

IN THE MATTER OF SEASONS

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BEFORE THE

HOSPICE AND PALLIATIVE

MARYLAND HEALTH

CARE OF MARYLAND, INC.

CARE COMMISSION

Docket No. 11-03-2318

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REVISED EXCEPTIONS OF STELLA MARIS, INC.
TO THE RECOMMENDED DECISION

Stella Maris, Inc., by its undersigned counsel and pursuant to COMAR 10.24.01.09B(1), takes exception to the Reviewer’s Recommended Decision.

INTRODUCTION

Sponsored by the Sisters of Mercy, Stella Maris is a Maryland not for profit entity that has been providing a comprehensive range of health and housing services for the care of the elderly, sick, and dying for 60 years, and home and inpatient hospice services for 30 years. While authorized to provide hospice services in six jurisdictions, Stella Maris’ 22-bed inpatient hospice unit is located on its campus in Timonium, Maryland.

Stella Maris respectfully asks the Maryland Health Care Commission to deny the application of Seasons Hospice and Palliative Care of Maryland, Inc. to establish a 16-bed inpatient hospice unit on the campus of MedStar Franklin Square Medical Center in Baltimore County because Seasons has failed to demonstrate: (1) that the proposed project will meet “the unmet needs of the population to be served,” as is required for a finding of consistency with COMAR 10.24.01.08G(3)(b); and (2) that the proposed project will not have a significant adverse impact on existing providers and the health care delivery system, as is required for a finding of consistency with COMAR 10.24.08G(3)(f).

As explained below, the Recommended Decision erroneously concludes that Seasons met its burden of establishing need for additional inpatient hospice services in a jurisdiction with over concentrated capacity and low volume providers. Rather than require Seasons to demonstrate that the proposed project will meet the unmet needs of the population to be served, as required, the Reviewer incorrectly permitted Seasons to demonstrate that it could fill its new inpatient beds allegedly by generating new demand. In fact, there is no unmet need for inpatient hospice services and, if approved, the proposed project would be filled by hospice referrals that currently fill the existing inpatient capacity of Stella Maris and other providers in the jurisdiction. Finally, the Recommended Decision erroneously relies upon the assumption that Seasons' inpatient hospice unit at Northwest Hospital will not continue to operate.

Seasons' application should be denied.

EXCEPTIONS

I. EXCEPTION NO. 1: SEASONS' PROPOSAL TO BUILD A 16-BED INPATIENT HOSPICE UNIT AT FRANKLIN SQUARE HOSPITAL CENTER IS NOT CONSISTENT WITH REVIEW CRITERION .08G(3)(b) BECAUSE SEASONS FAILS TO DEMONSTRATE UNMET NEEDS OF THE POPULATION TO BE SERVED AND TO ESTABLISH THAT ITS PROPOSED PROJECT MEETS THOSE NEEDS.

The application should be denied because Seasons has failed to show that its proposed project will meet the unmet needs of the population to be served, as required by Review Criterion .08G(3)(b). Instead of requiring a true need analysis, the Recommended Decision permitted Seasons to substitute a demand assessment more appropriate for evaluating the financial viability of the project rather than assessing the need for the project in the jurisdiction.

The Recommended Decision notes that Baltimore County and Baltimore City already have a high concentration of inpatient hospice facilities and bed capacity in excess of the

proportion of population in these jurisdictions, with 64% of the statewide bed capacity and only 25% of the State's population. Recommended Decision at 10. Also, the Reviewer found that the average annual occupancy rate for Stella Maris' inpatient unit ranged between 28.3% and 44.1% for the years 2007 through 2011. Recommended Decision at 26 (Table 12). In addition, the Recommended Decision observes that Seasons did not address why it cannot meet any need for inpatient hospice care through the use of hospital beds, on an as needed basis, although a number of agreements between hospitals and hospices of this nature have been developed in Maryland. Recommended Decision at 21. Despite all of this, the Recommended Decision proposes to approve the new inpatient hospice unit, without applying any meaningful need analysis, in a jurisdiction with an over-concentration of inpatient capacity and low occupancy existing providers.

- A. The need analysis is based upon the flawed assumption that the proposed project will generate need, rather than satisfy existing unmet need.

The Recommended Decision accepts and rests upon Seasons' assertion that its proposed 16-bed inpatient unit at Franklin Square will serve many patients transferred from Franklin Square's ICU and that the majority of admitted patients otherwise would not have sought hospice care. However, in terms of demonstrating that the project will meet the "unmet needs of the population to be served" – which is what Criterion .08G(3)(b) requires – Seasons concedes that it "does not generally have a problem obtaining beds for hospice care in a long term care facility on a contracted bed basis." Seasons' Response to 9/1/11 Completeness Questions at 6–7.

Rather than seeking to meet the existing needs of the hospice patients Seasons currently serves, which Seasons admits it can do without the proposed project, the application purports to establish a new type of hospice delivery service, supposedly principally based on capturing a

population of hospice patients discharged from hospital ICUs or who otherwise would not have sought hospice care. Yet, Seasons does not quantify how many patients would be admitted direct from ICUs, nor does it even try to prove how many ICU patients it has served at its Northwest Hospital hospice unit. For example, Seasons could have tracked the ICU admissions at the Northwest unit and reported the resulting data to the Commission, but it did not do so. Instead, it merely states, without any factual support, that “[m]any of the patients who will be admitted to the Seasons unit will be discharged from hospitals’ ICUs.” Application at 41.

Seasons has failed to provide any evidence that patients in need of hospice care at Franklin Square or other hospitals in Baltimore County were denied care or have been unable to obtain hospice services from Stella Maris and other existing providers. There is no current need for an additional 16-bed inpatient hospice unit in Baltimore County. Rather than present a sound need analysis, Seasons advances a result-driven and simplistic analysis consisting of a calculation that purports to quantify admissions of patients it claims would not otherwise seek hospice care, including “many” from hospital ICUs. The surface appeal of this approach is that it conveniently produces need for hospice services that would not otherwise be referred to existing hospice providers.

Seasons’ inpatient demand calculation is based on its experience at its Northwest Hospital unit, which Seasons claims received admissions equivalent to 4.4% of the MSGA admissions age 65 years and older at Northwest Hospital and 1.5% of such admissions at Sinai Hospital. Based on these numbers, Seasons projects its proposed inpatient unit will receive referrals representing 4.4% of the MSGA admissions age 65 years and older at Franklin Square and 1.5% of such admissions at the other Baltimore area MedStar hospitals: Good Samaritan Hospital, Harbor Hospital, and Union Memorial Hospital. *See* Application at 42-44. This

methodology is based merely on Seasons’ experience with referrals from two hospitals in one fiscal year. If applied throughout the State, the calculation would result in a huge oversupply of inpatient hospice beds.

Such an ad hoc methodology should not be the basis for determining need. For example, if determination of need were to be based on 4.4% of medical/surgical admissions age 65+ in every general acute care hospital in the state, Maryland would “need” 258 inpatient hospice beds located in hospital-based units, regardless of how many other inpatient units may already exist in the various jurisdictions and the occupancy of those facilities. As shown in **Table 1** below, this is almost twice the number of currently existing inpatient beds throughout the state in *any* setting (the 2011 Hospice Survey results indicate there are 144 inpatient beds, of which 74 are mixed inpatient/residential beds and only 14 are beds in a hospital inpatient unit, plus the Commission approved two new inpatient units in 2012 for an additional 20 beds). Seasons’ calculation is simply a methodology for justifying its business strategy of establishing hospital-based inpatient units to capture all of the hospice referrals from the host hospital.

Table 1: Hospice Need Based on 4.4% of Medicare Medical/Surgical Patients 65 Years or Older

	Med/Surg Patients	4.4% of Med/Surg Patients	ALOS = 6.0	ADC	Beds Needed at 75% Occupancy
Statewide	267,355	11,761	70,566	193.3	258
Montgomery County	32,825	1,444	8,664	23.7	32
Southern Maryland	29,047	1,277	7,662	21.0	28
Central Maryland	156,250	6,874	41,244	113.0	151
Western Maryland	24,015	1,056	6,336	17.4	23
Eastern Shore	25,218	1,110	6,660	18.2	24

Source: AHD.com.

In sum, Seasons has simply failed to demonstrate need for a 16-bed inpatient hospice unit in Baltimore County when existing providers have vacant beds and Seasons cannot show that it will serve a previously unserved population. Instead, if Seasons' proposed inpatient unit is accepted, Seasons will take patients from Stella Maris and other existing providers, merely swapping patients from existing hospice inpatient facilities to its new unit.

B. If the Commission approves this project on the basis of Seasons' need methodology, it will set a poor precedent for future inpatient hospice cases.

As discussed above, Seasons' approach to establishing need in this case is not defensible as a valid need methodology and, if applied broadly, would justify the establishment of a huge number of inpatient hospice beds in Maryland. Any hospital-based inpatient unit could be rationalized by using Seasons' calculation of 4.4% of the hospital's MSGA admissions age 65 and older. Indeed, if the rationale is adopted in this case where the affected jurisdiction is already over concentrated with inpatient hospice beds and the existing providers are suffering from low occupancy, then it should work anywhere in the State.

The Commission should resist setting this precedent and thereby potentially opening the flood gates to a glut of inpatient hospice beds throughout the State.

C. The need analysis is based upon the flawed assumption that the Seasons' Northwest Hospital inpatient unit will not continue to operate.

The Recommended Decision is premised on the incorrect notion that Seasons will not be able to continue its operation of its inpatient unit at Northwest Hospital and that the proposed project is a replacement. The Reviewer describes Seasons' 14-bed inpatient hospice unit located at Northwest, explaining that it was established at a time when the Commission staff advised that it did not require CON approval. Recommended Decision at 2. However, the Reviewer concludes that the Northwest unit now "is not in compliance with a recent determination made

by OHCQ and MHCC with respect to operation of dedicated hospital units comprised of licensed general hospital beds . . . [and] continued operation of the [Northwest unit] may be in jeopardy as a result.” Recommended Decision at 28. Thus, the Reviewer states: “[a]uthorization of [the proposed project] will assure that Seasons has the ability to operate an inpatient hospice program under its general hospice license, the same capability enjoyed by the two other major providers of hospice services to Baltimore County.” *Id.*

The assumption that Seasons, the fifth largest provider of hospice services in the United States, needs approval of the proposed project in order to establish competitive parity among the major hospice providers in Baltimore County is false. Seasons continues to operate the Northwest inpatient unit and has given no indication that it intends to stop. If approved, the proposed project would be Seasons’ second inpatient unit in Baltimore County and, as noted in the Recommended Decision, it has filed a letter of intent for a CON application to establish a third inpatient hospice unit in Baltimore County at Sinai Hospital.¹ Recommended Decision at 4.

To the extent the recommendation to approve the proposed project is motivated by a sense of competitive fairness, Seasons does not need a boost, nor does it deserve one. Indeed, the Recommended Decision details the manner in which Seasons has flouted the CON law thus far by, among other things, establishing an inpatient unit at Sinai Hospital without obtaining any prior regulatory approval.² Recommended Decision at 3–4. The Reviewer also notes that

¹ In fact, as described in the Recommended Decision, Seasons began operating an inpatient unit at Sinai Hospital earlier this year without a CON and other required regulatory approval. Recommended Decision at 3-4.

² Although the OHCQ ordered Seasons to discontinue the admission of hospice patients at its illegal inpatient unit at Sinai Hospital after May 15, 2013, Seasons’ website still promotes the “Sinai Hospital Inpatient Center” and invites viewers to “take a pictorial tour” of the unit. *See* <http://www.seasons.org/page/Our%2BLocations>

Seasons' continued control and operation of the inpatient hospice unit it established at Northwest appeared to Commission staff to be inconsistent with representations made by LifeBridge in 2012 that the termination of the lease between Seasons and Northwest would involve the hospital taking control of the beds and the patients would be served directly by the hospital, not Seasons. On page 28 of the Recommended Decision, the Reviewer sums up his view of Seasons' conduct: "I also believe that Seasons has made inappropriate choices in the approach it has taken to meeting regulatory requirements associated with CON and licensure for inpatient hospice care in the past year."

In the event the Commission adopts the Reviewer's perspective that Seasons should be allowed to operate at least one inpatient hospice unit in Baltimore County, like the other major providers in the jurisdiction, then it should regard the Northwest Hospital unit as satisfying that objective. The Northwest unit has been operating for five years, Seasons has not indicated it will cease to operate it, and Stella Maris is aware of no regulatory action to terminate operation of the unit. The Commission should not authorize another Seasons inpatient unit at Franklin Square, which, as explained below, will cause a much greater adverse impact on existing providers than the Northwest unit.

II. EXCEPTION NO. 2: SEASONS' PROPOSAL TO BUILD A 16-BED INPATIENT HOSPICE UNIT AT FRANKLIN SQUARE HOSPITAL CENTER IS NOT CONSISTENT WITH REVIEW CRITERION .08G(3)(f), DUE TO THE UNTOWARD IMPACT ON EXISTING PROVIDERS AND THE HEALTH CARE DELIVERY SYSTEM.

Review Criterion .08G(3)(f) requires Seasons to "provide information and analysis with respect to the impact of the proposed project on existing health care providers." In response, Seasons claims that the proposed project will have an impact only on its own Northwest Hospital unit and that the impact will be short-lived because of the prospects for continued growth and

demand. CON Application at 54-55. Seasons also asserts that it expects no negative impact on non-Seasons hospice programs (*i.e.*, Stella Maris and Gilchrist). Responses to 7/26/11 Completeness Questions at 19-20. Seasons goes so far as to imply that the Franklin Square project, and other hospital-based inpatient units, will have a *positive impact* on volume for all hospice care providers. Responses to 7/26/11 Completeness Questions at 22.

Seasons' blithe contentions are wrong, which the Reviewer recognizes: "I believe that the applicant has made unrealistic claims with respect to the likely impact of the proposed project on [Stella Maris and Gilchrist]." Recommended Decision at 36. However, the Recommended Decision does not recognize the full extent of the likely adverse impact on Stella Maris and Gilchrist. Seasons has failed to demonstrate that the proposed project will not have a significant adverse impact on existing providers, as is required by .08G(3)(f), and, in fact, it will cause severe adverse impact to Stella Maris.

A. The impact of the Northwest Hospital facility is not indicative of the likely impact of the proposed Franklin Square facility.

In assessing the impact of the Franklin Square project, the Recommended Decision notes the similarities between Seasons' inpatient hospice unit at Northwest Hospital and the proposed Franklin Square facility. The Recommended Decision relies on the impact the opening of the Northwest Hospital facility had on Stella Maris and Gilchrist in drawing erroneous inferences about the likely insignificant impact the opening of the Franklin Square facility will have on these providers. However, because Stella Maris receives substantial patient referrals from Franklin Square and other MedStar hospitals (as shown in **Table 2**, MedStar hospitals were the second largest source of inpatient referrals to Stella Maris) and because the LifeBridge facilities

(Northwest Hospital and Sinai Hospital) were not one of the top four sources of referrals to Stella Maris, the two inpatient units are vastly different in terms of impact.

Table 14 of the Recommended Decision sets forth the number of inpatients, as well as the total number of patients, served by Stella Maris, Gilchrist and Seasons for the years 2007 through 2011. This time frame captures the year prior to the opening of the Northwest Hospital facility, the year of the facility's opening, and the data following the first three years of that facility's operation. The Recommended Decision notes that during the period from 2007 to 2011, all three facilities experienced growth in total patients (56 % for Gilchrist, 60% for Stella Maris and 127% for Seasons), and that Stella Maris experienced a "modest" decline in its inpatient census between 2008 and 2011, but remained above the level reported for 2007. From this, the Recommended Decision concludes: "[w]hile Seasons experienced strong growth in inpatient demand in the three years after opening the unit at [Northwest], this does not appear to have significantly damaged [Stella Maris and Gilchrist]." Recommended Decision at 37.

The Recommended Decision's conclusion that the impact of the proposed project at Franklin Square on Stella Maris is likely to be similar to the impact caused by the opening of the Northwest facility is incorrect. Although the Recommended Decision acknowledges that the Franklin Square facility is more likely to have an impact on Stella Maris than the Northwest facility due to the geographic proximity of the Franklin Square campus with the Stella Maris campus (Recommended Decision at 38), the finding of impact is understated, especially in light of the vastly different inpatient referral patterns between Northwest/LifeBridge and Stella Maris and Franklin Square/MedStar and Stella Maris.

Northwest specifically, and the LifeBridge Health system in general, is not a significant source of referrals to Stella Maris. As shown in **Table 2** below, in FY10 and FY 11 neither

Northwest nor Sinai (the other LifeBridge hospital) was included among the top four sources of referrals to Stella Maris. By contrast, as shown in **Table 2**, Stella Maris receives a substantial number of inpatient referrals from Franklin Square and the other MedStar hospitals. Franklin Square was, in fact, the second largest outside source of inpatient referrals to Stella Maris in FY10 and FY11. When considered in their entirety, the MedStar system provided the largest outside source of inpatient referrals to Stella Maris.

Table 2: Top Sources of Referrals to Stella Maris Inpatient Unit³

	FY10	FY11
St. Joseph Medical Center	66	79
Franklin Square	60	76
Good Samaritan	23	42
All MedStar Hospitals	97	128
Stella Maris Nursing Home	138	194

Source: Stella Maris Comments at 8.

Certainly, Stella Maris can compensate for the loss of a relatively small number of patient referrals in a given year. However, it is unrealistic and unfair to expect Stella Maris to compensate for as much as 20% of inpatient referrals in a given year, particularly in light of the history of decrease in inpatient admissions at Stella Maris (3.7% between 2008 and 2011). Stella Maris Comments at 8.

The Recommended Decision finds that Seasons’ experience at Northwest indicates Seasons likely will generate a new demand for hospice care as a result of the development of an

³ Seasons has noted that Stella Maris is part of a larger health system with a hospital affiliate (Mercy Medical Center), which Seasons argues provides a captive source of referrals for Stella Maris. Response to Comments of Stella Maris, Inc. and Gilchrist Hospice Care, Inc., at 17. However, Mercy does not provide a large number of referrals to Stella Maris, and it does not have an exclusive referral relationship with Stella Maris. As shown in **Table 2** above, Mercy is not one of Stella Maris’ top three sources of referrals. Franklin Square is a more important referral source than Stella Maris’ affiliate. Moreover, in 2010, the Seasons unit at Northwest received 17 inpatient admissions from Mercy Medical Center, demonstrating that Stella Maris does not capture all of the Mercy referrals. Application at 42 (Table 3).

inpatient hospice unit on a hospital campus. Recommended Decision at 37. The Recommended Decision concludes that the impact of the proposed Franklin Square project on Stella Maris and Gilchrist will not be a “zero sum game” (i.e., the loss in number of inpatient admissions by Stella Maris and Gilchrist will not automatically translate to the same number of gains in inpatient admissions by the Seasons’ Franklin Square facility). *Id.* While the Northwest unit may have generated demand for some inpatient hospice referrals of patients who may not have otherwise chosen hospice care, the lack of significant change in the number of admissions to the Stella Maris inpatient facility following the opening of the Northwest facility is not due to any “new demand generation” of the hospice unit on the hospital campus, but can be attributed to the absence of a significant referral relationship between Stella Maris and Northwest prior to the opening of the Northwest inpatient facility.

Prior to the opening of the Northwest facility, Stella Maris received relatively fewer referrals from Northwest while Seasons already had a significant relationship with Northwest, providing inpatient care to 164 patients in the Northwest Hospital subacute unit. Responses to 9/1/11 Completeness Questions at Exhibit 1. Seasons’ prior relationship with Northwest, coupled with the overall increase in Seasons’ presence in the hospice market during the relevant period both help to account for the number of inpatient admissions generated by the opening of the Northwest unit.

B. The loss of the second and third largest referral sources to Stella Maris would be highly damaging.

The Recommended Decision concludes that an impact on Stella Maris in the range of 15-20 percent is unlikely, but even if the impact is 15-20 percent, the impact will not threaten the existence of Stella Maris. Recommended Decision at 41. The pattern of referrals from MedStar

hospitals to Stella Maris does not support this conclusion. Next to Stella Maris itself, MedStar hospitals account for the largest percentage of patients referred to the inpatient unit at Stella Maris, and a loss of this magnitude cannot be recouped simply through possible changes in the hospice market. Stella Maris Comments at 8 (n.3). (See **Table 2** above).

In FY10 and FY11, Franklin Square was the second largest source of inpatient admissions to Stella Maris (not including admissions from the Stella Maris nursing home), while Good Samaritan Hospital Center, another MedStar hospital, provided the third greatest source of inpatient admissions. Stella Maris Comments at 8. In FY10, referrals from all MedStar hospitals represented 18% of all Stella Maris inpatient admissions, while in FY11 they represented 17% of Stella Maris inpatient admissions. *Id.* Moreover, in FY10, Stella Maris received 17% of its referrals for home hospice care from MedStar hospitals. In FY11 this number increased to 20%. Stella Maris Comments at 10.

If the proposed project is approved, Stella Maris could not replace the MedStar referrals that will be captured by Seasons' 16-bed inpatient hospice unit at Franklin Square. Even if, as Seasons claims, some of these patients would not have otherwise chosen hospice, many of the patients who will receive care in the new inpatient unit at Franklin Square are MedStar patients who would have gone to Stella Maris and other existing providers who can, and do, provide the same services. Seasons itself projects that it will receive 107, 114, and 58 inpatient referrals from Good Samaritan, Union Memorial, and Harbor Hospital, respectively. *See* CON Application at 43. If Seasons' own expectations are met, it will receive approximately 2.5 times more referrals from Good Samaritan than Stella Maris did in FY11. Comments by Stella Maris, at 9-10.

Contrary to Seasons' assertions, many of the beds in the new inpatient facility likely will be filled with patients who otherwise would have occupied the underutilized beds at the existing

inpatient facilities in Baltimore County. In fact, this is what happened at the Northwest Hospital unit as shown by the difference in Seasons' inpatient utilization in 2007 (the year before Seasons opened the inpatient unit at Northwest) and 2008 (the year the unit opened). In 2007, 164 hospice patients were served by Seasons in the sub-acute unit at Northwest (beds licensed to provide nursing home or CCF care). In 2008, the number of hospice patients served in the sub-acute unit declined by *120 patients to a total of 44*. Seasons' Responses to 9/1/11 Completeness Questions at 5. Seasons admits that many of the 120 patients comprising the decline in the sub-acute admissions would have chosen hospice care even without the new inpatient hospice unit at Northwest.⁴

Perhaps even more indicative of the losses Stella Maris will face if the Franklin Square unit is approved is the impact the opening of the Northwest unit had on Seasons' referral relationship with Sinai Hospital, the other member hospital in the LifeBridge Health system. As Seasons relates, prior to the opening of the Northwest hospice unit, Seasons provided no inpatient services to patients at Sinai Hospital. However, in 2010, the Northwest unit admitted 123 hospice patients from Sinai Hospital (42% of the 291 patients it received from Northwest). 9/15/11 Response to 9/1/11 Completeness Questions at 5. In fact, in 2010 Sinai Hospital was the second largest source of referrals for Seasons' Northwest inpatient unit. Application at 41-43, 54-55. Thus, by opening the Northwest inpatient unit, Seasons captured the inpatient referrals from Northwest's sister hospital, Sinai Hospital. Seasons admits that the same effect likely will occur within the MedStar Health system as a result of the proposed project. Indeed, Seasons is

⁴ In FY11, 76 patients from Franklin Square were cared for at Stella Maris' inpatient hospice. This number is less than two-thirds of the 120 patients Seasons concludes it may have lost from its hospice care of patients in Northwest's sub-acute unit to its inpatient hospice at Northwest in 2008.

counting on it. Seasons expects to receive 107 inpatients referrals from Good Samaritan, a MedStar member hospital, roughly 2.5 times the 42 inpatients Stella Maris received in FY11 from Good Samaritan. *Id.*

In short, if Seasons' proposed inpatient unit at Franklin Square is approved, Stella Maris could lose most, if not all, of its inpatient admissions from the MedStar hospitals. This loss would include the loss of two of its largest sources of referrals, and an overall loss of nearly 20% of Stella Maris' inpatient referrals. It is an error for the Recommended Decision to find that a 15-20% impact not to be significant. Recommended Decision at 38.

Aside from the impact on its inpatient services, Stella Maris' loss of home hospice patients from the MedStar system also would be quite significant. In FY10, 9% of Stella Maris' home hospice patients were transferred from Franklin Square, and a total of 17% percent were transferred from all MedStar hospitals. In FY11, 11% of Stella Maris' home hospice patients were transferred from Franklin Square, and a total of 20% were transferred from all MedStar hospitals. Due to Seasons' presence within Franklin Square, Franklin Square and the other MedStar facilities would be more likely to refer home hospice patients to Seasons, rather than to other hospice providers, like Stella Maris, that receive these referrals today.

Also, a loss in home hospice referrals to Stella Maris from the MedStar hospitals would have an adverse impact on admissions to Stella Maris' inpatient unit. In FY10 and FY11, Stella Maris' home hospice program accounted for 19% and 24%, respectively, of Stella Maris' inpatient hospice admissions. As noted above, a significant portion of Stella Maris' home hospice patients are referred from MedStar hospitals, and some of these referrals are, in turn, referred to the Stella Maris inpatient unit. If Stella Maris loses the MedStar home hospice

referrals, it will also lose a portion of the vicarious inpatient admissions originating from those referrals.

Finally, like the need analysis, the adverse impact analysis in the Recommended Decision relies upon the incorrect assumption that Seasons Northwest inpatient unit may not continue to operate, due to lack of CON approval, and Seasons will ultimately only have one inpatient hospice unit. Recommended Decision at 39 (“This finding is based on . . . the jeopardy under which the NWH unit exists because of its close similarity to the Sinai unit.”). This is not an accurate or fair assumption. The reality is that Seasons’ Northwest unit has been operating continuously and successfully since 2008, and Seasons has not indicated that it intends to cease operating the unit.

- C. The suggested expansion of services into other geographic markets is not a feasible or proper alternative to compensate for adverse impact in the jurisdiction where Stella Maris’ inpatient unit is located.

The Recommended Decision accepts Seasons’ bold assertion that Stella Maris and Gilchrist would not suffer undue adverse impact as a result of approval of the proposed project because Stella Maris and Gilchrist could expand their penetration into other jurisdictions where they have a CON to operate. Recommended Decision at 38. The Recommended Decision notes that Stella Maris is only competitive within four of the six jurisdictions it is authorized to serve, and suggests that Stella Maris has the ability to offset negative impact it may experience in the Baltimore City and Baltimore County region by expanding and competing more effectively in other regions. *Id.* Thus, the Recommended Decision suggests that Stella Maris and Gilchrist can avoid an adverse impact simply by competing elsewhere. This guidance seems better offered to Seasons, the party attempting to add to existing inpatient capacity, rather than to the two existing

providers who have been operating established inpatient facilities in Baltimore County for decades.

This suggested “solution” to adverse impact would unfairly burden Stella Maris (and Gilchrist). The issue of adverse impact relates to negative effects on inpatient capacity. As Seasons implies throughout the application process, a convenient location for patients and family is paramount to garnering inpatient admissions. *See Responses to Completeness Questions 7/26/11 at 9-10.* There is little reason to conclude that patients and their families from Montgomery and/or Anne Arundel Counties would travel to Stella Maris’ inpatient unit in Baltimore County to compensate for a loss of nearly 20% of inpatient referrals lost to the Franklin Square facility.⁵ Thus, apparently, Seasons is suggesting that Stella Maris should choose to abandon the inpatient hospice unit it has operated in Baltimore County for 30 years and seek Commission approval to relocate its inpatient capacity to Anne Arundel County and/or Montgomery County so that Seasons may establish a new (second) inpatient unit in Baltimore County and capture a significant portion of inpatient referrals from Stella Maris. This result would be neither fair nor reasonable, and it would undermine the purpose of an adverse impact analysis.

Because patients and families likely would not travel from Anne Arundel County and/or Montgomery County to receive hospice services in an inpatient facility in Baltimore County, if

⁵ An important goal of hospice care is to allow terminal patients to die at home or in a home-like setting surrounded by their loved ones. While Stella Maris could provide home care hospice services to patients living in Anne Arundel County and Montgomery County to allow them to achieve the goal of receiving care at home, in the event such patients required general inpatient hospice care (for whatever reason) it would be both impracticable and a hardship on their family members to admit patients from these counties to an inpatient unit in Baltimore County.

Stella Maris were to increase its presence in these distant counties, in order to provide the best care to their patients, Stella Maris would have to enter into HSCRC-approved arrangements with local hospitals to provide inpatient care on an “as available basis.” Any home hospice patient Stella Maris provided service to in Anne Arundel County or Montgomery County would be admitted to a local hospital, not the Stella Maris inpatient unit. The Stella Maris inpatient unit would not see an increase in the number of inpatient admissions due to increased competition in outlying counties.

Furthermore, Review Criterion .08G(3)(f) states that there shall be an “analysis with respect to the *impact* of the proposed project on *existing* health care providers.” (emphasis added). The Recommended Decision’s determination that Stella Maris may be able to mitigate the impact of the Franklin Square facility by expanding the geographic scope of its services is not relevant to the Review Criterion. Stella Maris has been providing inpatient hospice services to residents of Baltimore City and County since 1983. A loss of as much as 20% of inpatient admissions would, as stated above, have a highly detrimental impact on Stella Maris’ ability to continue to provide these inpatient services. Therefore, Stella Maris’ potential ability to expand the scope of home hospice services into distant counties (which, as stated, would have no impact on Stella Maris’ inpatient admission numbers) is irrelevant.

CONCLUSION

Seasons has failed to demonstrate (i) that its proposed inpatient unit will meet an unmet need by serving patients who would otherwise not have been cared for in hospice and (ii) that its proposed inpatient unit will not have a severely adverse impact on Stella Maris’ inpatient hospice

unit. For all of the reasons set forth above, Stella Maris respectfully asks that the Seasons' Application proposing to establish a 16-bed inpatient hospice unit at Franklin Square be denied.

Respectfully submitted,



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July 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2013, copies of the foregoing Revised Exceptions to Recommended Decision submitted by Stella Maris were sent via email and first-class mail to:

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