences between states stay within reasonable bounds.

Limits:

- Variation between States: There are some differences in how different states carry out the inspection process, even though the standards are the same across the country.
- Medicaid Program Differences: There are also differences in state licensing requirements that affect quality, and in state Medicaid programs that pay for much of the care in nursing homes.

TIP: The best comparisons are made by looking at nursing homes within the same state. You should be careful if you are trying to compare a nursing home in one state with a nursing home in another state.

Staffing

Strengths:

- Overall Staffing: The quality ratings look at the overall number of staff compared to the number of residents and how many of the staff are trained nurses.
- Adjusted for the Population: The ratings consider differences in how sick the nursing home residents are in each nursing home, since that will make a difference in how many staff are needed.

Limits:

- Self-Reported: The staffing data are self-reported by the nursing home, rather than collected and reported by an independent agency.
- Snap-Shot in Time: Staffing data are reported just once a year and reflect staffing over a 2 week period of time.

TIP: Quality is generally better in nursing homes that have more staff who work directly with residents. It is important to ask nursing homes about their staff levels, the qualifications of their staff, and the rate at which staff leave and are replaced.

Quality Measures

Strengths:

- In-Depth Look: The quality measures provide an important in-depth look at how well each nursing home performs on ten important aspects of care. For example, these measures show how well the nursing home helps people keep their ability to dress and eat, or how well the nursing home prevents and treats skin ulcers.
- National Measures: The ten quality measures we use in the Five-Star rating are used in all nursing homes.

Limits:

- Self-Reported Data: The quality measures are self-reported by the nursing home, rather than collected and reported by an independent agency.
- Just a Few Aspects of Care: The quality measures represent only a few of the many aspects of care that may be important to you.

TIP: Talk to the nursing home staff about these quality measures and ask what else they are doing to improve the care they give their residents. Think about the things that are most important to you and ask about them, especially if there are no quality measures that focus on your main concerns.

Appendix D

Competing Facility Utilization and Driving Distances

THE FIVE CCF NURSING FACILITIES LOCATED CLOSEST TO MCHS-FAIRWOOD SITE:

County	Facility_Name	Facility_City	Licensed Capacity	Miles to MCHS-Fairwood Site*	MHCC CY 2009 DATA			CMS OSCAR DATA 2009, 2010	
					Total Avail PDS	TOTAL PDS	TOTAL OCCUP %	TOTAL ADC	TOTAL OCCUP %
PRINCE GEORGES CO.	LARKIN CHASE	BOWIE	120	1.9	43,800	42,261	96.5%	109	90.8%
PRINCE GEORGES CO.	VILLA ROSA NURSING HOME	MITCHELLVILLE	101	3.0	36,865	33,165	90.0%	92	91.1%
PRINCE GEORGES CO.	COLLINGTON EPISCOPAL LIFE CARE (CCRC)	MITCHELLVILLE	44	4.1	16,060	13,155	81.9%	40	90.9%
PRINCE GEORGES CO.	MAGNOLIA CENTER MANOR CARE	LANHAM	104	5.2	37,960	35,617	93.8%	91	87.5%
PRINCE GEORGES CO.	HEALTH SERVICES - LARGO	GLENARDEN	130	5.6	47,450	40,673	85.7%	114	87.7%
Subtotal:			499		182,135	164,871	90.5%	446	89.4%

* Distances identified in the chart are straight line mileage distances; Shortest driving distances are as follows: Larkin Chase 4.3 miles, Villa Rosa 4.4 miles, Collington 5.4 miles, Magnolia Center 6.4 miles, MCHS-Largo 8.3 miles.

SOURCE: MHCQ Licensed Beds, current as of July 2011; TDL beds updated with MHCC staff, and none of these CCFs has TDL beds. Occupancy and payor mix: MHCC data for CY 2009; CMS data from most current OSCAR survey, majority from 2010. Mileage Distances: Straight line distances from Pitney Bowes mapping software; driving distances from Google Maps.

Appendix E

Nursing Home Compare

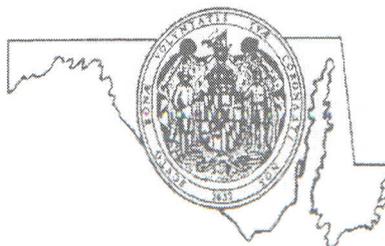
	HEARTLAND HEALTH CARE CENTER - ADELPHI 1801 METZEROTT ROAD ADELPHI, MD 20783 (301) 434-0500	HEARTLAND HEALTH CARE CENTER - HYATTSVILLE 6500 RIGGS ROAD HYATTSVILLE, MD 20783 (301) 559-0300	MANOR CARE HEALTH SERVICES - LARGO 600 LARGO ROAD GLENARDEN, MD 20774 (301) 350-5555
Overall Rating	★★★★★ 4 out of 5 stars	★★★ 2 out of 5 stars	★★★ 2 out of 5 stars
Health Inspections	★★★★ 3 out of 5 stars	★★★★ 3 out of 5 stars	★★★ 2 out of 5 stars
Nursing Home Staffing	★★★ 2 out of 5 stars	★ 1 out of 5 stars	★★★ 2 out of 5 stars
Quality Measures	★★★★★★ 5 out of 5 stars	★★★★ 3 out of 5 stars	★★★ 3 out of 5 stars
Fire Safety Inspections	1 Fire Safety Deficiencies	3 Fire Safety Deficiencies	5 Fire Safety Deficiencies
Penalties and Denials of Payment Against the Nursing Home	0 Civil Money Penalties 0 Payment Denials	0 Civil Money Penalties 0 Payment Denials	0 Civil Money Penalties 0 Payment Denials
Complaints and Incidents	4 Complaints 3 Incidents	5 Complaints 3 Incidents	6 Complaints 2 Incidents
Nursing Home Characteristics			
Program Participation	Medicare and Medicaid	Medicare and Medicaid	Medicare and Medicaid
Number of Certified Beds	218 Certified Beds	160 Certified Beds	130 Certified Beds
Type of Ownership	For profit - Corporation	For profit - Corporation	For profit - Corporation
Continuing Care Retirement Community	No	No	No
Resident & Family Councils	Resident Council Only	Resident Council Only	Resident & Family Councils
Located in a Hospital	No	No	No

Appendix F

June 13, 2012 Decision in re
Interested Party Status

Marilyn Moon, Ph.D.
CHAIR

STATE OF MARYLAND



Ben Steffen
ACTING EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215
TELEPHONE: 410-764-3460 FAX: 410-358-1236

June 13, 2012

By E-Mail and U.S. Mail

Cheryle A. Mines, M.S.A., M.P.H.
Fairwood Community Association
12800 Libertys Delight Drive, Apt. 305
Bowie, Maryland 20720

Jack C. Tranter, Esquire
Gallagher, Evelius and Jones
218 North Charles Street
Baltimore, Maryland 21201

Re: Request for Interested Party Status; Pending Motions
ManorCare Health Services, LLC
Docket No. 11-16-2324

Dear Ms. Mines and Mr. Tranter:

I have considered the request for interested party status, comments, and response made by the Fairwood Community Association (“FCA”) in this review of an application for Certificate of Need (“CON”) filed by ManorCare Health Services, LLC (“ManorCare”). I have also considered four filings made by ManorCare, including both a letter and a motion opposing FCA’s request for interested party status, a response to FCA’s comments, and a Motion to Strike FCA’s May 3 filing.

Under Commission regulations at COMAR 10.24.01.01B(20), the qualification for interested party status is narrowly delimited. Because it does not fit into any more specific category, to qualify as an interested party, FCA must demonstrate that it will be “adversely affected,” in an issue area over which the Commission has jurisdiction, by the approval of the project. Under this qualification, at COMAR 10.24.01.01B(2), FCA must demonstrate that it could “suffer a potentially detrimental impact” from the approval of the project.

In addition, the regulations at COMAR 10.24.01.08F require that persons seeking interested party status “state with particularity the State Health Plan standards or the review criteria in §G of this regulation that the person seeking interested party status believes have not been met by the applicant and the reasons why the applicant does not meet those standards or criteria.” The reference criteria are the State Health Plan, need, availability of more cost effective alternatives, viability of the proposal, compliance with conditions of previous CONs, and impact on existing providers and the health care delivery system. An attachment to this

Cheryle A. Mines
Jack C. Tranter, Esquire
June 13, 2012
Page 2

letter reproduces the entire text of COMAR 10.24.01.08G. The regulations also state that "factual assertions made in comments by a person seeking interested party status that are not included in the record shall be accompanied by appropriate documentation or sworn affidavit, or both."

FCA's letter of April 9, 2012 recommends denial of the CON application on the basis of concerns that "embrace a larger issue." The concerns expressed by FCA include "the delivery of quality geriatric care services in our Prince George's community and the reputation of the service providers." FCA concludes its letter by noting that it "would welcome a more non-traditional long term care service model in our County that would position itself to provide exceptional care and services to the residents of twenty year from now. HCR Manor Care Services, Inc. may not be able to provide such level of service to our Prince George's County seniors."

On May 3, FCA responded to ManorCare's motion opposing FCA's request for interested party status. On May 4, ManorCare moved to strike FCA's May 3 filing. I deny ManorCare's motion to strike. The comments filed by FCA will remain in the record of this review. However, I conclude that FCA does not qualify for interested party status in this review because it has not demonstrated that it will suffer a potentially detrimental impact, in an issue area over which the Commission has jurisdiction, if this proposed project is approved.

In its motion in opposition to FCA's request for interested party status, ManorCare argues that a "homeowners association" or "community association" cannot meet the regulatory criteria to be designated as an interested party because of a previous ruling by MHCC that such associations cannot be granted status as "participating entities." I disagree with ManorCare's position; each determination of interested party or participating entity status is limited to the facts before the reviewer. For example, if FCA substantiated that ManorCare delivers sub-quality care in its existing facilities, I may have been swayed, even though granting interested party status under such circumstances would be unusual.

FCA's filings are primarily devoted to statements of concern regarding the poor functioning of the full spectrum of health care facilities and programs operating in Prince George's County and the lack of innovation and higher quality of care in the provision of long-term care facilities and programs, locally, at a statewide level, and nationally. Poor or inadequate State regulation is identified as an important cause of these problems. While I am familiar with and agree, to some extent, with some of the observations made by FCA, these aspects of the filings do not meet the threshold for proof that it or its members will be "adversely affected," in an issue area over which the Commission has jurisdiction, by the approval of the project. FCA appears to argue that almost any nursing home project that involves replacement and relocation of bed capacity will have a detrimental effect on the surrounding community because nursing home facilities and services, as currently configured, are not structured to meet community needs.

With respect to FCA's comments that speak more specifically to the project under review, I have concluded that they also lack the specificity and documentation required by the

Cheryle A. Mines
Jack C. Tranter, Esquire
June 13, 2012
Page 3

applicable regulations and fail to demonstrate, in any definitive manner, the detrimental impact that will result from the project, if implemented. Considering the applicable review criteria, the FCA comments also do not speak with particularity to any standards of the State Health Plan, the viability of the project, the track record of the applicant in implementing previously awarded CONs, or the impact of the project.

The comments can be viewed as speaking, in a general manner, to the criteria of need and the effectiveness of alternatives. In summary, my reading of the comments indicates that FCA does not believe the project is needed because it does not believe that it meets the desires of the residents of the community it will serve for more innovative and less conventional long term care services. FCA does not believe the applicant has shown itself to be an effective provider of comprehensive care facility ("CCF" or nursing home) services because it has not achieved the highest quality ratings possible in two evaluation forums: the Center for Medicare and Medicaid Services ("CMS") *Nursing Home Compare* Five Star Rating System and the *U.S. News and World Report* magazine's list of Best Nursing Homes in the U.S.A.

While there may be some validity to FCA's point that the development of a greater range of alternative community-based long-term care resources might better fit the needs and desires of Prince George's County and Maryland residents, this does not demonstrate that FCA is likely to suffer a detrimental impact as a result of the modernization of a portion of the physical plants of the comprehensive care facilities that the applicant operates in Prince George's County. I note that the proposed project does not increase the applicant's CCF bed capacity in Prince George's County. The applicant seeks to downsize two old physical plants and replace the bed capacity eliminated at these facilities, placing them in a new building designed to better meet the needs of short-term CCF patients seeking rehabilitative services rather than long-term residential and maintenance care. ManorCare states that this model responds to changes in the demand for CCF services that have occurred since the time in which its existing facilities were developed. While one can believe that having more programs that facilitate the ability of aging Americans to avoid or delay reliance on nursing home care is an important objective, it is not clear that achieving this objective is furthered by withholding the ability of nursing home operators to invest in approaches that improve the quality and functionality of service capacity that is currently in operation nor is it clear that making such changes in the current system for delivering CCF services will harm any residents of Prince George's County.

Rating systems applied to nursing homes, undertaken by CMS and other organizations, can be a useful tool for consumers and regulators. However, a failure of the applicant's facilities to achieve the highest possible ratings in two rating systems does not demonstrate that FCA will be harmed by the applicant's proposed establishment of a new nursing home to replace and relocate a portion of the applicant's bed capacity in Prince George's County. This may be the most cost-effective alternative to meet the needs that can be identified for the proposed project. The interested party filing does not indicate, with particularity, that a more cost-effective approach to meeting the objectives of the proposed project exists.

Cheryle A. Mines
Jack C. Tranter, Esquire
June 13, 2012
Page 4

While I find that FCA does not qualify as an interested party, its comments are accepted as part of the record in this review and will be addressed in the report and recommendation on this project made to the Commission. If you have any questions, please call Suellen Wideman, Assistant Attorney General, at 410-764-3326.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Glenn Schneider". The signature is fluid and cursive, with a long horizontal stroke at the end.

Glenn Schneider
Commissioner/Reviewer

attachment

cc: Paul E. Parker
Suellen Wideman, AAG
Pamela B. Creekmur, Prince George's County Health Department

10.24.01.08G. Criteria for Review of Application.

(1) In proceedings on a Certificate of Need application, the burden of proof that the project meets the applicable criteria for review, by a preponderance of the evidence, rests with the applicant.

(2) Issuance of a Certificate of Need by the Commission. In reviewing an application for a Certificate of Need, the Commission shall consider the applicant's submissions, the responses of each other applicant and interested party, the recommendation, if any, of the local health department, and the information gathered during the Commission's review of the application, to which each applicant and interested party shall have been afforded an opportunity to respond.

(3) Criteria for Review of an Application for Certificate of Need.

(a) State Health Plan. An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.

(b) Need. The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

(c) Availability of More Cost-Effective Alternatives. The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.

(d) Viability of the Proposal. The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

(e) Compliance with Conditions of Previous Certificates of Need. An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.

(f) Impact on Existing Providers and the Health Care Delivery System. An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region,

including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.

Appendix G

Comparison of Quality as
Indicated by Maryland OHCQ
Survey Data (Deficiency Records)

Overall Medicare 5 Star Rating	Heartland Health Care Center – Adelphi 4 Stars	Heartland Health Care Center – Hyattsville 2 Stars	Manor Care Health Services – Largo 2 Stars
Maryland Deficiencies By CY Quarters			
2009 Q1	CS: D-1, E-1	CS: D-2	
Q2	CS: D-1, E-1	AS: B-1; C-2, D-17; E-2 FS: B-4, F-2	
Q3	AS: D-8, E-4 FS: B-2, D-3, E-1 CS: D-4; E-2		AS: D-12, E-1 FS: D-3, F-1
Q4			
2010 Q1	CS: D-3	CS: D-1	
Q2			
Q3	AS: B-1, E-1 FS: B-1, D-3	CS: B-1, D-4	FS: B-2, D-2, E-1, F-4 CS: D-2
Q4			AS: B-1, D-12, E-4
2011 Q1		CS: D-2	CS: D-2
Q2		CS: D-1 FS: D-2, F-1	CS: D-1
Q3	AS: D-3 FS: E-1	AS: B-1, C-1, D-3, E-2	
Q4			
2012 Q1			CS: D-4 FS: B-2, D-2, F-1
Q2			
Q3			
Q4			

Source: MHCC Guide to Long Term Care

Note: State-wide, about 24% of all deficiencies are level A-C and indicate that the CCF is substantially in compliance with those regulations; Level D deficiencies constitute 59% of all deficiencies and Level E deficiencies account for 16% of all deficiencies; Level F and G each account for 4% of all deficiencies.

Key: Type of Inspection: Level of deficiency-number of deficiencies
e.g., **AS: D-4** means Annual Health Survey with 4 level D deficiencies

Types of inspections: **AS** = Annual (Health) Survey, **FS** = Fire/Safety, **CS** = Complaint,
[note: there can be more than one type of inspection in a quarter]

Levels of deficiencies:

- A = Potential for no more than minimal harm/Isolated occurrence
- B = Potential for no more than minimal harm/Pattern
- C = Potential for no more than minimal harm/Wide Spread
- D = Potential for more than minimal harm/Isolated
- E = Potential for more than minimal harm/Pattern
- F = Potential for more than minimal harm/Wide Spread
- G = Actual Harm, Isolated.
- H = Actual Harm/Pattern
- I = Actual Harm/Wide Spread
- J = Immediate Jeopardy/Isolated
- K = Immediate Jeopardy/Pattern
- L = Immediate Jeopardy/Wide-Spread