STATE OF MARYLAND

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CHAIR

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EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

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MEMORANDUM

TO: Commissioners, Maryland Health Care Commission

Rose M. Matricciani, Esquire
Peter Dabbenigno, Executive Director

FROM: Ben Steffen
Executive Director

RE: Staff Report and Recommendation in the Matter of
Presbyterian Senior Living Services, Inc. d/b/a Glen Meadows Retirement Community, Docket No. 17-03-2395

DATE: October 3, 2017

Enclosed is the Staff Report and Recommendation in the review of the application of Presbyterian Senior Living Services, Inc. d/b/a Glen Meadows Retirement Community ("Glen Meadows"), a continuing care retirement community ("CCRC") to alter the status of 22 comprehensive care facility ("CCF"), or nursing home, beds from beds that are restricted in use to CCRC subscribers (contract holders) to beds available for use by the general public. In reaching its recommendation, Commission staff considered the application, additional information, and the record in this review.

For reasons stated in more detail in the Staff Report and Recommendation, staff recommends that the Commission **DENY** the application. Staff has concluded that Glen Meadows failed to meet the applicable State Health Plan standard for CCF bed need, COMAR 10.24.08.05A(5). Additionally, staff has concluded that the applicant did not demonstrate a need for the project, generally, as required by the general criterion for need in COMAR 10.24.01.03G(3)(b) and did not demonstrate that the proposed project is a more cost-effective alternative than providing publicly available nursing home services through existing Baltimore County nursing homes. This project would return 22 CCF beds formerly operated in Towson and temporarily delicensed upon the closure of that facility to fully licensed and operational status as part of the existing complement of 31 CCRC-restricted beds operated by Glen Meadows.in Glen

Arm. The 31 CCF beds at Glen Meadows are CCRC-restricted because they were developed and put into operation without Certificate of Need review and approval. Maryland law allows CCRCs to operate a CCF for the exclusive use of the community's subscribers who have executed continuing care agreements. This project proposes to convert most of these CCRC-restricted beds to beds that function in the same manner as beds available at freestanding nursing homes, available to any person needing admission to a nursing home.

As provided under COMAR 10.24.01.09B, the applicant may submit written exceptions to the enclosed Staff Report and Recommendation. Exceptions must be filed no later than 4:30 p.m. on Tuesday, October 10, 2017. Written exceptions and argument must identify specifically those findings or conclusions to which exception is taken, citing the portions of the record on which each exception is based. The filing deadline can be met by sending pdf'd copies of exceptions to Ruby Potter, Kevin McDonald, and Assistant Attorney General Suellen Wideman; however, thirty copies of written exceptions and responses to exceptions must be filed with the Commission by noon on the following business day, October 11, 2017.

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

Submission of exceptions	October 10, 2017 No later than 4:30 pm
Submission of response	October 13, 2017 No later than 4:30 p.m.
Exceptions hearing	October 19, 2017 1:00 pm

cc: Andrew L. Solberg

IN THE MATTER OF	*	**BEFORE THE**
	*	
PRESBYTERIAN SENIOR	*	**MARYLAND HEALTH**
	*	
LIVING SERVICES, INC. d/b/a	*	**CARE COMMISSION**
	*	
GLEN MEADOWS RETIREMENT	*	
	*	
COMMUNITY	*	
	*	
Docket No. 17-03-2395	*	

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Staff Report and Recommendation

(released October 3, 2017)

TABLE OF CONTENTS

PAGE

I. INTRODUCTION.....1

A. The Applicant.....1
B. The Project.....2
C. Summary of Recommendation.....3

II. **PROCEDURAL HISTORY**.....4

A. Record of the Review.....4
B. Local Government Review and Comment.....4
C. Community Support.....4
D. Interested Parties.....5

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

A. **COMAR 10.24.01.08G(3)(a) — THE STATE HEALTH PLAN**.....4

COMAR 10.24.08.05A: Nursing Homes Standards

1. Bed Need.....5
2. Medical Assistance Participation.....6
3. Community-Based Services.....7
4. Non-Elderly Residents.....8
5. Appropriate Living Environment.....9
6. Public Water.....9
7. Facility and Unit Design.....10
8. Disclosure.....10
9. Collaborative Relationships.....10

.05B. New Construction or Expansion of Beds or Services.....11

1. Bed Need.....11
2. Facility Occupancy.....14
3. Jurisdictional Occupancy.....16
4. Medical Assistance Program Participation.....17
5. Quality.....18
6. Location.....19

.05C. Renovation of Facility.....19

B. COMAR 10.24.01.08G(3)(b) - NEED..... 19

C. COMAR 10.24.01.08G(3)(c) - AVAILABILITY OF MORE COST-EFFECTIVE ALTERNATIVES.....21

D. COMAR 10.24.01.08G(3)(d) - VIABILITY OF THE PROPOSAL.....22

E. COMAR 10.24.01.08G(3)(e) - COMPLIANCE WITH CONDITIONS OF PREVIOUS CERTIFICATES OF NEED…….. 25

F. COMAR 10.24.01.08G(3)(f)—IMPACT ON EXISTING PROVIDERS……25

IV. **SUMMARY AND STAFF RECOMMENDATION **26

FINAL ORDER

APPENDICES

Appendix 1: Record of the Review

Appendix 2: Pertinent Commission Regulations Regarding CCRCs – COMAR 10.24.01.01B(12)(b)(ii) and 10.24.01.03K

I. INTRODUCTION

A. The Applicant

The applicant is Presbyterian Senior Living, Inc., d/b/a Glen Meadows Retirement Community ("Glen Meadows"). Glen Meadows is a continuing care retirement community ("CCRC")[1] located at 11630 Glen Arm Road in Glen Arm (Baltimore County). It is comprised of:

- Independent living units: 113 patio homes and 83 apartments (reported to be 94% occupied in 2015/16);
- Assisted living units: 36 private rooms and four semi-private (55% occupancy in 2015/16);
- Comprehensive care facility ("CCF") or nursing home beds: 31 beds, consisting of 15 semi-private rooms, and one private room, all of which are restricted to CCRC residents (explained immediately below).

All of Glen Meadows' CCF beds were authorized under statutory and regulatory language that provides that the definition of "health care facility" subject to Certificate of Need review and approval does not include a CCF constructed by a CCRC "if the facility is for the exclusive use of the provider's subscribers who have executed continuing care agreements ..." In 2000 the General Assembly amended the law to permit limited direct admission into a CON-excluded CCF bed at a CCRC by: an individual in "a long-term significant relationship" with an individual who is admitted under a joint contract and at the same time to the CCRC's independent or assisted living units; or an individual directly admitted into a CCF bed at the CCRC after executing a continuing care agreement and paying an entrance fee that is at least equal to the lowest entrance fee charged by the continuing care retirement community for its independent or assisted living units.[2]

The facility now known as Glen Meadows Retirement Community had its start as a health care facility in 1907 when the School Sisters of Notre Dame purchased the property. The order established and maintained a residence for sick and convalescent sisters and for those in need of a retreat. In 1981 the property was sold again to health care executives and physicians from Fallston General Hospital and the Notchcliff Life Care Community was established. This was short-lived as the group filed for bankruptcy in 1988 and Presbyterian Homes (now Presbyterian Senior Living) assumed the day-to-day operations officially purchasing the property in 1990.[3] (DI #22).

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[1] On its website, the Maryland Department of Aging, states that "[a] lthough the legal definition of 'continuing care' is complex, in general, 'continuing care' exists when all three of the following are present: (1) The consumer pays an entrance fee that is, at a minimum, three times the average monthly fee; (2) The provider furnishes or makes available shelter and health-related services to persons 60 years of age or older; and (3) The shelter and services are offered under a contract that lasts for a period of more than one year, usually for life."

[2] Health-General Article §§ 19-114(d)(2)(ii) and 19-123, Maryland Code Annotated; COMAR 10.24.01.01B(12)(d)(ii) and 10.24.01.0303K. Pertinent Commission regulations regarding CCRCs are in Appendix 2.

[3] From Glen Meadows Retirement Community's Background Statement.

Glen Meadows' sole member is Presbyterian Senior Living, Inc. ("Presbyterian"), based in Dillsburg, Pennsylvania. It is a is a qualified tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. It owns and operates a variety of services and resources for senior living at 30 locations throughout Pennsylvania, Ohio, Maryland, and Delaware. Its communities and facilities accommodate over 6,000 elderly residents and employ approximately 2,700 staff members.

Glen Meadows is a CCRC with "Type C" contracts, i.e., assisted living and nursing home services are not covered in the residents' contracts, but are provided on a "pay as you go" basis. Residents cover nursing home care through a combination of Medicare, out-of-pocket payments, insurance, and, when financial resources are depleted, Medicaid. Glen Meadows has not generated revenues in excess of expenses from its operations for several years. However, it is important to note, as discussed later,[4] that the management fee charged to Glen Meadows by its parent, Presbyterian Senior Living, increased dramatically in 2014, resulting in a significant negative balance. In 2013, the Glen Meadows community showed a gain of $1.1 million and in 2014, it showed a loss of $410,000, a reversal very similar to that experienced by the CCF component of the community on a stand-alone basis, which had high bed occupancy in both years.

B. The Project

Glen Meadows has purchased 22 temporarily delicensed beds from Presbyterian Home of Maryland, Inc. d/b/a Carsins Run at Eva Mar and is requesting a Certificate of Need to convert 22 of its 31 beds to publicly-available – rather than CCRC-restricted – use in the hope of stabilizing what it describes as a precarious financial situation.[5] It is not proposing to increase its CCF bed capacity. Rather, it is seeking to change the status of 22 of its 31 CCF beds from restricted to unrestricted, which will make these beds available to the general public. Although Glen Meadows purchased 22 beds for this purpose, it states that it expects to use only ten of these beds for non-CCRC contract holders in order to have adequate bed capacity available for its CCRC residents.

The only costs associated with the project are the cost of purchasing the temporarily-delicensed beds ($88,000) and the estimated legal and consultant fees for CON preparation ($50,000 combined), a total estimated expense of $138,000.

C. Summary of Recommendation

Staff has reviewed the proposed project's compliance with the applicable State Health Plan standards at COMAR 10.24.01.08.05A and B, and with the CON review criteria at COMAR 10.24.01.08G and recommends that the Commission **DENY** the application. Staff has concluded that that the applicant did not demonstrate a public need for this project consistent with COMAR 10.24.08.05A(1) the applicable Bed Need standard in the Nursing Home Chapter or with the

[4] See discussion at Viability of the Proposal, pp.22-25, *infra.*

[5] The 22 beds were operated by Presbyterian Home of Maryland, Inc. in Towson (Baltimore County). That facility has closed and its successor, Carsins Run at Eva Mar is a CCRC under development in Harford County that will operate with restricted CCF beds excluded from CON requirements. The 22 beds were not CCRC-restricted beds because their existence pre-dated establishment of Maryland's CON program.

general review criterion for Need. COMAR 10.24.01.08G(3)(b). Baltimore County has a surplus of over 1000 CCF beds available to the general public in Baltimore County, under the Commission's bed need projections for 2016. No additional CCF bed capacity is needed in Baltimore County.[6] Staff has also concluded that applicant also failed to demonstrate, under COMAR 10.24.01.08G(3)(c), that its proposed project is the most cost effective alternative to existing publicly available beds in Baltimore County that the public can use without a facility spending additional funds.

The applicant was transparent in explaining that its objective in this proposal was to increase revenue generated from operation of its CCF, in hopes of reducing the deficits it has recently experienced in operating revenues, gains, and other support net of expenses. In other words, it hopes that the ability to admit patients to its nursing home from the general public will enable it to generate income rather than losses from operations. While Glen Meadows' rationale is understandable, it is important to recognize its CCF beds were established under statutory exclusion for CCRCs that waived the requirement for CON review and approval because the CCF would exclusively serve CCRC residents rather than the general public. This law permitted the development of CCRCs in any jurisdiction without regard to whether or not the jurisdiction has an adequate supply of CCF beds. Because no CON review and approval was required, a CCRC such as Glen Meadows was not required to participate in serving Medicaid patients or meet other State Health Plan standards, as is the case with CCFs that serve the general public in Maryland.

Staff recommends that the Maryland Health Care Commission ("Commission" or "MHCC") deny this application, and notes that to do otherwise would establish a precedent for CCRCs that have or obtain CCF beds without CON approval to put those beds into operation and convert them into facilities able to compete with freestanding CCFs simply by purchasing any unrestricted beds that become available on the market. While sympathetic to Glen Meadows situation, staff believes that a change in regulatory policy of this type should not be made through a CON decision but through a change in regulations or law that considers public input. Additionally, staff is unconvinced that Glen Meadows' proposal, if approved, would establish a long-term solution to the operational deficit problems it has encountered. Finally, applicable regulations do not contain a "hardship" clause that would authorize the award of a CON to add publicly available CCF beds at a CCRC that has only CON-excluded beds in a jurisdiction with no identified need for more CCF beds.

Thus, while the applicant indicated that its proposed conversion of CCF bed status might improve operating results in the short-term, it failed to demonstrate an unmet need of the population of Baltimore County for this project, that the proposed project would generally improve access to and the quality of *needed* health care services, or that the project is the most cost effective alternative,

[6] Glen Meadows projects that the 2020 CCF bed forecast, if computed, would show a CCF bed surplus in Baltimore County of "only" 616 beds. See Table III-1, *infra.*

II. PROCEDURAL HISTORY

A. Record of the Review

Please see Appendix 1, Record of the Review.

B. Local Government Review and Comment

No comments were received from the Baltimore County Health Department.

C. Community Support

Letters supporting the proposal were received from: Robert Y. Dubel, President, Glen Meadows Residents' Association; Alma Smith, President of the Maryland Continuing Care Residents Association; Martha Roach, former Chief of Continuing Care for the Maryland Department of Aging (MDOA); Barbara Brocato, consultant to the Maryland Continuing Care Residents Association (MACCRA); and The Glen Meadows Residents Association (151 signatures).

Mr. Dubel's letter focused on Glen Meadows' need to increase occupancy and revenues so as to eliminate or reduce its operational deficits and urged MHCC to consider the "desperate need of our Glen Meadows Community to create a positive cash flow in our budget," and "to give special consideration to our isolated geographic location about half-way between Towson and Bel Air… [where]…there are no health care facilities in Glen Arm, Baldwin, Phoenix, or Fallston." Similar themes were addressed in Ms. Smith's and Ms. Brocato's letters.

Ms. Roach wrote that during her tenure with MDOA she frequently met with representatives of Glen Meadows to "explore ways to make the community fiscally sound." She stated that the addition of a Residential Services Agency at Glen Meadows, combined with the availability of home health care and community-based services has diminished its need for skilled nursing beds.[7] These circumstances ultimately led her to recommend that Glen Meadows acquire skilled nursing beds without changing the number of skilled nursing beds at the facility, thus "offer[ing] Glen Meadows the perfect opportunity to admit outside patients for rehabilitative care without placing an additional financial burden on the facility."

D. Interested Parties

There are no interested parties in this review.

III. PROJECT CONSISTENCY WITH REVIEW CRITERIA AND STANDARDS

A. The State Health Plan

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

[7] Staff notes that reduction of CCF beds is generally regarded as a positive.

The applicable chapter of the State Health Plan for this review is COMAR 10.24.08, the State Health Plan for Facilities and Services: Nursing Home Services ("Nursing Home Chapter" or "Chapter"). The specific standards to be addressed include: COMAR 10.24.08.05A, the nursing home general standards; .05B, the standards that apply to a nursing home project involving new construction; and .05C, the nursing home standards regarding renovation of a facility.

COMAR 10.24.08.05 Nursing Home Standards

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

(1) Bed Need

The bed need in effect when the Commission receives a letter of intent for the application will be the need projection applicable to the review.

The most recent bed need projections when the applicant submitted its February 3, 2017 letter of intent, were those published in the *Maryland Register* on April 29, 2016. The published projection identified no need for additional CCF beds in Baltimore County, showing a surplus of beds, unadjusted for community-based services, equivalent to 16.6% of the existing bed inventory. As shown in Table III-1, below, this results in an excess of 1139 CCF beds in Baltimore County.[8]

Table III-1: CCF Bed Need Projection for Baltimore County

Licensed Beds	Bed Inventory as of January 31, 2016				Projected Need in 2016			
	Temporarily Delicensed Beds	CON Approved Beds	Waiver Beds	Total Bed Inventory	Gross Bed Need Projection	Unadjusted Bed Need	Community -Based Services Adjustment	2016 Net Bed Need
5,351	40	105	105	5,496	4,585	-911	228	0

Source: MHCC Gross and Net 2016 Updated Bed Need Projections for Nursing Home Beds in Maryland. Maryland Register (Issued: April 29, 2016)

The 2016 iteration of the nursing home bed need projection was limited to a bed inventory update. The actual 2016 target year forecast was developed earlier in this decade when overall CCF use rates were declining more rapidly and it was not updated in 2016 because it is outdated in its construction. Staff has begun the process of undertaking an update of the Nursing Home Chapter, including its bed need methodology. Recent CCF census would indicate that the bed surplus for Baltimore County is smaller than the 2016 projection indicates. However, recent occupancy rate experience also indicates that supply is ample. While bed occupancy rates have firmed up in recent years against a gradually declining bed inventory, they have still stayed below

[8] 4,585 CCF beds are projected as needed in 2016 in Baltimore County, which has a bed inventory of 5,496 CCF beds, resulting in an unadjusted CCF bed need of -911 (i.e., an excess of 911 CCF beds). A community-based service adjustment of 228 increases the excess capacity from 911 to 1,139 excess beds. Since this means that there is no CCF bed need in Baltimore County, the bed need is shown as 0. Temporarily delicensed beds remain in the inventory because they can be re-implemented without a showing of need at the facility that delicensed the beds within twelve months of delicensure.

90%. Thus, on an average day during the three years of 2013 to 2015, an average of 570 CCF beds in Baltimore County were unoccupied. This number, of course, does not include the community-based services adjustment.

As noted, this application does not propose the addition of physical bed inventory in Baltimore County. Instead, it seeks to place 22 temporarily delicensed beds back into the licensed bed inventory of the County as publicly-available beds. This proposed project would have the effect of converting 22 beds[9] developed without CON approval and operated for use by CCRC contract holders into beds available to members of the public, despite an excess of publicly-available CCF beds in Baltimore County. Since the beds cannot be relicensed at the CCF that delicensed them since it has closed, the beds would be permanently delicensed if this project is not approved.

(2) <u>Medical Assistance Participation</u>

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

(b) Each applicant shall agree to serve a proportion of Medicaid patient days that is at least equal to the proportion of Medicaid patient days in all other nursing homes in the jurisdiction or region, whichever is lower, calculated as the weighted mean minus 15.5%, based on the most recent Maryland Long Term Care survey data and Medicaid Cost Reports available to the Commission, as shown in the Supplement to COMAR 10.24.08: Statistical Data Tables, or in subsequent updates published in the Maryland Register.

(c) An applicant shall agree to continue to admit Medicaid residents to maintain its required level of participation when attained, and have a written policy to this effect.

(d) Prior to licensure, an applicant shall execute a written Memorandum of Understanding with the Medicaid Assistance Program of the Department of Health and Mental Hygiene to:

(i) Achieve or maintain the level of participation required by .05A2(b) of this Chapter; and

(ii) Admit residents whose primary source of payment on admission is Medicaid.

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

Glen Meadows states that it already participates in the Medical Assistance Program for its continuing care residents who require comprehensive care and have "spent down" their assets, making them eligible for Medicaid reimbursement. From 2010 through 2015 Glen Meadows'

[9]Glen Meadows states that it will only use ten of the 22 CCF beds, reserving the remainder of its beds for members of the community

cumulative proportion of Medicaid patient days was 32.7% of total patient days.[10] The current required participation rate in Baltimore County is 42.59%.

Glen Meadows states that it will sign a Memorandum of Understanding ("MOU") with Medicaid to comply with the requirements of this standard in regard to the patient days generated by admissions from the public. (DI #2, p.16). In response to an MHCC staff question about how the Medicaid participation commitment will be monitored to ensure it is fulfilled, the applicant responded:

> Presbyterian Senior Living maintains an integrated electronic records system which tracks census by payor. Each month, these data are summarized and reviewed in detail on a month-end call with Finance, the VP of Continuing Care Operations and the Executive Director of Glen Meadows. As part of this call and process, the team will review the results and ensure that the required Medicaid percentages are being met.
> (DI #10, p. 1).

The applicant's response indicates a willingness to comply with this standard with respect to the publically available beds it proposes to operate. Twenty-two publicly-available beds operating at a 95% rate of average annual occupancy would generate 3,249 Medicaid patient days at a participation rate of 42.6%.

While Glen Meadows has expressed its willingness to comply with this standard Commission staff does not recommend approval of this project and, thus, has not proposed conditions that would otherwise be included.

(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.

Glen Meadows responded that, since it currently cannot admit patients who are not already CCRC residents, it is not required to provide information to those residents who are prospective comprehensive care patients about the existence of alternative community-based services. Glen Meadows commits that, if it is permitted to admit residents from the general public, 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. (DI #2, p. 17).

(b) Initiating discharge planning on admission; and

[10] Source: MHCC Long Term Care Survey

Glen Meadows states that it initiates discharge planning on admission as part of its development of its Resident Care Plan, and provided a copy of its Discharge Planning Policy and Transfer and Discharge Process, which demonstrates its compliance with this standard. (DI #2, p. 17).

(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.

Glen Meadows states that it provides residential service agency services, social work services, meal and transportation services as well as outpatient physical therapy to residents who are discharged from the nursing center back to independent living at the CCRC. If CCRC residents require Home Health Services, those services are typically provided by Bayada Home Health Services. Glen Meadows permits access to the facility for all Olmstead efforts approved by the Department of Health and Mental Hygiene to provide education and outreach for residents and their families. (DI #2, p. 17).

Glen Meadows complies with this standard.

(4) Nonelderly Residents. An applicant shall address the needs of its nonelderly (<65 year old) residents by:

(a) Training in the psychosocial problems facing nonelderly disabled residents; and

Glen Meadows states that it will augment its current training modules (which employees must complete annually) with a module that addresses the psychosocial problems facing nonelderly disabled residents, and that its licensed social worker will work with its psychiatric provider, Med Options, to develop a curriculum specifically addressing the needs of non-elderly residents.

In addition, the applicant stated that an interdisciplinary team develops programs for residents, and the plan of care incorporates each resident's individualized needs and desires. The care plan for younger residents will incorporate access to programs designed to meet the resident's needs. Glen Meadows currently provides reading materials, access to outdoor areas, a calendar of events and social activities, exercise room, beauty shop, dining room, gift shop, and library/computer room.

(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.

Glen Meadows states that its practice is to initiate discharge planning immediately following admission with the goal of limiting length of stay in order to facilitate discharge to the least restrictive living environment as soon as possible for all residents. Further, it states that its connection with community-based programs facilitates earlier discharge by providing referral resources to assist in addressing residents' at-home needs. A specific discharge plan is completed for each resident based upon the resident's personalized needs and desires. Residents and family members or personal representatives receive appropriate education and provide input into the discharge plan. (DI #2, pp. 17-18).

It is unlikely, given the history of the Glen Meadows' CCF as a CON-excluded facility at a CCRC, that it has served CCF patients under the age of 65. The applicant's response to this standard indicates its intention to comply with the standard if approved to admit patients from the general public.

(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.

Not applicable. This project does not involve new construction or renovation.

(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.

Glen Meadows states that it has its own water and sewer plant that has been inspected and licensed by the State of Maryland. (DI #2, p. 18). This complies with the 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.

Glen Meadows' 31-bed CCF does not have specialized units. Glen Meadows listed a range of conditions that are common to the patients in its nursing facility and stated that it expects to continue to serve patients with the same types of conditions. Common disease conditions include heart disease, dementia, and cancer. The applicant notes that it commonly provides rehabilitative services following joint replacement surgery and also provides end-of-life care. The applicant stated that it employs staff trained in intravenous therapy, rehabilitation therapies, respiratory services, wound care, total parenteral nutrition, enteral nutrition, pain management, and neuromuscular electrical stimulation in the treatment of dysphagia.

Glen Meadows states that the design of its skilled nursing facility is consistent with the provisions outlined in the National Institute of Building Sciences' 2011 revision of its *Whole Building Design Guide* for skilled nursing facilities. (DI #2, pp. 19-20).

The applicant complies with the standard.

(8) Disclosure

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

Glen Meadows states that none of its principals has ever pled guilty to, or been convicted of, a criminal offense in any way connected with the ownership, development, or management of a health care facility. Staff concludes that the applicant has complied with the disclosure requirements of 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.

Glen Meadows states that it currently provides skilled nursing care, assisted living services. and functions as a Residential Services Agency to provide supportive home care services to its non-CCF residents. In addition to the services it provides directly, it also works with a variety of other providers, including:

- **Stella Maris Adult Day Care Center** – for a day program designed to combine health services and social activities to help individuals stay mentally and physically active, reduce isolation and prevent decline;

- **Stella Maris Hospice** and **Gilchrist Hospice** - for end of life care and services;

- **Bayada Home Health Services** - for services in the person's home such as assisting with activities of daily living and safely managing tasks around the home, companionship, therapy and rehabilitative services and short or long-term nursing care for an illness, disease or disability;

- **Arden Court** and **Brightview** - for specialized memory support and care (dementia services);

- **Greater Baltimore Medical Center** - for acute hospital inpatient and outpatient care;

- **University of Maryland St. Joseph Medical Center** - for acute hospital inpatient and outpatient care; and

- **MedStar Franklin Square Medical Center** - for acute hospital inpatient and outpatient care.

(DI#2, pp. 19, 20).

Staff concludes that the applicant has met this standard.

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

(1) <u>Bed Need</u>

(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.

Applicant's Response

The applicant states that it is not seeking to add new nursing home bed capacity in Baltimore County. Nonetheless, while acknowledging that there is no need for publicly-available CCF beds in Baltimore Coutny, the applicant pointed out that the bed need projections published by the Commission have not been updated since April 2016, and performed its own calculations, using the MHCC methodology with updated population and bed inventory information. Table III-1 shows the 2016 MHCC bed need projection, and the applicant's alternate calculation for a target year of 2020.

Glen Meadows acknowledged that its modeling of nursing home bed need still shows a surplus of beds in Baltimore County in 2020, but stated that it was providing this information to show that the gross bed need for 2010 is larger than in the published projections and that, as a result the excess CCF bed capacity in Baltimore County is smaller. It also noted that Glen Meadows project will not add to the excess capacity. (DI#2, p. 25).

Table III-1: Glen Meadows' Comparison of MHCC's CCF Bed Need Projection for Baltimore County (published April 29, 2016) with Applicant's Updated Projection Using MHCC Methodology

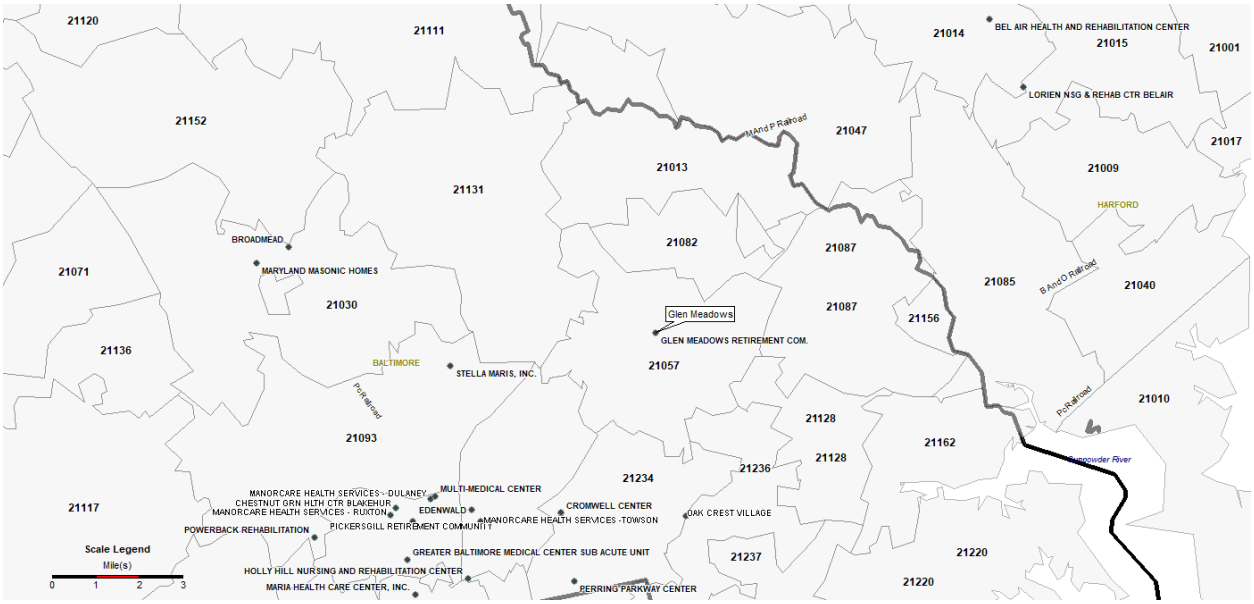
	CCF Bed Inventory	Gross Bed Need Projection	Unadjusted Bed Need	Community-Based Services Adjustment	Projected Net Bed Need
As per MHCC Bed Need Projection for 2016 published on April 29, 2016	5,496	4,585	-911	228	…for 2016 = 0 (bed surplus of 1,139)
As per Glen Meadows' Updated projection for 2020	5,465 (provided by MHCC as of 3/13/17)	5,102	-363	253	for 2020 = 0 (bed surplus of 616)

Source: DI #2, pp. 21-25.

Glen Meadows stated its view that allowing it to admit non-CCRC patients will improve access to CCF services in the northern areas of Baltimore County, stating that "all of the facilities in that region of the county are located to the south and west of GM, with no other facilities located in GM's Zip Code and north," and that "such a re-distribution of existing beds already in the MHCC's bed inventory...would result in residents of this section of the county having a choice to go to a high quality facility that is closer to their homes." (DI #2, pp. 25-26).

Figure 1

Baltimore County Comprehensive Care Facilities



Source:

Staff Analysis

With respect to bed need projection, MHCC staff has been reviewing approaches to updating the SHP's CCF bed need forecasting methodology. The target year 2020 projections it has considered using models that are similar in their structure to the current methodology show a higher bed surplus for Baltimore County when compared to the Glen Meadows projections.[11] While the number of excess beds is lower than the most recently published bed need projection, this new model still identifies a substantial surplus.

This application seeks to relocate 22 temporarily delicensed beds formerly operated at the Presbyterian Home of Maryland, Inc. in Towson to Glen Meadows. As stated in the discussion of COMAR 10.24.08.05A(1) Bed Need (*supra*, page 5), there is no need for additional CCF beds in Baltimore County; in fact there is a substantial surplus. The applicant states that its intent is to expand the inventory of beds available to the general public by converting 22 of its CCRC-restricted beds to unrestricted status. Thus the actual, physical bed supply in Baltimore County would not be affected, but the effective supply of beds available to the general public would increase by 22 (although the applicant projects that no more than ten of the beds would be available to the public because the balance would be needed for CCRC residents).

In its project description as well as in addressing the Need Criterion, COMAR 10.24.01.08G(3)(b), Glen Meadows makes it clear that its proposal is driven by the facility's need for higher CCF bed occupancy and greater revenue generation. (DI #2, p. 9). As stated immediately above, it posits that allowing it to operate non-restricted beds would improve

[11] Staff's work was done to prepare for a scheduled update of the Nursing Home Chapter in 2018.

geographic access for residents of this section of Baltimore County, but provided no evidence or analysis of unmet need among that population. Staff research shows several nursing homes within a 15-30 minute drive of Glen Meadows, so this access argument is not compelling.

Paragraph (a) of the standard requires an applicant that is using beds currently in the Commission's inventory to "address 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*."

Part (b) of the standard requires an applicant who is seeking to relocate beds to "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."*

Staff concludes that Glen Meadows has not met either test of the standard. It has not shown a need for more CCF bed availability for the target population of Baltimore County. Its case for the project is purely facility-driven. It wants to increase its CCF service revenue because the demand for its nursing facility beds has declined in recent years. However, as recently as CY 2014, CCF bed demand was quite high, at 98 percent average annual bed occupancy.

Staff recommends that the Commission find the applicant has not met this standard.

(2) <u>Facility Occupancy</u>

(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.

<u>Applicant's Response</u>

Glen Meadows presented the following information regarding its last two years of operation.

Table III-2: Glen Meadows' CCF Use

Year	Patient Days	Bed-Days Available	Average Annual Occupancy Rate
2015	10,004	11,315	88%
2016	8,046	11,346	71%

Glen Meadows explained that its CCF bed occupancy has declined as a result of "a number of care delivery and reimbursement initiatives over the past few years … [resulting in] … excess capacity to provide services to non-CCRC residents."

The factors it cited were: (1) the Centers for Medicare and Medicaid Services (CMS) rule

requiring a three-day qualifying hospital stay to authorize a skilled nursing benefit for Medicare beneficiaries has resulted in more patients being discharged from the hospital to home with outpatient or home health agency services instead of being admitted to skilled nursing care[12]; (2) insurance plans have become less willing to approve a stay or are significantly reducing approved lengths of stay in skilled nursing facilities, shifting referrals to outpatient or home health agency services; (3) Glen Meadows' residents are increasingly opting to receive home health agency services or at home Ssrvices (provided by Glen Meadows Residential Service Agency) instead of skilled nursing services; and (4) access to community-based services such as dementia and memory care services, adult day care services and in-home hospice services have all contributed to the residents remaining in their home and not moving to skilled nursing. (DI #2, p. 26).

The applicant stated that, under paragraph (b), this rule should not apply to its proposed project because, as its nursing home has been a "closed campus" available only to CCRC subscribers, it is unable to admit patients from outside the community. (DI #10, p. 3).

Staff Analysis

While Glen Meadows has seen a recent decline in its CCF bed occupancy, in the four years of 2011 to 2014, the facility operated at full capacity (an average of 96.7% occupancy) based on the Nursing Home Chapter's use of a 95% average annual occupancy rate as a measure of full capacity use of CCF beds. In 2015, bed occupancy was still about at the State average. (See Table III-3, immediately below).

Table III-3: Glen Meadows' Utilization and Payor Mix Statistics, 2010-2015

Calendar Year	CCF Beds	Total Available CCF Days	Total Patient Days	Private Pay Patient Days	Medicaid Patient Days	Medicare Patient Days	Other Patient Days	Average Annual Occupancy Rate
2010	31	11,315	10,308	5,821	2,128	1,565	794	91.1%
2011	31	11,315	10,902	5,115	3,400	1,843	544	96.3%
2012	31	11,346	10,778	4,806	3,970	1,986	16	95.0%
2013	31	11,315	11,052	5,367	3,589	1,813	283	97.7%
2014	31	11,315	11,067	4,277	4,957	1,264	569	97.8%
2015	31	11,315	10,004	3,367	4,172	2,019	446	88.4%

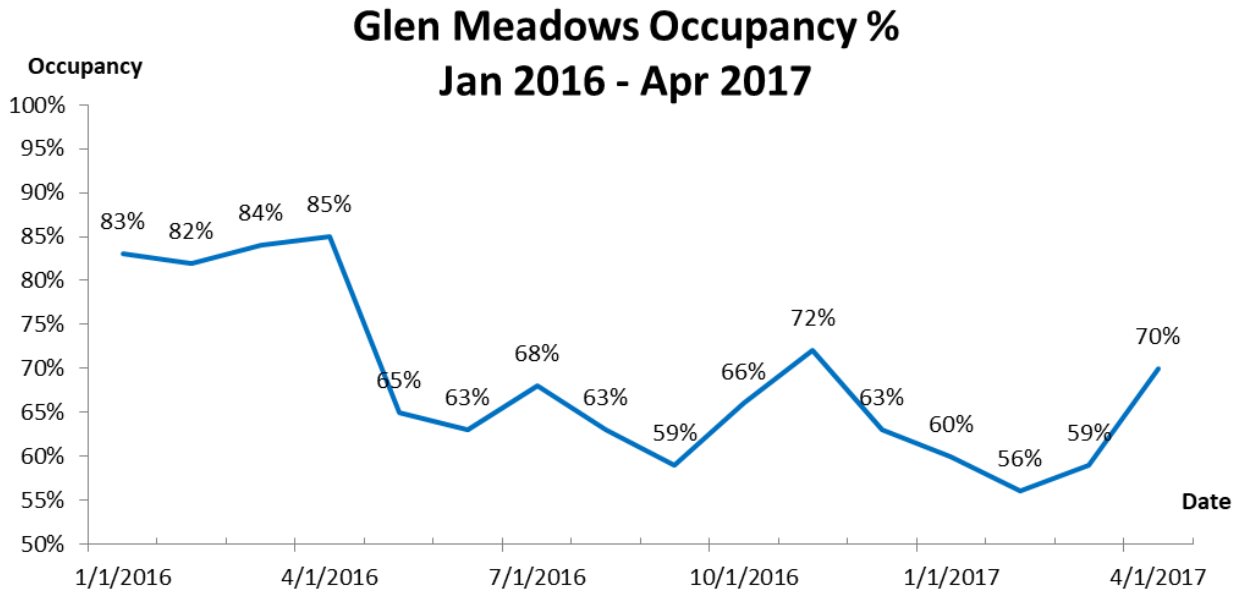
Source: MHCC's Annual Nursing Home Surveys

The dip in CCF bed occupancy at Glen Meadows only began in 2015 but has been relatively sharp. In the 12 months ending in April of this year, Glen Meadows reports that average annual bed occupancy was 64%. Notably, Medicare patient days increased substantially between 2014

[12] Staff notes that this CMS rule has been in effect for years.

and 2015, which is not consistent with some of Glen Meadows' explanations listed above for the drop in demand for CCF beds.

Figure 1: Glen Meadows' CCF Bed Occupancy Trends, January 2016 – April 2017



Source: DI #12, Tabs A and B.

Glen Meadows made the point that, as a facility restricted to use by its members, when bed demand among those members declines, there is no way to meet the facility occupancy standard.

This standard is intended for use as a test for facilities that are actually adding physical bed capacity rather than simply expanding the population that can use the facility's existing bed capacity, as is the case here. As such, it is not truly applicable to this project. High bed occupancy is a logical test for true CCF expansion projects. The recent low occupancy of beds at Glen Meadows is the basis for Glen Meadows seeking approval for this project. In staff's view, the key fact with respect to bed occupancy in this review is that high CCF bed occupancy is not seen at the facility or jurisdictional level that would supporting approval of this project's result, which is the expansion of CCF bed inventory in Baltimore County that is available to the general public. There is no demonstration of need that the general public in Baltimore County needs more availability of CCF beds.

(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 applicant states that, at the time of preparation of its application, the most recent jurisdictional data in the Commission's Public Use Data Set was for 2014, and showed jurisdictional occupancy in Baltimore County to be 89.4% when calculated based on the number of licensed beds at the beginning of the year. The applicant also pointed out that there were 16 fewer beds licensed at year end, and that calculating occupancy on that basis would raise the overall bed occupancy rate for the jurisdiction to 89.7%. The applicant asserts that "[i]n either case, this standard is essentially met." Staff notes that, since the application was filed, more recent jurisdictional occupancy data has been released, which showed Baltimore's jurisdictional bed occupancy in 2015 to be 89.9%, on average.[13]

Staff Analysis

This proposed project does not result in establishment of a new nursing home, as that would be commonly understood, although the project does have the effect of establishing an additional CCF in Baltimore County that can compete with other CCFs for admissions from the general population. It adds to the generally available bed capacity in Baltimore County, so this standard has some relevance.

In this case, the most recent published average annual occupancy rate for Baltimore County CCF beds is just under the 90% threshold. Thus, to the extent that this standard is considered relevant to this project because the project creates an additional CCF in Baltimore County that competes for all prospective nursing home patients, the project does not comply with this standard.

(4) Medical Assistance Program Participation

Paragraphs (a) and (b) of this standard are not applicable to this CON application, as the proposed project is not a new nursing home and it does not involve new CCF beds.

(c) An application for nursing home expansion must demonstrate either that it has a current Memorandum of Understanding (MOU) with the Medical Assistance Program or that it will sign an MOU as a condition of its Certificate of Need.

(d) An applicant for nursing home expansion or replacement of an existing facility must modify its MOU upon expansion or replacement of its facility to encompass all of the nursing home beds in the expanded facility, and to include a Medicaid percentage that reflects the most recent Medicaid participation rate.

This standard duplicates some requirements of COMAR 10.24.08.05A(2), the General Standard regarding Medical Assistance Participation. The applicant referred to its response at that section. Glen Meadows has stated that it will sign an MOU with Medicaid to comply with the

[13]http://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_shp/documents/shp_nursing_home_2015_occupancy_20170331.pdf

requirements of this standard with regard to the patient days generated by admissions from the public. (DI #2, p.16). Staff refers to the discussion regarding COMAR 10.24.08.05A(2) (*supra*, pages 6-7).

(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.

Glen Meadows reports that it has no outstanding Level G or higher deficiencies and that it maintains a demonstrated program of quality assurance. The applicant included its Quality Assurance Policy as an exhibit to its application. (DI # 2, Tab 5A).

In order to provide some consideration of quality of care beyond the narrow specific requirements of this standard, Table III-4 below provides a summary of Glen Meadows' performance on selected quality measures. The overall rating was strong. Of 13 selected measures, the facility rated better than the statewide average on nine, was average on one measure, and below the average on three measures.

Table III-4: Summary of Glen Meadows' CCF Quality Measures

Quality Measure	MD Avg	Glen Meadows
Falls		
Long-stay residents that did not fall and sustain a major injury	**97%**	97%
Pain		
Long-stay residents who do not report moderate to severe pain.	**93%**	90%
Short stay residents who did not have moderate to severe pain.	**86%**	95%
Pressure ulcers		
High risk long stay residents without pressure sores. (4)	**93%**	91%
Short stay residents that did not develop new pressure ulcers or with pressure ulcers that stayed the same or got better.	**99%**	100%
Vaccinations		
Long stay residents assessed and given influenza vaccination during the flu season.	**95%**	100%
Short stay residents assessed and given influenza vaccination during the flu season.	**83%**	100%
Nursing home staff receiving influenza vaccination during flu season (2015-2016).	**87.6%**	73.2%
Restraints		
Percent of long-stay residents who were not physically restrained.	**99%**	100%
Deficiencies		
Number of Health deficiencies cited in the most recent annual OHCQ health inspection (2016).	**11.7**	7

Resident/Family Satisfaction Survey Results (2015 Long Stay and Short Stay Surveys)		
The rating of overall care provided in the nursing home – long term residents. (2016) (1 being worst care and 10 the best care.)	**8.1**	8.3
The rating of overall care received from the nursing home staff, overall – short stay residents. (1 being worst care and 10 the best care.)	**7.5**	9.1
Percentage of long term residents/family who responded "Yes" to "Would you recommend the Nursing Home?"	**86%**	91%

Source: MHCC Consumer Guide to Long Term Care and CMS Nursing Home Compare

Not surprisingly (since the data comes from the same source), Nursing Home Compare at Medicare.Gov gave Glen Meadows an overall rating of five stars (Much Above Average) and four stars (Above Average) on Quality Measures.[14]

Staff recommends that the Commission find that the applicant meets this standard.

(6) Location

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

The proposed project is not a relocation of a facility. This standard is not applicable.

C. Renovation of Facility. The Commission will review projects involving renovation of comprehensive care facilities using the following standards in addition to .05A(1)-(9):

This section is not applicable as there is no renovation associated with this proposal. The project's compliance with the five remaining general review criteria in the regulations governing Certificate of Need is outlined below:

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.

Applicant's Response

Glen Meadows began its response to this criterion by referring to its response to the Bed Need standard, COMAR 10.24.08.05B(1), where it stated that it was not seeking to add beds to the inventory in Baltimore County. The applicant also posited that the surplus in the County was considerably less than that shown in the latest published bed need projections for 2016, and provided its own analysis using the MHCC methodology with updated population and bed

[14]https://www.medicare.gov/nursinghomecompare/profile.html#profTab=3&ID=215278&state=MD&lat=0&lng=0&name=glen%2520meadows&Distn=0.0

inventory information. Further, it suggested that access to nursing home beds would be improved for residents in its sector of the county. Glen Meadows stated that the *facility and the CCRC* need the public beds to bolster its finances.

Discussing the reasons behind the recent census dip at Glen Meadows and the fact that "nursing centers have high fixed staffing and operating costs, it states that "the goal…[is] to reach and maintain financial viability. Obtaining the public beds will allow G[len] M[eadows] to serve its own residents as well as the local community including residents of other assisted living communities and areas north of [the CCRC]." (DI #2, p. 32). At present levels of demand, Glen Meadows stated that it consistently has nine to twelve open beds, and that "just five additional beds occupied even at Medicaid rates of $235 a day for a year would provide $428,000 in incremental revenues…with very little additional cost." (DI #2, p. 33).

Staff Analysis

Bed Need

As previously noted, no need for additional CCF beds has been identified in the Commission's published projections, which show a substantial surplus of CCF beds in Baltimore County. Although the applicant correctly states that it would not add to the bed inventory, it would effectively increase the number of CCF beds and nursing home that are actually available to the general public.

Facility and Jurisdictional Occupancy Rates

As previously discussed, Glen Meadows consistently experienced relatively high bed occupancy until 2016, at which point bed occupancy began a sustained slide that the applicant attributes to changing requirements by payors and individual CCRC members' preference for remaining independent with support services.[15] Thus the applicant's "need" to convert CCRC-restricted beds to publicly-available beds is based on the CCRC's economic situation. The applicant projects that occupancy would rise to 78%, 87%, and 93% respectively, in 2018, 2019, and 2020 if this project is approved.

Baltimore County's jurisdictional bed occupancy, at 89.5% over the last three years of available data, is slightly higher than the overall average for Maryland.

Summary of Compliance with the Need Criterion

The applicant indicated that allowing it to serve the general public in its CCF beds would be likely to increase its ability to generate higher CCF service revenue. However, it did not demonstrate an unmet need for additional beds by the general population in Baltimore County or how the proposed project would overcome any material barriers to access to care. In the past two years, Glen Meadows' subscribers have had more than adequate availability and accessibility to

[15] From 2010 through 2015, the facility's average occupancy was above 94%. It dipped to 71% in 2016, and for the twelve months between May 2016 and April 2017 its occupancy was just under 64%.

CCF beds, which is one way to characterize the problem that the proposed project is intended to address.

While the applicant's proposal is an understandable business response to its desire to boost revenue and generate net income in its operations, this institutional objective is not what this criterion is meant to measure. It is important to recognize that the CCF beds at this CCRC were established under a provision that excluded Glen Meadows from having to obtain a Certificate of Need to establish the CCF, on the rationale/legislative purpose that the beds would only be used for its CCRC residents. Allowing Glen Meadows to convert CON-excluded beds to publicly-available status through the acquisition of beds ready to exit the county's inventory because of a facility closure is not consistent with the regulatory policy established for CCRC development. Staff believes that changing this policy as a response to the particular situation of a single CCRC is not appropriate and that any such changes should take place through changes to applicable law or regulations.

Staff notes that the CON-excluded bed policy for CCRCs was developed to assure that CCRCs would not face barriers in CON regulation to assuring that they could meet the needs of their resident populations for a continuum of care that includes CCF services. In this case, just three years ago, Glen Meadows needed all of its 31 beds for this purpose. Staff concludes that it is likely that Glen Meadows may find that it needs all or nearly all of its beds just to have sufficient bed capacity for its resident population's needs again in the future, which suggests that the benefits Glen Meadows perceives as deriving from an ability to compete for admissions from the general public may not be realized in a significant manner.

Finally, staff believes that reduced demand for nursing home services by the resident population of a CCRC, which is consistent with long-term trends in general demand for CCF services, can be viewed in a positive light and, if it is primarily resulting from the substitution of CCF services with nursing and personal care services provided in the residents' independent living or assisted living unit, the long-term solution to the fiscal problem faced by Glen Meadows may be to restructure its pricing and service delivery model to make the substitution of institutional services with in-home service delivery self-sustaining.

Staff recommends that the Commission find that the applicant has not demonstrated a need for the project.

C. COMAR 10.24.01.08G(3)(c) <u>Availability of More Cost-Effective Alternatives</u>
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 stated that because this project does not involve any construction or renovation, there are no more cost-effective alternatives.

In response to staff questions exploring Glen Meadows' options for improving its financial situation – specifically whether Glen Meadows considered raising the prices for the support

services (to which Glen Meadows attributed a major role in reducing the skilled nursing census) – to help offset revenue lost to a declining nursing home census, the applicant stated that it reviews and adjusts these rates annually. Glen Meadows noted that its rates are slightly above the prevailing market for similar services, and that it "must be competitive or risk losing the business." (DI #14, p. 2).

Staff concludes that the project is a relatively low cost approach ($138,000) to providing Glen Meadows with an ability to generate more revenue by filling its CCF bed capacity more frequently. Obviously, a larger CCF patient census will require higher operating expense levels in addition to the costs involved in purchasing delicensed beds and obtaining a CON. As previously noted, staff is not convinced that there is not a preferable longer-term solution to the problem faced by Glen Meadows, which is not a problem of need for CCF services by its resident population or the larger population of Baltimore County. The resident population of Glen Meadows will continue to need nursing, rehabilitative, and personal care services as they age in place and this need may intensify if the average age of residents increases over time. However, the resident population wants to obtain these services in a setting other than a CCF and Glen Meadows appears to have accommodated this preference by its contract holders, to a large extent. However, it has not figured out how to meet this customer need in a profitable way and, for this reason, seeks to expand its CCF customer base. Glen Meadows needs an ability to operate its entire CCRC on a more sustainable basis. It is a retirement community where the paradigm of care and service provided through the lifetime of its residents is changing.

Staff concludes that the proposed project has not been demonstrated to be the most cost effective alternative. While Glen Meadows' project cost is relatively low, there is a large excess of existing publicly available beds in Baltimore County that the public can use without a facility spending additional funds.

Staff recommends that the Commission find that the applicant has not demonstrated that its proposed project is a more cost effective alternatives than providing the service through alternative existing facilities.

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.*

The applicant reiterated that its nursing home bed occupancy had experienced a decline, resulting in excess capacity and a revenue shortfall, and that the purpose of its proposal is to allow it to provide services to the general public, resulting in improved financial performance and enhanced viability of the entire CCRC. Table III-5 below excerpts some (actual and projected) utilization and financial data for Glen Meadows' CCF, coinciding with the beginning of the CCF's downturn in CCF bed occupancy.

If it receives a CON to operate publicly-available beds, the applicant projects a very gradual increase in occupancy that tops out at 93%, at which point the CCF is projected to show a small positive margin, beginning in 2020.

Table III-5: Actual and Projected Utilization and Operating Statistics for Glen Meadows' CCF (only)

	2015	2016	2017	2018	2019	2020	2021	2022
Key Statistics								
Licensed Beds	31	31	31	31	31	31	31	31
Admissions	75	84	86	120	126	129	124	119
Patient Days	10,004	8,046	8,216	8,826	9,844	10,552	10,553	10,553
Occupancy Percentage	88.4	70.9	72.6	78.0	87.0	93.0	93.3	93.3
Payer Mix (by patient days)								
Medicare	20.2%	27.2.%	26.0%	30.7%	36.2%	37.7%	38.5%	38.1%
Medicaid	41.7%	38.0%	39.0%	35.1%	32.4%	36.3%	38.8%	39.5%
Commercial Insurance	3.9%	8.7%	7.9%	8.1%	7.5%	6.6%	6.0%	13.7%
Self Pay	29.8%	26.0%	24.0%	22.6%	20.2%	16.2%	13.9%	13.7%
Financial Operating Results								
Revenue	$3,587,594	$2,946,317	$3,014,819	$3,446,456	$4,087,219	$4,473,759	$4,582,130	$4,701,753
Expense	$3,906,034	$3,559,792	$3,672,109	$3,995,253	$4,348,317	$4,456,076	$4,563,474	$4,675,410
Income from Operations	**($318,440)**	**($613,475)**	**($657,290)**	**($548,797)**	**($261,098)**	**$17,683**	**$18,656**	**$26,343**

Source: CON application (DI #10, Table G; DI #23); MHCC Long Term Care Surveys.

Table III-6 below correlates Glen Meadows' CCF bed occupancy rate with CCF financial performance and with the financial performance of the CCRC in its entirety.

Table III-6: Actual and Projected Financial Results, Glen Meadows Nursing Home and Entire CCRC

	2012	2013	2014	2015	2016	2017	2018	2019	2020
Bed Occupancy	95.0%	97.7%	97.8%	88.4%	70.9%	72.6%	78.0%	87.0%	93.0%
CCF net income	$296,146	$543,455	($78,180)	($318,440)	($613,475)	($657,290)	($548,797)	($261,098)	$17,683
CCRC net income	$439,702*	$1,100,081	($410,012)	($693,435)	($718,716)	($431,061)	($366,828)	$89,998	$700,916

* Does not include "Loss on abandoned project" of $451,714

Source: CON application Tables (DI#2), MHCC Long Term Care Surveys, and DI#23

Staff notes that, in 2012 and 2013, high nursing home bed occupancy correlated with nursing home profitability, and with profitability of the CCRC as a whole. In fact, in 2012 and 2013 nursing home profits made up 55% of the total CCRC's profits. However, in 2014 the nursing home reportedly lost $78,000 *despite a nursing home occupancy rate that was actually slightly higher than that of 2013* (97.8% to 97.7%), a year-over-year reversal of $621,635. At the same time, the CCRC's total performance went from a gain of $1.1 million to a loss of $410,000, a reversal very close to that of the nursing home.[16] While this outcome would not be surprising, it is difficult to then draw the conclusion that higher nursing home occupancy will be the salvation of Glen Meadows CCRC, which is essentially the premise of this application. Thus, with the information on hand, it is difficult to project that this project will lead to long-term viability of the Glen Meadows Community.

[16] Glen Meadows explained that total expenses for 2014 increased $455,000, an "increase [that] was mainly due to an increase in management fee expense charged to Glen Meadows by [its parent] PSL in 2014. In 2013 and 2012, PSL only charged back to the community direct salary expenses related to Glen Meadows executive director, business office coordinator and human resources director. In 2014, PSL charged the direct salary expenses, but also charged Glen Meadows the same management fee (based on percentages of revenue) that is charged to all other PSL communities." (DI #23).

Under this criterion, the Commission is charged with assessing whether the financial and nonfinancial resources, including community support, necessary to implement and sustain the project are available. The resources to implement the project are available – only bed rights are being purchased, with no expense for actual expansion of the facility. Assessing the long term availability of resources to sustain the project is less certain. Staff has excerpted information from the last five Glen Meadows' audited financial statements to produce Table III-7 below.

Table III-7: Excerpts from Glen Meadows' Audited Financial Statements, 2012-2016

	2012	2013	2014	2015	2016
Income (Deficit)	$ 439,702*	$ 1,100,081	($ 410,012)	($ 693,435)	($ 718,716)
Cash	$ 235,298	($ 604,426)	$ 50,832	($ 130,624)	$ 103,878
Total Assets	$37,269,454	$36,670,247	$36,042,237	$34,508,333	$34,536,211
Total Liabilities	$60,700,562	$58,839,652	$58,748,171	$58,152,337	$58,818,247
Due to affiliated entity (PSL)	$20,630,865	$19,916,534	$21,025,499	$22,756,431	$24,768,163

Source: Audited financial statements

* Does not include "Loss on abandoned project" of $451,714

Review of Glen Meadows' financial statements shows:

- Cumulative losses from operations of $1.82 million over the last three years;
- Positive cash flow in three of the last five years;
- Total liabilities that significantly exceed total assets; and
- A large and growing debt to its sole member, Presbyterian Senior Living.

Indeed, the Auditors Report for 2016 closed with the following statement:

> The accompanying consolidated financial statements have been prepared assuming that Presbyterian Senior Living Services, Inc. will continue as a going concern. As discussed in Note 18 to the consolidated financial statements, the Corporation has suffered recurring losses from operations; its total liabilities exceeds total assets; and the Corporation's continued operations are dependent upon the continued support of Presbyterian Senior Living. This raises substantial doubt about the Corporation's ability to continue as a going concern.
>
> The consolidated financial statements do not include any adjustments that might result from the outcome of this support.

Thus, it appears that the long term viability of Glen Meadows may very well depend on Presbyterian Senior Living's ongoing ability and willingness to provide ongoing support, unless the potential for additional revenue created by approval of this proposal was sufficient to put Glen

Meadows in the black. The applicant did not project that its parent would seek to close Glen Meadows if a need for ongoing support continues.

Staff concludes that approval of this project is likely to improve Glen Meadows' bottom line although it is uncertain whether that improvement would be sufficient to put its operations in the black. As noted, staff also has doubts with respect to whether the recent drop in CCF bed occupancy at Glen Meadows is conclusive evidence that its 31 beds will not ultimately return to high levels of occupancy generated from its resident population, given that this was the case prior to 2016. It does appear that Glen Meadows has the availability of resources, through its parent, to sustain operations, whether or not it is authorized to generate CCF revenues by admitting patients to its CCF from the general public.

E. COMPLIANCE WITH CONDITIONS OF PREVIOUS CERTIFICATES OF NEED

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

Glen Meadows has not received a CON in the past.

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

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

Glen Meadows stated that it does not anticipate that this project will have any material impact on other CCFs, as the number of projected additional admissions at GM is relatively small. It also claims that it will improve access for residents of the northeast region of Baltimore County and improve the facility's financial performance. (DI #2, p. 36).

Staff agrees that the likely impact on other facilities would be small. It is also likely that approval of the project may marginally improve access for patients needing CCF services in the northeastern section of Baltimore County, although this improvement is not material. Residents of this area are within 15-30 minutes' drive of several CCFs. Approval of the project could have the impact of improving Glen Meadows' bottom line operational performance and slightly decreasing the occupancy of existing CCFs with publicly available beds..

IV. SUMMARY AND STAFF RECOMMENDATION

This application seeks Certificate of Need approval to convert 22 of its 31 CCF beds to publicly-available beds. All of the beds are currently CCRC-restricted nursing home beds that it developed without a CON through the exclusion provision that permits a CCRC to operate CCF beds that are intended primarily for contract-holding members of its community and are not available to the general public.

Staff has analyzed the proposed project's compliance with the applicable State Health Plan standards in COMAR 10.24.01.08.05A and B, and with the Certificate of Need review criteria at COMAR 10.24.01.08G(3)(b)-(f). Staff recommends that the application be denied because; (1) there is not a general public need for the beds in Baltimore County, which has a substantial CCF bed surplus; and (2) the applicant did not demonstrate that this bed conversion is the most cost-effective alternative than "providing the service through alternative existing facilities ...," as required by COMAR 10.24.01.08G(3)(c).

The proposed project effectively increases the number of CCF beds that are made available to the general public. The applicant identified its institutional need for more revenue because of its recent operational deficits, which are, in part, a result of reduced demand by its resident population for CCF services. In staff's view, the inability of Glen Meadows to implement a cost reduction and pricing strategy in response to the changing service preferences of its resident population is not a basis for putting unneeded bed capacity that has been retired in Baltimore County back into use.

Approval of this project would signal to Maryland's CCRCs that CON-excluded beds that were developed and operated without regulatory approval or Medicaid participation requirements (or compliance with other State Health Plan standards) can be converted, through the purchase and "relocation" of CCF beds, to beds that can serve the general public. Thus, the CCRCs would have publicly available beds that would compete directly with existing nursing homes that obtained CON approval. As previously noted, existing Maryland law and regulations permit CCRCs to be developed anywhere in the State, whether or not there is an identified need for CCF beds to serve the general public in the jurisdiction. A CCRC thus avoids the regulatory burden of obtaining a CON or complying with requirements related to serving Medicaid patients in exchange because they will not directly compete with freestanding nursing homes for admissions arising from the general public. While staff is sympathetic to the financial problems experienced by Glen Meadows, it does not believe that upending regulatory policy with respect to CCF beds developed as part of CCRCs is an appropriate response to the issues presented by this single CCRC.

Staff would note that its recommendation of denial for this project is consistent with the staff recommendation made for the only other similar project that sought to "relocate" temporarily delicensed CCF beds in a jurisdiction with no CCF bed need to a CCRC with conversion of excluded beds to publicly-available beds. In 2015, staff recommended denial of a proposal to convert existing CON-excluded CCF beds at Ingleside at Kings Farm, a Montgomery County CCRC, to general public beds, effected through purchase of temporarily delicensed beds from another CCF provider in the same jurisdiction. That application was withdrawn prior to final action by the Commission.

IN THE MATTER OF	*	**BEFORE THE**
	*	
PRESBYTERIAN SENIOR	*	**MARYLAND HEALTH**
	*	
LIVING SERVICES, INC. d/b/a	*	**CARE COMMISSION**
	*	
GLEN MEADOWS RETIREMENT	*	
	*	
COMMUNITY	*	
	*	
Docket No. 17-03-2395	*	

* *

FINAL ORDER

Based on Commission staff's analysis and recommendations contained in the Staff Report and Recommendation, it is, this 19th day of October, 2017, by a majority of the Maryland Health Care Commission, **ORDERED:**

That the application for Certificate of Need submitted by Presbyterian Senior Living Services, Inc. d/b/a Glen Meadows Retirement Community to relocate 22 temporarily delicensed, publicly available comprehensive care facility beds and convert 22 of its CCRC-restricted comprehensive care facility beds to publicly-available beds be, and hereby is, **DENIED**.

MARYLAND HEALTH CARE COMMISSION

APPENDIX 1

Record of the Review

Record of the Review

Item #	Correspondence File	Date
1	Commission staff acknowledged receipt of Letter of Intent	2/6/17
2	The applicant filed the Certificate of Need application	4/7/17
3	Letters of Support Martha Roach Robert Dubel Alma Smith Barbara Brocato Residents of Glen Meadows	Various Dates
4	Commission staff acknowledged receipt of application for completeness review	4/11/17
5	Commission staff requested that *The Baltimore Sun* publish notice of receipt of application	4/11/17
6	Commission staff requested that the *Maryland Register* publish notice of receipt of application	4/11/17
7	Notice of receipt of application as published in *The Baltimore Sun*	4/19/17
8	Commission Staff found the application incomplete and requested completeness information	4/27/17
9	Glen Meadows E-mailed Commission staff Audited Financials of Glen Meadows for 5 years	5/9/17
10	Commission staff received response to completeness information	5/22/17
11	Commission staff sent a second set of completeness questions	6/9/17
12	Glen Meadows responded to completeness questions of 6/9/17 questions	6/16/17
13	Commission staff sent applicant additional questions	7/6/17
14	Commission staff received response to information request of 7/6/17	7/18/17
15	Commission staff notified the applicant of formal start of review of application will be 9/1/17	8/14/17
16	Commission staff requested that *The Baltimore Sun* publish notice of formal start of review	8/14/17
17	Request made for comments from the Local Health Planning Department on the CON application	8/14/17
18	Commission staff requested that the *Maryland Register* publish notice of formal start of review	8/15/17
19	Notice of the formal start of review was published in *The Baltimore Sun*	8/23/17
20	Staff emailed consultant to applicant seeking a better version of a map that illustrated a statement made in the application	9/21/17
21	Applicant wrote to Commission clarifying its expectation of using only 10 of the requested 22 beds as “publicly available” beds	9/22/17
22	E-mail exchange between staff and applicant regarding history and background of Glen Meadows	9/26/17
23	E-mail exchange regarding statistics and finances in years prior to CON tables	9/28/17

APPENDIX 2

Pertinent Commission Regulations

Regarding Continuing Care Retirement Communities

COMAR 10.24.01.01B: Terms Defined.

(12) Health Care Facility.

(a) “Health care facility” means:

. . .

(b) "Health care facility" does not mean:

. . .

(ii) For the purpose of providing an exclusion from a Certificate of Need under Health-General Article §19-120, Annotated Code of Maryland, a facility to provide comprehensive care constructed by a provider of continuing care, as defined in Article 70B, Annotated Code of Maryland, if the facility is for the exclusive use of the provider's subscribers who have executed continuing care agreements except as provided by Regulation .03[K] of this chapter;

. . . .

COMAR 10.24.01.03K: Continuation of Specific Exclusion from Certificate of Need for Continuing Care Retirement Communities.

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

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

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

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

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

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

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

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

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

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

(ii) The individual must pay the entrance fee by the same method, terms of payment, and time frame as a person who immediately assumes residence in an independent or assisted living unit at that continuing care retirement community; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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