

**IN THE MATTER OF:**

**NMS HEALTHCARE OF HAGERSTOWN**

**DOCKET NO. 10-21-2307**

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**BEFORE THE**

**MARYLAND HEALTH**

**CARE COMMISSION**

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**REQUEST TO MODIFY CERTIFICATE OF NEED**

**I. INTRODUCTION**

**Background**

NMS Healthcare of Hagerstown, LLC (“NMSH” or “the facility”) is a licensed 186-bed comprehensive care facility (“CCF”) located at 14014 Marsh Pike in Hagerstown (Washington County). The facility currently has 12 four-bed rooms, seven (7) three-bed rooms, 55 semi-private rooms and seven (7) private rooms in buildings constructed in the 1950s through the 1980s.

On July 15, 2010, the Commission approved an expansion and renovation project to eliminate the three and four bed rooms, increase the number of private rooms to 42 and add 20 temporarily de-licensed beds acquired from Homewood at Williamsport, another Washington County CCF. The approved project included the construction of a two-story addition of 25,480 square feet and the renovation of 16,660 sq. ft. at a total cost of \$9,513,233. The approval was issued with following condition:

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

**Request for Modified Certificate of Need: November 2012**

In seeking to modify its Certificate of Need, NMSH is requesting the following:

- (1) An increase in the total project costs of \$1,608,228 from \$9,513,233 to \$11,121,461; and
- (2) A major reduction in the scope of the renovations from the 16,660 square feet in the approved project to 1,335 square feet in the modified project limiting the number of private rooms to 22 instead of the 42 in the approved project, but still more than the current seven (7). The modified plans continue to eliminate all three and four bed rooms but increase the number of semi-private rooms from 82 to 92.

There will also be a slight decrease in the size of the new construction from 25,480 sq. ft. to 25,365 sq. ft.

The following table summarizes key differences between the approved project and the modified project now proposed.

**Table 1: Comparison of Approved and Proposed Modified Expansion Project  
NMS Healthcare of Hagerstown**

	<b>Approved Project July 15, 2010</b>	<b>Proposed Modified Project</b>
Project budget estimate	\$9,513,233	\$11,121,461
New construction gross square feet ("GSF")	25,480	25,365
Renovation GSF	16,660	1,335
Total CCF Beds	206	206
Private rooms (on completion)	42	22
Semi-private rooms (on completion)	82	92

Source: Original CON and Project Modification Request, NMS Healthcare of Hagerstown, November, 2010

NMSH stated that the main reason for the increase in costs is project delays attributable to the following reasons:

1. A change in storm water management regulations required a redesign and delay in obtaining site plan approval.
2. The Washington County Fire Marshall misidentified the scope of the project, which resulted in an initial finding that the plans were incomplete.
3. The project is being financed through the U. S. Department of Housing and Urban Development, which required the relocation of underground propane tanks that are not in the way of the expansion.

All of these developments increased project cost. NMSH responded by seeking ways to reduce the costs. This included a significant reduction in the scope of the renovations including the elimination of plans to renovate two of the existing nursing units and related cosmetic work on the opposite side of the building from the planned new addition. NMSH stated that these renovations will be reviewed and implemented in the future.

## **II. STAFF REVIEW AND ANALYSIS**

### **Requirements for Project Modification**

Pursuant to Commission regulations at COMAR 10.24.01.10 I. and .17 this proposed modification requires Commission approval because of the significant physical plant design changes (the elimination of most of the renovations that were part of the project as approved) and the significant increase in project costs.

### ***Significant changes in physical plant design***

The approved project included the renovation of 16,660 square feet. These renovations in combination with the new construction would have increased the facility's number of private

rooms from 7 to 42. The significant reduction in the amount of space to be renovated from 16,600 square feet to 1,335 will result in only 22 private rooms. However, MMSH will still be able to add 20 beds and eliminate the 12 four-bed rooms and 7 three-bed rooms by converting these rooms to semi-private rooms, which is the most important aspect of this project. See Attachment 1 for a comparison of the patient room and bed inventory by nursing wing for the existing facility, the approved project, and the requested modification.

Staff finds these changes reasonable, given the continued elimination of undesirable three and four bed rooms and the increase in semi-private and private rooms, some of which will be in newly constructed space.

*Capital cost increases that exceed the approved capital cost, inflated by an amount determined by applying the Building Cost Index published in Health Care Cost Review from the application submission date to the date of the filing of a request for approval of a project change*

NMS Healthcare of Hagerstown, LLC has provided a revised Project Budget to reflect the costs associated with the modified plans as summarized below.

**Table 2: Changes in the Uses of Funds  
Approved and Proposed Modified Expansion Project  
NMS Healthcare of Hagerstown**

USES OF FUNDS	As Approved July 15, 2010	Requested Modification	Change	Percent Change
	Dollar Amount	Dollar Amount		
New construction	\$3,719,282	\$6,307,012	\$2,587,730	69.6%
Site preparation	870,718	1,792,820	922,102	105.9%
Architect/engineering fees	529,826	790,820	760,942	49.3%
Permits (buildings/utilities)	81,512	82,044	532	0.7%
<b>SUBTOTAL-CONSTRUCTION</b>	<b>\$5,201,338</b>	<b>\$8,972,644</b>	<b>\$3,771,306</b>	<b>72.5%</b>
<b>SUBTOTAL-RENOVATION</b>	<b>1,327,054</b>	<b>239,835</b>	<b>(\$1,087,219)</b>	<b>(81.9%)</b>
Equipment	605,850	605,850	0	
Contingencies	580,000	580,000	0	
Right to License Beds	150,000	208,051	58,051	38.7%
Capitalized Construction Interest	933,779	240,310	(693,469)	(74.3)
<b>TOTAL CURRENT CAPITAL COSTS</b>	<b>\$8,798,021</b>	<b>\$10,846,690</b>	<b>\$2,048,669</b>	<b>23.3%</b>
Inflation Allowance	523,212	0	(523,212)	
<b>TOTAL CAPITAL COSTS</b>	<b>\$9,321,233</b>	<b>\$10,846,690</b>	<b>\$1,525,457</b>	<b>16.4%</b>
Loan Placement Fees	100,000	182,770	82,770	82.8%
Legal and Consulting Fees	90,000	90,000	0	
Other - Printing	2,000	2,000	0	
<b>SUBTOTAL-FINANCING/OTHER</b>	<b>\$192,000</b>	<b>\$274,770</b>	<b>82,770</b>	<b>43.1%</b>
<b>TOTAL USES OF FUNDS</b>	<b>\$9,513,233</b>	<b>\$11,121,461</b>	<b>\$1,608,227</b>	<b>16.9%</b>

Source: Project Budget in Staff Report dated July 15, 2010 for original CON; Project Budget in Submission dated November 2, 2012

In reviewing the changes in the project budget reported in this request for Modification of a previously approved Certificate of Need, Staff applied the allowable inflationary increases that

would be applicable to this project. Specifically, Commission regulations at COMAR 10.24.01.17B(2), require Commission approval for capital cost increases that exceed the approved capital cost, inflated by an amount determined by applying the Building Cost Index published in *Health Care Cost Review* from the application submission date to the date of the filing of a request for approval of a project change. Capital cost increases under that amount do not require Commission approval.

To confirm that the requested increase in capital cost exceed the allowable inflation and required Commission approval, Staff applied the allowable inflationary increases that would be applicable to this project as follows:

<b>Table 3</b> <b>ALLOWABLE INFLATION BASED ON HEALTH CARE COST</b> <b>REVIEW'S BUILDING COST INDEX-</b> <b>NMS Healthcare of Hagerstown</b>	
Application submission date (2 <sup>nd</sup> Qtr 2010)	April 26, 2010
Modification request filing date (4 <sup>th</sup> Qtr 2012)	November 2, 2012
Net approved capital costs (without inflation, financing costs and other expense)	\$8,798,021
Inflation Factor for 1 <sup>st</sup> year to 2 <sup>nd</sup> Qtr 2011	1.011
Inflation Factor for 2 <sup>nd</sup> year to 2 <sup>nd</sup> Qtr 2012	1.012
Inflation Factor for Remaining portion of 2012	1.0046253
<b>Inflation Factor for Entire Period</b>	<b>1.027864</b>
Allowable Current Capital Cost without inflation, financing costs and other expense)	\$9,043,172
Requested Modified Current Capital Cost without inflation, financing costs and other expense)	\$10,846,690
<b>Over (Under) Allowance Current Capital Cost</b>	<b>\$1,803,518</b>

Based on the previous analysis, this proposed modification clearly requires Commission approval because the increase in costs exceeds the allowable inflation.

While this cost increase is significant, it is not an impermissible modification. This project as modified would still achieve significant improvements in the facility's physical plant. In addition the modified costs are based on actual bids. NMSH stated that if this modification is approved the bids will be finalized and a contract will be signed within this budget.

### **A Change in the Project Financing Mechanisms**

This CON modification request does not involve any significant changes in the project funding plan that would be considered to fundamentally alter an approved "mechanism" of financing. The financing plan is still comprised of a mortgage and cash contribution. The applicant will account for the increase by borrowing more and contributing more cash equity as detailed in Table 4.

**Table 4: Changes in the Proposed Sources of Funds  
NMS Healthcare of Hagerstown**

SOURCES OF FUNDS	As Approved 7/15/2010		As Modified 5/10		% Change
	Dollar Amount	% of Total	Dollar Amount	% of Total	
Mortgage	\$8,561,910	90.0	\$9,321,200	83.8	8.9
Cash	951,323	10.0	1,800,261	16.2	89.2
Working Capital Loan					
Other – FF&E Loan					
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$9,513,233</b>	<b>100.0</b>	<b>\$11,121,461</b>	<b>100.0</b>	<b>16.9</b>

Source: Project Budget in Staff Report dated July 15, 2010 for original CON; Project Budget in Submission dated November 2, 2012

As one can see in Table 4, the cash contribution of the applicant for the project has increased almost 90% from \$951,323 to \$1,800,261 and the mortgage loan intended to provide the bulk of project funding has increased by approximately 9% from \$8,561,910 to \$9,321,200. However, a change in the project financing mechanism is not proposed.

#### **A Change in Location or Address of the Project**

This CON modification does not involve a change in the location or address of the project.

#### **Impermissible Changes**

This project does not include any impermissible modifications. The project's status regarding the three categories of impermissible modifications is addressed as follows:

#### ***Changes in the fundamental nature of the facility or the services to be provided in the facility from those that were approved***

This modification does not change the fundamental nature of the approved services or facilities. The project components remain the same as approved. The facility and services of the NMS Healthcare of Hagerstown will be the same.

#### ***Increases in the total bed capacity or capacity of medical service categories other than those approved***

This proposed modification does not increase the total bed capacity or other services.

#### ***Changes requiring extensions of time to meet applicable performance requirements, except as permitted by regulation***

NMS Healthcare of Hagerstown has not indicated that the proposed change will change the current project schedule.

#### IV. SUMMARY AND STAFF RECOMMENDATION

NMS Healthcare of Hagerstown, LLC., a licensed 186-bed comprehensive care facility (“CCF”) located at 14014 Marsh Pike in Hagerstown (Washington County), has requested Commission approval of its request for modification to its Certificate of Need (Docket No. 10-21-2307), issued July 15, 2010, to undertake a construction/renovation project for its existing structure, to include an addition to the existing building.

There are no changes to the fundamental nature of the facility or services in the actual project being proposed. Based on the analysis in this report, Staff finds that there are no impermissible modifications being requested. Staff concludes that the facility design changes proposed are permissible under Commission regulations at COMAR 10.24.01.17, and they are a reasonable approach to achieving the primary objectives of the original CON to eliminate all three and four bed rooms and add 20 beds to the facility given the increase in costs that are supported by actual bids in response to design changes and delays that result from external parties beyond the control of the Applicant. For these reasons, Staff recommends that the Commission **APPROVE** the proposed modification to the NMSH Certificate of Need physical plant design and capital cost increase for its construction/renovation project with the condition attached to the original CON approval.

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COMMISSION

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**FINAL ORDER**

Based on the analysis and findings in this Staff Report and Recommendations, it is this day, the 20<sup>th</sup> of December, 2012, **ORDERED**

That the request of NMS Healthcare Hagerstown, LLC to modify the physical plant design and increase the costs of the capital project approved through Certificate of Need, Docket No. 10-21-2307, on July 15, 2010, is **APPROVED** with the same condition placed on the original approval

The project, as modified, will expand the physical plant of NMS Healthcare of Hagerstown, adding 25,365 square feet of space and 20 comprehensive care facility beds. The project will convert all existing three and four bed rooms to semi-private or private rooms. All patient rooms with more than two beds will be eliminated through the project. The approved cost of the modified project is \$11,121,461.

This Certificate of Need approval is subject to the following condition:

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

**MARYLAND HEALTH CARE COMMISSION**

**Attachment 1**  
**NMS Healthcare of Hagerstown**  
**November 2012 Modification**  
**Room and Bed Inventory**

Location (Floor/Wing)	Existing						As Originally Approved						Per Requested Modification			
	Room Count					#Beds	Room Count					#Beds	Room Count			#Beds
	Total Rms	4 Per. Rms	3 Pers. Rms	S-P	P	Phys. Cap.	Total Rms	4 Per. Rms.	3 Per. Rms	S-P	P	Phys. Cap.	Total Rms	S-P	P	Phys. Cap.
Lower Terrace	10	3	2	4	1	27	10	0	0	9	1	19	10	9	1	19
1/Fountain Hd Hall	11	0	0	10	1	21	27	0	0	22	5	49	27	22	5	49
1/Wash. Hall Fr.	11	0	0	9	2	20	11	0	0	7	4	18	11	7	4	18
1/Wash. Hall Back	8	0	1	7	0	17	13	0	0	3	10	16	8	8	0	16
1/Longmeadow Fr.	13	0	1	11	1	26	13	0	0	12	1	25	13	12	1	25
1/Longmeadow Back	10	0	2	7	1	21	10	0	0	7	3	17	10	7	3	17
2/Airview Hall Fr.	11	2	1	7	1	26	11	0	0	7	4	18	11	7	4	18
2/Airview Hall Back	7	7	0	0	0	28	13	0	0	3	10	16	8	8	0	16
Lower Level Addition							16	0	0	12	4	28	16	12	4	28
<b>Total</b>	<b>81</b>	<b>12</b>	<b>7</b>	<b>55</b>	<b>7</b>	<b>186</b>	<b>124</b>	<b>0</b>	<b>0</b>	<b>82</b>	<b>42</b>	<b>206</b>	<b>114</b>	<b>92</b>	<b>22</b>	<b>206</b>