STATE OF MARYLAND

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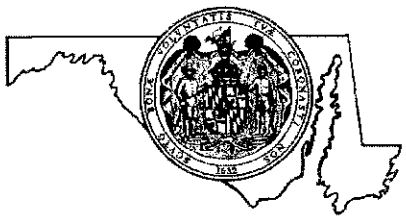
Ben Steffen
EXECUTIVE DIRECTOR



MARYLAND HEALTH CARE COMMISSION

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MEMORANDUM

TO: Commissioners, Maryland Health Care Commission
Lynn O'Connor, President & CEO, Ingleside at King Farm
Rose Matricciani, Esquire, Counsel to Ingleside at King Farm

FROM: Ben Steffen
Executive Director

RE: Staff Report and Recommendation
Ingleside at King Farm, Docket No. 14-15-2355

DATE: April 1, 2015

Enclosed is the Staff Report and Recommendation in the review of the Certificate of Need ("CON") application of Ingleside at King Farm ("Ingleside"), a continuing care retirement community ("CCRC") located in Rockville (Montgomery County). Ingleside seeks CON approval to "convert" 20 existing comprehensive care facility ("CCF" or "nursing home") beds developed without CON approval for use by subscribers of the CCRC to beds that can admit members of the general public. The applicant entered into an agreement to purchase 20 temporarily de-licensed CCF beds from National Lutheran Home and Village at Rockville ("National Lutheran") and is seeking to transfer the former status of these beds as publicly available bed capacity to 20 of its existing 45 CCF beds. All 45 of the existing nursing home beds at Ingleside were established without CON approval, using a statutory exclusion that permits a CCRC to develop CCF beds based on a ratio of beds to independent living units in order to have nursing home beds adequate to the needs of its independent living and assisted living residents. CCRCs do not have to justify a public need for nursing home beds when they are developed under the terms of this CON exclusion.

For reasons stated in more detail in the enclosed Staff Report, MHCC staff recommends that the Commission **DENY** the application. Staff notes that Montgomery County has been projected by the MHCC to have a surplus of over 1,000 CCF beds in 2016, and that the use rate of nursing home beds in the County has been declining. Staff has concluded that the applicant did not demonstrate: that the proposed conversion of CON-excluded beds to publicly available

beds met unmet needs of the population to be served; and, that the proposed project was needed to assure access to services or the quality of care.

In accordance with COMAR 10.24.01.09B, the applicant may submit written exceptions to the enclosed Staff Report and Recommendation. Exceptions must be filed no later than 1:00 p.m. on Thursday, April 9, 2015. Written exceptions and argument must identify specifically those findings or conclusions to which exception is taken, citing the portions of the record on which each exception is based. Any responses to exceptions must be filed on Friday, April 10, 2015. The filing deadline can be met by sending pdf'd copies of exceptions and any response to exceptions to counsel for the parties and to Ruby Potter, Paul Parker, Kevin McDonald, and Assistant Attorney General Suellen Wideman; however, thirty copies of written exceptions and responses to exceptions must be filed with the Commission by noon on the next business day.

Oral argument during the exceptions hearing before the Commission will be limited to 15 minutes for the applicant and 10 minutes for any interested party, unless extended by the Chair or the Chair's designated presiding officer. The schedule for the submission of exceptions and responses is as follows:

Submission of exceptions	April 9, 2015 No later than 1:00 pm
Submission of responses	April 10, 2015
Exceptions hearing	April 16, 2015 1:00 pm

IN THE MATTER OF	*	**BEFORE THE**
	*	
INGLESIDE AT KING FARM	*	**MARYLAND HEALTH**
	*	
DOCKET NO. 14-15-2355	*	**CARE COMMISSION**

* *

Staff Report and Recommendation

April 1, 2015

TABLE OF CONTENTS

Page

I. **INTRODUCTION**
The Applicant....1
The Project....2
Environment and Marketplace....2
Staff Recommendation....3

II. **PROCEDURAL HISTORY....4**
Review of the Record....4
Local Government Review and Comment....4
Interested Parties....4

III. **PROJECT CONSISTENCY WITH REVIEW CRITERIA AND STANDARDS....4**

A. COMAR 10.24.01.08G(3)(a) - THE STATE HEALTH PLAN

COMAR 10.24.08.05: Nursing Home Standards

(A) General Standards
1. Bed Need....4
2. Medical Assistance Participation....5
3. Community Based Services....6
4. Non-Elderly Residents....6
5. Appropriate Living Environment....7
6. Public Water....7
7. Facility and Unit Design....8
8. Disclosure....9
9. Collaborative Relationships....9

(B) New Construction or Expansion of Beds or Services
1. Bed Need....9
2. Facility Occupancy....13
3. Jurisdictional Occupancy....14
4. Medical Assistance Program Participation....15
5. Quality....16
6. Location....16

B. COMAR 10.24.01.08G(3)(b) NEED....17

C. COMAR 10.24.01.08G(3)(c) AVAILABILITY OF MORE COST-EFFECTIVE ALTERNATIVES....18

D. COMAR 10.24.01.08G(3)(d)-VIABILITY OF THE PROPOSAL....18

E. COMAR 10.24.01.08G(3)(e)-COMPLIANCE WITH CONDITIONS OF PREVIOUS CERTIFICATES OF NEED 21

F. COMAR 10.24.01.08G(3)(f)-IMPACT ON EXISTING PROVIDERS 21

IV. SUMMARY AND STAFF RECOMMENDATION 21

Appendices

1. Ingleside at King Farm, CCRC-wide Occupancy History 23
2. COMAR 10.24.01.03 K. Continuation of Specific Exclusion from Certificate of Need for Continuing Care Retirement Communities 25
3. Record of the Review 29
4. Trends in Population by Age Group, Montgomery County and State of Maryland, CY 2010 – 2040 32
5. Comparison of previous projects that used temporarily de-licensed beds to construct new beds by replacing or adding on to an existing nursing home..... 34

STAFF REPORT AND RECOMMENDATION

I. INTRODUCTION

The Applicant

King Farm Presbyterian Retirement Community d/b/a Ingleside at King Farm ("Ingleside") is a continuing care retirement community ("CCRC") that opened in 2009 and is currently comprised of: 245 independent living ("IL") units (studios to three bedroom apartments); 32 assisted living ("AL") units with one or two bedrooms with a total of 35 beds licensed for 35 residents; and 45 comprehensive care facility ("CCF"), or nursing home, beds. Ingleside is located at 701 King Farm Boulevard, in Rockville (Montgomery County).

Ingleside opened with 26 CON-excluded CCF beds (i.e., nursing home beds available to its CCRC members but not available to the general public) and 45 AL beds in its initial phase of development, which was planned to extend from its opening in 2009 until 2016. Ingleside's original plan called for its CON-excluded CCF beds to increase as the community matured; Phase II of Ingleside's plan, slated for 2016 to 2021, was intended to adjust the balance of CON-excluded CCF beds and AL beds, resulting in 37 CON-excluded CCF beds and 35 AL beds (an increase of 11 CCF beds and a decrease of 10 AL beds). Phase III development, projected for 2021 and beyond, called for a complement of 45 CCF and 35 AL beds (an increase of 8 CCF beds from Phase II, with AL beds remaining the same as in Phase II). (See Appendix 1 for Ingleside's occupancy profile from inception through the end of 2014.)

All of Ingleside's existing CCF beds were authorized under statutory language that, subject to certain conditions, excludes the development of such beds from the requirement to obtain Certificate of Need ("CON") approval. The statutory exclusion for CCF beds at a CCRC beds was implemented in regulations, found at COMAR 10.24.01.03K, which provide that CON-excluded beds may only be used for: CCRC residents; an individual in "a long-term significant relationship" with an individual who is admitted under a joint contract and at the same time to the CCRC's independent or assisted living units; or an individual directly admitted into a CCF bed at the CCRC after executing a continuing care agreement and paying an entrance fee that is at least equal to the lowest entrance fee charged by the continuing care retirement community for its independent or assisted living units. (Appendix 2 provides the full regulation.)

According to Ingleside, by the latter part of 2012, the 26 CON-excluded CCF beds that Ingleside had put into operation at its opening in 2009, were full and the CCRC had to send some of its residents to other nursing homes in Montgomery County. As would be expected, this was not a satisfying alternative for subscribers, who signed contracts with the expectation that they would receive such care on the Ingleside campus, consistent with the conventional concept of continuing care. These circumstances prompted Ingleside to seek and receive a determination in February 2013, from the Maryland Health Care Commission ("MHCC") staff that CON approval was not required to add 19 CON-excluded CCF beds in existing space that was then being used as AL units. In May 2014, Ingleside completed its conversion of 11 assisted living apartments to CCF capacity, adding 19 CON-excluded CCF beds, all in private rooms, reaching its current

total of 45 CON-excluded CCF beds. This reduced Ingleside's AL capacity from 43 to its current 32 apartments, accommodating 35 AL beds.

The 19 additional CON-excluded CCF beds were licensed for use on June 10, 2014. Three weeks later, MHCC received a letter of intent from Ingleside, notifying the Commission that it would be requesting CON approval to "exchange" 20 of its CON-excluded CCF beds for publicly-available CCF beds that would not be subject to the earlier-noted admission limitations under which the conversion of the previous AL space CON-excluded beds was authorized in 2013.

The Project

In September 2014, Ingleside applied for a CON to "convert" 20 CON-excluded CCF beds to "public" beds, not by adding any additional space, but by purchasing 20 temporarily de-licensed CCF beds from National Lutheran Home and Village at Rockville ("National Lutheran"). Thus, the project is essentially a proposal to convert CCF beds from a status under which they were created, which limits their use to CCRC residents of Ingleside, to a status that would allow members of the general public to be directly admitted to 20 of those beds.

As noted, the costs to convert the space from AL beds to CON-excluded CCF beds (that Ingleside now wants to change to publicly available CCF beds) have already been incurred. The total estimated project cost of the second bed "conversion" now proposed is $160,000, which includes $100,000 for acquisition of the temporarily de-licensed beds, with payment conditioned on Ingleside's obtaining CON approval.

Environment and Marketplace

As of the close of 2013, there were 34 nursing homes operating in Montgomery County. Seven of those operate as components of CCRCs, which provide a continuum of care that includes independent living, assisted living, and CCF services in one location under oversight by the Maryland Department of Aging. (*see*, http://www.aging.maryland.gov/CCRC.html). The 27 freestanding nursing homes operated 3,657 CCF beds in Montgomery County in FY 2013 while the seven CCRCs operated a total of 668 CCF beds. However, only 89 of the beds operated on CCRC campuses were authorized through the CCRC "exclusion" provisions of the law that limits use of the beds, for the most part, to CCRC subscribers.

As displayed in Table 1-1, below, the Commission's 2016 projection of CCF bed need in Montgomery County shows that the County has a surplus of 1,191 CCF beds, when the adjustment for community-based services that is part of the MHCC's need methodology is factored in. Montgomery County has an unadjusted surplus of 956 CCF beds.

Table I-1: 2016 CCF Bed Need Projection for Montgomery County

Licensed Beds	Bed Inventory as of September 1, 2014				Projected Need in 2016			
	Temporarily Delicensed Beds	CON Approved Beds	Waiver Beds	Total Bed Inventory	Gross Bed Need Projection	Unadjusted Bed Need	Community-Based Services Adjustment	2016 Net Bed Need
4,500	72	0	35	4,607	3,651	-956	235	-1,191

Source: MHCC 2016 Gross and Net Bed Need Projections for Nursing Home Beds in Maryland. 41:20 *Maryland Register* 1180 (October 3, 2014).[1]

Montgomery County has a jurisdiction-wide occupancy rate that has consistently declined in recent years and is among the lowest in Maryland (Table I-2). than that of Montgomery County. Consistent with what might be expected in a jurisdiction showing a large bed surplus, the occupancy rate of CCF beds in Montgomery County in recent years has consistently lagged the statewide occupancy rate. In 2013, the latest reporting period for which data is available, Montgomery County ranked 18th out of 24 jurisdictions with an occupancy rate of 84.7%. In Montgomery County, average annual bed occupancy declined every year from 2008 to 2013.

Table I-2: Average Annual Occupancy Rate of CCF Beds, FY2008-FY2013, Montgomery County and Maryland

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013
Montgomery	88.1%	87.7%	87.2%	85.8%	85.2%	84.7%
MARYLAND	88.8%	89.1%	89.2%	88.9%	88.5%	87.9%

Source: MHCC Long-Term Care Surveys

Staff Recommendation

Staff has reviewed the proposed project's compliance with the applicable State Health Plan standards at COMAR 10.24.01.08.05A and B, and with the CON review criteria at COMAR 10.24.01.08G and recommends that the Commission DENY the application on the basis that it would create a new publicly available nursing home that is not needed based on the projected need and occupancy rates of existing facilities.

The rationale for this conclusion will be developed throughout this report. However, staff's primary reason for recommending denial is that the applicant did not demonstrate that additional publicly available CCF beds are needed in Montgomery County, given the significant surplus of CCF beds and declining use rate in the county. The applicant was transparent in stating that "the impetus for this project is to enable Ingleside to operate the nursing home beds more efficiently by operating at a higher census." The applicant did not demonstrate unmet needs of the population to be served or how the proposed project would improve access to and the quality of needed services.

Staff also concluded that Ingleside's application does not meet the required jurisdictional occupancy threshold and is not a cost-effective way to meet the needs of the population to be served.

[1] *See* discussion of the bed need standard, COMAR 10.24.08.05A, *infra*.

II. PROCEDURAL HISTORY

Please see Appendix 3, Record of the Review.

Local Government Review and Comment

No comments on this project have been received from either the Montgomery County Department of Health or other local government entities.

Interested Parties

There are not interested parties in this review.

III. 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 and Home Health Agency Services. The specific standards to be addressed include COMAR 10.24.08.05A and .05B, the General Standards for review of all nursing home projects and the Nursing Home Standards for New Construction or Expansion of Beds or Services.

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 a letter of intent for the application will be the need projection applicable to the review.

At the time Ingleside submitted its letter of intent, the Commission had published what was later determined to be an erroneous Gross and Net Bed Need Projections for Nursing Home Beds in Maryland. 40:8 *Maryland Register* 767 (April 19, 2013). The erroneous projection showed a total bed inventory of 4,686 beds and a gross bed need projection for 4,248 beds in Montgomery County in 2016, indicating a projected surplus of 438 CCF beds. After MHCC staff discovered calculation errors in the 2013 projections, a corrected need projection (with updated bed inventory) was published in 41:20 *Maryland Register* 1180 (October 3, 2014). The October 2014 corrected projection is the bed need in effect and applicable to this review. The corrected

projection lowered the gross need, widening the CCF bed surplus in Montgomery County to 1,191 beds in 2016.

(2) Medical Assistance Participation.

(a) 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 .05A 2(b) of this Chapter.

(b) 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 Maryland 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*.

(c) 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.

(d) 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.

Ingleside states that it already participates in the Medical Assistance Program and will continue to do so. The current minimum level of participation is 41.6% for Montgomery County. The applicant has stated its willingness to comply with this required Medicaid participation level and, on the surface, its financial projections are consistent with a commitment to comply, with Medicaid patients representing 42.75% of the patient-days for the 20 public beds. (DI#2, DI#8) This minimum participation level would only apply to the 20 beds that Ingleside proposes to "convert" to publicly available beds; CCRC residents who have "spent

down" cannot be included in any calculation of whether Ingleside meets the required minimum Medicaid participation level.

Based on this response, the applicant complies with this standard.

(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 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.

Ingleside states that it provides information to all prospective residents about the existence of alternative community-based services, and included samples of educational materials for such programs in their application materials. (DI#2)

Ingleside states that it initiates discharge planning on admission as part of its development of the Patient Care Plan and that it will permit access to the facility for all Olmstead efforts approved by the Department of Health and Mental Hygiene to provide education and outreach for residents and their families. (DI#2)

The applicant complies with this 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

Ingleside states that it will provide in-service education for staff and utilize local hospitals and social service agencies on a consulting basis to develop its in-service education programs addressing the psychosocial needs of non-elderly disabled residents and meeting those needs. Ingleside also states that its social worker will maintain contact with appropriate government agencies relating to career and technical education in order to facilitate vocational rehabilitation services for non-elderly patients preparing for discharge from the facility. (DI#2)

(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.

Ingleside states that a care plan will be developed for each resident upon admission and that it will initiate discharge planning at that time with the goal of limiting each nonelderly resident's stay to 90 days or less, whenever feasible, and achieving voluntary transfer to a more appropriate setting. (DI#2)

The applicant complies with this 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.

(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.

All of the 45 CCF rooms at Ingleside are private rooms with individual temperature controls. No more than two residents share a toilet. (DI#2)

The applicant complies with this standard.

(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.

Ingleside's site is served by a public water system.

(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.

Ingleside states that its CCF design is oriented toward treating "typical patients requiring comprehensive care, with an emphasis on rehabilitation." It has two nursing units and includes a rooftop garden to allow residents safe access to the outdoors. Part of one of the units is a dementia unit, and the facility is equipped with a WanderGuard monitoring system so that patients who wander will not be able to leave the building without setting off an alarm.

Ingleside states that specific attention has been made to patient safety, and lists the following features as examples:

- Visibility of patients: Nursing stations are located central to the units, so that nurses will be able to see all of the patient rooms. The day areas are located opposite the nursing stations, to promote efficiency and reduce staff fatigue. The nursing station for the dementia subunit is closer to the patient space, allowing nurses to be closer to these residents;
- Standardization: All of the rooms have been designed to be similar, with common equipment;
- Automation: Centralized scheduling, nurse call system, bar coding medications;
- Accessibility of information: Ingleside states that it is a pioneer in wireless electronic technology and providing a platform for electronic medical records that also allows point of care nursing.
- Noise reduction: Materials used in Ingleside are designed to reduce noise as much as possible. Most areas will be carpeted with the goal of reducing noise and promoting safe gait for the residents;
- Patient involvement in care: The rooms are sized larger than necessary to accommodate family involvement with care. The facility holds routine care planning meetings with resident or family participation.
- Safety: The CCF and AL unit are on one floor, above the independent living floors, allowing for quick response to precarious events and evacuation, if needed.

The units can also be segmented via fire-resistant doors and is fully sprinklered.(DI#2)

The applicant complies with this 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 its principals has 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. (DI#2)

The applicant meets 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.

Ingleside provided a list of local providers with whom it has established collaborative relationships. The list includes a pharmacy, therapists (physical, occupational and speech), laboratory, imaging services, home health care and hospices, as well as a dentist, dietitian, physicians, and a psychiatrist. (DI#2)

The applicant meets this 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.

Ingleside maintains that it is not seeking to add new nursing home capacity in Montgomery County in this proposal, but rather seeking to relocate 20 existing temporarily-delicensed CCF beds from National Lutheran to Ingleside and license them, while, in effect, simultaneously delicensing 20 CON-excluded CCF beds developed in 2013-2014 without CON authorization under the CCRC bed exclusion policy. The applicant's position is that, since these temporarily delicensed beds are already in the bed inventory, there would be no addition of beds in the jurisdiction.

The applicant also cited demographic trends that project Montgomery County's population to grow by 3% between 2015 and 2020 with the 65+ cohort projected to grow at a rate which is "more than five times the rate for all age groups." (DI#2) The 65 and older population is projected to increase by 38% between 2010 and 2020.[2]

In justifying the need for these publicly available beds, Ingleside notes that all of its CCF beds will be located in private rooms and that (citing 2012 MHCC data) only 28.8% of the CCF beds in Montgomery County are located in private rooms. The applicant also notes that its CCF has a four-star rating on Medicare's rating system, while nine facilities in the county totaling 1,024 beds rated two or fewer stars and that two facilities with a combined 252 beds have a one star rating, according to the applicant. (DI#10)

Ingleside also maintains that MHCC has established a precedent of allowing the replacement and relocation of temporarily delicensed beds "irrespective of the net bed need projection in the jurisdiction in which the facilities are located, because the additional beds being requested were temporarily de-licensed and already in the Commission's bed inventory," and that "allowing the industry to re-purpose beds that are already in the MHCC's inventory enables the industry to substitute new, state of the art capacity for older, out of date capacity." Ingleside cited several examples that it considers to be analogous.[3]

Staff will address these points below.

Staff Analysis and Recommendation

Ingleside is seeking to expand its services and beds by adding publicly available CCF beds through the "conversion" of 20 CON-excluded CCF beds that are currently restricted to

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[2] See Appendix 4 for "Trends in Population by Age Group Montgomery County and State of Maryland, CY 2010-2014" (prepared by Maryland Department of Planning. Staff notes, as is discussed later, that population trends are taken into account in the Commission's bed need projections.

[3] Staff disagrees with Ingleside's conclusion and believes that there are significant differences between in the objectives and circumstances in which the Commission has authorized replacement and relocation of temporarily delicensed CCF beds cited by the applicant and its own project. A detailed examination of those differences is found in this report's discussion of the Need criterion, at COMAR 10.24.01.08G(3)(b): Need, *infra*, and Appendix 5.

members of the Ingleside community. The applicant states that MHCC's approval of this application would not add new nursing home bed capacity in Montgomery County because the temporarily delicensed beds (although not in use anywhere) remain in the Commission's CCF bed inventory, and would simply be relocated to its facility.

Regulatory history is important in the Commission's consideration of the Ingleside's position. Before the Commission adopted changes to COMAR 10.24.08, the Nursing Home Chapter of the State Health Plan, it considered MHCC staff's analysis of informal public comments. Staff's analysis of 10.24.08.05B(1)(a) contains the following:

> [I]t cannot be assumed that every bed in the current inventory is fully needed or would be needed at a new site. Historically, when applicants have applied to move beds from one site to another, the Commission has asked the applicant to demonstrate need.

(Staff analysis of informal public comments, Nov. 16, 2006). As a result of this analysis, staff recommended and the MHCC adopted, additional language that added to .05B(1)(a) the requirement that an applicant demonstrate need when "using beds currently in the Commission's inventory."

In order to obtain MHCC approval, Ingleside must show that that the additional publicly available beds are needed in Montgomery County. The applicable standard specifically requires that, even when an applicant is using beds already in the inventory, the 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.

(COMAR 10.24.08.05B(1)(b))(emphasis added).

The applicant cites demographic trends in responding to the need standard. Demography is the basis of the MHCC's adopted bed need projection methodology, at COMAR 10.24.08.07, that identifies surplus bed capacity in Montgomery County. For this reason, the applicant's recitation of the facts concerning population growth and aging in the jurisdiction are unpersuasive as a justification of need. Similarly, the slight increase in access to private rooms and the small number of CCF beds in the jurisdiction with very poor Medicare star ratings are a negligible basis for claiming a need for this project.

Ingleside also sought to address need by presenting data that it states shows that, as National Lutheran downsizes to 160 beds (and if a nursing home with eight four-bed rooms is counted as having 16 beds in those rooms rather than 32), then occupancy in a 5-mile radius of Ingleside would be almost 91%. This argument is displayed at length in the applicant's discussion of the Need criterion later in the report, but staff does not believe that the Commission should find that a hypothetical occupancy rate of 90.9% in a small sector of the county (which has 26 other nursing homes outside of this defined 5-mile radius) is a compelling demonstration of need. Such an average annual occupancy rate is not excessive for nursing homes.

Commission staff does not agree with the applicant's claim that MHCC has established a precedent of allowing the use of temporarily delicensed beds to be replaced and relocated "irrespective of the net bed need projection in the jurisdiction in which the facilities are located." While the MHCC has allowed relocation of temporarily delicensed CCF bed capacity, such decisions have facilitated tangible changes in the physical plants of nursing homes, which, like any facilities, age and require modernization or replacement. Allowing some reallocation of temporarily delicensed CCF bed capacity can make sense, in a period when overall bed capacity and utilization are shrinking and MHCC's policy is to limit bed capacity growth in order to maintain higher bed occupancy levels. In particular, approving this type of reallocation is especially warranted when it facilitates modernization or replacement of obsolete facilities that are maintaining a relatively high level of use or operating under health and safety waivers.

The table in Appendix 5 profiles instances cited by the applicant in which temporarily delicensed beds were acquired and relocated. As that table illustrates, such relocations have typically been approved for use in freestanding nursing home projects that involve replacement of facilities or older bed capacity. The addition of beds can improve operating scale for smaller nursing homes, thereby lowering unit cost, and helping those facilities eliminate antiquated room accommodations, such as three and four-bed rooms. The addition of CCF beds can help offset the space-per-bed increases required modernization requires with greater overall revenue potential.

In contrast, Ingleside at King Farm is not proposing a tangible project, but is simply seeking to change the manner in which it can use its existing bed capacity. Ingleside has already built more CCF bed capacity than it currently needs to serve its retirement community campus population. It did this without CON authorization, using the special provisions in Maryland law available only to CCRCs and designed to allow CCRCS to easily develop the beds they need to fulfill the commitments they make to their subscribers who contract for continuing care. The applicant now seeks a CON merely to generate an additional increment of revenue from its nursing home operation on a temporary basis while waiting for demand from its CCRC population to catch up with the capacity it has built. The applicant acknowledged that "the impetus for this project is to enable Ingleside to operate the nursing home beds more efficiently by operating at a higher census." The low CCF bed occupancy problem that resulted from Ingleside changing assisted living beds to CON-excluded nursing home beds does not present a sound policy reason for reallocating bed capacity in a jurisdiction such as Montgomery County that has declining and relatively low CCF bed occupancy. Ingleside's proposal, if approved, would revive 20 dormant CCF beds that have not been used by nursing home residents since 2012 or 2013,[4] beds that otherwise would disappear from the bed inventory. Staff believes that removing these "paper" beds from the inventory is a desirable objective, given the large bed surplus currently existing in Montgomery County.

[4] National Lutheran delicensed various quantities of its CCF beds on various dates beginning in 2011, some of which have been relicensed at National Lutheran. *See,* letter from Ben Steffen, MHCC Executive Director, to the Village at Rockville re temporary delicensure of CCF beds at National Lutheran (Jan. 3, 2014).

Staff recommends that the Commission find that the applicant has not demonstrated public need for the publicly available CCF beds that it wants. Standard B(1)(b) requires an applicant, like Ingleside, that seeks to relocate CCF bed capacity to demonstrate "unmet needs … and how access to, and/or quality of, needed services will be improved." This it simply did not do.

(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.

Ingleside's application presented month-by-month occupancy rate information, as shown in Table III-2 below. (DI#2)

Table III-2: Monthly CCF Occupancy Rates

	Beds Available	Days in Month	Bed Days	Pt. Days	% Occupancy
Aug 2012	26	31	806	705	87.5%
Sep	26	30	780	653	83.7%
Oct	26	31	806	680	84.4%
Nov	26	30	780	676	86.7%
Dec	26	31	806	794	98.5%
Jan 2013	26	31	806	733	90.9%
Feb	26	28	728	654	89.8%
Mar	26	31	806	754	93.6%
Apr	26	30	780	754	96.7%
May	26	31	806	799	99.1%
Jun	26	30	780	771	98.9%
Jul	26	31	806	804	99.8%
Aug	26	31	806	792	98.3%
Sep	26	30	780	774	99.2%
Oct	26	31	806	796	98.8%
Nov	26	30	780	767	98.3%
Dec	26	31	806	801	99.4%
Jan 2014	26	31	806	783	97.2%
Feb	26	28	728	678	93.1%
Mar	26	31	806	728	90.3%
Apr	26	30	780	637	81.7%
May	26	31	806	707	87.7%
Jun*	45	30	1,350	425	31.5%
Jul	45	31	1,395	895	64.2%
24 Month Total		**730**	**20,139**	**17,560**	**87.2%**

* The 19 CON-excluded CCF beds that Ingleside changed from AL beds were licensed on June 10, 2014.

Ingleside also presented data that showed an occupancy rate of 64.6% for the last six months of 2014, during which it operated a CCF complement of 45 beds. (DI#22)

While not directly stating that it was presenting evidence why this rule (i.e., the standard requiring 90% occupancy over prior 24 months in order to allow expansion) should not apply, Ingleside gave several explanations for falling below this standard: (a) Ingleside has never had CCF beds that were available to the general public (i.e., persons who do not sign a CCRC contract and pay an entrance fee); (b) Ingleside has a "lower than normal occupancy rate for the comprehensive care beds" because "residents benefit from the wellness lifestyle and philosophy, [with]... a focus on fitness and healthy eating ... [that]. ...promote[s] a higher quality of life and less reliance on health care services;" and (c) some of Ingleside's residents move closer to family when their health begins to deteriorate, reducing the Ingleside resident population's need for skilled nursing services. (DI#2)

The applicant went on to state that converting 20 CCRC-restricted beds to publicly available status would enable the public to benefit from these beds without jeopardizing Ingleside's residents' access to these services when needed, thus "enabling Ingleside to increase occupancy in its skilled nursing facility."

Staff Analysis and Recommendation

As shown by the data it provided, Ingleside does not meet the facility occupancy standard. The applicant chose, in 2013, to get a determination of coverage that permitted it to change assisted living capacity to CCF beds for subscribers of its community, as permitted by statute and regulations without going through a Certificate of Need review to determine if the beds were needed. As a result of its decision, the applicant now has 45, rather than 26, CON-excluded CCF beds.

Exactly 21 days after Ingleside's CON-excluded beds were licensed, Ingleside submitted a letter of intent (followed later by a CON application) to "flip" the status of the beds to public beds. The applicant noted several times that its desire to increase its occupancy is the reason for this application; that it wants to "assure that the occupancy of the unit is economically sound by admitting people from the surrounding community to the unused beds." (DI#2, at p. 10)

Staff recommends that the Commission find that Ingleside has neither met the facility occupancy standard nor shown evidence why the standard should not apply.

(3) Jurisdictional Occupancy.

(a) The Commission may approve a CON application for a new nursing home only if the average jurisdictional occupancy for all nursing homes in that jurisdiction equals or exceeds a 90 percent occupancy level for at least the most recent 12 month period, as shown in the Medicaid Cost Reports for 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.

In its application, Ingleside took the position that this standard was not applicable, stating that "Ingleside is not a new nursing home." During completeness review, however, MHCC staff informed the applicant that that this standard would apply since the project seeks to create a 20-bed CCF unit that operates, from the perspective of its target market population, like a conventional freestanding nursing home.

Ingleside disagrees with this interpretation, stating that the beds that it proposes to purchase from National Lutheran Village have until recently been available to the public "for many years and are in the MHCC's bed inventory," and argued that its "application reflects a relocation of publicly available beds from one existing facility to another."

Staff Analysis and Recommendation

While Ingleside's application does not seek to construct a new nursing home, it does seek to expand comprehensive care facility beds within .05B and, more specifically, to relocate existing CCF beds, within .05B(1)(b). Its application, if approved, would make its nursing home newly-available to the general public. Staff notes that considerations of jurisdictional occupancy are also involved in the Commission's assessment of need for a proposed nursing home project that have been analyzed by staff in other sections in this report.[5]

The CCF beds that Ingleside seeks to relocate have not been recently available to members of the public, but, instead, are dormant beds that, while in the Commission's bed inventory, have not been available to Montgomery County residents beginning in 2011.[6]

In summary, with Montgomery County showing an occupancy of 84.7% in FY2013[7] – the seventh lowest among the 24 jurisdictions in Maryland – staff recommends that the Commission find that Ingleside's application does not meet the jurisdictional occupancy standard and that it has not shown evidence why this rule should not apply.

(4) Medical Assistance Program Participation.

(a) An applicant for a new nursing home must agree in writing to serve a proportion of Medicaid residents consistent with .05A(2)(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

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[5] *See* discussion regarding: COMAR 10.24.08.05B(1) – Bed Need, *supra*; and COMAR 10.24.01.06G(3)(b) – Need.
[6] *See* n. 5, *supra*.
[7] MHCC Long Term Care Survey FY2013.

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 its 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 participation rate.

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

Ingleside notes that it already participates in the Maryland Medical Assistance Program ("Medicaid"). As a CCRC that only operates CON-excluded CCF beds, it is not required by MHCC regulations to participate in Medicaid. A nursing home that obtains Certificate of Need approval and thus is able to admit members of the general public to its facility, must sign a Memorandum of Understanding with Medicaid and must later serve the required proportion of Medicaid recipients. The current Medicaid minimum participation is 41.6% for Montgomery County. Ingleside's financial projections are consistent with this participation level, with Medicaid patients projected to represent 42.8% of patient-days for the 20 public beds. (DI#2, DI#8)

Based on this response, the applicant complies with this standard.

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

The applicant meets this standard.

(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.

Since the applicant does not seek to relocate its facility, this standard is not applicable.

OTHER 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.

As discussed above at 10.24.08.05B(1), Ingleside maintains that this proposal meets the SHP need standard because Ingleside acquired 20 temporarily delicensed beds. These beds are slated to be permanently delicensed as National Lutheran Home is in the process of replacing CCF bed capacity with AL capacity, in a phased renovation project that received CON approval on January 19, 2012.

Ingleside maintains that the addition of CON-approved CCF beds that will be available to the general public will help fill a need in central Montgomery County created by the downsizing of the nursing home at National Lutheran. According to the applicant's calculations, the eight nursing homes within a five-mile radius of Ingleside had an aggregate 83.5% average annual occupancy rate in 2012 (the latest data available to the applicant at the time of filing); however, if National Lutheran is counted as 160 beds (as it will become) and if the 175 beds licensed at Potomac Valley Nursing & Wellness Center are counted as 159 beds (on the assumption that the 32 beds on their roster which are in four-bed rooms should not be used to accommodate more than two persons), then the occupancy rate in 2012 would have been 90.9% in that sector of the county. (DI#10) Ingleside's submission is shown below.

The Applicant's Analysis:
Adjusted Licensed Beds, Patient Days, Percent Occupancy
Facilities within a Five Mile Radius of Ingleside
FY 2012

Facility	Lic Beds Comp	Bed Days (Bedsx365)	Total Patient Days_Comp	% Occupancy
Shady Grove Center - Genesis HealthCare	134	48,910	45,517	93.1%
Hebrew Home at Greater Washington	556	202,940	176,171	86.8%
Rockville Nursing Home, Inc.	100	36,500	30,572	83.8%
Herman M. Wilson Health Care Center	285	104,025	88,094	84.7%
Potomac Valley Nursing & Wellness Center	159	58,035	55,327	*95.3%
National Lutheran Home & Village at Rockville	160	58,400	69,224	**118.5%
Montgomery Village Health Care Center	147	53,655	46,550	86.8%
Collingswood Nursing and Rehabilitation Center	160	58,400	53,105	90.9%
Total	1,701	620,865	564,560	90.9%

* assumes that the 32 beds located in 8 quad rooms would only be used as semi-privates
** reflects National Lutheran's bed count at the end of its bed reduction project

Staff Analysis and Recommendation:

In an effort to justify its proposed conversion of Staff does that a hypothetical occupancy rate of 90.9% in a small sector of the county (which has 26 other nursing homes outside of this defined five-mile circle) is a compelling demonstration of need. Montgomery County has a large bed surplus and relatively low occupancy rate. The proposed project is not needed. Rather, the project fulfills a desire by Ingleside to generate higher levels of revenue in its CCF operation until the demand generated from its independent living and assisted living population matches the number of CCF beds it has put into operation.

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.

Ingleside's response was that "this project is the most cost-effective means of improving the operating efficiency of the nursing home component at Ingleside and still assure that Ingleside will have adequate bed capacity to accommodate Ingleside subscribers. The project has no capital costs, maintains the current bed capacity, and will increase occupancy."

Staff Analysis and Recommendation:

Ingleside's response to this criterion considered only alternatives available to Ingleside that would enable it to improve *Ingleside's* efficiency and *Ingleside's* financial performance rather than addressing the broader meaning of the criterion, i.e., whether there are alternative and cost-effective ways *to meet community needs*.

Staff concludes that Ingleside has not made a case for this project under this criterion. A preferable alternative exists for Ingleside to achieve more efficient operation of CCF bed capacity. It can "right size" its CCF bed capacity to match the demand being expressed by its CCRC population, on which it based and received a determination that it could create the CON-excluded CCF capacity that it now wants to convert. Ingleside can reduce its CCF bed capacity and return it to AL capacity or other use in order to correct the apparent error it made when it expanded bed capacity in 2014 without obtaining CON approval.

Staff recommends that the Commission find that the application is not consistent with this criterion.

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.

Availability of Resources Necessary to Implement the Project

The only expenses associated with this project are legal and consulting fees totaling $60,000, and the $100,000 that would be paid to purchase the 20 temporarily delicensed beds from National Lutheran if the Commission issues a CON for this proposed project. The applicant has documented the availability of sufficient cash on hand to fund this all-cash project.

Availability of Resources Necessary to Sustain the Project

Table III-3 below shows Ingleside's projected key operating statistics for the proposed public beds.

Table III-3: Key Operating Statistics for the Proposed 20 Public Beds

Fiscal Year	2015	2016
Licensed Beds	20	20
Admissions	55	210
Patient Days	1,825	5,110
Occupancy Percentage	25%	70%
Medicare as Percent of Total Patient Days	55%	55%
Medicaid as Percent of Total Patient Days	45%	45%
Commercial Insurance as Percent of Total Patient Days	0%	0%
Self-Pay as Percent of Total Patient Days	0%	0%

Source: Ingleside application, Table 2 (DI#10)

Based on these assumptions, the applicant projects a positive bottom line for its 45 bed CCF component. In fact, the CCF component turns a profit even without the beds becoming public beds, as shown in Table III-4, which details the applicant's projections for the operating results of the CCRC's comprehensive care unit with the ability to admit public patients and without that ability.

Table III- 4: Projected 2016 Operating Results for Ingleside's 45 Bed CCF Component with and without 20 Public Beds

	With Public Beds	Without Public Beds
	CCF Component	CCF Component
REVENUE		
Inpatient Services	$6,743,000	$3,327,000
Outpatient Services	$0	$0
Gross Patient Revenue	$6,743,000	$3,327,000
Allowance for Bad Debt	$33,715	$16,635
Contractual Allowance	$420,000	$170,000

Charity care	$50,000	$50,000
Net Patient Services Revenue	$6,239,285	$3,090,365
Other Operating Revenue	$420,000	$300,000
Total Operating Revenue	$6,659,285	$3,390,365
EXPENSES		
Salaries, Wages, Professional Fees	$2,820,236	$1,387,429
Contractual Services	$489,675	$293,805
Interest on Current Debt	$211,633	$211,633
Interest on Project Debt	$0	$0
Current Depreciation	$413,577	$413,577
Project Depreciation	$0	$0
Current Amortization	$57,598	$57,598
Other Expenses	$400,000	$240,000
Total Operating Expenses	$4,392,719	$2,604,042
Net Income (Loss)	$2,266,566	$786,323

Source: Ingleside application, Table 5 with and without the Project (DI#10)

For the Ingleside CCRC community as a whole, the applicant's operating statements showed a loss (on a cash basis, net of depreciation and amortization expense) of approximately $600,000 in 2012 and a gain of $1,068,020 in 2013. A bottom line gain of $976,254 was projected for 2014. (DI# 15)

The projected overall financial impact of converting 20 of the CCF beds to public beds in 2016 (the first full year of operation of the 20 beds as public beds) is displayed in Table III-5 below.

Table III-5: 2016 Projected Revenue/Expense for Ingleside CCRC, with and without Public Beds

	With Public Beds	**Without Public Beds**
REVENUE		
Comprehensive Care	$6,659,285	$3,390,365
Assisted Living	$3,564,090	$3,564,090
Independent Living	$12,835,625	$12,835,625
Total Operating Revenue	**$23,059,000**	**$19,790,080**
EXPENSES		
Salaries & wages	$8,309,883	$6,877,076
Contracted services	$699,536	$503,666
Interest on current debt	$2,696,000	$2,696,000
Current depreciation	$5,268,000	$5,268,000
Current amortization	$734,000	$734,000
Other expenses	$8,220,581	$8,060,581
Total Operating Expenses	**$25,928,000**	**$24,139,323**
NET INCOME (LOSS)	**($2,869,000)**	**($4,349,243)**
NET INCOME *excluding depreciation and amortization*	**$3,134,000**	**$1,653,757**

Source: Ingleside application, Table 5 with and without the Project (DI#10)

Staff Analysis and Recommendation:

Staff concludes that, while the proposed project would enhance the CCRC's financial situation, it is not critical to its ability to thrive. Staff recommends that the Commission find that the proposed project is financially 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.

The applicant has never received a CON. Its CCF beds were developed under special provisions in Maryland law that allow CCRCs to have a certain number of CCF beds, deemed adequate to support the nursing home needs of its CCRC population, without CON approval. In the case of Ingleside, these provisions would allow it operate up to 49 CCF beds without CON approval (20% of 245 independent living beds).

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.

The applicant stated that this project would have no impact on existing providers, primarily because the number of beds being proposed is so small (about four-tenths of 1% of the Montgomery County supply) and because even some of those beds were likely to be filled by members of the Ingleside community, further diluting that small impact. Applicant also stated that the proposed project would have a positive impact on Ingleside by improving the operating efficiency of its nursing home component.

Staff agrees that the impact on other providers and the larger health care system of this project is minimal.

IV. SUMMARY AND STAFF RECOMMENDATION

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

This application seeks Certificate of Need approval to convert to publicly available nursing home beds 20 beds that it developed without a CON through the exclusion provision that permits a CCRC to operate CCF beds that are intended primarily for members of its community and are not available to the general public.

Staff recommends that the application be denied for the reasons outlined in this report and briefly summarized below.

Need for the beds was not demonstrated

Given the significant surplus of beds in Montgomery County, staff concludes that the applicant has not demonstrated the need for this project. The applicant cited growth in the elderly population projected for Montgomery County. However, this growth is already factored into the bed need projection methodology that the MHCC established in the State Health Plan. The applicant also cited a need for higher quality beds (based on Medicare star ratings and the need for more single rooms), based on the small percentage of CCF beds in Montgomery County that are at low quality nursing homes.

The application was transparent in stating that "the impetus for this project is to enable Ingleside to operate the nursing home beds more efficiently by operating at a higher census." The applicant did not demonstrate unmet needs of the population to be served or how access to and quality of needed services would be improved if CON approval were granted.

Jurisdictional occupancy is below the required 90% threshold

The application does not meet the jurisdictional occupancy standard that requires an average jurisdictional occupancy for all nursing homes in that jurisdiction of at least 90 percent before a new nursing home can be approved and did not present evidence why that standard should not apply. Occupancy of CCF beds in Montgomery County was 18th out of 24 Maryland jurisdictions in FY2013 and has been steadily declining over the past six years. Jurisdictional occupancy is also a consideration in the determination of need for a project.

Availability of more cost-effective alternatives

The application addressed this criterion from Ingleside's perspective rather than from the broader community perspective, stating that the proposal would enable it to improve *Ingleside's* efficiency and *Ingleside's* financial performance rather than addressing the broader meaning of the criterion, i.e., *considering alternative ways to meet community needs*.

Staff's conclusion is that Ingleside failed to make a case for its project under this criterion, which involves the comparative cost-effectiveness of a chosen alternative in meeting *community* – not applicant – needs.

Appendix 1

INGLESIDE AT KING FARM, CCRC-wide Occupancy History

Appendix 1: INGLESIDE AT KING FARM, CCRC-wide Occupancy History

Ingleside's actuarial study projected a need for 45 – 55 nursing home beds to accommodate its CCRC subscribers. Ingleside built 26 as part of the initial community, planning to increase as needed over time. Ingleside's occupancy profile from inception through the end of 2014 is shown in the table below.

INGLESIDE AT KING FARM, CCRC-wide Occupancy History

	Quarter ending	Assisted Living		Independent Living		CCF beds	
		Number of units	**Occupancy %**	**Number of units**	**Occupancy %**	**Number of units**	**Occupancy %**
2009	6/30	43	1.26%	242	30.39%	26	0.35%
	9/30	43	11.07%	242	47.30%	26	14.85%
	12/31	43	22.09%	242	56.53%	26	26.96%
2010	3/31	43	29.28%	242	59.30%	26	24.50%
	6/30	43	38.51%	242	63.02%	26	23.58%
	9/30	43	52.60%	242	66.53%	26	42.12%
	12/31	43	63.88%	242	69.75%	26	51.42%
2011	3/31	43	67.84%	242	72.93%	26	57.23%
	6/30	43	66.28%	242	73.68%	26	57.88%
	9/30	43	66.28%	242	78.31%	26	57.04%
	12/31	43	64.72%	242	81.82%	26	79.12%
2012	3/31	43	59.23%	242	85.95%	26	72.96%
	6/30	43	68.77%	242	89.59%	26	81.08%
	9/30	43	79.09%	244	93.11%	26	86.23%
	12/31	43	80.63%	245	93.18%	26	89.88%
2013	3/31	43	78.49%	245	94.57%	26	91.96%
	6/30	43	76.44%	245	96.53%	26	103.04%
	9/30	43	72.58%	245	98.45%	26	102.85%
	12/31	43	74.33%	245	98.45%	26	105.12%
2014	3/31	32	98.75%	245	98.08%	26	93.54%
	6/30	32	100.00%	245	97.22%	26	87.88%
	9/30	32	92.75%	245	97.55%	45	65.31%
	12/31	32	87.06%	245	96.61%	45	63.93%

Source: additional information provided by Ingleside.

Notes:
1. All occupancy percentages are the average for the quarter.
2. CCF occupancy exceeded capacity in each quarter of 2013 (including certain days in the 1st quarter) necessitating placing residents in outside nursing home during rehabilitation periods.
3. During 2013 the various permits and design efforts for CCF took place. Actual construction took place in January2014 to May 2014. License for the additional 19 beds was received at the beginning of July 2014.

Appendix 2

COMAR 10.24.01.03

K. Continuation of Specific Exclusion from Certificate of Need for Continuing Care Retirement Communities

COMAR 10.24.01.03

K. Continuation of Specific Exclusion from Certificate of Need for Continuing Care Retirement Communities.

(1) The number of comprehensive care beds excluded from Certificate of Need requirements and located on the campus of a continuing care retirement community may not exceed:

(a) 20 percent of the number of independent living units at a continuing care retirement community that has 300 or more independent living units;

(b) 24 percent of the number of independent living units at a continuing care retirement community that has fewer than 300 independent living units.

(2) Notwithstanding the provisions of Health-General Article, §19-114(d)(2)(ii), Annotated Code of Maryland, and Regulation .01B(12)(b)(ii) of this chapter, a continuing care retirement community does not lose its exclusion from Certificate of Need when the continuing care community admits an individual directly to a comprehensive care facility within the continuing care community under either of the following circumstances:

(a) Two individuals having a long-term significant relationship are admitted together to a continuing care retirement community and:

(i) The admission occurs after October 1, 1999;

(ii) The admission includes spouses, two relatives, or two individuals having a long-term significant relationship, as defined in Regulation .01B of this chapter and supported by documentary proof in existence for at least 1 year before application to the continuing care retirement community, admitted at the same time, under a joint contract, who are jointly responsible for expenses incurred under the joint contract; and

(iii) One of the individuals admitted under the joint contract will reside in an independent living unit or an assisted living unit; or

(b) An individual is admitted directly into a comprehensive care bed at a continuing care retirement community and:

(i) The individual must have executed a continuing care agreement and have paid entrance fees that are at least equal to the lowest entrance fee charged by the continuing care retirement community for its independent or assisted living units;

(ii) The individual must pay the entrance fee by the same method, terms of payment, and time frame as a person who immediately assumes residence in an

independent or assisted living unit at that continuing care retirement community; and

(iii) The individual admitted to the comprehensive care bed must have the potential for eventual transfer to an independent living unit or assisted living unit at that continuing care retirement community, as determined by the subscriber's personal physician, as defined in Regulation .01B of this chapter.

(3) Under §K(2)(b)(iii) of this regulation, an individual is deemed not to have potential for eventual transfer to an independent living unit or assisted living unit if the individual can qualify for hospice services under federal Medicare regulations or if the individual has an irreversible condition that would make it unlikely that the individual could transfer to an independent living unit or assisted living unit at the continuing care retirement community. Irreversible conditions include quadriplegia, ventilator dependence, and any end-stage condition.

(4) The total number of comprehensive care beds occupied by individuals who are directly admitted to comprehensive care beds pursuant to §K(2)(b) of this regulation may not exceed 20 percent of the total number of licensed and available comprehensive care beds at the continuing care retirement community.

(5) The admission of the individual directly into the comprehensive care bed pursuant to §K(2)(b) of this regulation may not cause the occupancy of the comprehensive care facility at the continuing care retirement community to exceed 95 percent of its current licensed capacity.

(6) Before admitting an individual directly into a comprehensive care bed pursuant to §K(2)(b) of this regulation, the nursing home administrator of the comprehensive care facility at the continuing care retirement community shall keep on file a statement, in a format required by the Commission and signed by the individual's personal physician, that the individual has the potential for eventual transfer to an independent living unit or an assisted living unit.

(7) The nursing home administrator of the comprehensive care facility at each continuing care retirement community who admits an individual directly to a comprehensive care bed under this section shall submit information quarterly to the Commission about each admission. The information shall be submitted within 30 days after the end of the reporting period, in the format required by the Commission and encrypted by the continuing care retirement community so that the individual's identity will not be disclosed. Information submitted by the nursing home administrator shall include:

(a) The number and utilization of licensed comprehensive care beds excluded from Certificate of Need requirements at the continuing care retirement community;

(b) The admission source of each individual admitted pursuant to §K(2)(b) of this regulation to a comprehensive care bed excluded from Certificate of Need requirements at the continuing care retirement community;

(c) For an individual admitted pursuant to §K(2)(b) of this regulation, the amount of and terms of payment for the entrance fee;

(d) The dates of admission and discharge of each individual admitted pursuant to §K(2)(b) of this regulation;

(e) The site to which an individual directly admitted pursuant to §K(2)(b) of this regulation is discharged; and

(f) Any other information as required by the Commission.

(8) A continuing care retirement community that admits an individual to a comprehensive care bed pursuant to §K(2)(b) of this regulation shall maintain documentation required by §K(6) of this regulation and documentation underlying the information submitted under §K(7) of this regulation and make the documentation available to the Commission upon request.

(9) Unless the conditions of §K(2)(a) or (b) of this regulation are met, the provisions of Health-General Article, §19-114(d)(2)(ii), Annotated Code of Maryland, apply; that is, a person may not be directly admitted to a CON-excluded nursing home bed of a continuing care retirement community.

Appendix 3

Record of the Review

APPENDIX 3:

RECORD OF THE REVIEW

Docket Item #	Description	Date
1	Letter of Intent and Acknowledgement of Receipt (Potter).	7/18/14
2	Certificate of Need Application filed (Matricciani).	9/12/14
3	Additional affirmation statement for CON application (Matricciani)	9/12/14
4	MHCC acknowledges receipt of this CON application by letter.	9/15/14
5	Staff requests that the *Washington Times* publish notice of receipt of the CON application for Montgomery County.	9/15/14
6	Staff requests that the *Maryland Register* publish notice of receipt of the CON application.	9/15/14
7	Notice of receipt of application as published in the Washington Times	9/25/14
8	Commission staff finds the CON application incomplete and requests additional information.	9/26/14
9	E-mails – McDonald/Matricciani – Request and extension to file completeness information until 10/27/14.	10/8/14
10	Commission receives responses to the September 26, 2014 request for additional information.	10/24/14
11	Letter from Martha Roach (DoA) to O'Connor – re: publicly available beds at Ingleside.	10/31/14
12	Letter from Yoram Tanay (Ingelside) to Roach (DoA) – Response to 10/31/14 letter to O'Connor address concerns concerning beds.	12/1/14
13	Second request for completeness and additional information.	12/2/14
14	O'Connor to McDonald – Letters dated 12/5/14 from O'Connor to Roach and Letter dated 12/5/14 from Roach to O'Connor received via E-Mails.	12/8/14
15	Additional completeness responses received.	12/22/14
16	MHCC requests Maryland Register to publish notice of formal start of review.	1/9/15
17	Notification to applicant of formal start of review of application will be 1/23/15.	1/12/15
18	Request sent to Washington Times to publish notice of formal start of review.	1/12/15

19	Request made for Local Health Planning (LHP) comments.	1/13/15
20	Notice of formal start of review published in the Washington Times.	2/2/15
21	Response from LHP that they choose not to comment	2/2/15
22	Additional information for analysis of occupancy with excel table E-mailed from Tanay to McDonald.	1/13/15

Appendix 4

Trends in Population by Age Group, Montgomery County and State of Maryland, CY 2010 – 2040

Appendix 4: Trends in Population by Age Group, Montgomery County and State of Maryland, CY 2010 – 2040

Trends in Population by Age Group
Montgomery County and State of Maryland, CY 2010 – 2040

Montgomery Co.	2010	2020	2030	2040	2010-2020	2020-2030	2030-2040
	Population by Age Cohort				Projected Increase (Decrease)		
0-64	852,008	899,358	933,509	959,589	5.6%	3.8%	2.8%
65-74	62,541	97,368	117,581	110,031	55.7%	20.8%	-6.4%
75-84	37,797	47,723	74,335	90,609	26.3%	55.8%	21.9%
85+	19,431	22,551	28,474	42,573	16.1%	26.3%	49.5%
Total	**971,777**	**1,067,000**	**1,153,899**	**1,202,802**	**9.8%**	**8.1%**	**4.2%**
State of Maryland	**2010**	**2020**	**2030**	**2040**	**2010-2020**	**2020-2030**	**2030-2040**
	Population by Age Cohort)				Projected Increase (Decrease		
0-64	5,065,910	5,235,577	5,310,875	5,458,561	3.3%	1.4%	2.8%
65-74	386,357	580,747	712,563	634,868	50.3%	22.7%	-10.9%
75-84	223,159	277,601	422,545	525,719	24.4%	52.2%	24.4%
85+	98,126	120,581	157,872	237,102	22.9%	30.9%	50.2%
Total	**5,773,552**	**6,214,506**	**6,603,855**	**6,856,250**	**7.6%**	**6.3%**	**3.8%**

Source: Prepared by Maryland Department of Planning
2013 Total Population Projections by Age, Sex and Race (1/28/14)

Appendix 5

Comparison of previous projects that used temporarily de-licensed beds to construct new beds by replacing or adding on to an existing nursing home.

Appendix 5: Comparison of previous projects that used temporarily de-licensed beds to construct new beds by replacing or adding on to an existing nursing home

Project	Free-Standing Nursing Home Project?	Replacement Nursing Home or Partial Replacement?	Improved Operating Scale?[1]	Replace Multi-Bedded Rooms?[2]	Most Recent[3] Jurisdictional Occupancy Rate	Most Recent[3] Facility Occupancy Rate
College View: Replacement of a 119-bed nursing home built in 1964 with a 130-bed nursing home using 11 temporarily-delicensed (TDL) beds. **Dec 2012**	Yes	Yes	Yes	**No**	89.2%	84.4%
Devlin Manor: 30-bed building addition to a 120-bed nursing home, replacing 10 existing beds (replacing 5 semi-private rooms with 10 private rooms) and adding 20 TDL beds. The existing nursing home was built in 1993. **Feb 2008**	Yes	Yes	**No**	**No**	92.8%	90.3%
Genesis Bayview: New 132-bed nursing home replacing 132 beds located at Johns Hopkins Bayview Medical Center (JHBMC), allowing the hospital to use space for needed acute care services expansion. The project would replace 92 TDL beds and replace and relocate 40 licensed beds from JHBMC. **Mar 2012**	Yes	**No**	**No**	**No**	88.2%	NA
Holly Hill: Building addition to 55-bed nursing home replacing 23 beds in space built in 1921 and adding 20 TDL beds. The project eliminated 3 and 4-bed rooms at the facility. **Mar 2009**	Yes	Yes	Yes	Yes	87.8%	87.6%
Levindale: 84-bed building addition to 172-bed nursing home (co-located with special hospital beds for acute rehabilitation and chronic care), replacing 46 existing beds (replacing 23 semi-private rooms with 46 private rooms), adding 20 TDL beds, and replacing and relocating 18 licensed beds from JHBMC. **Oct 2008**	**No**	Yes	**No**	**No**	89.5%	96.4%
Lorien Lifecenter (DN 05-13-2159): Establishment of a 63-bed CCF in Ellicott City replacing TDL beds formerly operated at Lorien Nursing and Rehabilitation Center-Columbia. **Oct 2005**	Yes	**No**	**No**	**No**	86.5%	NA
Lorien Lifecenter (DN 06-13-2185): Establishment of a 60-bed CCF in Elkridge replacing TDL beds formerly operated at Lorien Nursing and Rehabilitation Center-Columbia. **Sep 2007**	Yes	**No**	**No**	**No**	90.4%	NA

Project	Free-Standing Nursing Home Project?	Replacement Nursing Home or Partial Replacement?	Improved Operating Scale?[1]	Replace Multi-Bedded Rooms?[2]	Most Recent[3] Jurisdictional Occupancy Rate	Most Recent[3] Facility Occupancy Rate
Magnolia Center: Replacement of a 104-bed nursing home built in the 1950s with a 119-bed nursing using 15 TDL beds. **Mar 2012**	Yes	Yes	Yes	Yes	90.3%	93.8%
NMS Healthcare: 29-bed building addition and extensive renovation of a 186-bed nursing home originally built in the 1950s, adding 20 TDL beds. The project eliminated 19 three and four-bed rooms at the facility. **Jul 2010**	Yes	Yes	No	Yes	95.1%	94.4%
The GREEN HOUSE: New 49-bed nursing home replacing 49 TDL beds at Johns Hopkins Bayview Medical Center. The project is the first "GREEN HOUSE®" nursing home developed in Maryland and, its developer, Govans Ecumenical Development, had "an excellent history of helping to improve the lives of some of Baltimore City's most vulnerable citizens." **Apr 2008**	Yes	**No**	**No**	**No**	90.6%	NA
Brooke Grove: 70-bed building addition to a 168-bed facility, replacing a 48-bed wing originally constructed in the late 1800s, and adding 22 TDL beds. The wing being replaced currently operates with life safety code waivers. The project eliminates a multi-bedded room. **Feb 2015**	No [4]	Yes	No	Yes	84.7%	90.6%
INGLESIDE AT KING'S FARM: Granting CON status to 20 CCF beds licensed and operating at a 45-bed CCF so that the CCF can directly admit patients from the general public. This is not a capital project. The beds were constructed through a CON exception available to CCRCs. **Current application**	**No**	**No**	**No**	**No**	**84.7%**	**63.9%**

Source: MHCC

[1] "Yes" if the project expanded the bed capacity of a CCF with less than 120 beds.

[2] Rooms with three or more beds.

[3] Prior to MHCC action on application.

[4] While Brook Grove's comprehensive care facility is affiliated with a continuing care retirement community (CCRC) campus, it is not a CCRC campus with a conventional mix of accommodations. It has only 40 independent living units and 112 assisted living units operating on the same campus as its 168-bed nursing home. In contrast, the campus of Ingleside at King's Farm contains 245 independent living units; 32 assisted living apartments with one or two bedrooms licensed for 35 residents; and 45 Comprehensive Care Facility beds. Additionally, all of Brook Grove's nursing home beds have always been operated as facilities available to the general community, grandfathered under or approved through CON approvals. All of the beds at Ingleside at King's Farm were excepted from CON review requirements as CCRC nursing home beds, developed for use by its resident retirement community campus population.

Note: each of the examples listed except for Brooke Grove and Ingleside were cited by the applicant.

IN THE MATTER OF	*	**BEFORE THE**
	*	
INGLESIDE AT KING FARM	*	**MARYLAND HEALTH**
	*	
DOCKET NO. 14-15-2355	*	**CARE COMMISSION**

* *

FINAL ORDER

Based on Commission Staff's analysis and findings, it is this 16th day of April, 2015, **ORDERED** that:

The application for Certificate of Need submitted by Ingleside at King Farm to convert 20 of its CCF beds from CCRC-exclusive use to publicly available beds by purchasing and relocating 20 temporarily delicensed beds from National Lutheran/Village be DENIED.

MARYLAND HEALTH CARE COMMISSION

April 16, 2015