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Maryland
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Via Hand Delivery or First Class Mail

Kevin McDonald, Chief
Certificate of Need Division
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: Blue Heron Nursing and Rehabilitation Center
Docket No. 13-18-2348
Response to Comments

Dear Mr. McDonald:

With this letter, we are submitting four (4) copies of our Response to Comments of LP Lexington Park, LLC d/b/a Chesapeake Shores and St. Mary's Nursing Center in the above-referenced matter.

I hereby certify that a copy of this Response to Comments has also been forwarded to the appropriate local health planning agency, as noted below.

Sincerely,

Howard L. Sollins

JJE/tjr
Enclosures
cc: Joel Riklin, Program Manager
Meenakshi Brewster, Health Officer
Suellen Wideman, Assistant Attorney General
Marta D. Harting, Esquire
Henry E. Schwartz, Esquire
Mr. Mark Fulchino
Mr. Melissa Warlow
Mr. Andrew L. Solberg
John J. Eller, Esquire

IN THE MATTER OF	*	**BEFORE THE**
ST. MARY'S LONG TERM CARE, LLC	*	**MARYLAND**
BLUE HERON NURSING AND REHABILITATION CENTER	*	**HEALTH CARE**
	*	**COMMISSION**
DOCKET NO. 13-18-2348	*	

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RESPONSE TO COMMENTS OF LP LEXINGTON PARK, LLC D/B/A CHESAPEAKE SHORES AND ST. MARY'S NURSING CENTER

Blue Heron Nursing and Rehabilitation Center ("BHNRC"), by its undersigned counsel, and pursuant to COMAR 10.24.01.08F(3) submits this Response to Comments filed by LP Lexington Park, LLC d/b/a Chesapeake Shores ("CS") and St. Mary's Nursing Center ("SMNC") (collectively the "Interested Parties") in opposition to the above-captioned project. As will be explained below, the comments filed by the Interested Parties are wholly without merit. They do not provide any meaningful evidence or argument in rebuttal to BHNRC's plan to provide a new comprehensive care facility ("CCF") that will meet a significant part of the growing, substantial and unaddressed need the Maryland Health Care Commission ("Commission" or "MHCC") identifies in St. Mary's County.

The Commission identifies a need for 192 additional CCF beds in St. Mary's County, which determination results from the application of the State Health Plan ("SHP") methodology as is applied to every other Maryland jurisdiction. BHNRC proposes to meet less than three-quarters of that need, by constructing a 140-bed facility, leaving 52 remaining CCF beds. The Interested Parties comments reflect a simple but flawed refrain i.e. that if the growing population continues not to select their facilities for long term care services, then this can only mean there is no unmet need at all. They implicitly argue that the Commission's SHP is so wrong, and that the conditions and methodology that apply everywhere else in Maryland are so out of kilter in St.

Mary's County, that in the face of the growing need for CCF beds the best strategy is to delicense beds even further, as evidenced by the actions these Interested Parties have taken to reduce their bed capacity. This argument makes no sense now, and should be rebuffed just as the same arguments by the same Interested Parties before the same Commission in the same sort of CON review involving a new CCF were already rejected by the Commission.

Response to comments about BHNRC, its relationship to Fundamental Administrative Services, LLC ("FAS") and Fundamental Clinical and Operational Services ("FCOS")

On pages 2 and 3, CS seeks to cast aspersions on BHNRC and its relationship with FAS and FCOS. This attack on the FAS and FCOS organizational structure is gratuitous and does not allege any inconsistency with the SHP review standards or criteria. It therefore should be considered irrelevant to the Commission's review of the proposed project.

It notes that BHNRC "claims no experience" operating CCFs in Maryland or elsewhere. This is odd, since SC itself is operated by an entity LP Lexington Park, LLC, and is one of three affiliated Maryland facilities, each of which is located far from each other, i.e. with the other two located in Cecil County and Dorchester County, all of which are affiliated with an out of state services company. If SC can effectively operate under such a structure, as a single purpose entity supported by an out of state company serving multiple facilities, it has made no argument that BHNRC's structure, which is typical in the long term care provider community, is at all subject to question.

Moreover, as the charts provided at Exhibit 1 to the January 9, 2014 completeness response detail, there is significant, ultimate ownership in common in relation to the Applicant and Co-Applicant for BHNRC, i.e. the operating and landlord entities. In addition, FAS and FCOS are part of the Fundamental family of companies as explained in Exhibit 1 to the November 18, 2013 completeness response. It is completely illogical and without foundation for

CS to infer that FAS and FCOS will somehow disappear after a year of involvement with BHNRC.

In Exhibit 20 to the January 9, 2014 completeness response, BHNRC disclosed an extensive list of the "family" of facilities served by FAS and FCOS. BNHRC will be substantially designed, staffed, programmed and operated with the support of an effective team. It should also be noted that BHNRC is the first FAS and FCOS supported facility in Maryland but FAS maintains offices in Sparks, Maryland.

COMAR 10.24.01.08G(3)(a). The State Health Plan.

> COMAR 10.24.08.05B(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.

Both SMNC and CS acknowledge that BHNRC has a right to show evidence why the 90% average jurisdictional occupancy requirement should not apply. Each argues that they continue to have low occupancy, and, therefore, that their low occupancy must operate as total barrier to anyone else meeting the increasing need the SHP identifies. CS further argues that "If the occupancy threshold could be ignored simply because there is a bed need for the jurisdiction, the standard would lose any meaning or effect." In fact, the need projection in the SHP does have substantial import. While the SHP permits an applicant to explain why the low occupancy standard should not bar the addition of beds the Commission identifies as needed, *there is no corollary provision under the Commission's need criterion.*

There is no Commission regulation stating that, if CCF occupancy is very high, or over a particular threshold, that a CON application for new beds may be filed when the SHP methodology does not find a bed need. Indeed, the Commission *only* publishes a schedule for the receipt of CON applications for CCF beds when a need is identified. Thus, when a need is identified, the Commission publishes a schedule and effectively invites applicants to submit a proposal to meet that need. This demonstrates that the Commission's CON regulation, making the SHP the basis for determining need, is the "senior" i.e. more supervening CON review principle. The fact that, when a need exists an applicant may demonstrate that low occupancy is not a barrier to meeting that need, highlights the greater weight given to proposals that meet the need the Commission identifies.

Here, not only is the need growing, but the Interested Parties are shrinking their bed capacity and taking beds out of service under the "temporary delicensure" regulations, making them unavailable to the public.

Both state that they have renovated portions of their facilities. However, those renovations nowhere compare to the construction of a new facility by BHNRC. Those facilities certainly have invested in their facilities. But, the renovations listed on Exhibit 2 of the CS comments and on page 5 of the SMNC comments (some of which are in the planning stages) are renovations to existing spaces, some cosmetic, some involving equipment and some more substantive and some in the planning stages. Indeed, in the case of SMNC, its occupancy fell in FY 2013 even after its most significant renovations in 2012. Rather than supporting an argument that the SHP need calculation is illusory, these renovations coupled with bed reductions, support the logical inference that the Interested Parties have simply been engaged in a process to address physical plant deficiencies while "right-sizing" the number of their licensed beds and mix of

private and semi-private rooms, to develop a care model and mix of beds and services that works best and is attractive to residents and families. That these Interested Parties have been reducing beds while the population is increasing and the need is growing is internally relevant for them, but in no way demonstrates or supports the view that the bed need projection is irrelevant.

In fact, BHNRC did not argue that the occupancy standard should not apply simply because there is a bed need. BHNRC explains that this standard should not apply for the following reasons:

1. The Commission recently found a need for an additional 192 beds (while the application seeks approval for a 140-bed facility).
2. The difference between the St. Mary's County occupancy (84.8%) and 90% (the percentage used in the standard at issue) is less than 16 beds. (110,502 (Calculation for Comp Care Patient Days) X .9 = 99,452; 97,452 – 93,714 (Total Patient Comp. Days) = 5,738; 5,738/365 = 15.7)
3. The fact that 16 beds were not filled should not deprive the residents of St. Mary's County of a state of the art, new nursing home that will meet the Commission's projected need for 192 beds. *Even if the State Health Plan's bed need projection were reduced to account for the existing facilities' low occupancy, BHNRC is applying for less than this net amount.*
4. Both existing facilities are older facilities.
5. Approval of this application will enhance availability of choice for St. Mary's County residents in this fast-growing county.

In the discussion of this standard in the MHCC's decision on Point Lookout (In The Matter Of Point Lookout Nursing Center, Docket No. 07-18-2201, at 25) (Exhibits 1 and 2, which include the Commission ruling and the Court of Special Appeals decision sustaining the Commission's decision), the Commission found:

> Patient census at Bayside and St. Mary's in the last five years has not followed the path that would have been expected, given the Commission's bed need projection. However, a key factor that gave rise to the projection – strong projected population growth – is still relevant. St. Mary's County has a limited number of facilities and beds to handle its exceptional projected population growth.

The MHCC found that the large projected bed need, a function of strong projected population growth, is still relevant to this standard. The MHCC methodology relies on the following factors.

1. Population growth (or decline)
2. Patient days in the "base year"
3. Patient migration
4. An optimal occupancy rate of 90%.

In two successive plan development cycles, the MHCC found substantial need for additional beds in St. Mary's County. In 2007, the MHCC found a need for 124 additional beds, and, in 2013, it found a need for 192 additional beds. Both projections imply that population is growing and that the "use rate" in the base year (patient days/population) is adequate to support a substantial number of new beds in the future. It should also be remembered that, under the SHP methodology the *net bed need of 192 beds* in St. Mary's County reflects a *reduction*, as a matter of policy, by 13.9% under a *community based services adjustment*, the purpose of which is to create a demand for non-institutional long term care services. The Interested Parties seek to have their own occupancy act as an automatic barrier to the construction of any new facility in the County that would meet part of the identified bed need.

As BHNRC stated in its CON application, BHNRC believes that a significant number of people are migrating out of the county for care. The MHCC methodology reduces the outmigration of residents by half in counties with high outmigration, and BHNRC infers that must be a factor in the MHCC's projection of bed need in St. Mary's County. BHNRC believes that the implicit policy reducing outmigration that affected such high additional bed need, the high, growing bed need and the small number of beds that represent the difference between the

Interested Parties' occupancy and the occupancy standard, supports waiver of the 90% occupancy standard.

Both SMNC and CS argue that BHNRC's calculation of the difference between 90% and the actual jurisdictional occupancy is more than 16 beds because more recent data show a lower jurisdictional occupancy. While neither shows the actual numbers or submits relevant pages from the Medicaid Cost Reports, SMNC does show a summary of the average jurisdictional percent occupancy in 2013 as being 81.1%. (See CS filing at 3) Assuming that there were 125 licensed beds at CS in 2013 (See CS filing at 6) (an increase of 5 beds since the beginning of FY 2011 in spite of CS's complaining that it cannot fill its beds) and 180 beds at SMNC, for a total of 305 beds, the difference between 81.1% and 90% is 27 beds. (305 x .811 = 247.355; 305 x .9 = 274.5; 274.5 – 247.355 = 27.145) The point is the same. The MHCC should not deprive the residents of St. Mary's County of 140 of the 192 needed beds in a new, additional nursing home because SMNC and CS cannot fill 27 of their 305 beds. This is particularly true when, even if 27 beds were offset from the need projection, BHNRC is not applying for the full amount of the remaining beds.

If SMNC and CS have not been able to convince those families to admit their loved ones to SMNC or CS, this is evidence that the people of St. Mary's County need another choice of facilities. We believe the Long term Care services chapter of the SHP (the "Chapter") highlights the importance of "choice" in a way that supports waiver of the occupancy standard. Under a discussion of "Choice" on page 6, the Chapter states:

> Another component of consumer choice is access to care. Although each jurisdiction in Maryland has at least one nursing home, there are a small number of jurisdictions that have only one or two facilities. The Commission should encourage the development of services to serve the residents of these jurisdictions.

This statement applies to community based services, but it is not limited to those kinds of alternatives where there is large bed need that even an additional facility will not fully meet, as is the case with St. Mary's County.

In its application BHNRC listed the following programs[1]:

i. Cardiac Rehabilitation/Pulmonary Rehabilitation
ii. Integumentary / Chronic Wound Care
iii. Orthopedic – Rehabilitation following:
    1. Join Replacement
    2. Spinal Surgery
    3. Amputation
iv. Chronic Disease Management
    1. Renal disease
    2. Respiratory disease
    3. Cardiac
v. Management of complex medical or surgical conditions, such as:
    1. Transplant
    2. General surgery
    3. Polytrauma
    4. IV Therapy
vi. Rehabilitation relating to neurological conditions, such as:
    1. Head injury
    2. Stroke
    3. Traumatic brain injury
    4. Alzheimer's/Parkinson's
vii. Oncology
viii. Pain management
ix. Infectious disease
x. Diabetes Program

In addition to the list above, the application offers substantial detail about BHNRC's Diabetes, Medical Specialty Unit, Rehabilitation and YourChoice 365 programs. In addition, FCOS also provide physician mentors for local practitioners via our Medical Director Advisory Board and physician oversight with all programing and policies and procedures. Additional detail on these special programs and services is provided in pages 4-11, pages 15-16 and Exhibit

[1] See, pages 8 and 9 of the CON application. The phrase "as the market demands" is an entirely appropriate statement confirming that BHNRC is committed to offering what is needed in the community.

4 of the November 18, 2013 completeness response provided to the Commission. See, also, the description of the Wellness equipment and services in addition to rehabilitation services under pages 3 and 4 and Exhibit 8 to the January 9 2014 completeness response. These programs and services that are not completely duplicated by the Interested Parties, but even where there is overlap, the enhanced availability of services in a new facility and increased choice and access are positive factors.

The substantial bed need that even BHNRC will not fully meet, the persistent low occupancy of the two existing facilities notwithstanding their renovations to their existing older facilities, the small number of beds represented by the difference between current occupancy and the occupancy standard, the Interested Parties' reductions in bed capacity in the face of increasing need demonstrating that they are not taking actions to address the need the Commission identifies, the importance of choice in counties with one or two facilities the SHP Chapter prioritizes, and the comprehensive range of services BHNRC will provide, all support waiver of the occupancy standard.

The Legal Doctrine of Issue Preclusion Bars The Interested Parties' Arguments Seeking to Bar Application of the Occupancy Waiver Regulation

CS and SMNC are precluded from re-litigating these issues a second time by the doctrine of collateral estoppel. "Collateral estoppel, or issue preclusion, bars re-litigating an issue that he or she has already litigated in another action. Collateral estoppel is of the 'nonmutual' variety if one of the parties in the present suit was neither a party nor in privity with a party to the prior action." *Culver v. Maryland Ins. Com'r*, 175 Md. App. 645, 653 (2007). It can be asserted in two ways, offensively or defensively. *Id.* at 653-54 (quoting *Welsh v. Gerber Prods., Inc.*, 315 Md.

510, 518 n.6 (1989)).[2] "'Offensive use of nonmutual collateral estoppel occurs when a plaintiff seeks to foreclose a defendant from relitigating an issue the defendant has previously litigated unsuccessfully in another action against a different party.'" *Culver*, 175 Md. App. at 653-54 (quoting *Welsh*, 315 Md. at 518 n.6). In Maryland, courts adhere to a four-part test when considering nonmutual collateral estoppel:

1) Was the issue decided in the prior adjudication identical with the one presented in the action in question?
2) Was there a final judgment on the merits?
3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Culver, 175 Md. App. at 656 (quoting *Leeds Fed. Sav. & Loan Ass'n v. Metcalf*, 332 Md. 107, 118 (1993)). Here, this analysis favors a ruling by the Commission that the Interested Parties' comments about the occupancy standard are barred by this doctrine.

- Was the issue decided in the prior adjudication identical with the one presented in the action in question?

  The occupancy waiver standard is the identical issue the Interested Parties raise in the Point Lookout CON review.

- Was there a final judgment on the merits?

  There was final decision by the Commission, sustained on appeal by the Court of Special Appeals.

- Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?

  The Interested Parties are identical.

[2] BHNRC notes, as articulated in *Culver*, that the Maryland Court of Appeals has only had opportunity to embrace *defensive* non-mutual collateral estoppel, but has yet to formally embrace its offensive use. 175 Md. App. at 654 (quoting *Rourke v. Amchem Prods., Inc.*, 384 Md. 329, 349 (2004)). However, the Court of Appeals has simply yet to review an appropriate case. *See Id.* at 654-55 (noting that *Rourke* was decided on "conflict of laws considerations rather than on the merits of offensive nonmutual collateral estoppel as a rule of law.").

- Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

  The Interested Parties had full rights as Interested Party and used them fully in the Point Lookout CON decision.

Therefore, BHNRC's use of nonmutual collateral estoppel satisfies Maryland law under the elements set forth in *Culver* and *Leeds*. *See Id.* Hence, the Interested Parties should not be allowed to relitigate the issue of application of the occupancy waiver regulation.

10.24.01.08G(3)(b). Need.

> *For purposes of evaluating an application under this subsection, 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.*
>
> Please discuss the need of the population served or to be served by the Project.
>
> Responses should include a quantitative analysis that, at a minimum, describes the Project's expected service area, population size, characteristics, and projected growth. For applications proposing to address the need of special population groups identified in this criterion, please specifically identify those populations that are underserved and describe how this Project will address their needs.

CS argues that "The existence of a need projection, however, is not dispositive of need and the Applicant still bears the burden of demonstrating need." Apparently, CS would have the MHCC ignore the first paragraph of this criterion.

> *For purposes of evaluating an application under this subsection, 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.(emphasis added).*

BHNRC believes that the need projection in the State Health Plan is, in fact, dispositive of need. The Need Criterion in the MHCC's own CON regulations states so. Applicants should be able to rely on the MHCC's projections, promulgated through a public process, and adopted

as a regulation. Under the State Health Plan Long Term Care Chapter, at COMAR 10.24.08, the MHCC has explained the guiding purpose of the need projections. Under Section .02A(2) of the Chapter, the MHCC identifies the need projections as the "legal foundation" for the agency's encouragement of changes in capacity and that capital expenditures are needed. Moreover, BHNRC sufficiently addressed the need criterion as required on pages 31-35 of its CON application.

The MHCC has also ruled that the need projection in the State Health Plan govern under this criterion. In the discussion of this criterion in the MHCC's decision on Point Lookout (In The Matter Of Point Lookout Nursing Center, Docket No. 07-18-2201, at 27), the MHCC found:

> I find that the proposed project is a reasonable and consistent response to the applicable need analysis established by the State Health Plan and, as such, conforms with the requirements of this criterion. As previously discussed, the SHP's case for more nursing home beds in St. Mary's County can be called into question by the average number of unoccupied beds in the jurisdiction in the two facilities that serve the general public. In the three year period of FY2003-2005, the average number of empty CCF beds in the county was 11. In the three year period of FY2005-2007, this number has increased to 22. However, I believe that the long term pattern of population growth in St. Mary's County warrants favorable consideration of this project, which will bring to the jurisdiction a modern comprehensive care facility with programs that foster advancement in treating medically compromised and/or disabled individuals as well as members of the general public whose health has declined to the point where they require long term care.

CS argues that Point Lookout's decision to not implement the CON it received in 2008 should be used as evidence that there is no need for additional beds. CS did not provide a shred of evidence that its statement has any basis in fact. CS suggests that its appeal of the Point Lookout CON approval could not have been a factor in Point Lookout's 2012 decision because (1) Point Lookout won the appeal, and (2) the appeal was no more lengthy than any other appeal. This is a remarkable statement, since the appeal set back planning on the development of the

project. FutureCare's reasons for not implementing the Point Lookout CON were articulated in its letter to the MHCC of September 5, 2012 in which it relinquished the CON, and are quoted below. See Exhibit 3.

> Since 2007, we have pursued the certificate of need (CON) to establish Point Lookout Nursing Center in a vigorous manner. This not only included participating in the CON review; it also included successfully defending the CON approval through judicial appeals. We appreciate the favorable findings in favor of our project.
>
> At the same time, we have continued to evaluate the project in relation to the current and developing health care regulatory and reimbursement environment and the impact of the overall slowdown in the economy that affects the communities we serve. This analysis involved taking into account the costs of development, costs of initial fill up and operation, and the direction of Medicare and Medicaid reimbursement priorities. We have also focused on our commitment to the existing communities we serve, including residents and staff, since it is important that no new project detract from the important work in which we are engaged every day in the geographic regions we serve. Additionally, we took into account the MHCC's regulations concerning the timing of new projects and were cognizant of the agency's performance requirement standards that ensure that approved projects progress according to those standards.
>
> After taking all this into account, including the fact that development of this project is distant from our existing operations, and in the interest of demonstrating our good faith commitment to adhering to the MHCC's regulations on implementation of approved projects, we have regretfully decided to relinquish the Point Lookout CON approval. While we invested substantial time, expense and effort in this project, our focus on our existing facilities and range of community based services in the Baltimore Metropolitan area, and our wish to adhere to the CON regulations, led us to this conclusion.

FutureCare recently submitted a second letter to the Commission on the same topic on March 18, 2014 in response to a request by Commission Staff for additional information in a pending CON proceeding in another jurisdiction. In that second letter, FutureCare provided a further explanation for its relinquishment of the CON it previously held to construct a new

facility in St. Mary's County. FutureCare provided more detailed information about the activities in which it has been engaged regarding its numerous other facilities and business endeavors since 2007 and during the time the appeal was pending on the Point Lookout CON, and the environment of the health care system as it had evolved to 2012, which informed its decision to relinquish the CON when the appeal concluded in Point Lookout's favor. See Exhibit 3.

FutureCare did not cite a lack of need in St. Mary's County as a reason for not developing the facility. What is on the record is that Point Lookout expended considerable cost and effort to develop a new facility in St. Mary's County because it was convinced of the need for one.

CS then argues that projected population growth in the county should be ignored because CS and SMNC have low occupancies. CS and SMNC are confusing their own marketability with bed need. Nothing proves this better than SMNC's argument in relation to this criterion.

SMNC provided its own need analysis for beds in what it considers its market area. SMNC included a methodology in which it applied "incidence of nursing home need and utilization by age as determined by the National Institutes of Health (NIH)" (see filing at 9) against projected population. There are substantial flaws in SMNC's methodology.

- SMNC does not provide the NIH document from which its "incidence" rates were derived.
- The "incidence" rates are not "incidence" at all, but rather simple patient day use rates divided by 365 to obtain the number of beds that would be needed.
- One cannot tell on what year the rates were based.
- Once cannot tell whether the rates were national rates or were derived from data on utilization in a sub-region of the country.
- One cannot tell whether the rates are adjusted to reflect an appropriate occupancy percentage for beds.

In spite of these flaws, it is illuminating if one applies the "incidence" proposed by SMNC to the St. Mary's County population. On pages 10 and 11 of SMNC's filing, SMNC provided what are presumably the NIH "incidence" rates by age cohorts (65-74, 75-84, and 85+), by gender. BHNRC has multiplied these rates times St. Mary's County population, using Claritas population data (just as SMNC did, though SMNC considered only a subsection of the County, which it considers its market area) to calculate the number of beds that are needed (just as SMNC did). According to these rates, the bed need in St. Mary's County in 2014 (520.8 beds) is very close to what the MHCC projected as the Gross Bed Need in St. Mary's County in 2016 (528 beds). In 2019, the bed need in St. Mary's County would be even higher (616.3 beds) based on these rates.

	Population			"Incidence"	Bed Need		
Male Population by Age	**2010**	**2014**	**2019**		**2010**	**2014**	**2019**
Age 65 - 74	3,141	3,798	4,848	0.96%	30.2	36.5	46.5
Age 75 - 84	1,438	1,673	2,140	3.82%	54.9	63.9	81.7
Age 85 and over	508	572	629	12.93%	65.7	74.0	81.3
Female Population by Age	**2010**	**2014**	**2019**		**2010**	**2014**	**2019**
Age 65 - 74	3,161	3,884	5,165	1.23%	38.9	47.8	63.5
Age 75 - 84	1,756	1,948	2,380	5.92%	104.0	115.3	140.9
Age 85 and over	777	828	913	22.15%	172.1	183.4	202.2
Total	10,781	12,703	16,075		465.7	520.8	616.3

Sources: Population: Claritas; "Incidence:" SMNC Filing at 10-11.

SMNC and CS are simply confusing their own inability to capture the residents of St. Mary's County with countywide bed need. As described above, their own approaches to identifying need support a finding of need for the BHNRC project.

10.24.01.08G(3)(c). <u>Availability of More Cost-Effective Alternatives</u>.

> *For purposes of evaluating an application under this subsection, the Commission shall compare the cost-effectiveness of providing the proposed service through the proposed project with the cost-effectiveness of providing the service at alternative existing facilities, or alternative facilities which have submitted a competitive application as part*

of a comparative review.

CS argued (at 12) that a more cost effective alternative to developing a new $15 million nursing home is to allow the existing facilities to meet any additional need that develops with their unused capacity. It would be impossible for the two existing facilities to do so. The MHCC's net bed need projections assume that all nursing homes will operate at 90% occupancy. This means that the methodology assumes that CS and SMNC will serve any additional need until they both reach 90% occupancy, and, only then, is there additional bed need. In this case, there is a need for 192 additional beds in addition to CS and SMNC operating at full capacity.

Moreover, this argument advocates for a double-standard the application of which, would, if adopted, be arbitrary and capricious. Under Section .05B(2), for an *existing facility to expand, that individual facility must be able to demonstrate 90% occupancy for 24 months, unless the MHCC accepts an argument why the standard should not apply.* By arguing that the existing facilities should be able to expand to meet any unmet need when their own occupancies are below 90%, they are asserting that an occupancy waiver should be available to them but not to BHNRC as an applicant seeking to construct a new facility. This is an inconsistent and illogical interpretation of the applicable provisions of the Chapter.

SMNC states, quite illogically, that it does not believe that there is a need for additional beds. It is essentially arguing that the most-cost effective way to meet the increasing, large bed need is to reduce beds at existing facilities, including withholding them through the temporary delicensure process. It further states that SMNC is involved in a strategic planning process which is considering the impact of the Affordable Care Act (ACA) and bundled payment systems. BHNRC believes that the current hospital initiatives both in regard to the ACA, bundled payment systems, and population health will actually increase the nursing home role in

the health care system, as hospitals reduce acute lengths of stay and rely on post-acute facilities and services to provide more rehabilitation and care for patients. This is likely to increase nursing home utilization, not reduce it, particularly when coupled with efforts to reduce readmission to the acute care setting. BHNRC has already met with Medstar St. Mary's Hospital and will coordinate with it in any initiatives the hospital may have to improve care for St. Mary's County residents. A letter of support from MedStar St. Mary's Hospital is provided at Exhibit 9 to the November 18, 2013 completeness response. The new facility will enhance choice and options for keeping residents out of the hospital and reducing readmissions in support of the success of the Health Services Cost Review Commission waiver process.

We also point out that BHNRC is not applying to use all of the 192 beds the SHP identifies as needed. Should there be a cost-effective alternative of expanding any of the existing facilities and should those facilities be ready, willing and able to pursue such an alternative, there are 52 beds that will be available to them.

10.24.01.08G(3)(d). Viability of the Proposal.

> *For purposes of evaluating an application under this subsection, the Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frame set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.*

CS argues that BHNRC has not explained how it will overcome significant staffing limitations in the rural area of St. Mary's County. However, it has not provided a shred of evidence that there is a general lack of staff in St. Mary's County. Rather, it only offers anecdotal statements about the difficulties it has recruiting staff to work at its facility. There is no explanation of why this is the case at CS.

Moreover, as the SHP identifies, the population is increasing. This not only increases the pool of available residents for admission but of members of the public who are part of the workforce. BHNRC believes that adding an additional, new CCF to the St. Mary's County health care delivery system, that includes MedStar St. Mary's Hospital, SMNC, CS and the large facility at Charlotte Hall (which, while not counted for need purposes, is another generator of nursing and clinical job opportunities), not to mention home care, hospice and assisted living providers, the addition of BHNRC will enhance the area's workforce by creating more opportunities.

Facilities supported by FAS and FCOS successfully operate in urban, suburban and rural markets in many states. In general, facilities do not make use of agency and experience minimal long-term nursing and staffing shortages. FAS and FCOS support facilities such as BHNRC by using recruiting Directors that specialize in health care recruitment, working with local schools and colleges, having a therapy provider partner that can allocate extensive national level resources for securing therapy staff, implementing an employee tuition reimbursement program, providing access to a 2 week orientation for all directors of nursing conducted by FCOS regional staff, providing as an employee benefit without charge continuing education (CE) credits for all employed nurses as FCOS is an American Nurses Credentialing Center (ANCC) CE provider.

10.24.01.08G(3)(f). <u>Impact on Existing Providers</u>.

For evaluation under this subsection, an applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the service area, including the impact on geographic and demographic access to services, on occupancy when there is a risk that this will increase costs to the health care delivery system, and on costs and charges of other providers.

Indicate the positive impact on the health care system of the Project, and why the Project does not duplicate existing health care resources. Describe any special attributes of the project that will demonstrate why the project will have a positive impact on the existing health care system.

Both SMNC and CS argue that the approval of a new facility will have a negative financial impact on them. However, neither provides any evidence, such as any financial analyses. Just saying so does not make it true.

The Interested Parties have nowhere provided a full description of the impact of an additional facility. They have simply focused on their assumptions about lost volumes, giving short shrift to the SHP need methodology. They say nothing about their fixed versus variable expenses. They say nothing about the improved access to care an additional facility meeting that need will provide to the community. They have renovated their facilities, rightsized the number of beds to improve the mix of private to semi-private facilities by eliminating beds, and appear to have taken a number of steps to improve conditions. It is reasonable to infer that they have done so in anticipation of the competition that would be provided, first by the Point Lookout facility and by the Commission's continued identification of need for a new facility. It is a positive factor that those facilities have taken proactive responses in the face of competition by a third facility, supporting a conclusion that the BHNRC project will have a positive impact on the health care delivery system for long term care services.

BHNRC would concede that, if the MHCC did not project any additional bed need, the establishment of a new nursing home in St. Mary's County would have a substantial impact on CS and SMNC. BHNRC would not have undertaken considerable expense and effort to submit a CON application if there was a projection of no additionally needed beds.

CS states that BHNRC has not addressed the positive impact its project will have on the health care system. This is in spite of elsewhere noting that BHNRC has stated that it will meet the additional bed need projected by the MHCC, offer a large array of clinical programs, and enhance patient choice within the county.

Disclosure: COMAR 10.24.08A(8)

CS complains in its comments about the disclosure BHNRC made in its completeness response, in response to question 17d., as follows:

> "Have Messrs Forman and Grunstein ever pled guilty to or been convicted of a criminal offense in any way connected with the ownership, development or management of the applicant facility or any of the health care facilities listed in response to Question 2, above? If yes, provide a written explanation of the circumstances, including the date(s) of conviction(s) or guilty plea(s).
>
> Neither Mr. Forman nor Mr. Grunstein have either pled guilty or been convicted of a criminal offense relating to the ownership, development or management of a health care facility. In December, 2013, Mr. Grunstein pled guilty in New York state court to perjury in the third degree, a misdemeanor, based on statements made in a civil deposition relating to the funding of certain loans."

This complaint is utterly lacking in substance. The MHCC asked a question about Mr. Forman and Mr. Grunstein. In direct response, specifically in response to the question relating to ownership, development or management of health care facilities, BHNRC made a proper disclosure about Mr. Grunstein's guilty plea. There was full compliance in the answer to the requested question. If BHNRC was substantively taking the position that the guilty plea was completely unrelated to ownership, development or management of a health care facility by Mr. Grunstein, it would have not mentioned the guilty plea at all in response to the question. Instead, BHNRC having made the disclosure, CS cannot complain about the fact that the disclosure was made.

BHNRC is entitled to characterize the guilty plea for what it was, i.e., a charge related to a statement in a civil proceeding about loans. The proceeding involved a dispute about whether a loan had been made that, if made, entitled another individual to have an option to purchase an interest in a holding company that owned certain nursing homes. During the course of a civil

deposition, Mr. Grunstein made a statement in a deposition related to whether the loan had been made that was later determined to be untrue. This gave rise to the charge and plea.

In short, this matter related to a statement about a loan. It in no way related to Mr. Grunstein's role as an owner, developer or manager of any health care facilities-related compliance with law by those facilities, the care they delivered or how they were managed. The applicant did, to ensure full disclosure, identify the action.

As for the footnote related to the planned divestiture by Mr. Grunstein of his interests, CS offers no support for its baseless speculation that the transfer will not occur. It will occur and if the MHCC needs assurances, it can condition approval on this taking place. The applicant would willingly agree to such a condition, since the intention is for the transfer to be made well before the Commission even considers a decision on this application.[3]

For the reasons outlined above, BHNRC respectfully requests that the comments of both CS and SMNC be disregarded, and the BHNRC CON application be approved.

Howard L. Sollins
John J. Eller
Ober, Kaler, Grimes & Shriver
100 Light Street
Baltimore, MD 21202
410-347-7369

[3] The unseemly attack on Mr. Grunstein's children in the CS footnote lacks any merit whatsoever. They are not involved in the dispute that gave rise to the plea. Mr. Grunstein is not a beneficiary of those trusts and is not a trustee of them. CS' comments about Mr. Grunstein's children are inappropriate and should be ignored.

Certificate of Service

I hereby certify that on this 25th day of March, 2014, a copy of the foregoing Response to Comments of LP Lexington Park, LLC d/b/a Chesapeake Shores and St. Mary's Nursing Center was mailed postage prepaid to:

Suellen Wideman, Esq.
Assistant Attorney General
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215-2299

Marta D. Harting, Esquire
Venable, LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21202

And

Henry E. Schwartz, Esquire
901 Dulaney Valley Road, Suite 400
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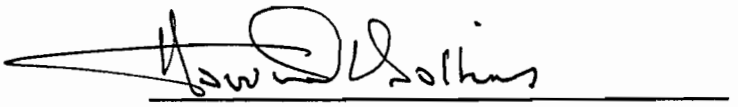

Howard L. Sollins

Exhibits

1. MHCC Recommended Decision: Point Lookout Nursing Center; Docket No. 07-18-2201

2. Opinion: Court of Special Appeals of Maryland, No. 913, September Term, 2009, *LP Lexington Park, LLC d/b/a Chesapeake Shores, et al v. St. Mary's Nursing Home, LLC d/b/a Point Lookout Nursing Center, et al* (Unreported)

3. September 5, 2012 and March 18, 2014 FutureCare Letters regarding Point Lookout Nursing Center CON

4. Affirmations

Exhibit 1

STATE OF MARYLAND

Marilyn Moon, Ph.D.
CHAIR

Rex W. Cowdry, M.D.
EXECUTIVE DIRECTOR

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

MEMORANDUM

TO: Commissioners

FROM: Commissioner Darren W. Petty DWP
Reviewer

RE: Recommended Decision: Point Lookout Nursing Center
Docket No. 07-18-2201

DATE: September 18, 2008

Enclosed is my Recommended Decision regarding the Certificate of Need application of FutureCare Health and Management Corporation, Docket No. 07-18-2201, to establish a comprehensive care facility in St. Mary's County. As Reviewer, I have analyzed the compliance of the application with applicable provisions of COMAR 10.24.08, the *State Health Plan for Facilities and Services: Nursing Home, Home Health Agency and Hospice Services*, and with the Certificate of Need review criteria at COMAR 10.24.01.08G(3)(a)-(f). I considered the application, comments on the application, additional information, and the record in this review. For reasons stated in my proposed decision, I recommend that the Maryland Health Care Commission approve the CON application of FutureCare Health and Management Corporation with conditions.

COMAR 10.24.01.09B(1) provides that applicants and recognized interested parties in a review "may submit written exceptions to a proposed decision ... by submitting written argument and supporting documentation from the record." Written exceptions and arguments must identify specifically those findings or conclusions in the proposed decision to which exception is taken, citing those portions of the record on which the exceptions are based. Oral arguments during the exceptions hearing before the Commission are limited to no more than 10 minutes for each applicant and interested party, unless the time is extended by the Chair. Argument is limited to matters raised in the written exceptions or responses.

There are two recognized interested parties in the review: Bayside Care Center (which was recently re-named Chesapeake Shores) and St. Mary's Nursing Center. Both are existing comprehensive care facilities located in St. Mary's County. These interested parties have jointly

filed exceptions to the recommended decision. The applicant filed a response to the exceptions. The exceptions and response to exceptions are enclosed.

Oral argument on the exceptions will be heard at the September 18, 2008 meeting of the Commission.

Attachments

cc: Carolyn Jacobs, Esquire, Counsel to the Interested Parties
Stephen J. Sfekas, Esquire, Counsel to FutureCare Health and Management Corporation
Gary L. Attman, Managing Member, Point Lookout Nursing Center
William B. Icenhower, M.D., Health Officer, St. Mary's County

IN THE MATTER OF	*	BEFORE THE
POINT LOOKOUT	*	MARYLAND
NURSING CENTER	*	HEALTH CARE
DOCKET NO. 07-18-2201	*	COMMISSION

Reviewer's Recommended Decision

September 18, 2008

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I. INTRODUCTION

A. Project Description

This project is proposed by FutureCare Health and Management Corporation ("FutureCare"), a Maryland-based for-profit corporation,[1] which seeks to construct a 124-bed comprehensive care facility ("CCF") (nursing home) in St. Mary's County, Maryland, to be known as Point Lookout Nursing Center ("Point Lookout").[2] FutureCare's application for a Certificate of Need to establish a new nursing home in St. Mary's County comes in response to the State Health Plan's projection of adjusted net bed need for 124 comprehensive care facility beds in St. Mary's County thru 2011.

The six acre site planned for the project is located at 20877 Point Lookout Road (Maryland Route 5), Callaway, St. Mary's County. The proposed facility will be housed in a one story building, comprising, under one roof, 56,933 square feet. The facility will have two main sections, one providing care to patients requiring relatively short stays for rehabilitation services; the second section of the building will accommodate long-term residents. (Attachment 2 provides the floor plan of the proposed facility.) The facility will accommodate a total of 8 private (single) rooms and 58 semi-private (double) rooms. If developed, the proposed project would be the third nursing home facility in St. Mary's County available to the general public. (D.I. # 3, p. 15; Exhibit 1)

Point Lookout projects serving medically complex residents with multiple system involvement, as well as those who require the provision of a safe, structured environment due to diminished physical and/or mental abilities. The applicant states that the proposed facility will provide community-based services including respite care on a space available basis, telephone reassurance to former residents, senior companion or volunteer services, and outpatient rehabilitation services. The applicant also states that the facility will sponsor health fairs and allow use of the site by support groups for meetings. (D.I. # 12, pgs. 1-2)

The total estimated cost for Point Lookout Nursing Center is $11,811,420, consisting of $11,266,420 in capital costs, $145,000 in financing and other cash requirements, and $400,000 in working capital start-up costs. The applicant projects $10,630,278 in mortgage financing as the primary source of funding for the project, with an equity contribution of $1,181,142 providing the balance of the project cost. (D.I. # 3, pp. 18-19)

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[1] Attachment 1 provides an organizational chart of FutureCare owners' Groups A and B. FutureCare was founded in 1986, and currently manages 11 nursing facilities located in the Baltimore Metropolitan area, and in Prince George's and Anne Arundel Counties. The owners of the proposed Point Lookout Nursing Center have ownership interests in the various FutureCare facilities, and they also have ownership interests in FutureCare Health and Management Corporation.

[2] The legal name of the project applicant is St. Mary's Nursing Home, L.L.C., which will be doing business as Point Lookout Nursing Center.

B. Summary of Recommendation

I have analyzed the proposed project's compliance with the applicable standards of COMAR 10.24.08, State Health Plan for Facilities and Services: Long Term Care Services, and have also considered the Certificate of Need review criteria at COMAR 10.24.01.08G(3)(a)-(f). I have also considered the comments by the interested parties, Bayside Nursing Home ("Bayside") and St. Mary's Nursing Center, Inc, ("SMNC") as well as the applicant's response to those comments.

Based on these considerations, I recommend that the Maryland Health Care Commission approve FutureCare's Certificate of Need application, with the following conditions:

1. Prior to first use review, FutureCare shall provide the Commission with a Medicaid Memorandum of Understanding reflecting that Point Lookout Nursing Center will comply with the required Southern Maryland regional Medicaid participation rate of 48.67%; and

2. Prior to first use review, FutureCare shall provide the Commission with information demonstrating that Point Lookout Nursing Center has established collaborative relationships with other types of long term care providers in St. Mary's County to assure that each resident has access to the entire long term care continuum, including, as appropriate, formal transfer and referral agreements.

II. PROCEDURAL HISTORY

A. Review Record

On July 6, 2007, John J. Eller, Esquire, of Ober, Kaler, Grimes & Shriver, submitted a Letter of Intent, on behalf of St. Mary's Nursing Home LLC (d/b/a Point Lookout Nursing Center) for the construction of a long term care facility with 124 CCF beds. On July 12, 2007, Ruby Potter, MHCC Health Facilities Coordinator, acknowledged receipt of the Letter of Intent. (Docket Item [D.I.] #1)

On August 15, 2007, MHCC received a letter of support for this project from Patricia A. Aud, identified as a resident of Hollywood, St. Mary's County. (D.I. #2)

On September 7, 2007, Mr. Eller filed a CON application on behalf of the applicant. (D.I. # 3) On September 11, 2007, MHCC acknowledged receipt of the application. (D.I. # 4)

On September 11, 2007, MHCC wrote to the St. Mary's *Enterprise* and the *Maryland Register* to request publication of the notice of receipt of the application. The *Enterprise* published notice of receipt of the application on September 21, 2007; the *Maryland Register* published the notice on September 28, 2007. (D.I. # 5; # 6; # 8)

On September 14, 2007, Mr. Eller submitted full size versions of the floor and site plans of the project. Mr. Eller wrote that the applicant had identified an error in the site plan that had

originally been submitted to the Commission, and therefore, he was providing revised copies of all plans to include as a replacement for Exhibit 2 of the application. (D. I. # 7)

On September 18, 2007, Carolyn Jacobs, Esquire, wrote to MHCC on behalf of St. Mary's Nursing Center, Inc., requesting information on the status of the review of the application. Ms. Potter responded on October 5, 2007. (D.I. # 9)

On October 12, 2007, MHCC wrote to Gary L. Attman, Managing Member of Point Lookout Nursing Center, requesting additional information in order to complete the application. Further, given that a recent change in counsel for the applicant had occurred and an Application Review Conference on the project had been scheduled for October 25, 2007, MHCC Staff explained it would extend the deadline for submission of responses to completeness questions until 10 days following completion of the Application Review Conference. (D.I. # 10)

On October 15, 2007, Howard L. Sollins, Esquire, of Ober, Kaler, Grimes & Shriver, advised MHCC of a conflict between clients which prompted his firm's withdrawal from representation of the applicant. (D.I. # 11)

MHCC received responses to completeness questions on November 8, 2007. The applicant's new counsel, Stephen S. Sfekas, Esquire, noted that the applicant had not yet received letters supporting the use of nurse practitioners by its sponsor, FutureCare which constituted Exhibit 11 of the completeness responses. (D.I. # 12) Mr. Sfekas submitted copies of these letters to the Commission, under separate cover, also on November 8, 2007. (D.I. # 13)

On November 30, 2007, Ms. Potter wrote to the St. Mary's *Enterprise* and *Maryland Register* requesting that each publish a notice of docketing of the application by December 21, 2007. (D.I. # 15; # 16) Also on November 30, 2007, MHCC Staff wrote to Mr. Attman, informing him that the application would be docketed for formal review as of December 21, 2007, and that the notice of docketing would appear in the *Maryland Register* on that date. (D.I. # 14)

On November 30, 2007, Ms. Potter requested comments from the St. Mary's County Health Department. (D.I. # 17)

On January 22, 2008, Ms. Jacobs filed interested party comments on behalf of St. Mary's Nursing Home, Inc. and HQM, d/b/a Bayside Nursing Home. (D.I. # 18)

On February 11, 2008, Mr. Sfekas filed responses to the Interested Party comments. (D.I. # 19)

On March 4, 2008, a statement was received by MHCC signed by three of the five members of the Board of County Commissioners of St. Mary's County, indicating that they did not support the proposed project. (D. I. # 20)

On March 20, 2008, Commissioner Darren Petty notified Mr. Sfekas and Ms. Jacobs of his appointment, by Dr. Rex W. Cowdry, Executive Director of MHCC, as the Reviewer in this matter, and that he was granting interested party status to SMNC and Bayside. (D.I. # 21)

On March 25, 2008, Commissioner Petty wrote to Mr. Sfekas and Ms. Jacobs about his intention to conduct a site visit of SMNC, Bayside, and the proposed site of Point Lookout Nursing Center. Commissioner Petty provided possible dates for the site visit, and asked both parties to notify Commission Staff about their availability from among the dates listed for the site visit. (D.I. #22) On April 2, 2008, Commissioner Petty provided all parties with confirmation and information on the date, times, Staff participants, and procedures concerning the site visits. The visits took place on April 9, 2008. (D.I. # 23)

On April 1, 2008, St. Mary's County Commissioner Kenneth R. Dement wrote to MHCC to clarify his position on the proposed project, in light of the letter previously filed (See D.I. # 20 above). (D.I. # 24)

On April 1, 2008, the Commission received a letter from St. Mary's County Commission Daniel H. Raley clarifying his position on the proposed project, in light of the letter previously filed (See D.I. # 20 above). (D.I. # 25)

On April 4, 2008, Ms. Jacobs responded to Commissioner Petty's request that the parties provide information on participants representing the interested parties, directions to the sites, parking, and locations for questions at the end of each site visit. (D.I. # 26)

Also on April 4, 2008, Mr. Sfekas responded with responses to Commissioner Petty's request for information. (D.I. # 27)

In response to an e-mail request for directions to a second site visit of the FutureCare-Irvington site from Ms. Jacobs, on April 21, 2008, Mr. Parker sent Commissioner Petty and Ms. Jacobs information with a map. The visits took place on April 24, 2008. (D.I. # 28)

On May 8, 2008, Commission Staff telephoned Ms. Stella Odunukwe, the Office of Health Care Quality's ("OHCQ's") Survey Coordinator for St. Mary's County, regarding the status of the most recent survey for Bayside Care Center, which the applicant had referenced in its application. On May 9, 2008, Ms. Odunukwe faxed Staff a copy of OHCQ's letter to Bayside dated October 4, 2007 concerning a Notice of Current Deficiencies, Imposition of a Per Instance Civil Money Penalty Under State Regulations, and the Possible Imposition of Other Remedies. This notice came as a result of an annual survey on August 29, 30, 31, September 7, and 13, 2007 conducted by OHCQ to determine if the facility was in compliance with federal requirements for nursing homes participating in the Medicare and/or Medicaid programs. The survey was also conducted for the purpose of State licensure. (D. I. # 29)

On May 14, 2008, Commission Staff telephoned Ms. Odunukwe to determine whether St. Mary's Nursing Center, Inc. had undergone surveys more recently than its last reported one, dated July 24, 2007. Ms. Odunukwe of OHCQ submitted information to Staff regarding a more recent complaint survey at SMNC. (D. I. # 30)

B. Local Government Review and Comment

To date, the Commission has received no comments from the St. Mary's County Health Department regarding this review.

As noted above, a statement was received by MHCC signed by three of the five members of the Board of County Commissioners of St. Mary's County, indicating that they did not support the proposed project. The letter stated, "there may be a need for another nursing facility in St. Mary's County in the future; however, the current situation does not meet the standard." The letter referred to the State Health Plan standard at COMAR 10.24.08.05B(3), and stated that the Commission's 90 percent occupancy requirement has not been met because the average jurisdictional occupancy rate in St. Mary's County's existing nursing homes is approximately 80 percent. The letter was signed by Commissioner Francis Jack Russell, President of the Board of County Commissioners, Commissioner Lawrence D. Jarboe, and Commissioner Thomas A. Mattingly, Sr. There was a line drawn through the signature blocks for the two other St. Mary's County Commissioners, Commissioner Daniel H. Raley and Commissioner Kenneth R. Dement. (D. I. # 20)

On April 1, 2008, the Commission received separate letters from the other two St. Mary's County Commissioners. Commissioner Daniel H. Raley wrote that, "one could assume that the reason for the strike-through was that [he] was absent." He wanted the Commission to "be aware that [he] was present at the time the letter was presented for signature, but [he] did not sign it because [he] did not agree with the content". (D.I. # 25) Likewise, Commissioner Kenneth R. Dement wrote that he wanted to, "clarify that, while [he] was present at the time of the signing of the letter, [he] did not sign it because [he] did not agree with the content (D.I. # 24)."

C. Interested Parties

I have recognized two interested parties in this review: St. Mary's Nursing Center Inc. ("SMNC"); and HQM of Bayside, L.L.C. d/b/a Bayside Care Center ("Bayside"). My decision in this matter was based on my finding that SMNC and Bayside were persons who could demonstrate that they would be adversely affected, in an issue area over which the Commission has jurisdiction, by the approval of the proposed project.

SMNC is an existing 212-bed CCF located at 21585 Peabody Street, in Leonardtown (St. Mary's County). Bayside is an existing 125-bed CCF located at 21412 Great Mills Road in Lexington Park (St. Mary's County). Bayside is part of Florida-based Signature HealthCARE, L.L.C., which has affiliates that operate and manage 64 skilled nursing centers in Pennsylvania, Maryland, Kentucky, Tennessee, Alabama, Georgia, and Florida. Signature HealthCARE, L.L.C. operates two other nursing facilities in Maryland: Laurelwood Care Center at Elkton, Cecil County; and Mallard Bay Care Center at Cambridge, in Dorchester County. SMNC is an independent, not-for-profit facility.

The two interested parties (referred to in filings collectively as "St. Mary's Nursing Centers") are represented by Carolyn Jacobs, Esquire, who, on January 22, 2008, filed joint comments on their behalf addressing the Certificate of Need application filed by Point Lookout

Nursing Center (D.I. # 18). On February 11, 2008, Mr. Sfekas submitted Point Lookout's response to the comments of the interested parties. (D. I. # 19)

III. DEMOGRAPHIC BACKGROUND

A. St. Mary's County Population: Growth Patterns and Age Composition

The Maryland Department of Planning projects that the current upward trend in population growth in St. Mary's County will continue into the next decade. (See Table below.) The rate of growth in all age groups noted below is expected to exceed the State average. For the period 2000-2015, St. Mary's County's projected growth in the over-65 population is more than two times that projected for the same age cohort for the State of Maryland as a whole, and almost three times greater than that of St. Mary's County's younger population. St. Mary's County's population, age 85 and older, is projected to grow substantially faster over the next seven years, although the actual size of this age group is not large, increasing from approximately 775 in 2000 to a projected 1,946 by 2015, according to census figures. This age group uses nursing home services at a significantly higher rate than younger age groups.

Table 1: Trends in Population by Age Group: St. Mary's County and Maryland, 2000 – 2015

Age Group	St. Mary's County Population 2000 Census	Projected 2010	Projected 2015	Projected Change 2000-2015
0-64	78,386	95,808	104,298	+33.1%
65+	7,825	11,893	15,153	+93.6%
65-74	4,336	6,964	9,275	+113.9%
75-84	2,714	3,304	3,932	+44.9%
85+	775	1,625	1,946	+151.1%
TOTAL	86,211	107,701	119,451	+38.6%

Age Group	Maryland State Population 2000 Census	Projected 2010	Projected 2015	Projected Change 2000-2015
0-64	4,697,179	5,161,248	5,299,032	+12.8%
65+	599,307	736,344	877,041	+46.3%
65-74	321,285	399,567	512,366	+59.5%
75-84	211,120	221,362	233,549	+10.6%
85+	66,902	115,415	131,126	+96.0%
TOTAL	5,296,486	5,897,592	6,176,073	+16.6%

Source: Maryland Department of Planning, Population Projection Series, October 2007

B. Long-term Care Facilities and Services in St. Mary's County

The interested parties in this review, Bayside Nursing Home and St. Mary's Nursing Center, Inc., operate the two nursing homes in the county that are available to the general public and have a total nursing home bed inventory of 337 beds. The third nursing home in the County, Charlotte Hall Veterans Home, is a state-operated facility that admits only veterans and their spouses or widows or widowers of veterans.

As of May 1, 2008, according to the most recent data published on the website of the Office of Health Care Quality, there are seven licensed assisted living facilities located in St. Mary's County with a total of 309 beds. (226 of these beds are located at Charlotte Hall Veterans Home.) There is one licensed provider of adult medical day care located in St. Mary's County.

C. Utilization of Comprehensive Care Facility Beds in St. Mary's County

Demand for comprehensive care facility beds at the two St. Mary's County nursing homes with general availability to the public, Bayside and SMNC, has declined in recent years, as shown in the following table. Total patient days at the two facilities has declined approximately 4.6% between FY2003 and FY2007. The table also shows proxy "use rates" for St. Mary's County, i.e., a use rate which does not account for patient migration, over this period, for the total population and for the population aged 65+.

Utilization of Charlotte Hall Veterans Home has increased in recent years, from a reported 69,740 patient days in FY2003 to 83,538 patient days in FY 2007 (19.8%).

Table 2: Trends in CCF Bed Use – Two Nursing Homes
St. Mary's County, FY2003-FY2007

	FY2003	FY2004	FY2005	FY2006	FY2007
Patient Days					
Bayside	34,754	33,414	33,310	30,887	36,510
SNMC	73,185	73,948	71,340	69,239	66,489
TOTAL PATIENT DAYS	107,939	107,362	104,650	100,126	102,999
Projected Population					
Total Population	92,143	94,120	96,097	98,417	100,737
Population Aged 65+	8,805	9,131	9,458	9,969	10,480
Use Rate – Patient Days per Thousand Population					
Total Population	1,171	1,141	1,089	1,017	1,022
Population Aged 65+	12,259	11,758	11,065	10,044	9,828
Average Annual Bed Occupancy Rate					
Bayside	76.2%	73.0%	73.0%	67.7%	80.0%
SNMC	94.6%	95.3%	92.2%	89.5%	85.9%
TOTAL	87.8%	87.0%	85.1%	81.4%	83.7%

Source: MHCC, Maryland Long Term Care Surveys (FY2003-FY2006) and Maryland Medicaid Cost Report (FY2007) and Maryland Department of Planning Population Projection Series

For the state as a whole, comprehensive care patient days declined approximately 0.5% during the period of FY2003 through FY2006.

IV. REVIEW AND ANALYSIS

I have reviewed the proposed project under the standards and criteria of the State Health Plan for Facilities and Services: Long Term Care Services, COMAR 10.24.08, and the Certificate of Need review criteria, COMAR 10.24.01.08G(3)(a) through (f).

COMAR 10.24.01.08G(3)(a), the first of the CON review criteria, requires consideration of an applicant's compliance with the applicable Chapter of the State Health Plan. As noted above, the

applicable section of the State Health Plan for this review is COMAR 10.24.08, the State Health Plan for Facilities and Services: Nursing Home, Home Health Agency, and Hospice Services section. The specific standards to be addressed include COMAR 10.24.08.05A and .05B, the Nursing Home General Standards and Standards for New Construction or Expansion of Beds or Services for nursing home projects.

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

COMAR 10.24.08.05A: Nursing Home General Standards.

(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.

This standard is relevant in the review of an application which seeks to add beds to the overall bed inventory of a jurisdiction. The applicant in this project is seeking to develop a comprehensive care facility (a nursing home) in St. Mary's County that will accommodate 124 CCF beds which is the State Health Plan's projection of maximum CCF bed need for St. Mary's County. (D.I. # 3, p. 20)

Comments by Interested Parties

The interested parties in this review (SMNC and Bayside) jointly argue that, in spite of the Commission's projection of need through 2011 in St. Mary's County for 124 new CCF beds, a need projection in and of itself neither mandates nor permits approval. An applicant still must meet all the applicable service-related State Health Plan and general Certificate of Need review criteria.

Further, these facilities affirm that their additional comments will show Point Lookout "has not met certain other applicable COMAR and [State Health Plan] criteria". (D.I. #18, p. 3)

Applicant's Response to Interested Parties Comments

Point Lookout responded that the Certificate of Need application is a response to the "public declaration" by the Commission that there is, in fact, need for these beds. On behalf of Point Lookout, Mr. Sfekas maintains that the data submitted by the applicant in its application and completeness materials is essentially the same data that the Commission relied upon in its determination of need. According to Point Lookout, the data conclusively demonstrate that there has been, and will be, a substantial increase in the population of St. Mary's County between the base year of 2006 and 2011, and that this increase will be even faster among persons over age 65. Further, the applicant maintains that the data show that St. Mary's County has had a high retention rate for nursing home patients.

On behalf of Point Lookout, Mr. Sfekas refers to what he terms the Commenters' "entire argument" against bed need as follows:

"Moreover, the actual utilization trends and jurisdictional occupancy in St. Mary's County demonstrate that there is no unmet need for comprehensive care beds in St. Mary's County." (D. I. # 18, p. 4)

Mr. Sfekas opines that this closing statement does not contradict the conclusion that there is need in St. Mary's County. Although the applicant notes that the jurisdictional occupancy standard, at times, can serve as a remedy to a faulty need analysis, it does not do so in this review or in any review where there is a small number of facilities. Point Lookout argues that, unlike the need analysis, occupancy can be affected by such things as business decisions, licensing issues, regulatory problems, or labor problems. In addition, occupancy can be affected by seasonal fluctuations or other short-term phenomena. The applicant contends that, in large jurisdictions with many facilities, all of these factors will tend to cancel each other out so that occupancy may provide useful insights into jurisdictional need. In the case of St. Mary's County, with only two publicly available nursing homes, Mr. Sfekas submits that jurisdictional occupancy provides little insight into bed need, and Point Lookout has shown in all its submissions that jurisdictional occupancy provides no insight into bed need. (D. I. # 19, p. 2)

Reviewer's Analysis and Finding

I find that Point Lookout meets this standard since it applied for the bed need of 124 CCF beds, which was the need projection in effect on July 6, 2007, the date on which the applicant submitted its Letter of Intent.

(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 .05A2(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 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 Medical Assistance Program of the Department of Health and Mental Hygiene to:**

(i) **Achieve or maintain the level of participation required by .05A 2(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.**

This rule requires a proposed free-standing nursing home to participate in the Maryland Medical Assistance Program and to provide its "fair share" of access to its facilities by Medicaid recipients, defined, at a minimum, as the applicable Medicaid proportion for the jurisdiction or region, whichever is lower. Point Lookout Nursing Center has assured the Commission that it fully commits to participation in the Medical Assistance Program, and it will meet or exceed the applicable percentage of patient days. In its application, Point Lookout estimated that for its first year at full utilization it would be serving 63% Medicaid recipients (D.I. # 3, Table 5 Revenues and Expenses, p. 56). However, on August 24, 2007, it submitted a request for a Memorandum of Understanding between St. Mary's Nursing Home, LLC d/b/a Point Lookout Nursing Center, for a Medicaid participation rate of 47.08%.

In responses to completeness questions and in accordance with the schedule published in the *Maryland Register* on August 31, 2007, Point Lookout submitted a Memorandum of Understanding ("MOU") executed with the Maryland Medical Assistance Program on October 23, 2007 in which it committed to serving 47.28% Medicaid recipients, the then applicable regional Southern Maryland participation rate for this anticipated facility (D.I. # 12, p. 3). This participation rate was lower than the St. Mary's County rate of 59.93% that was published on August 31, 2007. On December 21, 2007, in the *Maryland Register,* the Commission published updated Required Maryland Medical Assistance Participation Rates for Nursing Homes by Jurisdiction and Region, 2005. The required regional Medicaid participation rate for Southern Maryland, of which St. Mary's County is a part, is currently 48.67%, and the St. Mary's County participation rate is 55.99%.

Based on the information in the record, the applicant has demonstrated a commitment to comply with this standard. The Reviewer recommends that a condition be placed on this Certificate of Need that, as required, prior to first use review, the applicant's MOU with Medicaid be revised to reflect the increase in the required Southern Maryland regional Medicaid participation rate of 48.67%. With such a revised MOU in place, Point Lookout's Medicaid participation rate would equal the required regional Medical Assistance participation rate as published in the *Maryland Register*. The recommended condition is:

Prior to first use review, FutureCare shall provide the Commission with a Medicaid Memorandum of Understanding reflecting that Point Lookout Nursing Center will comply with the required Southern Maryland regional Medicaid participation rate of 48.67%.

(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.

This standard requires the applicant to demonstrate a commitment to meet all federal and State requirements regarding the provision of care in the least restrictive setting and the availability of alternative services. Point Lookout Nursing Center states, "[it] will provide information to all prospective residents about the existence of alternative community-based services, including, but not limited to, Medicaid home and community-based waiver programs, home care, medical day care, assisted living, and other initiatives to promote care in the most appropriate settings." As part of developing its Patient Care Plan, Point Lookout has agreed to initiate discharge planning for residents on admission to the facility. Further, Point Lookout has agreed to provide access to its facility and to encourage all "*Olmstead*-related" and other efforts by DHMH to provide education and outreach for all residents and their families concerning community-based alternatives (D.I # 3, p. 22). I find that the proposed Point Lookout Nursing Center is consistent 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

(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.

This standard requires all applicants to address the special needs of the younger population (<65) who require nursing home services. Point Lookout states that it will address the needs of the non-elderly residents in a variety of ways. According to the applicant, utilizing local hospitals and social service agencies, it intends to provide in-service education for staff that will include care for non-elderly patients. Non-elderly patients will be placed near each other to the extent that such placement is feasible and appropriate for good care. Point Lookout has assured the Commission that discharge planning, with the goal of limiting each non-elderly resident's stay to 90 days or less,

will begin as soon as a non-elderly resident is admitted and will continue throughout the resident's stay. (D.I. # 3, p. 23) Based on these assurances, the proposed project is consistent 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.

Point Lookout Nursing Center has assured the Commission that it will not have any rooms with more than two beds. (D. I. # 3, p. 24) Subsection (b) is not applicable in this review because the proposed Point Lookout project does not involve renovation of an existing facility.

In addition to requiring an applicant to demonstrate that it will provide patients with "an appropriate living environment," specifically, single or double room occupancy, this standard also requires the provision of individual temperature controls for each patient's room. In addition to its assurance that all of its patient rooms will contain no more than two beds, Point Lookout has assured the Commission that each nursing home resident room will have individual temperature controls and will be served with its own bathroom (with toilet and sink). (D.I. # 3, p. 24) The resident rooms in the rehabilitation unit will be equipped with showers; the resident rooms in the long term care unit of the nursing facility will not be. There will be tub rooms and areas for showers in the long term care portion of this proposed one story facility. (D.I. # 3, Exhibit 1 Floor Plans and diagrams of typical resident rooms) Based on these assurances, I find that the proposed Point Lookout Nursing Center is consistent 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.**

This standard requires an applicant to assure the Commission that a new proposed facility will be served by a public water system, and that access to public water will be adequate for the implementation of the project. Point Lookout Nursing Center has assured the Commission that the proposed facility will be served by the public water system on its site. Based on this representation, I find that the proposed project is consistent with this standard.

(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.**

This standard requires that the applicant identify the specific types of residents and medical conditions it projects for the proposed facility. It also requires the applicant to address how the facility will be designed to meet anticipated care needs. Point Lookout has responded that its design is oriented toward treating the typical patients requiring comprehensive care, with an emphasis on rehabilitation. Point Lookout further explained that it is designed to have three nursing units, two of which will be located around an enclosed courtyard, to allow residents to safely spend time outside. The applicant plans to include a waking path within the courtyard so that patients who are inclined to wander can spend safe, structured time outside. The facility also will be equipped with a WanderGuard® monitoring system so that residents who are at risk of wandering will not be able to leave the building without setting off an alarm. In order to accommodate bariatric patients, the facility will have two resident rooms with oversize doors.

The applicant related that its third nursing unit is intended mostly to serve patients who will require rehabilitation. As shown on the floor plan, the rehabilitation unit is separate from the other two units. Additionally, this unit will have another courtyard between this unit and the rehabilitation gym. Further, there will be a secure enclosed corridor crossing the courtyard. This also protects the residents from unwanted access by outpatients who may be using the rehabilitation gym. The applicant reported that many of the rooms on this unit will have their own showers. (D.I. # 3, p. 25)

Point Lookout reported that its design pays particular attention to patient safety. With regard to the concern for the visibility of patients by staff, Point Lookout's nursing stations will be situated central to the units, reducing the amount of walking by nursing staff in order to reach patient's rooms, and allowing direct care staff to see all of the patient rooms. Further, the day/activities areas will be located opposite to the nursing stations so that nurses will be able to observe the patients while they are there. Point Lookout states that these areas will be large enough to adapt to changes in technology and work processes.

Other design features include standardization of rooms with common equipment. Where possible, Point Lookout intends to employ the use of automated centralized scheduling, a nurse call system, and bar coding of medications on each unit. The applicant stated that the facility is being designed to accommodate wireless electronic technology, providing a platform for future electronic medical records that will allow point-of-care nursing. In an effort to reduce noise and to promote safety in walking for nursing facility residents, most areas at Point Lookout will be carpeted. Moreover, the applicant reports that the facility's rooms are being sized larger than required under State licensing regulations to accommodate family involvement with a resident's care. The applicant wrote of its intention to hold routine care planning meetings with resident or family participation.

With regard to unexpected, hazardous events, Point Lookout reported that the facility is designed to be a one-story structure in order to allow for quick response to such events and evacuations, if needed. The building will be constructed with an adequate number of sprinklers. (D.I. # 3, pgs. 25-28)

Point Lookout has stated that it intends to serve several types of medically complex residents, including, but not limited to, "typical patients requiring comprehensive care, with an emphasis on rehabilitation." Point Lookout has provided detailed information on the design elements of its proposed project and on how it intends its unit design to meet the medical needs of its patients. I find that Point Lookout has adequately demonstrated consistency 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 sponsor of this project, FutureCare, reports that none of the project's principals have 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. (D.I. # 3, p. 28) Point Lookout 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.

This standard is intended to assure that obtaining the level of care or type of services appropriate to the needs of patients is facilitated by the relationships established among providers.

FutureCare has committed to meeting this standard and has assured the Commission that it will demonstrate that it has established relationships with other types of long term care providers prior to initiating operation of the facility. (D.I. # 3, pgs. 28-29; Exhibit 10) Based on these assurances, I have determined that Point Lookout is consistent with this standard and I recommend that a condition be attached with any approval of the project. That condition is:

> ***Prior to first use review, FutureCare shall provide the Commission with information demonstrating that Point Lookout Nursing Center has established collaborative relationships with other types of long term care providers in St. Mary's County to assure that each resident has access to the entire long term care continuum, including, as appropriate, formal transfer and referral agreements.***

COMAR 10.24.08.05B: New Construction or Expansion of Beds or Services

(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.

In addressing this standard, the applicant cited COMAR 10.24.08, State Health Plan for Facilities and Services: Nursing Home, Home Health Agency, and Hospice Services, which identifies a need for 124 CCF beds in St. Mary's County thru 2011. As noted in the table below, FutureCare refers to the Commission's Statistical Data Tables in arguing that the overall St. Mary's County population will experience annual growth of between 2.2% to 2.4% during the period 2000 to 2011. However, FutureCare notes that the older age groups (the population most in need of nursing home care), are projected to grow much faster.

Table 3: Total Population in St. Mary's County, Maryland By Age Group 2001-2004, 2010, 2011

	2000	2001	2002	2003	2004	2010	2011
0-64 Years	76,329	78,011	79,692	81,374	83,055	93,597	95,286
Annual % Change		+2.2%	+2.2%	+2.1%	+2.1%	+2.1%	+1.8%
Age 65+	7,100	7,395	7,692	7,988	8,285	10,890	11,493
Annual % Change		+4.0%	+4.0%	+4.0%	+4.0%	+5.2%	+5.5%
65-74 Years	4,138	4,285	4,432	4,580	4,727	6,560	6,988
Annual % Change		+3.6%	+3.4%	+3.3%	+3.2%	+6.5%	+6.5%
75-84 Years	2,377	2,466	2,556	2,645	2,735	3,083	3,202
Annual % Change		+3.7%	+3.6%	+3.5%	+3.4%	+2.1%	+3.9%
85+ Years	585	644	704	763	823	1,247	1,303
Annual % Change		+10.1%	+9.3%	+8.4%	+7.9%	+8.6%	+4.5%
TOTAL	83,429	85,407	87,384	89,362	91,339	104,487	106,779
Annual % Change		+2.4%	+2.3%	+2.3%	+2.2%	+2.4%	+2.2%

Source: Maryland Department of Planning, Estimates and Projections for Total Non-Institutionalized Civilian Population, Revised September 2005, As Cited in MHCC COMAR 10.24.08, Supplement 1 Statistical Data Tables, Table 1.7, as provided by the applicant in its application D.I. # 3, p. 30.

To further support its position that a new nursing facility is needed in St. Mary's County, the applicant maintains that more seniors who live in St. Mary's County seek nursing home care in the county (80.6%) than the statewide average, citing Commission-published comprehensive care retention rates by jurisdiction of residence for 2004.

The applicant also cited the different nature of its three patient-focused care programs that it proposes to implement in the Point Lookout facility: Geriatric Nurse Practitioners Program; The proprietary LYFE Today Program; and a Focused Rehabilitation Services Program, providing both inpatient and outpatient rehabilitation services. More detail on these programs is provide in Attachment 3 to this report. In addition, Point Lookout reported that it will be offering additional services that it asserts are not now offered in St. Mary's County. Among these are peritoneal dialysis, physiatrist consulting, and respiratory therapy care. Finally, the applicant claims that, according to the 2006 data, St. Mary's Nursing Center, Inc. provides no hospice days. Point Lookout asserted that, in its application it has stated its intention to collaborate with the St. Mary's County Hospice to offer such a service. (D.I. # 19, p. 9)

FutureCare has represented that these programs will follow the model it has implemented in all of its other nursing facilities, implying that making this "option" available for the first time to residents in St. Mary's County constitutes the meeting of an "unmet need" for a nursing facility with a model that, the applicant relates, has been found to provide higher quality indicators, a lower incidence of hospitalizations, and lower incidence of decline in late-loss activities of daily living than the "typical" long-term care facility.

Comments by Interested Parties

The interested parties, filing jointly as the St. Mary's Nursing Centers, counter that the data suggesting that more seniors who live in St. Mary's County seek nursing home care in their home county than the statewide average fails to demonstrate unmet need. It is the position of the two interested parties that the actual utilization trends and jurisdictional occupancy in St. Mary's County demonstrate that there is no unmet need for CCF beds in the county. (D .I. # 18, pgs. 3-4)

Applicant's Response to Interested Parties Comments

Point Lookout contends that although the jurisdictional occupancy standard at times can serve as a remedy to a faulty need analysis, it does not do so in this case or in the case of any jurisdiction with a small number of facilities. Unlike the need analysis, the applicant argues that occupancy can be affected by such things as business decisions, licensing issues, regulatory problems, or labor problems. Additionally, occupancy can be affected by seasonal fluctuations or other short-term phenomena. According to the applicant, in large jurisdictions that have many nursing facilities, all of these factors tend to cancel each other out so that occupancy may provide useful insights into jurisdictional need. It is Point Lookout's position that, in a county such as St. Mary's, with only three nursing facilities, only two of which admit members of the general public, jurisdictional occupancy provides little insight into need. In this particular review, Point Lookout maintains that jurisdictional occupancy sheds no light on bed need. (D.I. # 19, p. 2)

Reviewer's Analysis and Finding

I have considered the information provided by the applicant describing population growth and aging in St. Mary's County. I have also reviewed the information provided by the applicant with respect to the "patient-focused" programs it intends to provide to both inpatients and outpatients, and note that the applicant asserts that the LYFE Today Program would be a new program for St. Mary's County. Based on this information, I find that the applicant has adequately addressed need issues in conformance with this standard.

(2) Facility Occupancy.

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

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

This standard does not apply in this review because FutureCare is proposing the construction of a new nursing home, rather than the expansion of an existing nursing facility in St. Mary's County.

(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.

The average annual occupancy rate of CCF beds in operation during FY 2007 in St Mary's County, excluding Charlotte Hall Veterans Home, was 83.7%. The Commission's bed need projection excludes Charlotte Hall. The bed need projection is based on an inventory of 337 beds, (i.e., the bed capacity of St. Mary's Nursing Center, Inc. and Bayside Care Center).

Given this occupancy rate, it is necessary to consider evidence presented by the applicant as to why the rule specifying a minimum bed occupancy rate of 90% should not apply. Point Lookout pointed to the Commission's finding of a need for 124 CCF beds in 2011, a fact which the applicant characterizes as the Commission's "essentially issu[ing] a 'request for proposals' in order to provide the residents of St. Mary's County with the long term resources that the Commission projected the county will need by 2011. Further, the applicant stated that the need for 124 CCF beds is not a marginal need, but a finding of a substantial need.

Point Lookout referred to the population projections for St. Mary's County that were used by the Commission in developing its bed need projections through the year 2011. These population projections show that the population in St. Mary's County is projected to increase substantially between 2004 and 2011. While the population age 0-64 is expected to grow at a rate of approximately two percent per year, the 65+ population in St. Mary's County is projected to grow at a rate of over five percent per year. (D. I. # 12, p. 4)

Table 4: St. Mary's County Population: Years 2000, 2005, 2010, and 2011

	2000	2005	2010	2011
0-64 Years	78,386	86,640	95,690	97,388
Annual % Change		+2.1%	+2.1%	+1.8%
Age 65+	7,825	9,460	12,010	12,662
Annual % Change		+4.2%	+5.4%	+5.4%
TOTAL	86,211	96,100	107,700	110,050
Annual % Change		+2.3%	+2.4%	+2.2%

Source: Maryland Department of Planning, Projections as of November 2006, Reported by the applicant as having been accessed from http://www.mdp.state.md.us/msdc/dw_map.htm on November 6, 2007. The applicant notes that the population figures are calculated by dividing the difference between 2010 and 2015 by 5 and adding the quotient to the 2010 population figure (D. I. # 12, p. 6).

In its comparison of the Commission's projections of population growth in St. Mary's County through the year 2011, and referencing data obtained from the Maryland Department of Planning, FutureCare argued that more recent Maryland Department of Planning data project that there will be an increase of almost 1,200 more St. Mary's County residents age 65+ in 2011 than those the Commission used in its projection of CCF bed need (i.e. 12,662 – 11,493 = 1,169). The applicant views this situation as an indication that the need for CCF beds in St. Mary's County could be even higher than predicted. (D. I. # 12, p. 6)

As noted above, there are only two other publicly available nursing facilities in St. Mary's County: St. Mary's Nursing Center, Inc. and Bayside Care Center. The applicant points to Bayside, constructed in 1983 and owned by HQM of Bayside, LLC, part of the larger Florida-based Signature HealthCARE, LLC, as having had consistently lower occupancy in recent years than St.

Mary's Nursing Center. The table below documents occupancy rate data for St. Mary's County's nursing homes from 2000 to 2007.

Table 5: Occupancy Rates for St. Mary's County Nursing Homes: Fiscal Years 2000-2007

Facility	2000	2001	2002	2003	2004	2005	2006	2007
St. Mary's Nursing Center	95.3%	93.0%	93.4%	94.6%	95.3%	92.2%	89.5%	85.9%
Bayside Care Center	81.9%	96.9%*	84.9%	76.2%	73.0%	73.0%	67.7%	80.0%
Charlotte Hall Veterans Home	82.0%	72.7%	64.1%	68.7%	67.7%	71.4%	79.2%	82.3%
ST. MARY'S CO.	86.6%	84.2%	78.8%	79.2%	78.3%	78.6%	80.4%	83.1%
ST. MARY'S CO. (excluding Charlotte Hall	90.3%	94.3%	89.7%	87.8%	87.0%	85.1%	81.4%	83.7%

Sources: MHCC's Nursing Home Occupancy Rates & Utilization by Payment Source: Maryland, Fiscal Years 2000-2003; Medicaid Cost Report Data for Fiscal Years 2004-2005, and MHCC's Long Term Care Surveys for Fiscal Year 2006, and 2007 Medicaid Cost Report Data as received from UMBC (not verified by facility).
***According to the Commission's records, during fiscal year 2001, Bayside increased its operating bed capacity by relicensing 20 temporarily delicensed beds (from 105 to 125 beds) on September 1, 2001.**

As the table above demonstrates, St. Mary's Nursing Center, Inc. maintained an average annual occupancy rate above 90% for the six years from 2000 to 2005, but dropped below in 2006 and 2007. Thus, for most of the past seven years, overall low bed occupancy in the County has resulted from empty beds at Charlotte Hall Veterans Home, which restricts its admissions to veterans and their spouses or widowers and widows of veterans, and Bayside Care Center. It is important to remember that the bed need projection for St. Mary's County excludes Charlotte Hall Veterans Home. It is based on an inventory of 337 beds (which is just St. Mary's Nursing Center, Inc. and Bayside Care Center).

In its application materials, Point Lookout also maintains that quality of care issues at Bayside are a reason why that facility's occupancy rate may be lower than that at SMNC. Specifically, FutureCare related that, on October 4, 2007, the Office of Health Care Quality corresponded with Bayside regarding a survey that state agency surveyors completed on September 19, 2007 that resulted in the findings of multiple deficiencies, including 5 'G' level deficiencies, a serious level of deficiency that identifies "actual harm that is not of immediate jeopardy." (Bayside was assessed a Civil Money Penalty of $25,000 as a result of the severity of the deficiencies found following the facility's September 2007 annual survey. On October 17, 2007, Bayside Care Center notified OHCQ that it decided to waive its right to a hearing on the assessed CMP, and, for this reason, its monetary penalty was reduced to $15,000. The facility submitted a Plan of Correction on the same day, which was accepted by OHCQ. That office currently finds Bayside in substantial compliance.)

Due to the level of severity involving these recent deficiencies, the applicant suggests that this situation, together with Bayside's historically low occupancy, should not preclude the Commission from approving the proposed Point Lookout Certificate of Need application.

The applicant has also referred to the two other nursing facilities in Maryland that are affiliates of Signature HealthCARE LLC, part of the same nursing home chain of which Bayside Care Center is a member: Laurelwood Care Center at Elkton ("Laurelwood"), in Cecil County and Mallard Bay Care Center at Cambridge ("Mallard Bay"), in Dorchester County. The applicant contends that neither of these two affiliates of Signature HealthCARE LLC is "performing well, and

[both] have low occupancies." A review of 2006 Medicaid Cost Report data, the most recent date for which occupancy data are available, reveals that Laurelwood had 8 temporarily delicensed beds during the fiscal year and an occupancy rate of 83.8%; Mallard Bay maintained its 160-bed operational capacity for the fiscal year, and had an occupancy of 82.8%. With lackluster occupancies at these two facilities, the applicant argues that Signature HealthCARE, LLC is not interested in achieving higher occupancies in any of its Maryland nursing facilities; however, such a situation should not bar another nursing home from entering the St. Mary's County jurisdiction to provide nursing home care that has been projected by the Commission as being needed.

With regard to the occupancy rate at St. Mary's Nursing Center, Inc., FutureCare states that, with an occupancy almost continually above 90%, SMNC is clearly the more sought after of the county's two publicly available nursing facilities, despite the fact that the initial section of its existing facility was constructed in 1965, even earlier than the Bayside facility. Point Lookout attributes SMNC's reported drop in its occupancy rate to SMNC's increasing number of Medicare patient days, i.e. 5,788 Medicare patient days in FY 2004, 8,025 in FY 2005, and 8,587 in FY 2006. This 48.4% increase from FY 2004 to FY 2006, in what the applicant characterizes as, "the usually more profitable," shorter stay Medicare patients, means there is a higher rate of bed turn-over, which results in lower occupancy. It is FutureCare's position that the population of St. Mary's County should not be deprived of 124 CCF beds that the Commission has deemed as being needed because, according to FutureCare, SMNC has chosen to focus on Medicare patients.

FutureCare also maintains that the difference between the St. Mary's County FY 2005 occupancy percentage of 84.47% (excluding Charlotte Hall Veterans Home) and a 90% occupancy was less than 14 beds (Total Available Patient Days 119,360 x .9 = 107,424 – (Actual Number of Patient Days) 102,448 = 4,976; 4,976/365 =13.63 beds). (D.I. # 3, p. 33) The applicant asserts that the fact that 14 beds in FY 2005 were not filled in the two publicly available nursing facilities in St. Mary's County should not deprive the county's residents of a new modern nursing facility that will meet the Commission's projected need of 124 beds.

According to the applicant, it responded to the Commission's projected need for 124 new CCF beds in St. Mary's County through the year 2011 with its proposal of the Point Lookout Nursing Center project. Point Lookout states that the proposed facility will provide a competitive challenge to the existing nursing facilities in the county, while at the same time it will give the county's residents a greater choice in the selection of a long term care facility. (D. I. # 12, pgs. 4-8)

Comments by Interested Parties

In their joint comments opposing the Point Lookout facility, the two St. Mary's CCFs assert that the applicant used data from the Commission's most recent public use data base for FY 2005 in its Certificate of Need application, despite the fact that both SMNC and Bayside file Medicaid Cost Reports. The interested parties assert that the applicant is deficient in not using the Medicaid Cost Reports for FY 2006 filed by these facilities to report occupancy. SMNC and Bayside relate that the 2006 Medicaid Cost Reports reveal that all three St. Mary's County nursing homes (including Charlotte Hall Veterans Home) had an average annual occupancy of 80.4%. The existing St. Mary's CCFs maintain that Point Lookout used and relied upon incorrect data in its application materials when it reported that (in the Point Lookout Certificate of Need application D.I. #3, p. 32)

the combined average occupancy of the two existing facilities, at 85.8% in FY 2005, was close enough to the required 90% to permit approval of the Point Lookout CON application under the provision in subsection (3)(b) of this standard, which states, "[t]he applicant may show evidence why the rule should not apply."

The Public Use Database for FY 2005 reports the occupancy of SMNC at 89.5% and the occupancy of Bayside at 79.1%. The interested parties claim that even if Charlotte Hall were excluded because of the limited and specialty nature of its admission policies, the jurisdictional occupancy for St. Mary's County, based on FY 2006 Medicaid Cost Reports, would be 81.4%, which would not be a sufficient occupancy rate to permit approval of the Point Lookout CON application. Both SMNC and Bayside affirm that available data suggest a decreasing need for comprehensive care facility beds in St. Mary's County, rather than an increasing need.

Next, the two existing St. Mary's CCFs criticize the applicant for failing to "give any credible evidence as to why an occupancy rate of 80.4% should not prohibit approval of its application, but instead complains about the standard itself.". (D.I. # 18, p.6) The interested parties contend that if Point Lookout had a complaint about the Jurisdictional Occupancy standard, then the applicant or its sponsor, FutureCare, should have taken this matter up with the Commission during the plan development process.

The interested parties relate that Point Lookout submitted population data on St. Mary's County from 2000 and projections of county population growth through 2011, especially population growth in the age 65+ age group, in order to support its assertion that the Jurisdictional Occupancy standard should not apply. However, the interested parties claim that, regardless of these projections, the experience of the existing facilities in St. Mary's County "demonstrates that need/demand is decreasing, not increasing."

To bolster this assertion, the St. Mary's Nursing Centers reported that it was in response to decreasing demand for CCF beds that SMNC, on July 30, 2007, requested and received authorization from the Commission, with an effective date of September 1, 2007, to request that the Office of Health Care Quality re-issue its license to reflect a temporary delicensure of 12 CCF beds for a period of one year, giving SMNC a licensed bed complement of 200 beds. Further, the interested parties related that SMNC's census for the six-month period July 1, 2007 to December 31, 2007 has, on average, been 84.5%. At the time of the filing by the interested parties on January 22, 2008, SMNC's census was 160 out of a 200 bed complement, giving the facility an occupancy rate of 80%.

The interested parties disagree with Point Lookout's assertion that the lower occupancy rate of SMNC is due to an increase in that facility's Medicare patient days and/or shorter lengths of stay. Rather, the St. Mary's Nursing Centers see decreasing occupancy as, in large part, a result of more persons being treated in home settings than in nursing homes, with the trend being more community-based services. Even if occupancy were reduced by an increase in Medicare patient days and/or shorter lengths of stay, the interested parties claim that empty beds would be filled if there were a need or demand for those beds. (D.I. # 18, p.7)

Further, the St. Mary's Nursing Centers take issue with Point Lookout's statements regarding the age of SMNC, and they state, "....the age of a facility is irrelevant...." The interested parties note that SMNC was built in stages. The years 1985 and 1993 are reported. (The oldest parts of the facility date from 1965.)

With respect to Bayside, the interested parties reported that, as of January 22, 2008, Bayside had a census of 93 residents and a licensed bed capacity of 125 CCF beds, and therefore, an occupancy rate of 74.4%. While Point Lookout has attributed this lowered occupancy to Bayside's being a "troubled facility," the interested parties argue that Point Lookout presents no evidence that, in fact, potential residents are not choosing Bayside because of alleged historic deficiencies.

Applicant's Response to Interested Parties Comments

In response to the interested parties' assertions, Point Lookout reiterated its statement that nursing home occupancy can be affected by a variety of factors, other than need. Point Lookout maintains that, in a county such as St. Mary's, idiosyncrasies relating to particular nursing facilities become particularly important.

According to Point Lookout, this standard has two parts. In the first, a general rule is announced that an application can be granted, "...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..."

The second part of the standard allows an applicant to show evidence why this rule should not apply. Point Lookout argues that this second provision is clearly intended to offer "an escape hatch" to prevent an application from being rejected on the basis of the sorts of individual factors that can affect occupancy. Point Lookout states its belief that the use of this "escape hatch" is indicated in this review for the following reasons:

- First, the demographic data that Point Lookout has introduced, and upon which the Commission, itself, has relied, has not been disputed. The overall population and the population of those age 65 and over in St. Mary's County is rising rapidly, and there is a high nursing home retention rate in the county. Thus, Point Lookout claims that any failure on the part of existing nursing homes in St. Mary's County to reach satisfactory occupancy cannot be attributed to broad demographic trends. According to the applicant, this pattern is strongly suggestive that the relatively low occupancy rates result from factors peculiar to the three existing nursing homes, rather than from a lack of bed need.

- Second, the very small number of nursing facilities in the county make the jurisdictional occupancy standard particularly susceptible to distortion by any factor unique to a particular facility.

Point Lookout seeks to illustrate both of these points by reviewing the three nursing facilities in St. Mary's County. Charlotte Hall Veterans Home is an extremely large nursing home that functions as a statewide resource for veterans and their spouses. Point Lookout notes that even

the interested parties seem to concede that Charlotte Hall should be excluded from the computations because of "...the limited and specialized nature of the facility...". (D.I. # 18, p.6) Further, the applicant notes that the State Health Plan, itself, excludes Charlotte Hall from the inventory in St. Mary's County in the bed need computation. St. Mary's Nursing Center, Inc. meets the occupancy standard, using the data that the Commission is required to use. Point Lookout concludes that the failure to reach the 90% standard results from the inadequate occupancy of Bayside Care Center, and raises questions about the reasons for Bayside's inability to achieve a 90% occupancy rate.

In response to this question, Point Lookout claims that Bayside occupies an old and obsolete building. As an example, the applicant reports that, according to the FY 2006 Public Use Data Base, Bayside has 61 semi-private rooms with shared toilets (meaning that the toilet serves two rooms and as many as four people). Point Lookout maintains that this configuration would obviously be a major marketing problem for the facility. Secondly, Bayside has undergone building renovations during FY 2006. The renovations would limit the number of available beds and would likely reduce, in the short term, the attractiveness of the facility to potential residents. Third, Point Lookout argues that Bayside is, in fact a "troubled facility," despite denials in the comments by the interested parties. In support of this contention, Point Lookout states that, during 2007, Bayside was found guilty of an unfair labor practice by the National Labor Relations Board. In Re HQM of Bayside, see 348 NLRB No. 42 (2006) See also NLRB v. HQM of Bayside, 518F.3d 256 (4th Cir.. 2008)] Fourth, as noted above, Bayside was the subject of an extremely poor licensing survey in 2007. Point Lookout relates that, in its survey covering 134 pages, the Office of Health Care Quality found five 'G' level deficiencies covering 20 deficiencies. According to Point Lookout, this licensing survey reveals major quality of care issues in the facility that would certainly have an impact on the facility's reputation, marketability, and attractiveness in the community. Fifth, the parent company of Bayside, identified by Point Lookout as HQM, runs two other Maryland facilities, which reportedly operated at 82.8% (Mallard Bay) and 83.8% (Laurelwood) occupancy during the same time period.

Although Point Lookout states that Bayside's occupancy rate appears, on its face, to be inconsistent with the need projections of the State Health Plan section for comprehensive care facilities, Point Lookout argues that this inconsistency can be explained by the fact that Bayside has undergone renovations, has had licensing and quality of care problems, has been found guilty of an unfair labor practice and is in litigation against its own employees, "and is part of a company all of whose Maryland facilities under-perform the State."

Point Lookout also relates that several other factors lead to the conclusion that Bayside's occupancy results from characteristics unique to it, rather than to a lack of bed need. It is Point Lookout's contention that Bayside significantly under-performs St. Mary's Nursing Center, Inc. If lack of bed need were the cause of poor occupancy, Point Lookout postulates, then both facilities would likely be affected, but they are not.

Further, Point Lookout recounts that Bayside temporarily delicensed 15 CCF beds on June 18, 2004. Under the Commission's regulations, Bayside had one year in which to decide what it was going to do with regard to the beds. Point Lookout argues that if Bayside thought that there would be a long term decline in bed need, it would have permanently delicensed some or all of the 15 CCF beds. Instead, Point Lookout reported, and Commission records confirm, that Bayside

returned all 15 CCF beds to service on March 25, 2005. According to Point Lookout, this act is inconsistent with the belief that the bed need was going down.

Additionally, Point Lookout affirms that, despite the return of the 15 CCF beds to service, Bayside's occupancy, by its own admission, has risen from 67.7% in its FY 2006 Medicaid Cost Report (D.I. # 18, p. 5), to an occupancy rate of 74.4% as of January 22, 2008, the date on which the interested parties filed their joint comments. Therefore, Point Lookout argues that, despite all of the factors referenced above that might tend to decrease its occupancy rate, Bayside's occupancy has actually increased in spite of the re-implementation of 15 temporarily delicensed beds.

With regard to St. Mary's Nursing Center, Inc., Point Lookout asserts that this facility has made additional claims about its occupancy. For example, Point Lookout states that SMNC reported a July 2007 request to temporarily delicense 12 CCF beds; it has operated at 89.4% occupancy for the period July 1, 2007 through December 31, 2007, and that it now has 40 empty beds. Point Lookout contends that, despite SMNC's arguing that there is no bed need in the county, St. Mary's Nursing Center, Inc. has not yet permanently delicensed the 12 CCF beds that became temporarily delicensed with an effective date of September 1, 2007, nor has it indicated that it intends to do so. According to Point Lookout, SMNC's actions relating to the temporary delicensure of its beds is consistent with a belief that occupancy will begin to rise again. Further, the apparent sudden drop from 89.5% in FY 2006 to the present, in Point Lookout's view, is likely the result of a specific change in policy, rather than a decline in bed need. Point Lookout maintains that if the drop in occupancy had resulted from a decline in bed need, then the decline would have been gradual, rather than a sudden drop that SMNC has reported.

Point Lookout further argues that there has been a substantial increase in Medicare patient days at St. Mary's Nursing Center, Inc. recently. Point Lookout states that since Medicare patients have short stays and much higher turnover than non-Medicare patients, occupancies would likely fall as a result of a policy of increasing Medicare admissions. The applicant maintains that SMNC has not explained nor contested Point Lookout's assertions concerning the increase in Medicare patient days at SMNC and its influence on occupancy. (D.I. # 19, pgs. 2-7)

Reviewers Analysis and Finding

After fully considering the points made in reference to this standard by the applicant and the interested party, it is my finding that the applicant has carried the burden of showing evidence why this minimum occupancy rate threshold should not apply. There are three bases for my finding. First, the exceptional rate of growth in the population of St. Mary's County indicates that the two existing facilities will not be able to meet the needs of the community in the future. Secondly, I believe there is a reasonable basis for finding that the condition of one of the two facilities in St. Mary's County that is available to the general public, Bayside, may be a factor in depressing demand for its beds and this facility has, on average, experienced substantially lower bed occupancy in recent years than the other facility, SMNC, that is available to the general public. Finally, I believe that the proposed facility will be attractive to a broad spectrum of patients because of the range of facilities and services it will offer, some of which are not currently offered at existing facilities, and that the long-term care needs of the population of St. Mary's County will be better served by having this additional option available

A review of utilization at the two relevant St. Mary's facilities in the last five years indicates that Bayside has been substantially underutilized throughout the period, hitting its highest level of average annual bed occupancy, 80%, in the most recent fiscal year, 2007, and that SMNC has only experienced a softening of its occupancy rate in the most recent two years. However, at its low occupancy point during this period, FY 2006, the jurisdictional discrepancy between the average daily census of patients in the two facilities and the number needed to meet the 90% average annual occupancy rate threshold of this standard was only 29 patients. This gap was less than 8 patients as recently as FY 2003. While use rates for comprehensive care have declined generally for a considerable period of time in Maryland and throughout the country, projected population growth in St. Mary's County is such that it may readily offset the impact of declining use rates. In the first 15 years of this century, it is projected that the population aged 65 to 74 in St. Mary's County will increase 114%, the population aged 75 to 84 will increase 45%, and the population aged 85 and older will increase 151%.

This point is illustrated in the table shown on the following page. Using the "proxy" use rates shown in Table 2 of this report, i.e., the ratio of CCF patient days per 1,000 population for the 65 and older population, recorded for St. Mary's County for FY 2003 through FY 2007, this table shows the number of CCF patient days that would be projected for 2010 and 2015 at these use rates. As can be seen, at the use rates recorded in 2003 through 2005, population growth in this elderly age group by 2010 would imply insufficient existing bed capacity in St. Mary's County (i.e., average annual occupancy rates in excess of 100% of bed capacity) and, even at the lower use rates of 2006 and 2007, very high occupancy of existing bed capacity in 2010 (95-97%). By 2015, use by the projected elderly population at any of the levels recorded in 2003 to 2007 will result in an inability of the current facilities to meet the demand for beds and, at the use rate levels of 2003 to 2005, even the proposed 461 beds (337 existing beds plus the 124 beds of Point Lookout) would be inadequate.

I do not believe that the relatively recent decline in census at SMNC serves as a strong indicator that occupancy will continue to be low at this facility and thus, that use rates will persist at the low level recorded in 2007 or continue to decline. The one other facility available to the general public, Bayside, can be characterized as having persistent underutilization. However, my site visit to all the facilities suggests that Bayside is not state-of-the-art, with respect to design and facility amenities, and I am persuaded that this may be a factor in its lower patient census at this facility.

Patient census at Bayside and St. Mary's in the last five years has not followed the path that would have been expected, given the Commission's bed need projection. However, a key factor that gave rise to the projection – strong projected population growth – is still relevant. St. Mary's County has a limited number of facilities and beds to handle its exceptional projected population growth. One of the County's two facilities available to the general public operated at high average bed occupancy except for the last two years. These factors indicate to me that allowing a third competing facility in the county is prudent. I find that the proposed project is consistent with this standard. Point Lookout Nursing Center has adequately addressed why the threshold occupancy rate standard of 90% should not apply in this review.

Table 6: Projected CCF Bed Demand – St. Mary's County Nursing Homes (Excluding Charlotte Hall) - 2010 and 2015

Bed Demand in 2010 at the Rate of CCF Patient Days per Thousand Population Aged 65+ - 2003-2007						
Year	Use Rate	Projected Population	Projected CCF Days	Average Daily Census	Projected Occupancy Rate of 337 Existing Beds	Projected Occupancy Rate of 461 Proposed Beds
2003	12,259	11,893	145,796	399.4	119%	87%
2004	11,758	11,893	139,838	383.1	114%	83%
2005	11,065	11,893	131,596	360.5	107%	78%
2006	10,044	11,893	119,453	327.3	97%	71%
2007	9,828	11,893	116,884	320.2	95%	70%
Bed Demand in 2015 at the Rate of CCF Patient Days per Thousand Population Aged 65+ - 2003-2007						
Year	Use Rate	Projected Population	Projected CCF Days	Average Daily Census	Projected Occupancy Rate of 337 Existing Beds	Projected Occupancy Rate of 461 Proposed Beds
2003	12,259	15,153	185,761	508.9	151%	110%
2004	11,758	15,153	178,169	488.1	145%	106%
2005	11,065	15,153	167,668	459.4	136%	100%
2006	10,044	15,153	152,197	417.0	124%	91%
2007	9,828	15,153	148,924	408.0	121%	89%

Source: MHCC. Use rates from Table 2 of this report. Population data from MDP.

(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 proportion of Medicaid participation from the time the facility is licensed, and must show a good faith effort and reasonable progress toward achieving this goal in years one and two of its operation.

(c) An applicant 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.

This standard requires the applicant to agree to participate in the Maryland Medical Assistance Program ("Medicaid"), and to serve a proportion of patients that is consistent with the proportion of Medicaid patients in the jurisdiction or region, whichever is lower. As discussed under COMAR 10.24.08.05A(2), Point Lookout has provided the Commission with its assurances that it is committed to meeting the requirements of this standard. Further, the applicant states it will participate in the Medicaid Program; it will execute the required Memorandum of Understanding, and it will implement the required written policies as set forth in this standard. Based on these assurances, the proposed project is consistent with this standard. As previously noted, I am recommending that the Commission condition approval of this project on the establishment of a

Memorandum of Understanding with the Medicaid program that commits the proposed facility to serving its fair share of Medicaid patients.

(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.

This standard concerns expansion of an existing facility, and therefore, is not applicable in this review.

(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.

This project does not involve the relocation of an existing facility, and therefore, the standard does not apply in this review.

B. 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.

The applicant states that there is a need projection for CCF beds in the State Health Plan for St. Mary's County, consistent with its proposed project.

As previously noted, in addressing bed need, the applicant referenced the population growth projected for St. Mary's County. Additionally, FutureCare points to its patient-focused programs as models to be used in the proposed project as a factor that should be considered within the criterion of "need," based on a view of the project as one that expands choice for those in need of nursing home services.

I find that the proposed project is a reasonable and consistent response to the applicable need analysis established by the State Health Plan and, as such, conforms with the requirements of this criterion. As previously discussed, the SHP's case for more nursing home beds in St. Mary's County can be called into question by the average number of unoccupied beds in the jurisdiction in the two facilities that serve the general public. In the three year period of FY2003-2005, the average number of empty CCF beds in the county was 11. In the three year period of FY2005-2007, this number has increased to 22. However, I believe that the long term pattern of population growth in St. Mary's County warrants favorable consideration of this project, which will bring to the jurisdiction a modern comprehensive care facility with programs that foster advancement in treating medically compromised and/or disabled individuals as well as members of the general public whose health has declined to the point where they require long term care.

C. 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.

The applicant responds to this criterion by reiterating that the Commission has found a need for 124 CCF beds. Point Lookout focuses on the fact that, while the two existing publicly available nursing facilities in St. Mary's County have interested party status, and have submitted a joint filing in this review, neither has submitted a competing Certificate of Need application to accommodate these 124 CCF beds.

Point Lookout maintains that neither of the two other nursing facilities would be able to meet the need of 124 additional beds without a major construction project. As the existing kitchen and other facilities would need to be expanded at either facility to accommodate 124 added beds, Point Lookout suggests that the cost of such a construction project would be comparable to its project costs, no matter which of the existing facilities would be the applicant. Further, Point Lookout relates that if one of the existing facilities had chosen to replace its entire existing structure as well, the project costs would have been even higher.

The applicant stated that, since neither existing facility submitted a Certificate of Need application to build these beds, it is difficult to know what they might have proposed. Therefore, it is difficult for Point Lookout to determine if St. Mary's County residents would have the benefits that the proposed Point Lookout facility would bring from some other entity. As an example, the applicant states that one does not know if the existing facilities would have proposed a state-of-the-art rehabilitation gymnasium, such as the one proposed by Point Lookout.

With regard to alternatives considered by the applicant, Point Lookout reports that it reviewed 35 alternative sites in St. Mary's County. According to the applicant, nine sites were considered to be too large, requiring substantial increases in the site acquisition costs. Fourteen sites were considered to be too small, and would not have provided the Point Lookout facility with adequate space. In its property review, the applicant found that seven sites had zoning inconsistent with nursing home development. One site was too remote from the county's only hospital and the county's main population areas. One site was not served by public water. One site, though suitable, was sold to another party. One site, though also suitable, was withdrawn from the market by the existing owner. Eventually, the applicant selected and purchased the site at 20877 Point Lookout Road as the site for the Point Lookout Nursing Center facility.

With respect to cost, the applicant indicates that its construction cost estimate is within the construction cost index used by the Commission to evaluate the reasonableness of proposed construction projects, as reported below under COMAR 10.24.01.08G.(3)(d) Viability of the Proposal. With respect to effectiveness, FutureCare's argues that its corporate patient-centered programs are models of best practice that produce enhanced health and well-being among residents when compared with traditional nursing home models.

Comments by Interested Parties

The St. Mary's Nursing Centers, argue that Point Lookout has not demonstrated why its project is the most cost-effective alternative. The opponents of this project contend that actual utilization in St. Mary's County's existing nursing homes fail to demonstrate a need for 124 additional CCF beds. To the extent there is any need arising from increased demand for CCF beds, the interested parties maintain that this need can be met by existing bed capacity. Both Bayside and SMNC argue that this would be more cost effective than constructing a new facility. (D. I. # 18, p. 9).

Applicant's Response to Interested Parties Comments

Point Lookout asserts that both SMNC and Bayside have argued in their joint comments on this criterion that it would be more cost-effective to meet bed need by using currently unoccupied beds. However, the applicant maintains that the need projections of the State Health Plan already take these beds into account. Point Lookout reiterates that the occupancy performance of these two nursing facilities is not a reliable indicator of future bed need because this performance most likely result from the business decisions or performance issues of two individual nursing facilities, rather than an overall decline in bed need in St. Mary's County (D.I. # 19, pgs. 7-8).

Reviewer's Analysis and Finding

I believe there are significant potential advantages, with respect to access, availability, and quality of care, in authorizing implementation of the proposed project in St. Mary's County, given the projected increase in its overall and elderly population. I find that the applicant has made a compelling case with respect to the effectiveness of the model it intends to follow, and agree that the project's cost is within the construction cost guidelines used by the Commission. I find that this is a sufficient basis on which to make a positive finding on this criterion.

D. 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.

St. Mary's Nursing Home, LLC is proposing to construct a 124-bed nursing facility in St. Mary's County to be known as Point Lookout Nursing Center. The total project budget is presented below:

Table 7: Point Lookout Nursing Center - Project Budget

A. Uses of Funds	Nursing Facility
CAPITAL COSTS	
Building	$ 6,618,460
Land Purchase	1,100,000
Site Preparation	295,000
Architect/Engineering Fees	370,000
Permits	15,000
Subtotal – New Construction	$8,398,460
Major Movable Equipment	$315,380
Minor Movable Equipment	1,004,578
Contingencies	498,164
Subtotal – Other Capital Costs	$1,818,122
Total Current Capital Costs	$10,216,582
Inflation Allowance	$709,285
Capitalized Construction Interest	$340,553
Subtotal- Total Capital Costs	$11,266,420
FINANCING COSTS AND OTHER CASH REQUIREMENTS	
Loan Placement Fee	$100,000
Legal Fees (CON related)	30,000
CON Application Assistance	15,000
Subtotal – Financing and Other Cash	$145,000
Working Capital - Startup Costs	$400,000
Total Uses of Funds	**$11,811,420**
B Sources of Funds	
Cash	$1,181,142
Mortgage Loan	10,630,278
Total Sources of Funds	**$11,811,420**

Source: CON Application, Part II Project Budget, (D. I. # 3, p. 18)

The applicant projects an equity contribution of $1,181,142 and a mortgage loan of $10,630,278. The applicant has submitted a letter from Mercantile Bank & Trust (now PNC Bank) indicating interest in financing the proposed nursing facility. The applicant has also provided a letter from Sacks, Trotta and Koppelman, Certified Public Accountants, stating that the applicant has sufficient liquidity and net worth to invest in the equity contribution.

Commission Staff analyzed the revenue and expense projections for the nursing facility only. The financial projections presented can be summarized as follows:

Table 8: Point Lookout Nursing Center Revenue & Expense Projections

	2011	2012
REVENUE		
Inpatient Revenue	$6,661,602	$10,393,140
Outpatient Revenue	-	150,000
Gross Revenue	$6,661,602	$10,543,140
Allowance For Bad Debt	73,366	114,536
Net Patient Care Revenue	$6,588,236	$10,428,604
Other Operating Revenue	8,010	19,236
Net Operating Revenue	$6,596,246	$10,447,840
EXPENSES		
Salaries, Wages, Professional Fees, etc.	$4,218,182	$5,588,324
Contractual Services	662,775	945,335
Interest on Project Debt	46,875	51,415
Current Depreciation	-	-
Project Depreciation.	-	-
Current Amortization	-	-
Project Amortization	-	-
Supplies	174,851	297,316
Other Expenses	2,349,441	3,052,855
Total Operating Expenses	$7,452,124	$9,935,245
INCOME	($855,878)	$512,595
Licensed Beds	84 (Avg. for FY)	124
Admissions	300	264
Patient Days	23,178	41,975
Occupancy Percentage	75.4%	92.7%
Gross Revenue/Patient Day	$287.41	$251.17
Net Operating Revenue/Patient Day	$284.25	$248.90
Expense/Patient Day	$321.52	$236.69

Source: Response to Completeness and Additional Information Questions dated 11/7/2007, Table 3: Revenues and Expenses-Entire Facility; Table 1: Statistical projections – Entire Facility, page 39

The applicant has projected the first full year of full utilization to be 2012. Although the applicant projects a loss in the first year of operations, Point Lookout Nursing Center generates a surplus in its second year. Staff has determined that the facility needs to reach an occupancy percentage of at least 86% to break even.

The applicant has substantiated all sources of funds for this project. Based upon the financial and statistical projections, I find that the applicant has demonstrated the financial feasibility of the project.

Marshall Valuation Service Analysis

Commission Staff analyzed this project and compared the project's construction costs with the Marshall Valuation Service's ("MVS's") guidelines as presented in the table below:

Table 9: Point Lookout Nursing Center
Marshall Valuation Service Analysis of Estimated Construction Cost

Building	$6,618,460
Normal Site Preparation	295,000
Professional Fees	370,000
Permits	15,000
Capitalized Construction Interest	13,237
Total Project Costs	$7,311,697
Adjustments to Project Cost	
Storm Drains	$40,000
Rough Grading	10,000
Roads	100,000
Utilities	50,000
Jurisdictional Hook-up Fees	5,000
Signage	20,000
Landscaping	50,000
Canopies	50,000
Total Adjustments	$325,000
Net Project Costs	$6,986,697
Square Feet of New Construction	56,933
Cost Per Square Foot	$122.72
MVS Benchmark Cost/Square Foot	$133.77
Over(Under)	**($11.05)**

Source: CON Application, Attachment 6, Marshall and Swift Analysis; D.I. # 3, Project Budget Page 18; Chart 1. Project Construction Characteristics and Costs, page 16

As shown in the Table 10, adjusted project costs as estimated by the applicant are within the MVS guidelines for a convalescent home with similar characteristics. The MVS analysis in the Certificate of Need application was based on older indices. Staff used the updated measures for base cost, current cost multiplier, and location multiplier.

Staffing

To accommodate the 124 CCF beds, Point Lookout projected that, in the area of Direct Patient Care, it will need to employ the following personnel: 0.92 full time equivalent ("FTE") Director of Nursing, 4.2 FTEs Registered Nurses, 2.75 Registered Nurse-Unit Manager, 2.75 FTEs Registered Nurse-Supervisors, 13.60 FTEs Licensed Practical Nurses, 4.20 FTEs Certified Medicine Aides, 42.53 FTEs Certified Nurses' Aides, 2.56 FTEs Therapy Aides, 0.92 FTEs Activities Coordinators, and 1.48 FTEs Social Worker.

The applicant projects the following numbers of contract staff: 1.0 FTE Nursing Home Administrator; 4.1 FTE Physical Therapists; 2.04 FTE Occupational Therapists; 1.04 FTE Speech

Therapists; and 1.0 FTE Nurse Practitioner. Other contractual employees include the Medical Director, Pharmacy Consultant, Social Services Consultant, and Medical Records consultant. The applicant reported that the services of respiratory therapists will be arranged for individual residents on an as needed basis and that FutureCare has relationships with respiratory therapists who can provide training to FutureCare Staff in caring for the needs of patients who require ventilator care (D.I. # 12, p. 15).

Point Lookout has offered the following information on the staffing pattern for its 124-bed facility:

Table 10: Point Lookout Nursing Center
Scheduled Staff for a Typical Work Week

	Day	Evening	Night
Director of Nursing	1.00	-	-
Registered Nurses	1.00	1.00	1.00
Registered Nurses - Unit Managers*	3.00	-	-
Registered Nurses – Supervisors	-	1.00	1.00
Licensed Practical Nurses	4.00	3.00	3.00
Certified Medicine Aides	3.00	-	-
Certified Nurses' Aides	13.0	11.0	7.0
Therapy Restorative Aides	2.0	-	-

Source: D. I. # 3, p. 63

*The applicant explained that RN Unit Managers and RN Supervisors are members of the nursing leadership staff. Primary administrative responsibility is supervision of all nursing personnel and nursing related functions on a specific shift and unit(s). Duties involve assessing staffing and resident needs and directing care. These members of staff participate in setting goals for the nursing department and monitor and implement the facility policies and procedures. Clinical management responsibilities of Unit managers and Shift Supervisors encompass making resident rounds, directing work assignments, and ensuring that residents' changes of condition are identified, addressed, documented, and reported. They review the 24-hour report for follow-up, and do a daily check of the charts, tracking all new physician, lab, and medication changes (D.I. # 12, pgs. 10-11).

Based on the Manpower Information provided, Point Lookout Care Center proposes to provide 3.1944 hours per bed per day of bedside care This exceeds the two hour minimum standard set in the Office of Health Care Quality regulations at COMAR 10.07.02.12.

Community Support

The Commission received letters of support for this project from the following individuals:

- Christine R. Wray, President and Chief Executive Officer, St. Mary's Hospital
- Anne Ryan, a resident of Lexington Park, St. Mary's County, Maryland
- Jan Scrivener, a resident of Valley Lee, St. Mary's County, Maryland
- Morton M. Lapides, Jr., President, itWorks Learning Center, Inc., Annapolis, Maryland
- Patricia A. Aud, a resident of Hollywood, St. Mary's County, Maryland (D.I. #2; # 3 Exhibit 10)

Comments by Interested Parties

The interested parties argue that, with respect to recruitment and retention of nursing staff, Point Lookout has failed to demonstrate with specificity that it will be able to satisfy this standard because there is a limited health care labor pool available for nursing facilities in St. Mary's

County. The St. Mary's Nursing Centers relate that members of the staffs at both Bayside and SMNC even travel from Virginia and Central Maryland to work at these two facilities. Further, Point Lookout has failed to demonstrate that, in light of the statewide shortages in nursing and other health care professional personnel, it will be able to recruit and retain the needed personnel. (D.I. # 18, p. 10)

Applicant's Response to Interested Parties Comments

In responding to the commenters' claim that Point Lookout has "failed to demonstrate that it will be able to recruit and retain needed personnel "...in light of the statewide nursing and other health care professional shortages," Point Lookout states that this comment fails to recognize that FutureCare already operates 11 nursing facilities in Maryland. Therefore, Point Lookout asserts that in its existing operations, FutureCare is both aware of the local labor markets in which its facilities are located, and has been extremely successful in dealing with each one. Point Lookout argues that FutureCare has two full-time recruiting directors who specialize in health care recruitment. Further, Point Lookout asserts that the 11 FutureCare facilities do not make use of agency personnel, and they experience minimal nursing and therapy vacancies.

According to the applicant, FutureCare recruits nationally and internationally, and it has a very successful employee referral program. In addition, FutureCare markets itself to local schools and universities, and is an affiliation site for many state colleges and universities. Point Lookout reports that FutureCare has a loan forgiveness program that makes it especially attractive to recent graduates in the health care fields. FutureCare also seeks to recruit health care employees at local job fairs, and it conducts its own Career Open House. According to the applicant, with such a background as a large Maryland health care provider with a positive reputation, Point Lookout affirms that its sponsor, FutureCare, has had great success in recruitment and retention of staff and does not anticipate great difficulties in staffing the Point Lookout Nursing Center facility. (D.I. # 19, p. 8)

Reviewer's Analysis and Finding

Based on the information presented, I have concluded that the proposed Point Lookout facility will be financially feasible if it is able to attract patient census within a reasonable range of that projected.

With respect to the issue of staffing, I find that FutureCare has presented convincing evidence that it recruits highly qualified nurses, therapists, and other employees from all across Maryland and surrounding states. It offers very attractive salary and benefit packages and has a program for repayment of student college loans. The staff turnover rate at FutureCare's existing facilities is considerably lower than that experienced by the two St. Mary's County facilities with which it will directly compete for patients and staff. While I recognize that there are limited supplies of nursing and other staff that make recruitment difficult in the long-term care industry, I believe that FutureCare is well-positioned to succeed in staffing a new facility in southern Maryland and that labor shortages are not a basis for denying the ability of the County to benefit from the availability of a new facility.

For these reasons, I find that the project is viable. The applicant has the financial and non-financial resources, including community support, necessary to implement on a timely basis and the resources necessary to sustain the project.

E. COMAR 10.24.01.08G(3)(e) - COMPLIANCE WITH CONDITIONS OF PREVIOUS CERTIFICATE 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 Commission has no record of FutureCare obtaining a Certificate of Need relating to any of its nursing facilities. It appears from a review of the Commission's records, that FutureCare acquired its facilities, and in accordance with Commission regulations at COMAR 10.24.01.03, complied with all regulatory requirements applicable to these acquisitions.

Based on this information, the Reviewer has determined that this criterion is not applicable in this review.

F. COMAR 10.24.01.08G(3)(f) - IMPACT ON EXISTING PROVIDERS AND THE HEALTH CARE DELIVERY SYSTEM

An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.

In response to this criterion, the applicant stated that, if its proposal is not approved, residents of St. Mary's County, who will require care in the additional 124 CCF beds that the Commission has projected as being needed through 2011, will have to seek long term care outside of St. Mary's County. The applicant asserts that its proposed project will not have any impact on the costs or charges at other facilities. Since the additional need for these 124 comprehensive care facility beds is calculated at an occupancy rate target of 90%, there should be enough volume of patient days to accommodate Point Lookout without affecting the two other existing publicly available nursing facilities. (Actually, the Commission used an occupancy rate target of 95% in projecting bed need.) Further, the applicant explains that, in addition to a comprehensive array of long-term care services, its proposed project will bring FutureCare's unique patient care programs, not present in the other nursing homes in the county, such as its Nurse Practitioner Program and LYFE Today Program to St. Mary's County residents.

This project, as proposed, is consistent with the State Health Plan projected bed need for St. Mary's County of 124 CCF beds. However, two existing providers of comprehensive care in St. Mary's County, as interested parties, oppose this project and believe that fulfilling the State Health Plan's need projection will have a negative impact on their operations warranting denial of the requested CON.

Comments by Interested Parties

The two existing St. Mary's County CCFs contend that the Point Lookout CON application is not consistent with this review criterion because the proposed project will have a negative impact on existing providers. They believe that recent occupancy of CCF beds in St. Mary's County does not support the applicant's claim that a failure to develop this project will result in St. Mary's County residents being forced to seek nursing home care outside the county. At the time their opposition comments were filed, they claimed that there was current capacity in St. Mary's County for at least 72 additional nursing home residents at Bayside and an additional 12 at SMNC, if needed. Further, they note that the number of persons seeking nursing home care in St. Mary's County has not been increasing. Therefore, the interested parties argue that it is clear that if a new nursing facility were to open in St. Mary's County, it would have a negative and detrimental impact on the existing providers who are coping with decreasing demand for services. The costs of providing care are decreased when spread across an optimally occupied facility, and they are increased when spread across a facility that is not at a desirable level of bed occupancy. Finally, the interested parties discount the applicant's claims with respect to "new programs" which will be developed as part of the Point Lookout project and the benefits of such programming. The two St. Mary's County CCFs argue that they both already provide "virtually all of those program". (D.I. # 18, p. 11)

Applicant's Response to Interested Parties Comments

The interested parties argument that increased competition in St. Mary's County will harm existing providers depends greatly on the assumption that the need projections in the State Health Plan are wrong. However, Point Lookout believes that the Commission is correct in its projections.

Point Lookout states that it will offer a variety of services not currently offered in the County. Among these services are peritoneal dialysis, physiatrist consulting, and respiratory therapy care. Point Lookout will provide the Nurse Practitioner Program described above. The applicant also states that, according to the Maryland Long Term Care Survey for 2006, St. Mary's Nursing Center, Inc. provides no hospice days, but that the Point Lookout facility will collaborate with the St. Mary's County Hospice to offer such a service. (With regard to hospice services, a review of MHCC's Maryland Long Term Care Survey for 2006 for the St. Mary's Nursing Center, Inc. and for Bayside Care Center indicates that SMNC reported that it had no inpatient hospice special care programs. The service is available at the facility, but is provided by an outside vendor or contractor. Bayside Care Center also has no special inpatient hospice care program, but reported it does provide the service.)

It is the applicant's view that its presence in the community will provide an incentive to the other nursing facilities to innovate and add programs for the betterment of county residents needing nursing home care and would spur the existing facilities to innovate and improve themselves.

Reviewer's Analysis and Finding

My review of this application, the interested party comments, and the conditions recently prevalent in St.Mary's County indicate that the potential certainly exists for the proposed project to

have an adverse impact on the existing St. Mary's County nursing homes, primarily with respect to patient census and market share. It would be unrealistic to expect there to be no impact created by a new nursing home being established in a jurisdiction with only two existing nursing homes that serve the general public.

However, I am also convinced that this impact is unlikely to be extensive or long-term in its effect, because of the growth occurring in the county and surrounding region. This project may have a short-term impact on the occupancy rate that would be otherwise achievable by the two existing facilities in St. Mary's County that serve the general public, but this is likely to be limited in duration and is not likely to have the effect of increasing costs. Additionally, I believe the limited adverse impact potential of this project needs to be weighed against the proposed project's positive impact for the residents of St. Mary's County, in terms of an expanded selection of local options for long term care. I do not find that this project is likely to have an adverse impact on geographic and demographic access to services, on costs to the health care delivery system, or on costs and charges of other providers.

SUMMARY AND REVIEWER RECOMMENDATION

The Reviewer has considered the proposed project's compliance with the applicable State Health Plan criteria and standards in COMAR 10.24.08.05A and B., as well as the applicable Certificate of Need review criteria at COMAR 10.24.01.08 G (3) (a)-(f).

This project presents a challenge to the applicant with respect to the jurisdictional occupancy standard. However, having toured both St. Mary's Nursing Center, Inc. and Bayside Care Center on April 9, 2008 and an operational FutureCare facility, FutureCare Irvington, on April 24, 2008, I understand why occupancy could be affected by the condition of the Bayside facility. Although Bayside has undertaken some recent cosmetic renovations, such as the installation of new flooring, Bayside remains an aging facility with only 3 private rooms and 61 semi-private rooms, many of which share one toilet with another semi-private room, so that four patients must share one toilet. In response to a question from Commission Staff during the site visit, Bayside's administrator, Ms. Kelly Freidman, stated there are no current plans for an addition. Such an addition might allow for the creation of more private rooms and other common areas for patients and family members to gather.

St. Mary's Nursing Center had an average annual occupancy rate in excess of 90% for the years 2000 through 2005. It was only in 2006 and 2007 that its occupancy fell below 90% . I am not convinced that this recent census decline establishes a clear trend of declining demand in the county. In the aggregate, patient days at Bayside and SNMC increased approximately 2.9% from 2006 to 2007.

Regarding the issue of need, I believe the latest 2007 population projections for St. Mary's County, from the Maryland Department of Planning, with particular regard to those aged 65 and older, weigh in support of the findings made by the Commission in projecting a need for 124 comprehensive care facility beds in St. Mary's County through 2011.

FutureCare has made a strong case that it has the ability to recruit and retain needed health care personnel for this proposed facility in St. Mary's County.

Based on the foregoing, I recommend that this project be APPROVED, subject to the following conditions:

1. Prior to first use review, FutureCare shall provide the Commission with a Medicaid Memorandum of Understanding reflecting that Point Lookout Nursing Center will comply with the required Southern Maryland regional Medicaid participation rate of 48.67%; and

2. Prior to first use review, FutureCare shall provide the Commission with information demonstrating that Point Lookout Nursing Center has established collaborative relationships with other types of long term care providers in St. Mary's County to assure that each resident has access to the entire long term care continuum, including, as appropriate, formal transfer and referral agreements.

IN THE MATTER OF	*	**BEFORE THE**
POINT LOOKOUT	*	**MARYLAND**
NURSING CENTER	*	**HEALTH CARE**
DOCKET NO. 07-18-2201	*	**COMMISSION**

* *

ORDER

Based on analysis, findings, and Recommended Decision in this matter, it is this 18th day of September, 2008, **ORDERED** :

That the application for Certificate of Need by St. Mary's Nursing Home, LLC d/b/a Point Lookout Nursing Center to develop a 124-bed comprehensive care facility on a 6 +/- acre site, situated at 20877 Point Lookout Road, Callaway, St. Mary's County, Maryland 20620, be **APPROVED,** and that the Certificate of Need be subject to the following conditions:

1. Prior to first use review, FutureCare shall provide the Commission with a Medicaid Memorandum of Understanding reflecting that Point Lookout Nursing Center will comply with the required Southern Maryland regional Medicaid participation rate of 48.67%; and

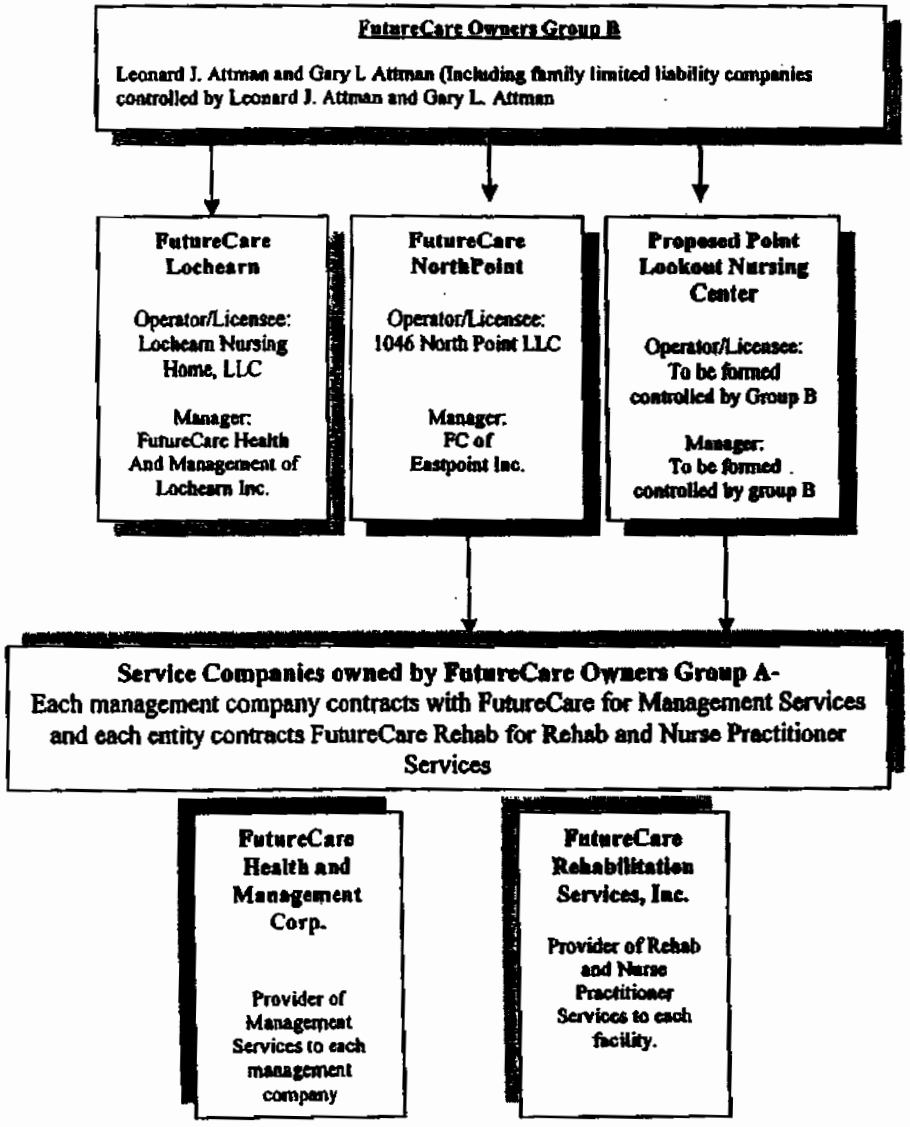
2. Prior to first use review, FutureCare shall provide the Commission with information demonstrating that Point Lookout Nursing Center has established collaborative relationships with other types of long term care providers in St. Mary's County to assure that each resident has access to the entire long term care continuum, including, as appropriate, formal transfer and referral agreements.

Attachment 1

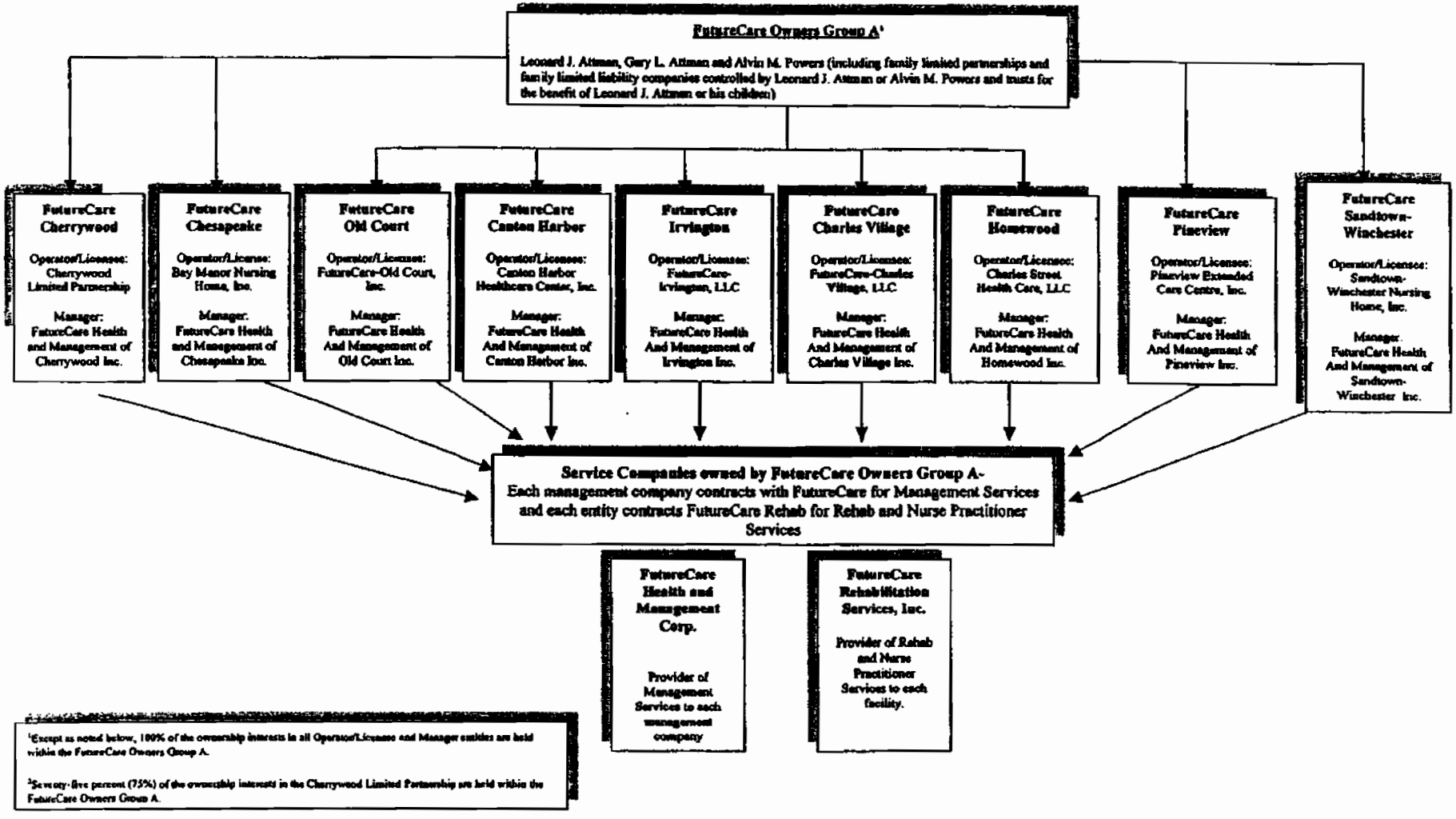
Organization Chart for

FutureCare Health and Management Corporation

FUTURECARE ORGANIZATION CHART



FUTURECARE ORGANIZATION CHART

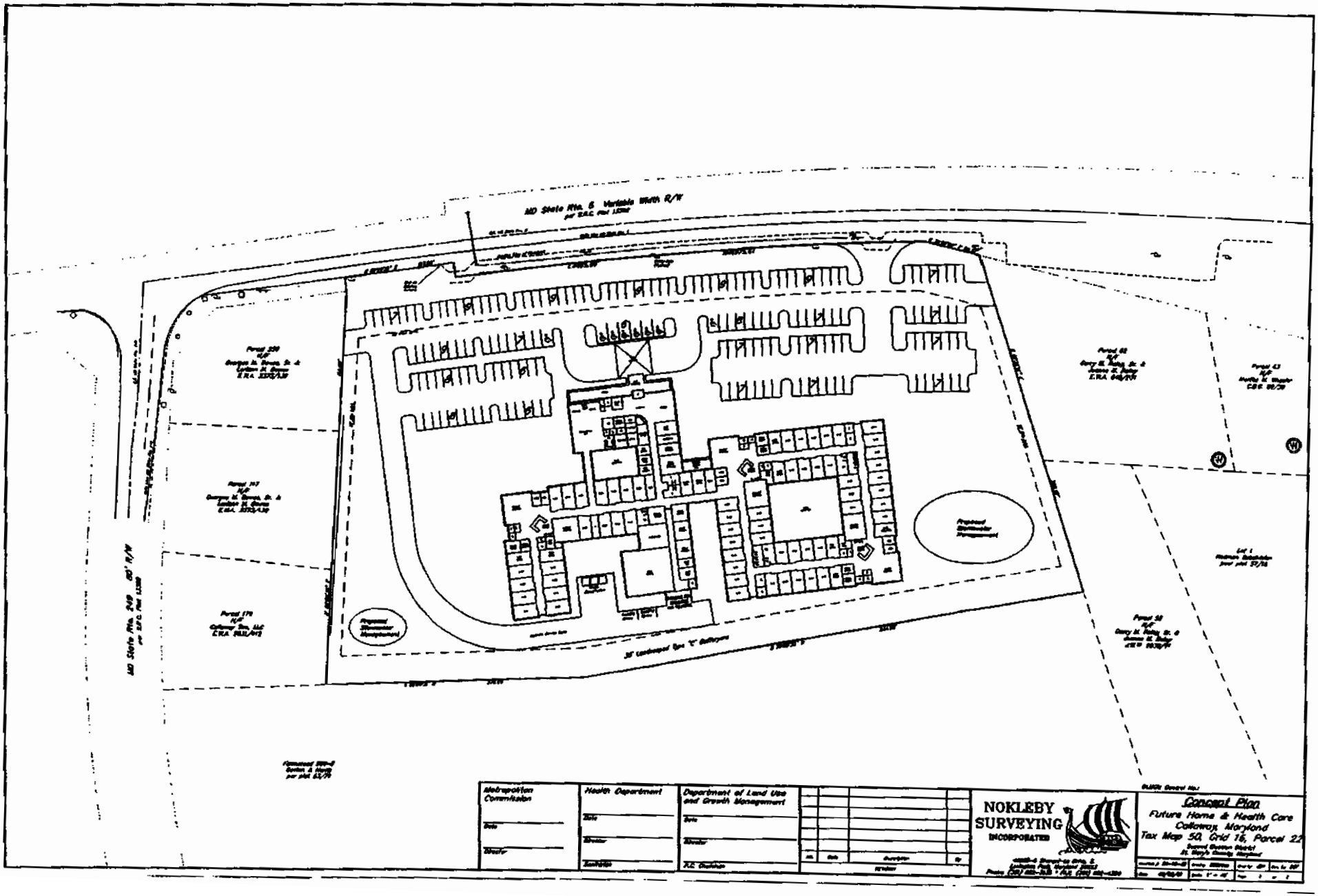


[1]Except as noted below, 100% of the ownership interests in all Operator/Licensee and Manager entities are held within the FutureCare Owners Group A.

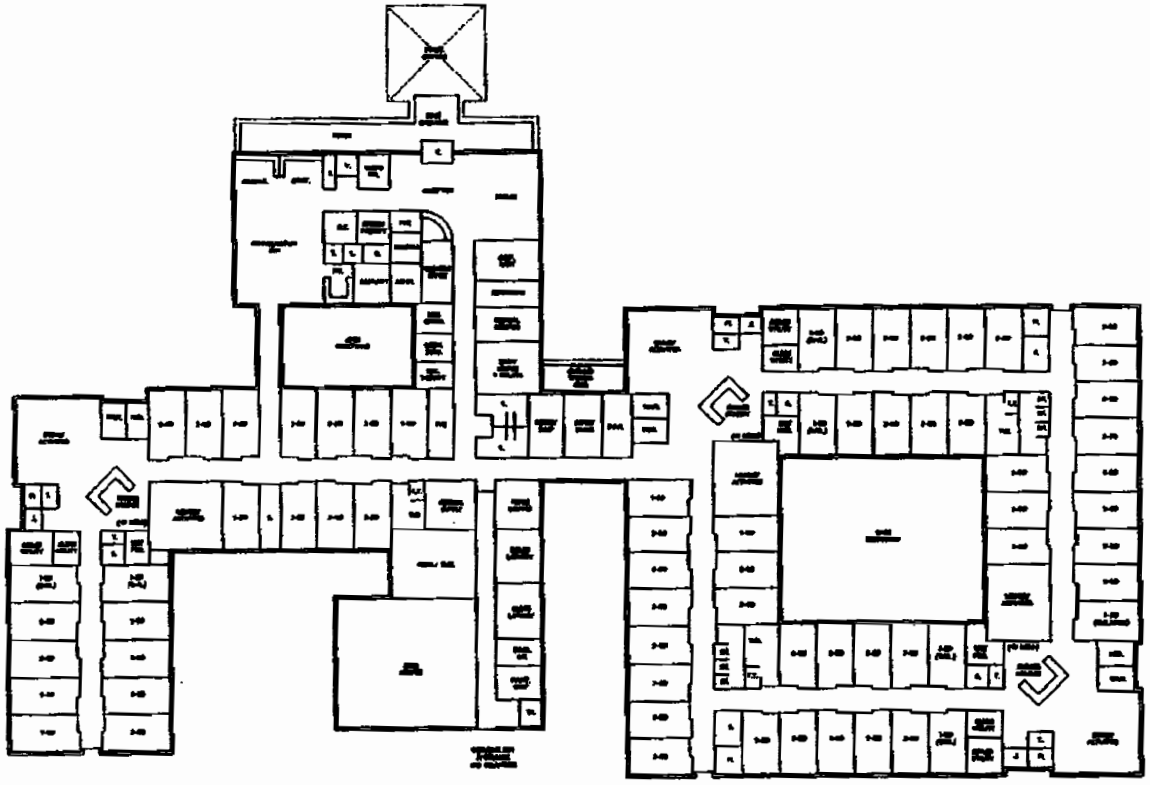
[2]Seventy-five percent (75%) of the ownership interests in the Cherrywood Limited Partnership are held within the FutureCare Owners Group A.

Attachment 2

Site Plan and Floor Plan of
Point Lookout Nursing Center including
Resident Room Plans


MD State Rte. 6 Variable Width R/W
MD State Rte. 249 80' R/W
Proposed Stormwater Management
Proposed Stormwater Management
Metropolitan Commission
Health Department
Department of Land Use and Growth Management
NOKLEBY SURVEYING INCORPORATED
Concept Plan
Future Home & Health Care
Calloway, Maryland
Tax Map 50, Grid 16, Parcel 22

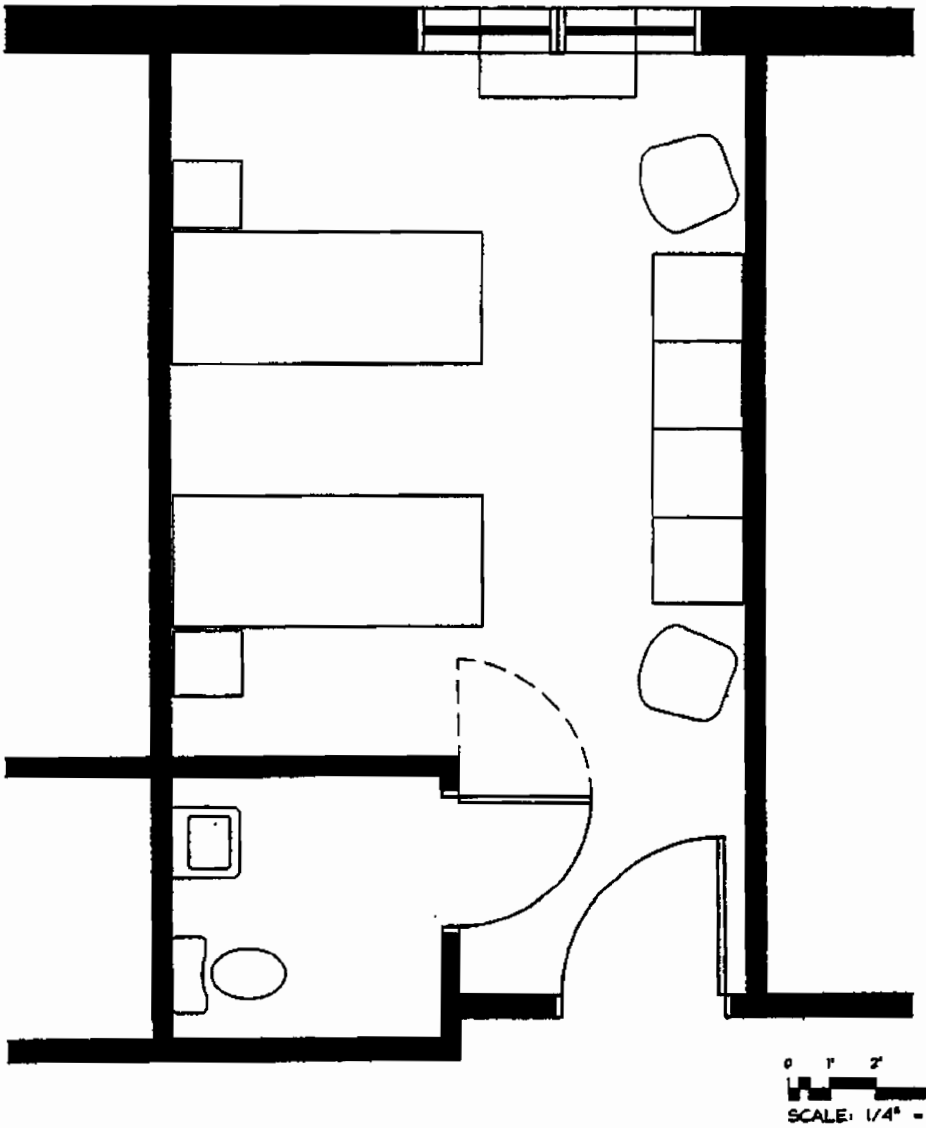
MARYLAND ROUTE 5



ST. MARY'S COUNTY
SKILLED NURSING FACILITY
CALLAWAY, MARYLAND

09-29-07

KANN PARTNERS
33 SOUTH GAY STREET, SUITE 400
BALTIMORE, MD 21202
P 410-234-0900
F 410-539-4921
WWW.KANNPARTNERS.COM



TYPICAL NURSING UNIT RESIDENT ROOM

ROOM SIZE: 286 SF. SLEEPING AREA: 208 SF.

DOUBLE-OCCUPANCY LAYOUT

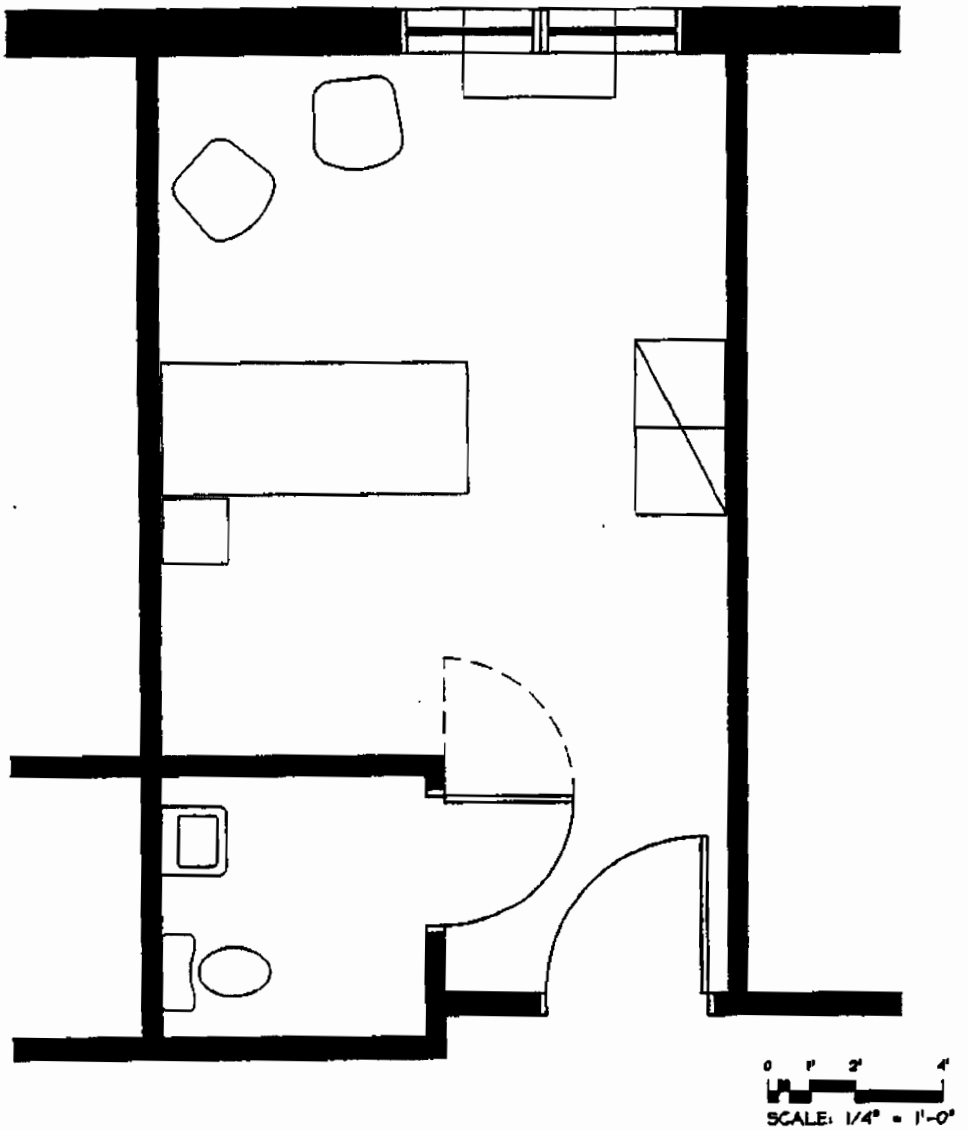
KANN PARTNERS
55 SOUTH GAY STREET, SUITE 400 • BALTIMORE, MD 21202
P 410-234-0800
F 410-539-4823
WWW.KANNPARTNERS.COM

ST. MARY'S COUNTY
SKILLED NURSING FACILITY
CALLAWAY, MARYLAND

Date:
08-30-07

Sheet Title:
RESIDENT ROOM LAYOUT

A-1



TYPICAL NURSING UNIT RESIDENT ROOM

ROOM SIZE: 286 SF. SLEEPING AREA: 208 SF.

SINGLE-OCCUPANCY LAYOUT

KANN PARTNERS
33 SOUTH GAY STREET, SUITE 400 • BALTIMORE, MD 21202
P 410-234-0800
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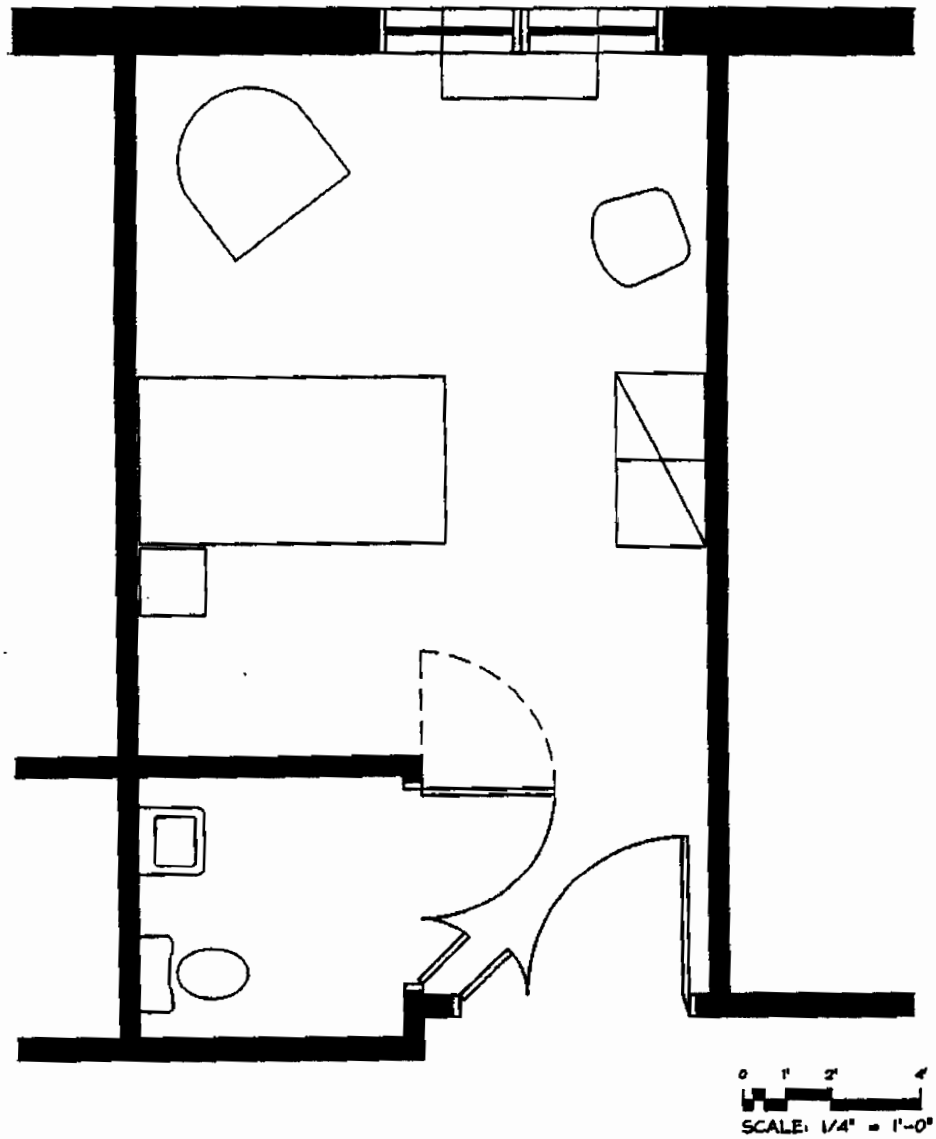
ST. MARY'S COUNTY
SKILLED NURSING FACILITY
CALLAWAY, MARYLAND

Date:
08-30-07

Sheet Title:
RESIDENT ROOM LAYOUT

A-2



TYPICAL NURSING UNIT RESIDENT ROOM

ROOM SIZE: 286 SF. SLEEPING AREA: 208 SF.

BARIATRIC LAYOUT

KANN PARTNERS
33 SOUTH GAY STREET, SUITE 400 • BALTIMORE, MD 21202
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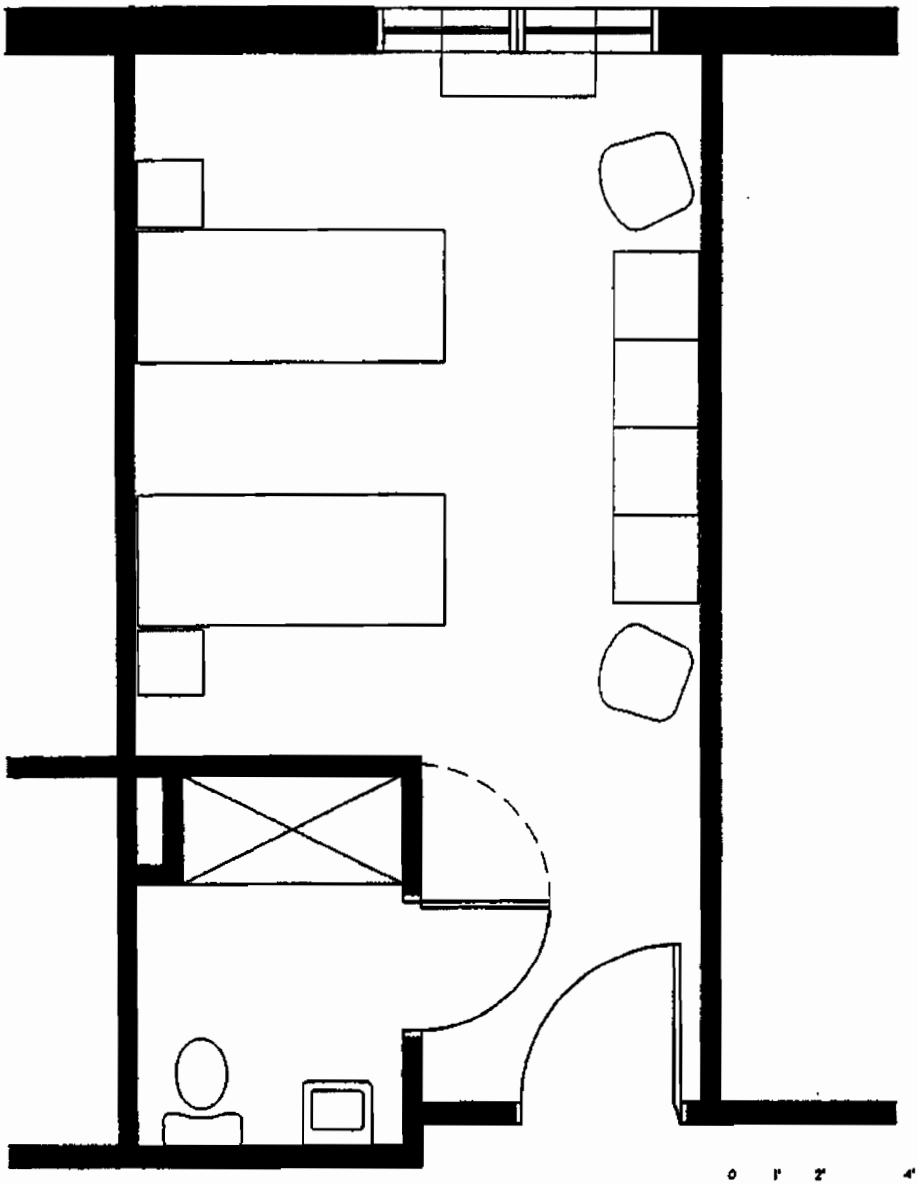
ST. MARY'S COUNTY
SKILLED NURSING FACILITY
CALLAWAY, MARYLAND

Date:
08-30-07

Sheet Title:
RESIDENT ROOM LAYOUT

A-3



TYPICAL REHAB UNIT RESIDENT ROOM

ROOM SIZE: 318.5 SF. SLEEPING AREA: 208 SF.

DOUBLE-OCCUPANCY LAYOUT

KANN PARTNERS
33 SOUTH GAY STREET, SUITE 400 • BALTIMORE, MD 21202
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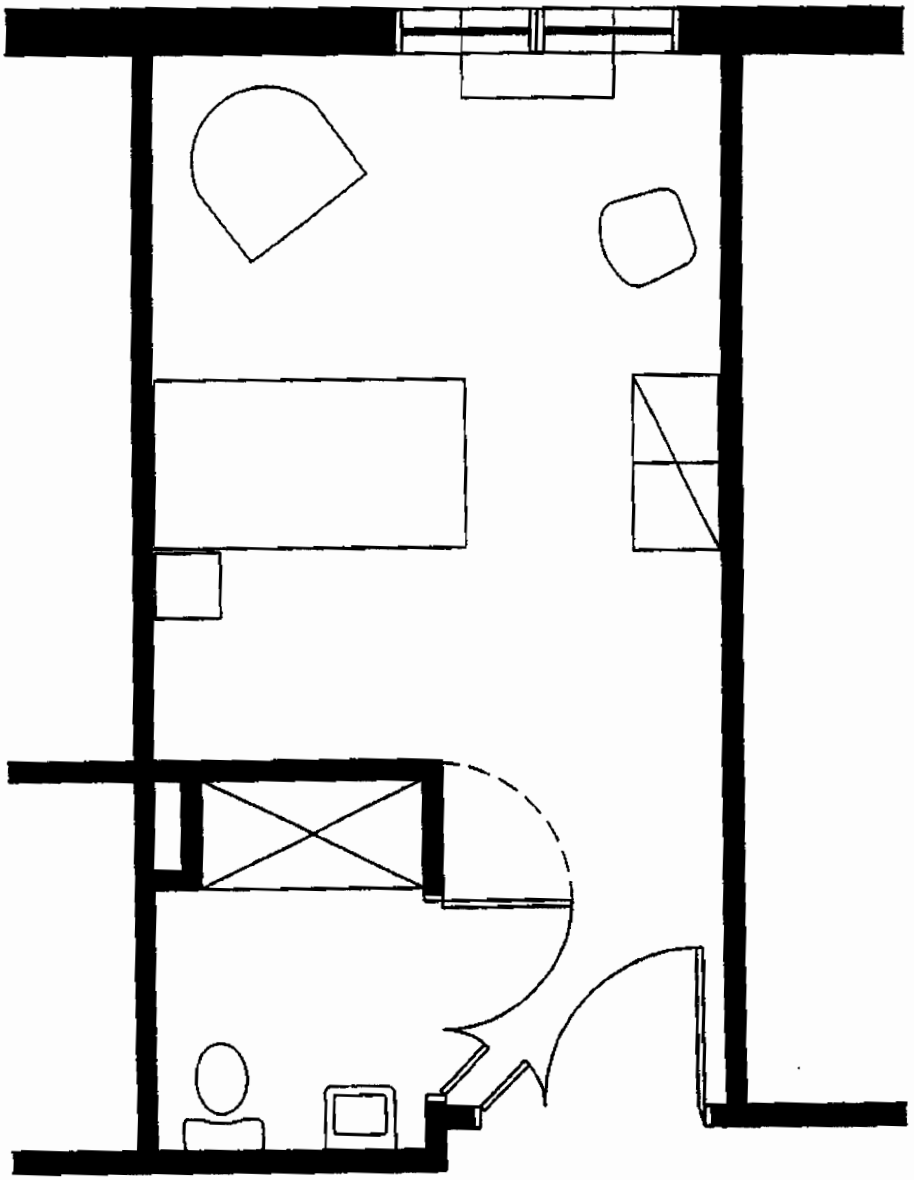
ST. MARY'S COUNTY
SKILLED NURSING FACILITY
CALLAWAY, MARYLAND

Date:
08-30-07

Sheet Title:
RESIDENT ROOM LAYOUT

A-4



TYPICAL REHAB UNIT RESIDENT ROOM

ROOM SIZE: 318.5 SF. SLEEPING AREA: 208 SF.

BARIATRIC LAYOUT

KANN PARTNERS

39 SOUTH GAY STREET, SUITE 400 • BALTIMORE, MD 21202

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ST. MARY'S COUNTY
SKILLED NURSING FACILITY
CALLAWAY, MARYLAND

Date:
08-30-07

Sheet Title:
RESIDENT ROOM LAYOUT

A-5

Attachment 3

FutureCare Health and Management Corporation's Patient-Focused Programs

The FutureCare Plus Geriatric Nurse Practitioner Program

The first program referenced by the applicant is one initiated by its sponsor, FutureCare, in 1999, which it calls "FutureCare Plus." This program places a licensed, certified Geriatric Nurse Practitioner, capable of providing a level of clinical oversight that is intended to enhance and insure quality of care for each resident, in each FutureCare facility. The applicant reports that the certified Geriatric Nurse Practitioners at the Point Lookout facility will be registered nurses who have completed training at a masters level and have successfully passed the American Academy of Nurse Practitioners Certification Examination. The Nurse Practitioners will be licensed by the State of Maryland and will be allowed to provide comprehensive health care services to nursing home residents. The applicant states that, working in collaboration with each resident's attending physician and the facility's Medical Director, the FutureCare Plus Nurse Practitioner will work with the clinical team to insure thorough assessment, monitoring, and follow-up on all clinical issues.

The applicant has explained that the FutureCare Plus Program allows the nursing facility to identify and assess changes in a resident's condition, and when changes in clinical condition occur, to act quickly and decisively. The Geriatric Nurse Practitioner can respond to these changes by writing orders for treatments, medications, and other medical interventions, as necessary. According to the applicant, the program, which is operational in all FutureCare facilities, provides a consistent and solid process to monitor treatment adjustments, changes in condition, and the overall well being of each resident on a daily basis, and treats residents' clinical issues before they become acute. (D.I. # 3, pgs. 8-9; # 12, p. 26)

While FutureCare has not performed its own formal studies that show how the use of Geriatric Nurse Practitioners benefit its nursing home patients, FutureCare reports it has found that having nurse practitioners on staff assists in developing care plans, training staff, responding to emergencies, and working with complex residents. In response to a completeness question from Staff to the Reviewer, the applicant also supplied the following statements from FutureCare's medical professionals describing the benefits of having a Geriatric Nurse Practitioner in the FutureCare facilities through the FutureCare Plus Program:

Rebecca Elon, M.D., FutureCare's Director of Physician Services, has written:

- "*On a day-to-day basis, the FutureCare Nurse Practitioners are involved in both clinical and administrative roles. Clinically, they have a collaborative practice agreement with the facility medical director, who oversees their work and serves as a resource when the Nurse Practitioner encounters clinical or administrative problems. The Nurse Practitioner does not replace, but rather facilitates, the attending physician's role in caring for the facility's patients. (who are admitted for short term care) and residents (who receive residential care in addition to health care on a long term basis). Since the Nurse Practitioner is present five days a week during normal business hours, she (or he) can respond to requests from the unit staff to evaluate patients/residents for acute issues. The Nurse Practitioner can make medical diagnoses and write orders on all of the patients/residents within the facility. If she has a*

question about a particular patient's situation, she will call the attending physician. The physicians are generally appreciative of the Nurse Practitioner's role, since they receive more comprehensive assessments over the telephone, and they receive fewer calls from direct care staff. The Nurse Practitioner can often review lab results or clarify situations, thus obviating the need for multiple calls throughout the day and night to the physician. The Nurse Practitioner often helps coordinate specialty appointments, spends time getting pharmacy authorizations for medications, can respond to concerns raised by the consulting pharmacist about patient medication regimens, and can assist with discharge planning for short stay residents, thus improving transitions of care. The Nurse Practitioners often discuss end-of-life issues and help clarify advance directives with patients and or families. They attend care planning conferences for individual patients/residents, something that the physicians seldom have time to participate in (D. I. # 12, p. 27)."

- Sharon M. Kern, C.R.N.P., Nurse Practitioner at FutureCare Sandtown-Winchester wrote:

"FutureCare Nurse Practitioners are responsible for assessment and treatment of episodic illnesses such as pneumonias, diarrhea, fluid and electrolyte imbalances, weight loss, congestive heart failure, and arthritis. Traumas are also assessed and treated. Many of these illnesses can be treated within the nursing facility safely and cost effectively. The plan of care for new residents is reviewed by the Nurse Practitioner, and when the resident is ready to return to the community, the Nurse Practitioner performs the discharge day management examination, which includes prescribing a 30-day supply of medications. Laboratory results are reviewed daily and changes to the treatment plan are initiated, if indicated. Recommendations from medical, surgical, and psychiatric consults are reviewed by the Nurse Practitioner, and subsequent orders are written.

The Nurse Practitioner performs monthly audits monitoring as part of FutureCare's performance improvement program, including indicators of Coumadin and Dilantin management. Participation in wound rounds and in the weekly meetings of wound and weight management further ensures prompt treatment and follow-up.

Formulary management has emerged as an important function for the Nurse Practitioner with the implementation of the Medicaid formulary and Medicare Part D programs. Based on the consultant pharmacist reviews, the Nurse Practitioner evaluates whether the change is necessary.

Nurse Practitioners are skillful in communication and frequently participate in family meetings to discuss clinical issues and advance directives. In addition, the Nurse Practitioner communicates with the resident's primary physician to apprise him or her of changes in the resident's clinical condition.

The Medical Director and the Nurse Practitioner meet weekly to discuss clinical issues. Most importantly, the Nurse Practitioner communicates with nursing and all facility staff to inform and direct the resident's care."

Harold Bob, M.D., C.M.D., Medical Director, FutureCare Canton stated:

"While many primary care practices and managed care companies use Nurse Practitioners to extend physician service in nursing homes, the FutureCare program is especially valuable since the Nurse Practitioner in each facility is full-time and is integral to the Quality Improvement process of the facility.

Increasingly, patients are being discharged from hospitals to sub acute facilities such as FutureCare with their acute episode "stabilized," but not yet fully resolved. Physicians tend to be either office-based or hospital-based, and few SNF/NH facilities have daily physician visits. There are situations where Nurse Practitioners, operating within their scope of practice and communicating with physicians, can have significant impact on patient outcomes (D.I. # 12, p. 28)."

The applicant also provided information from the research literature that includes studies showing the clinical benefits of having a Nurse Practitioner program in nursing facilities. According to the applicant, one of the early studies that showed the effectiveness of Nurse Practitioners on staff in the CCF was published in the *American Journal of Public Health* in 1989.[3] It found the following:

Favorable changes were seen in two out of eight activity of daily living (ADL) measures: five of 18 nursing therapies; two of six drug therapies; six of eight tracers. There was some reduction in hospital admissions and total days in geriatric [Nurse Practitioner-staffed nursing] homes. Overall measures of medical attention showed a mixed pattern with some evidence of geriatric [Nurse Practitioner] care substituted for physician care."

Further, the applicant reported on a more recent study of a program that employed Geriatric Nurse Practitioners in nursing homes (called "Evercare"). This study sought to assess the quality of care provided by a Medicare-Choice HMO targeted specifically at nursing home residents and which employed nurse practitioners to provide additional primary care over and above that provided by physicians. That study found the following:

"The hazard rates of mortality were significantly lower for Evercare residents than for other residents in the same nursing homes. Evercare residents had fewer

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[3] R L Kane, J Garrard, C L Skay, D M Radosevich, J L Buchanan, S M McDermott, S B Arnold, and L Kepferle, "Effects of a geriatric nurse practitioner on process and outcome of nursing home care," *American Journal of Public Health*. 1989 September; 79(9): 1271-1277.

preventable hospitalizations, the difference was significant for one control group. The rates of quality indicators and functional change were equivalent."[4]

Point Lookout referenced another study published in 2000 that sought to determine the effect on clinical outcomes for newly admitted nursing home residents when advanced practice gerontological nurses ("APNs") worked with staff to implement scientifically based protocols for incontinence, pressure ulcers, depression, and aggressive behavior. This study found the following:

"Trajectories from admission to 6 months revealed that residents with APN input into their care (n = 86) experienced significantly greater improvement or less decline in incontinence, pressure ulcers, and aggressive behavior, and they had higher mean composite trajectory scores compared with residents receiving usual care (n= 111). Significantly less deterioration in affect was noted in cognitively impaired residents in the treatment group. Findings suggest that APNs can be effective links between current scientific knowledge about clinical problems and nursing home staff."[5]

The last study cited by the applicant, which evaluated the role of gerontologic advanced practice nurses ("GAPNs") found the following:

"Outcomes of the larger study showed that residents with these four problems had better outcomes in the homes in which care was planned by the GAPNs using protocols that were integrated into the daily routines of staff."[6]

Point Lookout concludes that, consistent with its sponsor FutureCare's more informal conclusions, the research literature finds the use of geriatric Nurse Practitioners to be positive for residents (D. I. # 3, pgs. 8-9; # 12, pgs. 26-30).

FutureCare LYFE Today Program: Living Your Fullest Experience Today

A second program that will be available to the St. Marty's County residents at Point Lookout will be the facility's LYFE Today (Living Your Fullest Experience Today) Program. As

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[4] Robert L. Kane, M.D., Shannon Flood, BA, Boris Bershadsky, PhD, and Gail Keckhafer, BA, "Effects of an Innovative Medicare Managed Care Program on the Quality of Care for Nursing Home Residents," *The Gerontologist"* 44:95-103 (2004).

[5] Muriel B. Ryden, PhD, RN, FAAN, Mariah Snyder, PhD, RN, FAAN, Cynthia R. Gross, PhD, Kay Savik, MS, Valinda Pearson, MS, RN, Kathleen Krichbaum, PhD, RN, and Christine Mueller, PhD, RN, "Value-Added Outcomes – the Use of Advanced practice Nurses in Long Term Care Facilities," *The Gerontologist* 40:654-662 (2000).

[6] Krichbaum, Kathleen E. PhD, RN; Pearson, Valinda, MS, RN, GCNS, APNS; Hanscom, Judy, RN, MS, GCNS, APNS, "Better Care in Nursing Homes: Advanced Practice Nurses' Strategies for Improving Staff use of Protocols," *Clinical Nurse Specialist,* 14(1): 40-46, January 2000.

described by the applicant, LYFE Today is FutureCare's proprietary product for assessment and programmatic implementation to meet the needs of the assessed nursing home resident, irrespective of one's age. The LYFE Today Program embodies the values, ideas, and opinion that regenerative care promotes both quality of care and quality of life.

Program Philosophy

LYFE Today is a program that is directed at both the residents and the staff of the facility. From the staff perspective, FutureCare explained that the basis of the LYFE Today Program is that addressing the needs of the staff will enable the staff to better meet the complex needs of the residents. "Our Residents have places to go and things to do," is the simplified philosophy expressed by the applicant and FutureCare in the Certificate of Need application for the resident component of the LYFE Today Program. LYFE Today combines events around the residents' activities of daily living, their skilled nursing needs, and a therapeutic environment into a model of assessment and programming that minimizes decline, promotes physical function and social awareness, contributes to each resident's quality of life, and promotes self dignity and self respect. Events are structured according to the resident's level of functioning into four levels of Villages. Within each Village, the resident's care is a series of events structured to maximize both the resident's quality of care and his or her quality of life.

As explained by the applicant, the philosophy for the staff component of the LYFE Today Program is that caring for staff results in staff who can become experts in caring for residents. It is FutureCare's stated philosophy that, "just as we care for our residents, we must nurture our staffs." The nurturing of staff occurs through education to increase the staff's knowledge base, to engender respect in interactions between members of staff, and to value staff contributions in meeting a resident's needs.

Program Education

LYFE Today education is required for all staffs within the FutureCare facility, including administration, activities, housekeeping, dietary, maintenance, therapy, and nursing. The educational component consists of multiple modules focused towards staff and residents. The staff members learn techniques on how to recognize and deal with stress in their personal lives, with co-workers, and with challenging resident situations. Members of the facility's staff have an opportunity to identify their own stereotypes of aging, illness, and the nursing home resident.

In addition to this personal educational component, the facility staff's education includes multiple sessions with the objective being to increase staff's understanding of different disease processes and how they are manifested in the residents. By empowering the staff with knowledge about the types of residents they have been entrusted to care for, staff members are better prepared to understand a resident's behavior and, consequently, can respond in a more therapeutic way. The applicant reported that dementia, delirium, psychiatric illness, stroke, malnutrition, dehydration, infection, and neurological disorders are a few examples of condition-specific education the staff at Point Lookout will receive.

Staff members also will receive additional education on behavior management, use of psychotropic drugs, use of restraints, swallowing dysfunction, and toileting as part of its LYFE Today Education Program.

Program Assessment

All residents at Point Lookout will be assessed in three areas to identify their highest level of function. These areas are cognition, mobility, and continence. Using the LYFE Today Assessment tool, each resident will be assessed, and based on the outcome of that assessment, identified with one of four Villages. Village 1 is directed toward the highest level of cognition, mobility, and continence, and Village 4 is directed toward the lowest level of cognition, mobility, and continence. Village 2 is directed toward a high level of cognition, but with decreased mobility and continence. Village 3 is directed toward a low level of cognition, but a relative high level of mobility.

Identifying each resident with a Village allows him or her to participate in a group of other residents at the same level of function, thus promoting self esteem in the resident and facilitating staff to become experts on the care needs of the residents of a Village. The staff members are able to individualize care, activities, and psychological support that are appropriate for the resident's specific level of function. According to the applicant, the structure and the staff participation also encourage the resident to achieve more by setting obtainable goals.

As described by the applicant, assessment of the residents can sometimes be a daily task, as the residents can vary in function from day to day, depending on the fluctuation in the resident's state of health on any given day. Therefore, FutureCare encourages its staff members to identify changes in the resident that many change a resident's Village placement. Further, the applicant relates that facility staff will be encouraged to offer feedback on programming and goal achievement because, given their daily encounters with residents, they will know them best.

Programming

Once a resident has been identified with a Village, he or she will participate in the Village's specific daily program. Each Village at Point Lookout will have a structured daily schedule, beginning with awakening and ending in the evening with bedtime. All routine events of the day, such as bating, eating, and toileting will be incorporated into the daily schedule. The programming will be structured to maintain consistency and to promote familiarity. The degree of structure will differ, based on the defined level of resident functioning. The more dependent the resident's level of function, the higher the degree of structure will be in the events of the day.

Goals of the structured programming include: decreased anxiety in the resident, increased observation of the resident, which decreases the use of physical restraints, and increased level of stimulation and involvement, which will increase the functional level of the resident. It is FutureCare's expressed intent that, by keeping the resident engaged with other residents and staff throughout the day, the resident is less likely to present with negative behaviors and therefore require less use of psychotropic medications.

All members of staff are required to participate in the programming of the Villages as this is a key element in the restorative aspect of the LYFE Today Program. The daily schedules are based on a seven day a week calendar, and they rotate routinely to add some element of variety.

Each scheduled program will address one of the following four identified daily requirements: self expression, lifestyle, enrichment, and mobility. Self Expression programming will give the resident the opportunity to express his or her feelings through events such as art, music, or support groups. Lifestyle programming will be geared toward activities that are enjoyable to the resident and allow him or her to have fun and laugh. Enrichment programming is described as "food for the soul." This programming will sometime take the form of a spiritual event or through other activities such as letter writing/reading. Finally, mobility programming is just that. Through music and movement, residents at Point Lookout will be encouraged to increase their functional ability and improve their overall self worth

According to the applicant, the LYFE Today Program keeps residents engaged in meaningful activity throughout the day, thus helping residents to obtain/maintain purpose and achieve an overall happier experience. Such a program, respecting the individuality of the resident, allows for positive outcomes (D. I. # 3, pgs. 9-10; # 12, p. 9, Exhibit 5).

Rehabilitation Services

The applicant has related that the Point Lookout rehabilitation team will be comprised of licensed physical and occupational therapists and speech pathologists. The physical and occupational therapists will be helping residents, as well as outpatients from the local St. Mary's County community, with orthopedic, neurologic, vascular, and a variety of medical diagnoses resulting in pain, abnormality of the body structure, or functional limitations as a result of the acute or chronic nature of an illness or injury. Speech therapists will help patients with neurogenic communication and/or swallowing disorders. The rehabilitation therapy services that will be available at Point Lookout will strive to restore each patient's highest level of functional independence through individualized treatment plans. Therapy sessions will be available up to six days per week, a fact which will the applicant views as contributing to a more rapid recovery and a more positive outcome for patients. The FutureCare Rehabilitation Program that will be implemented at Point Lookout will treat the effects of disease, injury, or disability in an inpatient or outpatient by implementing the following process:

- Evaluating and assessing referred patients;
- Developing an appropriate treatment plan, based on assessed needs and including objective, measurable short and long term goals;
- Applying and assessing the individual's response to treatment;
- Educating patients and caregivers about rehabilitation principles, interventions, equipment, and techniques; and
- Participating in discharge planning.

It is the intent of the applicant that the evaluation, assessment, and treatment that will be provided by the Point Lookout rehabilitation team will allow patients to achieve functional outcomes that:

- Promote health;
- Prevent or reduce disability;
- Maximize independent functioning; and
- Facilitate the highest quality of life for the patient (D. I. # 3, pgs. 10-11).

Attachment 4

Nursing Home Surveys,
Substandard and Other Deficiencies,
Maryland, as of April 2008

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
Adventist Healthcare Services Fairland	9	5	4	0	0	0	49	41	8
Alice Byrd Tawes Nursing Home	5	3	2	0	0	0	12	7	5
Alice Manor Nursing Home	11	5	6	0	0	0	70	56	14
Allegany County Nursing & Rehabilitation Center	5	4	1	0	0	0	27	1	26
Althea Woodland Nursing Home	7	5	2	0	0	0	20	17	3
Anchorage Nursing & Rehabilitation Center	5	4	1	0	0	0	32	28	4
Annapolis Nursing & Rehabilitation Center	18	5	13	0	0	0	71	33	38
Arcola Health & Rehabilitation Center	5	5	0	0	0	0	16	16	0
Asbury Solomons Island (CCRC)	6	3	3	0	0	0	26	23	3
Augsburg Lutheran Home of Maryland (CCRC)	8	6	2	1	1	0	44	42	2
Autumn Ridge at North Oaks (CCRC)	6	4	2	0	0	0	40	38	2
Bayside Care Center at Lexington Park	10	3	7	0	0	0	43	30	13
Bedford Court Sunrise Senior Living services (CCRC)	12	6	6	0	0	0	39	26	13
Bel Air Health & Rehabilitation Center	9	4	5	0	0	0	39	33	6
Bel Pre Health & Rehabilitation Center	11	6	5	0	0	0	66	59	7
Berlin Nursing Home & Rehabilitation Center	8	3	5	0	0	0	32	25	7
Bethesda Health & Rehabilitation Center	16	6	10	0	0	0	56	34	22
Beverlley Living Center of Westminster	16	5	11	0	0	0	91	54	37
Beverly Healthcare of Hagerstown	9	5	4	0	0	0	25	20	5
Beverly Living Center - Cumberland	6	4	2	0	0	0	21	19	2
Blakehurst Retirement Community (CCRC)	5	3	2	0	0	0	19	16	3
Blue Point Nursing & Rehabilitation Center	12	8	4	0	0	0	59	41	18
Bradford Oaks Nursing & Rehabilitation Center	10	6	4	1	1	0	53	48	5
Brighton Gardens	4	4	0	0	0	0	12	12	0
Brightwood Center Genesis Elder Care	8	3	5	0	0	0	38	28	10
Brinton Woods Nursing & Rehabilitation Center	5	3	2	0	0	0	36	34	2
Broadmead (CCRC)	4	3	1	0	0	0	38	36	2
Brooke Grove Rehabilitation & Nursing Center (CCRC)	6	5	1	0	0	0	15	14	1
Buckingham's Choice, Inc. (CCRC)	5	5	0	1	1	0	13	13	0
Calvert County Nursing Center (CCRC)	10	4	6	0	0	0	51	41	10
Calvert Manor Healthcare Center, Inc.	4	2	2	0	0	0	9	7	2
Calvert Memorial Hospital	3	2	1	1	1	0	13	10	3
Carriage Hill Bethesda	3	3	0	0	0	0	12	12	0
Carroll Lutheran Village Healthcare Center (CCRC)	3	2	1	0	0	0	18	16	2
Caton Manor Center - Genesis Eldercare	15	5	10	1	1	0	77	52	25
Catonsville Commons, Genesis Elder Care	12	4	8	1	1	0	73	61	12
Chapel Hill Nursing Center	5	3	2	0	0	0	23	37	25
Charles County Nursing & Rehabilitation Center, Inc.	7	4	3	0	0	0	30	22	8
Charlestown Care Center - Renaissance Gardens	9	5	4	0	0	0	59	55	4
Charlotte Hall Veterans Home	10	6	4	0	0	0	56	49	7
Cherry Lane Nursing Center	8	4	4	0	0	0	55	45	10

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
Chesapeake Woods Center	6	4	2	0	0	0	22	17	5
Chester River Manor	6	4	2	0	0	0	20	17	3
Chestertown Nursing & Rehabilitation Center	8	5	3	1	1	0	56	47	9
Citizens Care Center	3	3	0	0	0	0	30	30	0
Citizens Nursing Home of Frederick County	5	4	1	0	0	0	23	18	5
Clinton Nursing & Rehabilitation	9	4	5	0	0	0	82	62	20
Coffman Nursing Home, Inc.	-	-	-	-	-	-	-	-	-
College View Center - Genesis Elder Care	7	4	3	2	2	0	44	37	7
Collingswood Nursing & Rehabilitation	5	4	1	0	0	0	14	13	1
Collington Episcopal Life Care Community (CCRC)	6	5	1	0	0	0	33	31	2
Copper Ridge Nursing Home	8	4	4	1	1	0	35	29	6
Corsica Hills Center	12	6	6	0	0	0	55	39	16
Crawford Retreat Nursing Home	-	-	-	-	-	-	-	-	-
Crescent Cities Center	10	5	5	1	0	1	77	66	11
Crofton Convalescent & Rehabilitation Center	11	5	6	0	0	0	35	25	10
Cromwell Center	12	3	9	0	0	0	48	31	17
D/B/A Caroline Nursing & Rehabilitation Center, Inc.	5	3	2	0	0	0	14	10	4
Deer's Head Hospital Center - CCF	8	4	4	0	0	0	23	19	4
Dennett Road Manor, Inc.	4	4	0	0	0	0	15	15	0
Devline Manor Nursing Home	9	4	5	0	0	0	45	25	20
Edenwald - No Medicare or Medicaid	-	-	-	-	-	-	-	-	-
Egle Nursing Home management, Inc.	4	4	0	0	0	0	16	16	0
Ellicott City Health & Rehabilitation Center	16	5	11	2	2	0	84	65	19
Fahrney-Keedy Memorial Home (CCRC)	7	6	1	0	0	0	21	20	1
Fairhaven Nursing Home (CCRC)	4	3	1	0	0	0	15	14	1
Fayette Health & Rehabilitation Center	15	3	12	0	0	0	55	26	29
Forest Glen Nursing & Rehabilitation Center, LLC	11	6	5	1	1	0	54	7	47
Forest Haven Nursing Home	8	4	4	0	0	0	34	28	6
Forest Hill Health & Rehabilitatyion Center	5	3	2	0	0	0	28	22	6
Forestville Health & Rehabilitation Center	8	6	2	0	0	0	62	58	4
Fort Washington Health & Rehabilitation Center	10	6	4	0	0	0	74	69	5
Fox Chase Nursing & Rehabilitation Center	11	5	6	0	0	0	42	29	13
Franklin Woods Center	4	4	0	0	0	0	24	24	0
Frederick Memorial Hospital TCU	1	0	1	0	0	0	2	0	2
Frederick Villa Nursing Center	10	5	5	1	0	1	53	46	7
Friends Nursing Home	5	4	1	0	0	0	20	18	2
FurtureCare Charles Village	9	6	3	0	0	0	61	56	5

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
Future Care - Chesapeake	16	5	11	0	0	0	61	31	30
FutureCare - Canton Harbor	14	4	10	2	0	2	63	46	17
FutureCare - Homewood	12	3	9	0	0	0	62	37	25
FutureCare-Northpoint (formerly Choice Communities, Inc	18	6	12	2	0	2	120	80	40
FutureCare - Old Court	10	6	4	0	0	0	50	44	6
FutureCare - Pineview	10	5	5	1	1	0	64	58	6
FutureCare Irvington	14	5	9	2	2	0	78	55	23
FutureCare Lochearn	15	4	11	0	0	0	83	56	27
FutureCare Sandtown	6	4	2	0	0	0	52	50	2
FutureCare-Cherrywood	11	5	6	0	0	0	69	48	21
Garrett County Memorial Hospital Subacute Unit	1	1	0	0	0	0	5	5	0
GBMC Subacute	2	2	0	0	0	0	4	4	0
Genesis Elder Care LaPlata Center	8	4	4	0	0	0	53	48	5
Genesis Elder Care Randallstown Center	10	6	4	1	0	1	70	61	9
Genesis Elder Care Severna Park Center	10	5	5	0	0	0	37	27	10
Genesis Health Care Spa Creek Center	8	2	6	0	0	0	20	11	9
Genesis Waldorf Center	12	5	7	2	1	1	74	53	21
Ginger Cove (CRC)	3	3	0	0	0	0	9	9	0
Glade Valley Nursing & Rehabilitation Center	5	5	0	0	0	0	24	24	0
Gladys Spellman Specialty Hospital & Nursing Center	5	4	1	0	0	0	33	32	1
Glen Burnie Health & Rehabilitation Center	14	4	10	0	0	0	57	34	23
Glen Meadows Retirement Community (CCRC)	4	3	1	0	0	0	32	31	1
Golden Living Center Frederick	9	4	5	0	0	0	43	34	9
Good Samaritan Nursing Home	13	5	8	0	0	0	49	36	13
Goodwill Mennonite Home (CCRC)	4	3	1	0	0	0	20	18	2
Greater Laurel Health & Rehabilitation Center	10	4	6	3	3	0	58	48	10
Hamilton Center - Genesis Healthcare	11	6	5	0	0	0	57	50	7
Hammonds Lane Center	8	5	3	0	0	0	61	57	4
Harborside Healthcare - Harford Gardens	16	5	11	0	0	0	76	45	31
Harford Memorial Hospital	2	2	0	0	0	0	3	3	0
Hartley Hall Nursing Home, Inc.	4	2	2	0	0	0	18	16	2
Haven Nursing Home, Inc.	2	1	1	2	0	2	10	9	1
Heartland Health Care Center - Adelphi	9	4	5	1	1	0	67	45	22
Heartland Health Care Center - Hyattsville	13	6	7	1	1	0	92	70	22
Hebrew Home at Greater Washington	17	5	12	0	0	0	56	34	22
Heritage Center	11	4	7	0	0	0	57	44	13
Heritage Harbour Health & Rehabilitation	14	4	10	0	0	0	74	46	28

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
Herman M. Wilson Health Care Center (CCRC)	9	6	3	0	0	0	43	38	5
Heron Point of Chestertown (CCRC)	4	4	0	1	1	0	12	12	0
Hillhaven Assited Living Nursing & Rehabilitation	5	5	0	0	0	0	32	32	0
Holly Hill Manor, Inc	6	4	2	0	0	0	36	30	6
Holy Cross Rehabilitation and Nursing Center	10	6	4	0	0	0	46	40	6
Homewood at Crumland Farms (CCRC)	7	4	3	0	0	0	29	24	5
Homewood at Williamsport MD, Inc.	10	5	5	0	0	0	39	27	12
Homewood Center Genesis Healthcare	11	4	7	0	0	0	76	60	16
Ivy Hall Geriatric & Rehabilitation Center	12	4	8	0	0	0	35	25	10
Jewish Convalescent & Nursing Home	9	5	4	0	0	0	63	57	6
Johns Hopkins Bayview Care Center	5	2	3	0	0	0	24	2	22
Julia Manor Health Care Center	11	4	7	0	0	0	89	49	40
Kensington Nursing & Rehabilitation Center	9	6	3	0	0	0	35	31	4
Keswick Multi-Care Center	7	3	4	1	1	0	35	27	8
Knollwood Manor Nursing Home	7	6	1	0	0	0	38	36	2
Larkin Chase Nursing & Rehabilitation Center	11	4	7	1	0	1	70	47	23
Laurelwood Care Center at Easton	9	4	5	0	0	0	48	40	8
Layhill Center - Genesis Health Care	14	6	8	1	1	0	79	66	13
Levindale Hebrew Geriatric Center	7	6	1	0	0	0	47	44	3
Liberty Heights Health & Rehabilitation Center	7	4	3	3	3	0	39	34	5
Loch RavenCenter	10	5	5	0	0	0	57	46	11
Long Green Center - Genesis Elder Care	8	4	4	0	0	0	67	63	4
Long View Nursing Home, Inc.	4	3	1	0	0	0	12	10	2
Lorien Frankford Nursing Center	16	3	13	0	0	0	74	52	22
Lorien Mt. Airy	5	3	2	0	0	0	33	31	2
Lorien Nursing & Rehabilitation Center - Bel Air	4	3	1	0	0	0	23	21	2
Lorien Nursing & Rehabilitation Center Columbia	14	6	8	0	0	0	73	56	17
Lorien Riverside Nursing Center	7	6	1	0	0	0	37	34	3
Lorien Taneytown	11	4	7	0	0	0	34	26	8
Magnolia Center	11	5	6	0	0	0	65	51	14
Mallard Bay Care Center	10	3	7	0	0	0	43	24	19
Manokin Manor Nursing & Rehabilitation Center	5	3	2	0	0	0	23	19	4
Manor Care Health Services - Bethesda	12	4	8	1	1	0	65	32	33
Manor Care Health Services - Chevy Chase	9	6	3	0	0	0	37	34	3
Manor Care Health Services - Largo	13	4	9	1	1	0	71	56	15
Manor Care Health Services - Potomac	5	5	0	0	0	0	17	17	0
Manor Care Health Services - Rossville	20	3	17	0	0	0	84	31	53

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
Manor Care Health Services - Ruxton	15	5	10	0	0	0	76	58	18
Manor Care Health Services - Silver Spring	14	6	8	0	0	0	46	34	12
Manor Care Health Services - Towson	12	5	7	1	1	0	72	56	16
Manor Care Health Services - Wheaton	9	5	4	0	0	0	36	30	6
Manor Care Health Services - Woodridge Valley	13	4	9	4	4	0	62	42	20
Manor Care of Dulaney	13	4	9	0	0	0	62	37	25
ManorCare Roland Park	16	4	12	0	0	0	75	52	23
Maplewood Park Place (CCRC)	5	5	0	0	0	0	12	12	0
Maria Health Care Center	3	3	0	0	0	0	12	12	0
Marley Neck Health & Rehabilitation Center	9	6	3	0	0	0	36	29	7
Maryland Baptist Aged Home	-	-	-	-	-	-	-	-	-
Maryland Masonic Homes - No Medicare or Medicaid	-	-	-	-	-	-	-	-	-
Memorial Hosital - Skilled Nursing Facility	4	4	0	0	0	0	12	12	0
Mercy Hospital TCU	3	3	0	0	0	0	4	4	0
Mid-Atlantic of Fairfiled	5	5	0	0	0	0	17	17	0
Milford Manor Nursing & Rehabilitation Center	7	5	2	1	1	0	59	54	5
Montgomery Village Health Care Center	8	6	2	0	0	0	39	30	9
Moran Manor Health Care Center	4	3	1	0	0	0	17	14	3
Multi Medical Center	7	4	3	0	0	0	46	40	6
National Lutheran Home for the Aged (CCRC)	6	13	3	0	0	0	22	19	3
NMS Healthcare of Hagerstown	11	4	7	0	0	0	76	56	20
North Arundel Health & Rehabilitation Center	11	4	7	0	0	0	43	21	22
Northampton Manor Health Care Center	16	6	10	2	2	0	82	61	21
Northwest Health & Rehabilitation Center	10	6	4	1	1	0	61	52	9
Northwest Hospital Center-Sub Acute Unit	4	3	1	0	0	0	23	21	0
Nursing Home Board of Allegany County - Lions Center	4	3	1	0	0	0	16	15	1
Oak Crest Village Care Center (CCRC)	6	5	1	0	0	0	30	29	1
Oakland Nursing & Rehabilitation Center	5	3	2	0	0	0	16	13	3
OP Frostburg LLC	8	4	4	0	0	0	25	20	5
Overlea Health & Rehabilitation Center	12	5	7	0	0	0	74	61	13
Peninsula Regional Medical Center TCU	2	2	0	0	0	0	5	5	0
Perring Parkway Center - Genesis Elder Care	19	3	13	1	0	1	94	33	61
Pickersgill Retirement Community (CCRC)	7	4	3	0	0	0	28	24	4
Pleasant View Nursing Home of Mt. Airy	7	5	2	1	1	0	34	31	3
Potomac Valley Nursing & Wellness Center	5	4	1	0	0	0	23	22	1
Presbyterian Home of MD - No Medicare or Medicaid	-	-	-	-	-	-	-	-	-
Randolph Hills Nursing Center	5	5	0	0	0	0	27	27	0

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
Ravenwood Lutheran Village Nursing Center	7	5	2	0	0	0	28	21	7
Ravenwood Nursing & Rehabilitation Center (Seton)	13	5	8	1	0	1	73	59	14
Reeders	6	3	3	2	1	1	34	24	10
Riderwood Village (CCRC)	6	4	2	0	0	0	15	3	12
Ridgeway Manor Nursing Home	5	5	0	0	0	0	20	20	0
Riverview Care Center	5	4	1	0	0	0	26	24	2
Rock Glen Nursing & Rehabilitation Center	11	3	8	1	1	0	60	39	21
Rockville Nursing Home, Inc.	4	4	0	0	0	0	16	16	0
Roland Park Place (CCRC)	7	3	4	0	0	0	33	28	5
Ruxton Health & Rehabilliation Center of Pikesville	8	4	4	1	1	0	52	46	6
Ruxton Health of Denton	13	5	8	0	0	0	42	27	15
Sacred Heart Home, Inc.	1	1	0	0	0	0	7	7	0
Salisbury Rehabilitation & Nursing Center	9	4	5	0	0	0	29	20	9
Shady Grove Adventist Nursing & Rehabilitation Center	13	6	7	0	0	0	58	45	13
Sligo Creek Nursing & Rehabilitation Center	6	4	2	0	0	0	30	23	7
Snow Hill Nursing & Rehabilitation Center	6	4	2	0	0	0	29	21	8
Solomons Nursing Center	5	4	1	1	1	0	31	30	1
Sout River Health & Rehabilitation Center	10	5	5	0	0	0	43	35	8
Southern Maryland Hosptial Center	3	3	0	0	0	0	10	10	0
Springbrook Nursing & Rehabilitation Center	8	5	3	0	0	0	37	28	9
St. Catherine's Nursing Center	6	4	2	0	0	0	17	12	5
St. Elizabeth Rehabilitation & Nursing Center	4	3	1	2	2	0	28	25	3
St. Joseph's Nursing Home	-	-	-	-	-	-	-	-	-
St. Martin's Home for the Aged (Little Sisters of the Poor)	-	-	-	-	-	-	-	-	-
St. Mary's Nursing Center, Inc.	8	4	4	0	0	0	32	23	9
St. Thomas More Nursing & Rehabilitation Center	10	5	5	0	0	0	54	46	8
St. Vincent Care Center LLC	3	2	1	0	0	0	4	2	2
Stella Maris, Inc.	5	3	2	0	0	0	32	30	2
Summit Park Healath & Rehabilitation	17	6	11	1	1	0	73	49	24
Sunbridge Care & Rehabilitation Center for Elkton	7	4	3	0	0	0	49	41	8
The Arbor (CCRC)	4	4	0	0	0	0	9	9	0
The Pines - Genesis HealthCare	12	6	6	0	0	0	45	38	7
The Villa Joint Retirement Convent, Inc.	5	4	1	1	1	0	9	8	1
The Wesley Home, Inc.	6	5	1	5	5	0	67	65	2
The William Hill Manor, Inc. (CCRC)	5	5	0	0	0	0	17	17	0
Transitional Care at Good Sam Hospital	3	3	0	0	0	0	18	18	0
Transitional Care Unit at St. Joseph Medical Center	3	2	1	0	0	0	12	11	1

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
Transitions Health Care at Sykesville	10	6	4	0	0	0	49	36	13
Vantage House Retirement Community (CCRC)	3	3	0	0	0	0	19	19	0
Villa Rosa Nursing Home	2	2	0	0	0	0	7	7	0
Vindobona Nursing Home	8	5	3	0	0	0	27	23	4
Western Maryland Hospital Center	3	3	0	0	0	0	9	9	0
WHMS - Frostburg Nursing & Rehabilation Center	6	5	1	0	0	0	31	1	30
Wicomico Nursing Home	6	4	2	0	0	0	25	22	3
Williamsport Nursing Home	6	5	1	0	0	0	25	22	3
Woodside Center	8	6	2	0	0	0	33	27	6
	1,858	989	896	67	53	14	9,211	7,132	2,116

335 Facilities, 227 Surveyed

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
Facility	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
FurtureCare Charles Village	9	6	3	0	0	0	61	56	5
Future Care - Chesapeake	16	5	11	0	0	0	61	31	30
FutureCare - Canton Harbor	14	4	10	2	0	2	63	46	17
FutureCare - Homewood	12	3	9	0	0	0	62	37	25
FutureCare - Northpoint (formerly Choice Communities)	18	6	12	2	0	2	120	80	40
FutureCare - Old Court	10	6	4	0	0	0	50	44	6
FutureCare - Pineview	10	5	5	1	1	0	64	58	6
FutureCare Irvington	14	5	9	2	2	0	78	55	23
FutureCare Lochearn	15	4	11	0	0	0	83	56	27
FutureCare Sandtown	6	4	2	0	0	0	52	50	2
FutureCare-Cherrywood	11	5	6	0	0	0	69	48	21
Total FutureCare (n=11)	135	53	82	7	3	4	763	561	202

	FutureCare	All Maryland
average number of deficiencies per survey	5.7	5.0
average number of deficiencies per inspection survey	10.6	7.4
average number of deficiencies per complaint survey	2.5	2.4
average number of substandard care deficiencies per survey	0.05	0.04
average number of substandard care deficiencies per inspection survey	0.06	0.05
average number of substandard care deficiencies per complaint survey	0.05	0.02
average number of surveys per facility	12.3	8.2
average number of inspection surveys per facility	4.8	4.3
average number of complaint surveys per facility	7.5	3.9
percentage of total facilities with substandard care deficiencies	36.4%	20.3%

Note: April,2008, Choice Communities is now FutureCare-Northpoint)

Nursing Home Surveys, Substandard and Other Deficiencies, Maryland, as of 4/2008

	Total Surveys			Substandard Deficiencies			Other Deficiencies		
	Total Surveys	Inspection Survey	Complaint Survey	Total Deficiencies	Inspection Surveys	Complaint Surveys	Total Deficienci	Inspection Surveys	Complaint Surveys
St. Mary's Nursing Center, Inc.	10	3	7	0	0	0	43	30	13
Bayside Care Center at Lexington Park	10	6	4	0	0	0	56	49	7
Mallard Bay Care Center (Dorchester County)	10	3	7	0	0	0	43	24	19
Laurelwood Care Center at Elkton	9	4	5	0	0	0	48	40	8
Signature Health Total	29	13	16	0	0	0	147	113	34

	St. Marys	Signature Health	All Maryland
average number of deficiencies per survey	4.3	5.1	5.0
average number of deficiencies per inspection survey	10.0	0.0	7.4
average number of deficiencies per complaint survey	1.9	2.1	2.4
average number of substandard care deficiencies per survey	0.0	0.0	0.04
average number of substandard care deficiencies per inspection survey	0.0	0.0	0.05
average number of substandard care deficiencies per complaint survey	0.0	0.0	0.02
average number of surveys per facility	10.0	9.7	8.2
average number of inspection surveys per facility	13.0	4.3	4.3
average number of complaint surveys per facility	16.0	5.3	3.9
percentage of total facilities with substandard care deficiencies	0.0	0.0	20.3

Exhibit 2

UNREPORTED

IN THE COURT OF
SPECIAL APPEALS
OF MARYLAND

No. 913

September Term, 2009

LP LEXINGTON PARK, LLC
d/b/a CHESAPEAKE SHORES, et al.

v.

ST. MARY'S NURSING HOME, LLC
d/b/a POINT LOOKOUT NURSING
CENTER, et al.

Davis
Kehoe
Wilner, Alan M. (Retired,
Specially Assigned)

JJ.

Opinion by Wilner, J.

Filed:

This litigation arose from an application filed by appellee, Point Lookout Nursing Center (PLNC), with the Maryland Health Care Commission for a Certificate of Need (CON) to construct a 124-bed comprehensive care facility (CCF) in St. Mary's County. Appellants, the owners and operators of the only two non-public CCFs in the county, opposed the application. After a hearing before one of the Commission members, appointed by the Commission as a "reviewer," and a second hearing before the full Commission on appellants' exceptions to the reviewer's findings, conclusions, and recommendations, the Commission granted the CON.

Aggrieved, appellants sought judicial review in the Circuit Court for St. Mary's County. The court affirmed the Commission's decision, and this appeal ensued. Finding no error, we shall affirm the Circuit Court's judgment.

BACKGROUND

The General Assembly has expressly recognized that the health care regulatory system in Maryland is a "highly complex structure that needs to be constantly reevaluated and modified in order to better reflect and be more responsive to the ever changing health care environment and the needs of the citizens of this State." Maryland Code, § 19-102(a) of the Health-General Article (HG). In furtherance of that finding, the Legislature created a comprehensive regime for regulating health care resources in Maryland, the two principal components of which are the State Health Plan, designed to

identify the health needs and resources throughout the State, and the CON program, designed to allocate and ration health care resources in conformance with that Plan. The development and implementation of both of those components are committed to the Commission. *See Medstar v. Md. Health Care*, 391 Md. 427, 429-30, 893 A.2d 1099, 1100 (2006).

The State Health Plan, which is adopted in the form of regulations, includes "the methodologies, standards, and criteria for certificate of need review." HG § 19-118(a)(2)(i). The Plan is required to be updated periodically, and is usually updated in sections rather than comprehensively, all at one time. Once the Plan (and the periodic amendments to it) is adopted, all CON decisions must conform with it. The part of the Plan applicable to CCFs is incorporated by reference in COMAR 10.24.08.01.

There are presently three facilities providing nursing home services in St. Mary's County, one of which, Charlotte Hall Veterans Home, is a State-operated facility that admits only veterans and their spouses or surviving spouses. St. Mary's Nursing Center (SMNC) operates a 212-bed CCF in Leonardtown, and Bayside Care Center (Bayside) operates a 125-bed CCF in Lexington Park. Apart from Charlotte Hall, therefore, the current CCF bed capacity in the county is 337.[1]

In 2007, the State Department of Planning issued updated population projections

[1] At some point, due to a drop in occupancy, SMNC temporarily delicensed 12 of its 212 beds. Both SMNC and the Commission continue to regard the bed capacity of the facility, for purposes of the CON review, as 212 beds.

for the State and its subdivisions.[2] Proceeding from the 2000 census, it projected the following population increases for St. Mary's County by 2010 and 2015:

Age Group	2000 Census	Projected 2010	Projected 2015	2000-2015 Change
0-64	78,386	95,808	104,298	25,912 (33.1%)
65+	7,825	11,893	15,153	7,328 (93.6%)
65-74	4,336	6,964	9,276	4,940 (113.9%)
75-84	2,714	3,304	3,932	1,218 (44.9%)
85+	775	1,625	1,946	1,171 (151.1%)
TOTAL	86,211	107,701	119,451	33,240 (38.6%)

Based on those projections, which have not been challenged by appellants, the Commission concluded that St. Mary's County would need an additional 124 CCF beds by 2011, and the State Health Plan was amended to reflect that need. On September 7, 2007, after having previously filed a letter of intent, PLNC filed a CON application to construct a 124-bed CCF in Callaway, which is approximately five miles and 8.4 miles, respectively, from the Bayside and SMNC facilities. In January, 2008, those facilities jointly filed interested party comments opposing the application. Pursuant to HG § 19-126(d)(4), the Commission appointed one of its members, Commissioner Petty, as a "reviewer," to review the application and comments, hold an evidentiary hearing, and prepare a recommended decision for the full Commission.

The hearing before Commissioner Petty was extensive and produced a great deal of evidence. The principal issue, however, came down to the proper consideration of two

[2]The projections included in the record are dated October, 2007, but it would appear that they had been made earlier.

provisions in the "Nursing Home Standards" part of the State Health Plan that govern applications for a CON:

(1) COMAR 10.24.08.05A requires the Commission, in its review of *all* nursing home projects, to use nine enumerated standards, the first of which is that "[t]he bed need in effect when the Commission receives a letter of intent for the application will be the need projection applicable to the review." It was agreed that 124 beds was the appropriate bed need established by the Commission under that standard.

(2) COMAR 10.24.08.05B requires that, in reviewing proposals involving new construction of CCF beds, the Commission use six enumerated standards, *in addition to* the standards in COMAR 10.24.08.05A. Standard (3) in that part of the regulation, captioned "Jurisdictional Occupancy," provides:

> "(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."[3]

[3] As noted, COMAR 10.24.08.01 incorporated that part of the State Health Plan applicable to CCFs by reference. The actual provisions of that part of the Plan, including those quoted above, are not repeated in COMAR and are found only in the Plan itself.

The jurisdictional occupancy at issue in this case was the average occupancy rates of the SMNC and Bayside facilities – the two private CCFs in St. Mary's County – for 2006, which was 80.4%. PLNC's application thus hinged on its ability, pursuant to subsection (b), to show why the 90% jurisdictional standard should not apply. It had the burden of proof and persuasion on that issue, and, in the Commission's view, it met that burden. That is what is challenged in this judicial review action.

PLNC focused on the fact that the Commission has already determined, based on the Department of Planning population projections, that there would be a need for 124 additional beds by 2011, and, under COMAR 10.24.08.05A, that established the need for purposes of CON review. Addressing the actual occupancy rates, it noted that the historic occupancy rates for SMNC from 2000 through 2005 consistently exceeded 90%, ranging from 95.3% to 92.2%, and only in 2006 and 2007 did they drop below 90%, to 89.5% and 85.9%, respectively. PLNC attributed that drop to an increase in the number of shorter-stay (but more profitable) Medicare patient days, which may have resulted in a higher rate of bed turnover and thus lower overall occupancy rates

The real problem, according to PLNC, was with Bayside, whose recent occupancy rates lagged significantly behind those of SMNC – 76.2% in 2003, 73.0% in 2004 and 2005, 67.7% in 2006, and 80.0% in 2007. It attributed those low rates to the fact that Bayside was an old facility that had only three private rooms and 61 semi-private rooms, many of which shared one toilet with another semi-private room, thus requiring four

patients to share one toilet. It pointed out, as well, that the State Office of Health Care Quality had found multiple deficiencies at Bayside, some serious, and had assessed a civil penalty of $15,000 against the facility. In contrast, Point Lookout noted that it would be a state-of-the-art facility and would offer a range of services that were not offered by either SMNC or Bayside.

SMNC and Bayside, understandably, had a different point of view. Though not attacking directly the Commission's finding of a need for 124 additional beds, they did their best to cast doubt on that finding by suggesting that, if the actual occupancy rates in the existing facilities, even in January, 2008, were considerably less than 100%, there could not really be a need for additional beds, and certainly not 124. Their argument, as summarized in their brief filed in this Court, was that "[n]o matter what the Commission's population projections for the years 2000 to 2011 might say, there is absolutely no evidence that the number of nursing home residents in St. Mary's County would jump from 253 to 465 between January 2008 and December 2011."[4]

The effect of this argument is to de-emphasize the Commission's finding of a 124 additional bed need and raise to prominence the requirement that a CON could not be approved if the historic jurisdictional occupancy fell below 90%, as it clearly did. They

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[4] SMNC and Bayside claimed that their actual bed census in January, 2008 was 253 (160 for SMNC and 93 for Bayside) and assumed that adding 124 additional beds to the current 337 would make the total 465. The actual number would be 461 (337 plus 124).

also took issue with the contention that Bayside's poor showing was due to its being an older facility, which they claimed it was not, or because of quality of care issues, urging, as they do in their brief, that there is no evidence to support a conclusion that the 75% to 80% bed utilization is the result of consumer dissatisfaction with SMNC or Bayside, as opposed to a growing lack of need for CCF beds.

Commissioner Petty, as the "reviewer," considered all of this in his 38-page Report. He also personally visited the SMNC and Bayside facilities and the site of the proposed PLNC facility. In the end, he found that there would, indeed, be a need for 124 additional beds by 2011 and thus recommended granting PLNC's CON application. He credited the Department of Planning's population projections, which neither SMNC nor Bayside contested, examined the historic occupancy rates for SMNC and Bayside from 2000 to 2007, which, combined, ranged from 81.4% to 94.3%, applied each of those annual rates to the population projections of persons 65 and older, and concluded that, no matter which rate was applied, by 2010, the occupancy rate (or need) for the existing 337 beds would be between 95% and 119%, and that, by 2015, it would be between 121% and 151%. By 2015, applying the same historic occupancy rates, the occupancy rate (or need) for the 461 proposed beds (the existing 337 plus an additional 124) would range from 89% to 110%.

Commissioner Petty found, "[a]fter fully considering the points made in reference to [the jurisdictional standard] by the applicant and the interested party," that PLNC had

"carried the burden of showing evidence why this minimum occupancy rate threshold should not apply." He gave three reasons for that conclusion, supporting each by extended discussion and subsidiary findings:

FIRST: "The exceptional rate of growth in the population of St. Mary's County indicates that the two facilities will not be able to meet the needs of the community in the future."

SECOND: There was a reasonable basis for finding that the condition of Bayside "may be a factor in depressing demand for its beds."

THIRD: The facility proposed by PLNC "will be attractive to a broad spectrum of patients because of the range of facilities and services it will offer, some of which are not currently offered at existing facilities, and that the long-term care needs of the population of St. Mary's County will be better served by having this additional option available."

SMNC and Bayside filed exceptions to Commissioner Petty's Report, and a hearing on those exceptions was held before the entire Commission, at the conclusion of which, the Commission accepted Petty's recommendation and approved the CON. This judicial review action followed, the argument being that the conclusions of the reviewer, and, in particular, the three reasons he gave for finding that the 90% jurisdictional occupancy standard should not apply, were unsupported by substantial evidence. After hearing argument on the exceptions, the court entered an order affirming the decision of the Commission.

DISCUSSION

The argument made by SMNC and Bayside before us is the same as that made to the Commission on their exceptions to Commissioner Petty's Report and to the Circuit Court – that the findings made by Commissioner Petty, most notably in connection with his determinations that the 90% jurisdictional occupancy standard should not apply and that there would, in fact, be a need for an additional 124 CCF beds in St. Mary's County by 2011, were unsupported by substantial evidence. There is no attack on the procedures followed by the Commission or on the validity or construction of any of the statutes or regulations that it applied.

As this case points out, there is some facial tension between (1) the requirement in COMAR 10.24.08.05A(1) that the bed need in effect when the Commission receives a letter of intent for a CON application "will be the need projection applicable to the review," and (2) the requirement in COMAR 10.24.08.05B(3)(a) that the Commission may approve a CON application only if the average jurisdictional occupancy for all nursing homes in the jurisdiction equals or exceeds a 90% occupancy level for the most recent 12-month period. If the Commission has, indeed, validly certified a need for a certain number of additional beds in a particular geographic area, what is it to do if the jurisdictional occupancy level of existing nursing homes in that area is below 90%?

In fact, the two requirements are not inconsistent. For one thing, it may be the case that, notwithstanding a certified need for additional beds, a new facility may not be

the best way to meet that need when existing facilities are currently under-utilized. More to the point here is COMAR 10.24.08.05B(3)(b), permitting the applicant to show why the 90% occupancy level requirement should not apply. Implicitly, of course, if the regulation expressly permits the applicant to produce such evidence, it anticipates that, if the Commission finds that evidence to be credible and persuasive, it may excuse compliance with that standard.[5]

As we have observed, the sole issue before us is whether the Commission erred in finding that the 90% jurisdictional occupancy requirement should not apply. That is quintessentially a discretionary call by the Commission, and the only inquiry is whether there was substantial evidence in the record to support it.

As the Court of Appeals has made clear so many times, a court "may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise . . . so long as the agency's determination is based on 'substantial evidence.'" *People's Counsel v. Surina*, 400 Md. 662, 681, 929 A.2d 899, 910 (2007). In examining evidentiary sufficiency, the scope of judicial review "'is a narrow and highly deferential one.'" *Armstrong v. Baltimore*, 410

[5] That part of the regulation could certainly have been better drafted, but there can be no doubt that subsections (a) and (b) must be read together, and, when they are, the 90% jurisdictional occupancy standard is not absolute. Upon sufficient and persuasive evidence, the Commission may discard it (find it inapplicable) in a particular case.

Md. 426, 443, 979 A.2d 98, 108 (2009), quoting *Trinity v. People's Counsel,* 407 Md. 53, 78, 962 A.2d 404, 418 (2008). The Court has often noted and applied the point so well articulated by Professor Kenneth C. Davis that

> "[T]he heart of the fact-finding process often is the drawing of inferences made from the evidence. . . . The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness."

Peoples Counsel v. Surina, supra, 400 Md. at 681, 929 A.2d at 910 , quoting indirectly 4 KENNETH CULP DAVIS & RICHARD J. PIERCE, ADMINISTRATIVE LAW § 29.11, at 186 (1958).

The ultimate test is whether the administrative decision is supported by "such evidence as a reasonable mind might accept as adequate to support a conclusion." *Surina,* 400 Md. at 681, 929 A.2d at 910, quoting from *Annapolis v. Annap. Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979). In reviewing the agency's factual findings, the court does not engage in an "independent analysis of the evidence" but rather construes it in a light most favorable to the agency, whose decision is "prima facie correct and presumed valid." *Armstrong v. Baltimore, supra,* 410 Md. at 444, 979 A.2d at 109, quoting earlier cases.

We need not, in this unreported opinion, pinpoint each item of evidence relied upon by Commissioner Petty, and ultimately by the full Commission, beyond what has already been recited. Commissioner Petty took careful account of the arguments made by

both sides and recounted at length the evidence he found persuasive and that the Commission found persuasive. It fully supported the ultimate conclusions that, based on the uncontested population projections for St. Mary's County, there would, in fact, be a need for an additional 124 CCF beds by 2011, that there were good and specific explanations for the 80.4% 2006 jurisdictional occupancy rate that did not detract from that certified need, that there were thus good reasons not to apply the jurisdictional occupancy standard as a bar to the CON, and that, if PLNC's CON application was denied, the health needs of the county would not be well-served.

JUDGMENT OF CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED; APPELLANTS TO PAY THE COSTS.

Exhibit 3

The Standard of Excellence

FutureCare

HEALTH AND MANAGEMENT CORPORATION

TOP WORK PLACES 2011

September 5, 2012

Mr. Paul Parker
Chief
Hospital Services Planning & Policy and Certificate of Need
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215-2299

Re: Point Lookout Nursing Center
Relinquishment of the Certificate of Need
Docket No. 07-18-2201

Dear Paul:

Since 2007, we have pursued the certificate of need (CON) to establish Point Lookout Nursing Center in a vigorous manner. This not only included participating in the CON review; it also included successfully defending the CON approval through judicial appeals. We appreciate the favorable findings in favor of our project.

At the same time, we have continued to evaluate the project in relation to the current and developing health care regulatory and reimbursement environment and the impact of the overall slowdown in the economy that affects the communities we serve. This analysis involved taking into account the costs of development, costs of initial fill up and operation, and the direction of Medicare and Medicaid reimbursement priorities. We have also focused on our commitment to the existing communities we serve, including residents and staff, since it is important that no new project detract from the important work in which we are engaged every day in the geographic regions we serve. Additionally, we took into account the MHCC's regulations concerning the timing of new projects and were cognizant of the agency's performance requirement standards that ensure that approved projects progress according to those standards.

After taking all this into account, including the fact that development of this project is distant from our existing operations, and in the interest of demonstrating our good faith commitment to adhering to the MHCC's regulations on implementation of approved projects, we have regretfully decided to relinquish the Point Lookout CON approval. While we invested substantial time, expense and effort in this project, our focus on our existing facilities and range of community based services in the Baltimore Metropolitan area, and our wish to adhere to the CON regulations, led us to this conclusion.

We wish to express our deep appreciation to you, the Maryland Health Care Commission and its staff for the hard work and cooperation that have been shown to us over the years. We look forward to working together on other projects in the near future.

Sincerely,

Gary L. Attman
President

8028 Ritchie Highway, Suite 210, Pasadena, Maryland 21122
2531227.2 Telephone: 410-766-1995 Fax: 410-761-6095 • www.futurecarehealth.com

The Standard of Excellence

FutureCare

March 18, 2014

Kevin McDonald, Chief
Certificate of Need Division
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Mr. William Chan
Health Policy Analyst
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: **Prince George's Post-Acute Care**
Certificate of Need Application
Docket No. 13-16-2347

Dear Mr. McDonald and Mr. Chan:

I am writing in reply to a question posed in connection with the review of the above-referenced certificate of need ("CON") application, relating to the decision to relinquish the Point Lookout Nursing Center CON application, Docket No. 07-18-2201 (the "PLNC CON"). Attached is our September 5, 2012 letter to the Maryland Health Care Commission ("Commission") withdrawing the PLNC CON (the "withdrawal letter").

First, we wish to note that facilities affiliated with FutureCare have a long history of successful implementation of projects in close coordination with the Commission under the CON laws. We have acquired new facilities, invested significantly in improving physical plants, and have worked proactively to adapt our available programs and services to meet the needs of residents with increasingly complex medical conditions. This continued to occur across all the facilities during the five years between the filing of the PLNC CON application and the decision to submit the withdrawal letter. Our decision with respect to the PLNC CON was fully consistent with this commitment to our residents and staff, and to compliance with the CON laws.

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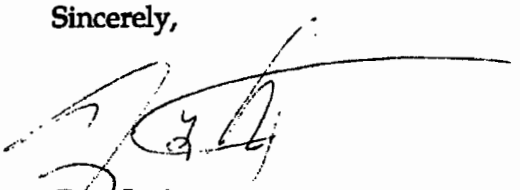
The PLNC CON application was first filed in 2007. We worked very hard on the project and the decision to relinquish the CON five years later was made with reluctance. By no means whatsoever did we doubt that there is a need in St. Mary's County for the facility or that a new facility there would be successful, both financially and in enhancing the availability of long term care services in that county. Had we not believed in that success we would not have made the substantial investment in designing the project, proceeding with a CON review and successfully defending the CON application all the way to the Court of Special Appeals. We are aware that the Commission has, in fact, determined in updated State Health Plan comprehensive care facility need projections that the need for an additional facility in St. Mary's County has grown.

As our withdrawal letter explains, the decision not to proceed with the PLNC CON was simply the result of our internal decision about what was in the best interests of our existing facilities, residents and staff in 2012, during one of the most challenging periods in our nation's economic history. In the years since the 2007 CON was filed, we had acquired and integrated the Future Care North Point and Future Care Cold Spring facilities in the Baltimore area, integrated Home Care Maryland (a home health agency), developed Pulse Medical Transport (an ambulance and medical transportation company), added or enhanced the availability of ventilator and dialysis services at several of our facilities, and invested in physical plant improvements at many of our facilities. During this time, we also invested in our staff, resulting in our company being recognized for the past 3 years by *The Baltimore Sun*, as one of Maryland's top workplaces across all places of employment, not just health care facilities. We accomplished all of this with the resources of a private Maryland-based company, not a larger more national health care company.

In reviewing our various commitments, we also looked at the impact of the delay in the development process resulting from the protracted CON process and related litigation, and the importance of our adhering to the Commission's applicable performance requirements. Not meeting them would have caused us to need to go back through the CON process, yet again. Ultimately, we made a decision that the investments in and commitment to our existing facilities, residents and staff, during a period when the general economy had been profoundly disrupted, had to take precedence over building a new facility more distant from our current operations. In this regard, the new Prince George's County facility will be located in a jurisdiction where we have an existing facility, Pineview, that is already an integral part of the local health care delivery system. This new facility meets a need the Commission has identified, in a way that augments our existing services.

We believe the decision to relinquish the PLNC CON during that uniquely difficult and uncertain economic period (which is now over) confirms the credibility of our commitment to long term care services in Maryland and adherence with the CON laws. Since 2012, the economy has improved and, as the Commission's State Health Plan projections demonstrate, the need for a new facility in Prince George's County has increased.[1] Accordingly, all of the factors that promise to ensure the success of this new facility are enhanced, and it's clear that the project will truly benefit the surrounding community and indeed all of Prince George's County. We look forward to the development of this very exciting project.

Sincerely,



Gary L. Attman
President

[1] We observe that the need in St. Mary's County has increased as well.

Exhibit 4

Affirmation

I hereby declare and affirm under the penalties of perjury that the facts stated in this Response to Comments are true and correct to the best of my knowledge, information, and belief.

Signature

3/25/14
Date

Affirmation

I hereby declare and affirm under the penalties of perjury that the facts stated in this Response to Comments are true and correct to the best of my knowledge, information, and belief.

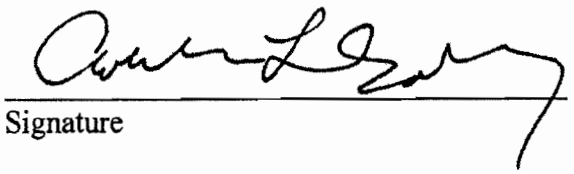
Signature

03/24/14

Date

Affirmation

I hereby declare and affirm under the penalties of perjury that the facts stated in this Response to Comments are true and correct to the best of my knowledge, information, and belief.



Signature

3/24/14

Date