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TO: Commissioners

FROM: Kevin R. McDonald
Chief, Certificate of Need

DATE: December 19, 2019

SUBJECT: Encompass Health Rehabilitation Hospital of Salisbury
Docket No. 18-22-2435

Enclosed is the staff report and recommendation for a Certificate of Need ("CON") application filed by Rehabilitation Hospital Corporation of America, LLC, d/b/a Encompass Health Rehabilitation Hospital of Salisbury ("Encompass"), a 64-bed special rehabilitation hospital located in Salisbury, MD (Wicomico County). The applicant states that the primary drivers of the project are a need for more beds to meet patient demand, and specifically a need for more private rooms.

Between CY2016 and CY2018 Encompass averaged 1,538 discharges, an average length of stay ("ALOS") of 13.2 days, and a 92.8 percent occupancy. It has an overwhelming market share in the Maryland jurisdictions that make up its primary service area (Somerset, Wicomico, Worcester), serving 95.7% of residents from those jurisdictions who were discharged from an inpatient rehabilitation facility.

At present, the facility has 14 private rooms and 26 semiprivate rooms, for a physical bed capacity of 66, and is licensed for 64 beds. The proposed project would add 14 patient rooms and 14 beds to the facility's physical capacity by renovating space that was formerly used for an outpatient physical therapy service that has since been discontinued. All 14 of the additional beds would be in private rooms. In addition, the applicant would convert four rooms that are currently semi-private rooms into private rooms. The project thus would produce a net increase of 10 acute inpatient rehabilitation beds, while increasing the number of rooms used as private rooms from 14 to 28, resulting in a 10-bed increase the total number of beds (from 64 to 74).

Nursing unit space will increase from 23,366 square feet ("SF") to 31,182 SF, with 7,447 SF added via renovation and 369 SF of new construction. The project will also increase the patient dining space, the therapy space, the business office space and the library. In total the project will be comprised of 13,140 SF of renovation and 1,437 SF of new construction.

The estimated cost of implementation is $5,717,015 and would be funded with cash.

Staff concludes that the proposed project complies with the applicable State Health Plan standards and that the need for the project, its cost effectiveness, and its viability have been demonstrated, and therefore recommends **APPROVAL** of the project, subject to a condition related to the facility's charity care performance. The recommended condition is:

> **Encompass-Salisbury may not put the approved beds into operation prior to obtaining approval for first use. The request for first use approval must provide a full report of the activities undertaken by Encompass-Salisbury following approval of the CON to increase the value of charitable service provided to patients and document its progress in achieving the level of charity care provision to which it has committed (charity care equivalent to two percent of total operating expenses). MHCC reserves the right to reconsider its approval of this CON without a satisfactory demonstration of progress toward increasing its level of charity care provision when Encompass-Salisbury's request for first use is considered.**

IN THE MATTER OF	*	**BEFORE THE**
	*	
REHABILITATION HOSPITAL	*	**MARYLAND**
	*	
CORPORATION OF AMERICA,	*	**HEALTH**
	*	
LLC, d/b/a ENCOMPASS HEALTH	*	**CARE**
	*	
REHABILITATION HOSPITAL	*	**COMMISSION**
	*	
OF SALISBURY	*	
	*	
Docket No. 18-22-2435	*	

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STAFF REPORT AND RECOMENDATION

December 19, 2019

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I. INTRODUCTION

A. The Applicant and the Project

The applicant, Rehabilitation Hospital Corporation of America, LLC, d/b/a Encompass Health Rehabilitation Hospital of Salisbury Maryland ("Encompass-Salisbury"), is a Delaware limited liability company and an indirect subsidiary of Encompass Health Corporation ("Encompass Health"), a publicly-traded proprietary corporation. Encompass-Salisbury is a 64-bed[1] special rehabilitation hospital located in Salisbury (Wicomico County) in the southern Eastern Shore of Maryland.

Encompass Health, formerly known as HealthSouth Corporation, has a nationwide network of inpatient rehabilitation hospitals, home health agencies, and hospice agencies that offer facility-based and home-based rehabilitation services. The company reports operation of 127 hospitals and 272 home health and hospice agencies in 36 states and Puerto Rico. (DI #2, pp. 3-4).

The applicant proposes to add 14 new patient rooms and ten additional beds to its special rehabilitation hospital in Salisbury. At present, Encompass-Salisbury has 14 private rooms and 26 semi-private rooms, for a physical bed capacity of 66, and is licensed for 64 beds. The proposed project would add 14 private patient rooms and ten beds to the facility's physical capacity, primarily through renovation of space that was formerly used for an outpatient physical therapy service that has since been discontinued. Nursing unit space will increase from 23,366 square feet ("SF") to 31,182 SF, with 7,447 SF added via renovation and 369 SF of new construction. The project will also increase the patient dining space, the therapy space, the business office space, and the library. In total the project will be comprised of 13,140 SF of renovation and 1,437 SF of new construction.

As noted, the proposed project would add 14 private rooms, yielding a hospital in which slightly over half of the rooms would be private. In addition, the applicant proposes to convert four rooms that are currently semi-private rooms into private rooms. The project would, thus, produce a net increase of ten acute inpatient rehabilitation beds, while increasing the number of rooms used as private rooms from 14 to 28. (DI #2, p. 6). The following Table I-1 shows the current and proposed bed configuration.

Table I-1: Patient Room and Bed Configuration, Current and Post-Project Encompass-Salisbury

	Currently			Post-Project		
	Physical Capacity		No. of Beds Licensed and Operating	Physical Capacity		No. of Beds Licensed and Operating
	Room Count	Bed Count	---	Room Count	Bed Count	---
Private Rooms	14	14	14	28	28	28
Semi-Private Rooms	26	52	50	26	52	46
Total	40	66	64	54	80	74

(DI #2, pp.4-7 and application Table B)

The project would increase the total number of beds from 64 to 74.

[1] The applicant added five beds through the "waiver" process and was licensed for 64 beds as of July 1, 2018.

The estimated cost of the project is $5,717,015 and would be funded with cash. (DI #2, pp. 5-6). The project budget is detailed in Table I-2 below. (DI #2, Att. 3).

Table I-2: Project Budget

New Construction	
Building	$649,000
Site/Infrastructure	155,000
Architect/Engineering	95,000
Permits	65,000
Subtotal	**$964,000**
Renovations	
Building	$2,986,941
Architect/Engineering	323,694
Permits	165,700
Site/Fees/Permits	315,000
Subtotal	**$3,476,335**
Other Capital Costs	
Movable Equipment	$601,680
Contingency Allowance	575,000
Subtotal	**$1,176,680**
Total Current Capital Costs	**$5,617,015**
CON Application Assistance (legal and other)	$100,000
TOTAL	**$5,717,015**
Total Sources of Funds - Cash	$5,717,000

Source: (DI #2, Att.3).

B. Staff Recommendation

Staff recommends approval of the project. This recommendation is based on its conclusion that the proposed project complies with the applicable State Health Plan standards and general CON review criteria, and that the applicant demonstrated the need for the project, its cost effectiveness, and its viability. Staff also concludes that the impact of the project is positive.

II. PROCEDURAL HISTORY

A. Record of the Review

Please see Appendix 1, Record of the Review.

B. Interested Parties in the Review

There are no interested parties in the review.

C. Local Government Review and Comment

A letter supporting the project was submitted by Lori Brewster, Health Officer for Wicomico County.

D. Community Support

A letter supporting the project was submitted by Michael Rabel, Chair of the Department of Physical Therapy at University of Maryland Eastern Shore.

III. REVIEW AND ANALYSIS

A. STATE HEALTH PLAN

COMAR 10.24.09 — State Health Plan for Facilities and Services: Specialized Health Care Services – Acute Inpatient Rehabilitation Services

10.24.09.04 Standards.

A. General Review Standards.

(1) Charity Care Policy.

(a) Each hospital and freestanding acute inpatient rehabilitation provider shall have a written policy for the provision of charity care that ensures access to services regardless of an individual's ability to pay and shall provide acute inpatient rehabilitation services on a charitable basis to qualified persons consistent with this policy. The policy shall have the following provisions:

Encompass-Salisbury provided a copy of its financial assistance policy. (DI #2, Att. 7). Its alignment with the subparts of this standard is addressed in order, below.

(i) **Determination of Eligibility for Charity Care. Within two business days following a patient's request for charity care services, application for medical assistance, or both, the facility shall make a determination of probable eligibility.**

The charity care policy that was submitted with Encompass-Salisbury's application stated that it will provide a determination of probable eligibility to the patient within two business days from receipt of the initial financial assistance application. (DI #10, exh. 19). Staff pointed out that the "plain language summary" of its policy in the application described a requirement that a patient submit a completed application with considerable documentation like tax returns, bank statements, and pay stubs prior to determination of probable eligibility. Staff informed the applicant via completeness question that these requirements did not comply with the intent of this standard. In its response to the completeness question, the applicant supplied a form entitled *Initial Financial Assistance Application* which, as subsequently revised, requires only the patient's name, estimated gross income, and number of dependents for an initial determination of eligibility which makes the process simple and expedient thus meeting the standard. The patient's certification on the initial financial assistance application has been removed. (DI #10, Att. 18; DI #28).

Staff concludes that Encompass-Salisbury has met Subparagraph (a)(i) of the standard.

(ii) Notice of Charity Care Policy. Public notice and information regarding the facility's charity care policy shall be disseminated, on an annual basis, through methods designed to best reach the facility's service area population and in a format understandable by the service area population. Notices regarding the facility's charity care policy shall be posted in the registration area and business office of the facility. Prior to a patient's admission, facilities should address any financial concerns of patients, and individual notice regarding the facility's charity care policy shall be provided.

The applicant states that it will disseminate information about the availability of charity care at "patient access sites and other places within the community served by the hospital." (DI #10, p. 4). The applicant provided documentation (photographs) of such notices in the registration area, and business office. (DI #10, Att. 20). Finally, the applicant's charity care policy also states that copies of the policy, a plain language summary of the policy, the Financial Assistance Applications, and the associated instructions are available on its website, on admission as well as upon written request. (DI #10, Att. 19). These documents are available in Spanish upon request as well as available on the hospital's website. (DI #10, Att. 18). Billing statements also include a notice informing patients of financial assistance, and provide a number and a website address where more information is available. (DI #10, Att. 19).

Staff concludes that Encompass-Salisbury satisfies Subparagraph (a)(ii) of the standard.

(iii) Criteria for Eligibility. A hospital shall comply with applicable State statutes and HSCRC regulations regarding financial assistance policies and charity care eligibility. A hospital that is not subject to HSCRC regulations regarding financial assistance policies shall at a minimum include the following eligibility criteria in its charity care policies. Persons with family income below 100 percent of the current federal poverty guideline who have no health insurance coverage and are not eligible for any public program providing coverage for medical expenses shall be eligible for services free of charge. At a minimum, persons with family income above 100 percent of the federal poverty guideline but below 200 percent of the federal poverty guideline shall be eligible for services at a discounted charge, based on a sliding scale of discounts for family income bands. A health maintenance organization, acting as both the insurer and provider of health care services for members, shall have a financial assistance policy for its members that is consistent with the minimum eligibility criteria for charity care required of hospitals that are not subject to HSCRC regulations regarding financial assistance policies.

The applicant's criteria for eligibility provide that patients and their families with household incomes of up to 200 percent of the applicable federal poverty guideline receive care at no cost. Those patients who are homeless, mentally incapacitated, or have recently qualified for Medicaid coverage are presumed eligible without completing an application, and also receive care

at no cost. Patients/families who have a household income greater than 200 percent and less than 400 percent of the applicable federal poverty guideline can receive care at a discounted cost on a sliding scale basis. (DI #10, Att.18). Patients without legal residency are also eligible to apply for financial assistance. (DI #10, Att. 19).

Staff concludes that the applicant meets Subparagraph (a)(iii) of the standard.

(b) A hospital with a level of charity care, defined as the percentage of total operating expenses that falls within the bottom quartile of all hospitals, as reported in the most recent HSCRC Community Benefit Report, shall demonstrate that its level of charity care is appropriate to the needs of its service area population.

HSCRC does not report on special rehabilitation hospitals in the Community Benefit Report, which covers general hospitals. The most recent report in 2018 indicates that the average level of charity care provided by general hospitals in 2018 was 7.7 percent (i.e., a value of charity care equivalent to 7.7% of total operating expenses). The bottom quartile for the state's general hospitals was 1.1 percent and less.

Encompass reports the provision of only negligible levels of charity care. In 2016, it reports providing charity care valued at $750, equivalent to just 0.004 percent of its $19.1 million in total operating expenses. In 2017, it reports charity care valued at $1,266, about 0.008 percent of operating expenses ($15.6 million). (DI #10, p.5). The hospital's track record does not compare favorably with the only other freestanding special rehabilitation hospital operating in Maryland, Adventist HealthCare Rehabilitation, a not-for-profit hospital. In a 2018 CON application filed by that hospital, it reported the provision of charity care valued at $148,995 in FY 2016 and $71,891 in FY 2017, equivalent to 1.4% and 0.6% of total operating expenses in those years, respectively.

In its effort to explain why its negligible amount of charity care is appropriate to the needs of its service area population, Encompass stated that it believed that this standard was not applicable to it, because as for-profit hospital, it is not included among the Maryland non-profit hospitals required to submit a Community Benefit Report to the Health Services Cost Review Commission ("HSCRC"). In its view, "[t]herefore, its level of charity care, defined as the percentage of total operating expenses cannot be determined to fall within the bottom quartile of all hospitals." (DI #26, p.1). Encompass-Salisbury further pointed out that, as a rehabilitation hospital the greatest share of its patients are over 65 years of age and thus covered by Medicare. It states that, for this reason, the percentage of its revenues attributed to charity care would not be comparable to other Maryland hospitals.

Finally, Encompass-Salisbury stated that has "committed to and intends to provide additional charity care as set forth in it Certificate of Need application," and that it responded to Commission staff's completeness questions with a commitment to provide charity care in the future ("at least two percent of total operating expenses") and a description of the outreach efforts it "will undertake to assure that the community stakeholders are aware of the charity care [it] has committed to provide in the future." (DI #26, pp.1-2).

Staff does not agree with the applicant's assertion that simply because its data is not included in the HSCRC Community Benefit Report "its level of charity care … cannot be determined to fall within the bottom quartile of all hospitals. Of course it can; staff simply needs to identify the bottom quartile and compare Encompass-Salisbury's performance to that benchmark. Just because the applicant is not among the reporters does not mean it cannot be compared to the results of the data collection.

On the other hand, Encompass-Salisbury's explanation that its patients are predominantly over 65 and covered by Medicare is somewhat more convincing. It is logical that a hospital with a primarily Medicare payor mix might be expected to show a lower level of charity care than one with a more typical payor mix. Staff compared Encompass-Salisbury's payor mix to that of Adventist Rehabilitation Hospital ("ARH"). ARH received a CON in March 2019. Indeed, that comparison showed Encompass-Salisbury to have a much higher mix of Medicare patients than ARH did. See Table III-3, below. What is not clear is whether this is by design or due to the nature of the service area.

Table III-1 Comparison of Payor Mix

	Adventist	Encompass
Medicare	59.2%	87.5%
Medicaid	7.8%	2.0%
Blue Cross	15.8%	5.8%
Commercial Insurance	14.9%	2.3%
Self-pay	0.1%	0.0%
Other	2.2%	2.4%

Source: Recent CON applications of Adventist Rehabilitation Hospital and Encompass-Salisbury (Table G)

Thus, while the applicant's explanation of why its level of charity care is appropriate to its service area population is less than compelling, staff believes that what is important is its commitment to charity care going forward, and as reflected in its plan for increasing charity care, as detailed in Subparagraphs (c)(i) and (ii) of this standard, which follow immediately. For these reasons, staff recommends that the Commission require the condition recommended below and find that the applicant meets Paragraph (b) of this standard.

> **(c) A proposal to establish or expand an acute inpatient rehabilitation hospital or subunit, for which third party reimbursement is available, and which is not subject to HSCRC regulations regarding financial assistance policies, shall commit to provide charitable rehabilitation services to eligible patients, based on its charity care policy, which shall meet the minimum requirements in .04A(1)(a) of this Chapter. The applicant shall demonstrate that:**
>
> **(i) Its track record in the provision of charitable health care facility services supports the credibility of its commitment; and**

Encompass-Salisbury states that it is committed to providing charity care with a value equivalent to at least two percent of its total operating expenses. (DI #10, p.5). As noted, Encompass-Salisbury's track record in providing charity care provides no reasonable level of confidence that this commitment is credible; however, based on the applicant's plan to achieve a

two percent rate of charity care, discussed in the next subparagraph, staff recommends that the Commission find that the applicant meets Subparagraph (c)(i) of the standard.

(ii) It has a specific plan for achieving the level of charitable care provision to which it is committed.

The applicant states that its clinical liaisons will educate community health providers including Atlantic General Hospital and Peninsula Regional Medical Center on Encompass Health's financial assistance policies in order to raise awareness of the availability of charity care. It will use meetings, phone calls, and regular and electronic mail to communicate with discharge planners, case managers, physicians, nurses, and therapists.

Encompass-Salisbury states that, using the regular reports it receives from its clinical liaisons, it will determine what it needs to do to insure that Encompass Health is providing charity care where it is most needed. The applicant states it will also seek out opportunities to present this information to the public through community events. (DI #10, p.6).

Staff concludes that the policies put forward by the applicant satisfy Subparagraph (c)(ii) of the standard. Staff notes that the applicant's plan for providing substantive levels of charity care, while appearing to be proactive and designed to increase the level of charity care it provides, is quite generic. While staff believes that the actions described can actually result in the substantial increase in the value of charity care predicted by Encompass-Salisbury, the implication is that the hospital has historically avoided the education, awareness-raising, and communications activities it proposes. Therefore, staff recommends that if the Commission approves this project it should also attach the following condition to the Certificate of Need:

> In its request for first use approval of any or all of the approved beds, Encompass-Salisbury shall provide information, acceptable to Commission staff, that: details the activities it has undertaken following approval of the Certificate of Need to increase the amount of charity provided to patients; and demonstrates its progress in achieving the level of charity care to which it has committed (i.e., charity care equivalent to two percent of total operating expenses). If staff concludes that Encompass-Salisbury's demonstration of progress is not satisfactory, further action regarding this Certificate of Need may be considered by the Commission at a public meeting.

(2) Quality of Care. A provider of acute inpatient rehabilitation services shall provide high quality care.

(a) Each hospital shall document that it is:

(i) Licensed, in good standing, by the Maryland Department of Health and Mental Hygiene.

The applicant provided a copy of its current license. On December 4, 2019, MHCC staff confirmed with the Maryland Department of Health that this license is in in good standing. Staff concludes that Encompass-Salisbury complies with Subparagraph (a)(i) of the standard.

(ii) Accredited by the Commission for Accreditation of Rehabilitation Facilities.

The applicant provided a current certificate of CARF accreditation. (DI#2, Att. 8). Staff concludes that Encompass-Salisbury complies with Subparagraph (a)(ii) of the standard.

(iii) In compliance with the conditions of participation of the Medicare and Medicaid programs.

The applicant is Medicare-certified and reliant on demand for services from Medicare beneficiaries for most of the hospital services it provides.

On June 28, 2019, the U.S. Department of Justice announced that Encompass Health Corporation agreed to pay $48 million to resolve allegations under the Fraudulent Claims Act that some Encompass Health Corporation inpatient rehabilitation facilities ("IRF") "provided inaccurate information to Medicare to maintain their status as an IRF and to earn a higher rate of reimbursement." The settlement resolved three lawsuits. Staff asked the applicant to provide details on the settlement and answer questions on this matter. It should be noted that the Form 10-K for FY 2017 included in the Certificate of Need application filing included general information on the investigatory activities of the federal government with respect to Encompass Health, some of which related to the 2019 settlement.

In response, the applicant provided more detail on the settlement. The Salisbury hospital was not an IRF implicated in the provision of inaccurate information to Medicare. The applicant noted that "Encompass Health expressly denied all wrong doing" and "did not enter into a Corporate Integrity Agreement" as part of the settlement. It states that this "confirms the government is not requiring Encompass Health to change any of its practices" with respect to coding of patient care information used in obtaining Medicare reimbursement for its services.

Staff concludes that Encompass-Salisbury meets the requirement of Subparagraph (a)(iii) of the standard because it currently is in compliance with Medicare conditions of participation.

(b) An applicant that currently provides acute inpatient rehabilitation services that is seeking to establish a new location or expand services shall report on all quality measures required by federal regulations or State agencies, including information on how the applicant compares to other Maryland acute inpatient rehabilitation providers. An applicant shall be required to meet quality of care standards or demonstrate progress towards reaching these standards that is acceptable to the Commission, before receiving a CON.

Encompass-Salisbury stated that it reports on all quality measures required by federal regulations or State agencies. It provided a link to the CMS Health Compare website where its

quality measures are displayed (Table III-1 below). The applicant met or exceeded quality standards in all areas except in the area of vaccination for influenza. (DI #10, pp. 6-7).

Table III-2 Quality of Care

Measure	Applicant	National Average
Rate of pressure ulcers new or worsened (lower is better)	0.4%	0.6%
% of patients who experience 1 or more falls (lower is better)	0.1%	0.2%
% of patients whose functional abilities were assessed and included in treatment plan	98%	99%
Catheter infections	No different than the national benchmark	1.155
Methicillin-resistant staphylococcus aureus	Not available	0.954
Clostridium-difficile Infection	No different than the national benchmark	0.741
Flu Vaccine- Personnel	73%	87%
Flu Vaccine-Patients	67.7%	93.5%
Readmissions	Data suppressed by CMS	Data suppressed by CMS
Rate of Successful return to community	Better than the National rate	64.82%
Medicare spending per beneficiary	1.01	1.01

Source: https://www.medicare.gov/inpatientrehabilitationfacilitycompare.

The applicant also provided several other performance indicators,[2] including:

- Functional Independence Measure Gain, 2017, of 32.6 compared to a UDS Expected of 32.1;
- Discharged 78.5% of patients to the community, compared to a UDS Expected rate of 76%;
- A 30-day readmission rate of 17% in 2016 compared to a SNF, Ultra-Rehab rate of 22%.

(DI #10, p.7)

Staff concludes that the applicant meets Subparagraph (b) of the quality standard.

(c) An applicant that does not currently provide inpatient rehabilitation services that is seeking to establish an inpatient rehabilitation unit within an acute care hospital or an inpatient rehabilitation specialty hospital shall demonstrate through reporting on quality measures that it provides high quality health care compared to other Maryland providers that provide similar services or, if applicable, nationally.

[2] The applicant explains that "This data compares Encompass Health IRFs to IRFs comprising the Uniform Data System for Medical Rehabilitation ("UDSMR"), a division of UB Foundation Activities, Inc., a data gathering and analysis organization serving the rehabilitation industry which represents approximately 80% of the industry, including Encompass Health sites. Data is adjusted by applying Encompass Health IRF case-mix to non-Encompass Health UDS IRFs." (DI #25, p.8).

This Paragraph (c) of the standard is not applicable as the applicant is a current provider.

B. Project Review Standards.

(1) Access.

A new or relocated acute rehabilitation hospital or subunit shall be located to optimize accessibility for its likely service area population. An applicant that seeks to justify the need for a project on the basis of barriers to access shall present evidence to demonstrate that barriers to access exist for the population in the service area of the proposed project, based on studies or other validated sources of information. In addition, an applicant must demonstrate that it has developed a credible plan to address those barriers. The credibility of the applicant's plan will be evaluated based on whether research studies or empirical evidence from comparable projects support the proposed plan as a mechanism for addressing the barrier(s) identified, whether the plan is financially feasible and whether members of the communities affected by the project support the plan.

Because this application does not involve a "new or relocated acute rehabilitation hospital," this standard is not applicable.

(2) Need.

A project shall be approved only if a net need for adult acute rehabilitation beds is identified by the need methodology in Section .05 in the applicable health planning region (HPR) or if the applicant meets the applicable standards below. The burden of demonstrating need rests with the applicant.

The applicant states that the Commission published its acute inpatient rehabilitation bed need projections for 2021 in April 2018 based on utilization data from CY 2012-2016. (DI #2, pp. 20-23). The calculation resulted in a projected range of between 14,167 and 25,447 total patient days for the Eastern Shore region in 2021. (DI #2, pp. 20-23).

At the time the bed need projection was published, licensed bed capacity in the Eastern Shore region was 79 beds, comprised of 20 licensed beds at University of Maryland Shore Medical Center at Easton and 59 beds at Encompass-Salisbury. Application of the bed need methodology yielded a minimum need of -30 beds and a maximum need of 10. Subsequently Encompass-Salisbury received approval to add five "waiver" beds without a requirement for CON approval, increasing its licensed capacity to 64 beds.

Encompass-Salisbury acknowledges that the inventory of available beds to accommodate the projected number of patient days in the region is now 84 total special hospital inpatient rehabilitation beds. Under the proposed project, the total available bed days in the Eastern Shore region would increase from 28,835 to 30,660. Given that the gross need bed range remains between 49 and 89 beds, there is now a net bed need range of between -35 beds and +5 beds. In this

application, Encompass-Salisbury has requested that it be permitted to add fourteen patient rooms and ten additional beds, five more than the maximum net bed need projected for the Eastern Shore region in 2021. (DI #2, pp. 20-23).. The applicant offers several rationales for exceeding the maximum bed need projection.

First, the applicant states that the bed need methodology does not consider the increase in actual discharges and patient days provided by Encompass-Salisbury after December 31, 2016. In CY 2017, Encompass-Salisbury reported 1,542 discharges, and 20,430 patient days. As of July 31, 2018, Encompass-Salisbury had 917 discharges and 12,032 patient days, which annualizes to 1,605 discharges and 21,144 patient days in CY 2018. The applicant notes that both the 2017 and projected 2018 utilization measures are well above the 2016 numbers used to calculate bed need.[3]

The second point made by the applicant is that the bed need methodology does not adjust for unoccupied licensed beds. It points out that the only other inpatient rehabilitation facility located in the Eastern Shore Health Planning Region is the University of Maryland Shore Medical Center at Easton (SMC-E), which is licensed for 20 beds. The bed need methodology calculates available bed days at SMC-E to be 7,300 (365 days x 20 beds at 100% occupancy); however its actual occupancy was 48%, well below the prescribed 75% minimum occupancy for an inpatient hospital rehabilitation unit beds with an average daily census of less than 49 patients at COMAR 10.24.09.05D(5). Citing the *Annual Report on Selected Maryland Acute Care and Special Hospital Services - Fiscal Year2018* the applicant pointed out that SMC-E reported that it staffed only 18 of it 20 licensed beds as of June 1, 2017.

Finally, Encompass-Salisbury points out that SMC-E plans to reduce its count of inpatient rehabilitation beds from 20 to 14, as evidenced in its September 2018 CON application for a replacement hospital. In that application, SMC-E stated its intention to reduce the number of inpatient hospital rehabilitation beds in the replacement hospital from 20 to 14. Encompass-Salisbury suggests that the bed need be adjusted to "reduce the number of actual bed days available at UMSMC from 7,300 to 5,110 patient days corresponding to [its] proposed reduction from 20 beds to 14 beds," an adjustment that would change the net bed need range for the Eastern Shore region to a minimum of -29 beds to a maximum of +11 beds, which would allow this application to add ten beds to be consistent with this standard. (DI #2, pp. 21, 22).

Staff Analysis

The proposed project is not consistent with the bed need projection published in 2018. It would produce an inventory of rehabilitation beds in the region that exceeds the maximum need forecast by five beds, a surplus of approximately 6% of the region's maximum need forecast for 89 beds. The rationales put forward by the applicant that speak directly to the methodology are not well-founded. The bed inventory at SMC-E included in the projection is accurate and adjusting bed inventories based on occupancy rates is illogical. Accounting for available bed capacity is the only logical approach to using a net bed need calculation in CON regulation and accounting only for "filled" beds, as suggested by the applicant, would simply drive up net bed need calculations, contrary to the intent of the methodology. It is also not appropriate to assume that beds will be eliminated from the inventory based on plans that have not been authorized or implemented or to

[3] Encompass-Salisbury reported 1,467 discharges and 18,061 patient days in 2016.

consider partial and informal adjustment of the bed need projection because volume at a single hospital has changed since the bed need projection was developed. The projection is based on observed use rate trends and fully reconsidering how these trends have changed is the only appropriate basis for recalculation.

The more reasonable and compelling considerations here are the high bed occupancy rates at Encompass-Salisbury (95% in 2017 and a projected 93% in 2018) and the significant in-migration of demand from Delaware for this hospital. Clearly, the Commission should, as a general principle, seek to provide sufficient bed capacity for hospital services such that demand can be timely provided without forcing patients to travel long distances for care.

The population of the lower Eastern Shore served by the applicant hospital exhibits the highest use of IRF services in Maryland, which raises a concern that this service may be overused in this area, given the observed variance with the rest of the state. Focusing on the elderly population, which is a reasonable proxy for the Medicare population that most heavily uses acute rehabilitation, staff found that the three jurisdictions (Somerset, Wicomico, and Worcester) have recently used this service at a rate of 23.7 discharges per 1,000 population, compared to an overall statewide use rate of 6.7 discharges per 1,000 population. Use in the balance of the Eastern Shore is relatively high as well, although significantly lower than that of the lower Shore counties, and use rates are much lower in the rest of the State, ranging from 4.4 (Southern Maryland) to 6.8 (Western Maryland) discharges per 1,000 population. The higher use rate suggests that alternative settings for rehabilitation services, such as skilled nursing facilities, home health agencies, and outpatient facilities, may be used less frequently by certain populations that could obtain appropriate and, in some cases, less expensive care in these settings.

In response, the applicant noted that Maryland has relatively low use of IRF services when compared to other states, ranking 14th from the bottom in terms of Medicare use and 17th in terms of overall use. The applicant also provided data showing that the use rate of the Salisbury hospital was 41st highest among the 120 markets it defined for Encompass Health facilities across the country a comparison that exhibited the wide variation in use among these markets. (DI #23, p.3). It also claims that the Salisbury market has a relatively high incidence of stroke, which explains some of the higher IRF use.

The applicant states that a positive aspect of the "clinical preference" for the IRF setting displayed in its service area is the reduction in general hospital average length of stay, postulating that the general hospital may be able to reduce stays by an average of one day because of the higher acuity that can be handled by an IRF when compared to a nursing home setting. (DI #23, p. 5).

Ultimately, Encompass-Salisbury believes that Medicare's regulatory oversight should alleviate concerns with overuse of the IRF setting, noting the requirement for pre-admission screening for patients referred to an IRF that must be approved by a rehabilitation physician so that only medically appropriate patients are admitted. Patients must be shown to require two modalities of therapy and be able to tolerate three hours of therapy per day, five days a week. The patient must also be stable enough to participate in therapy. (DI #23, p.6). The applicant notes that the patient must have a rehabilitation treatment plan, supervised by a rehabilitation physician and must be provided therapy and other multidisciplinary clinical care by qualified personnel. (DI #23, p. 6). It points out that, in addition to all of these requirements, CMS also requires inpatient

rehabilitation facilities to comply with the "60 percent rule," which puts parameters on the types of conditions treated for at least 60 percent of an inpatient rehabilitation facility's patients. To be classified for payment under Medicare's prospective payment system, at least 60 percent of the inpatient population of an IRF must require treatment for one or more of 13 conditions designated by CMS. (DI #23, p. 7).

While staff finds the high rate of IRF use observed in the service area of Encompass-Salisbury when compared with the rest of the state to be a concern, we note that, more generally, use of this service shows considerable variation and that bed availability is a factor in this variation. The Rehabilitation Services Chapter has not explicitly sought to adjust its bed need projections to provide for adjustment related to appropriateness of use and revisiting the SHP for this purpose is probably a better approach to using variation in use as a basis for specific project review decisions than ad hoc consideration in a particular review. Lastly, long-standing regulatory policy in Maryland allows for IRFs to incrementally expand bed capacity over time without CON approval, a feature that Encompass-Salisbury has recently used to add beds and a feature that would allow this hospital to later reach its bed capacity expansion targets without CON approval. For these reasons, staff recommends that the Commission find the project to be in compliance with the need standard, on the basis of the mitigating factors of high bed occupancy, inclusion of a non-Maryland population in its service area, and the benefits of increasing the level of private patient rooms that the project will achieve.

(a) An application proposing to establish or expand adult acute inpatient rehabilitation services in a jurisdiction that is directly contiguous to another health planning region may be evaluated based on the need in contiguous regions or states based on patterns of cross-regional or cross-state migration.

(b) For all proposed projects, an applicant shall explicitly address how its assumptions regarding future in-migration and out-migration patterns among Maryland health planning regions and bordering states affect its need projection.

The applicant notes that Sussex County Delaware is located in the primary service area of the applicant. From CY 2016-2018 approximately 23 percent of all patient days on Encompass-Salisbury's census involved patients who were residents of Delaware. For purposes of projecting the need for this project, the applicant has assumed that the proportion of Delaware residents among its future patient population will be consistent with past patterns and remain a constant proportion (23 percent in CY 2016-2018) of its total patient days. (DI #2, pp. 23-25).

Staff concludes that Encompass-Salisbury meets Paragraphs (a) and (b) of this standard.

(c) If the maximum projected bed need range for an HPR includes an adjustment to account for out-migration of patients that exceeds 50 percent of acute rehabilitation discharges for residents of the HPR, an applicant proposing to meet the need for additional bed capacity above the minimum projected need, shall identify reasons why the existing out-migration pattern is attributable to access barriers and demonstrate a credible plan for addressing the access barriers identified.

Not applicable, as the maximum projected bed need range for the Eastern Shore HPR does not includes an adjustment for out-migration of patients that exceeds 50 percent of acute rehabilitation discharges for residents of the region.

(d) An applicant proposing to establish or expand adult acute rehabilitation beds that is not consistent with the projected net need in .05 in the applicable health planning region shall demonstrate the following:

(i) The project credibly addresses identified barriers to access; and

The applicant states that its high occupancy rate is a significant access barrier preventing residents of the Eastern Shore HPR from obtaining needed inpatient hospital rehabilitation services. To overcome this barrier, the hospital proposes to renovate its existing facility to provide an additional net gain of ten licensed beds. (DI #2, pp. 23-25).

Staff research confirms that the applicant is the overwhelming provider of choice for inpatient rehabilitation in the region, and that alternatives are distant. Given the very high occupancy rate, and the large proportion of semi-private rooms in the current facility, staff agrees that a renovation and expansion that not only adds beds, but also increases the proportion of private rooms, will address barriers to access, and thus concludes that the standard is met.

(ii) The applicant's projection of need for adult acute rehabilitation beds explicitly accounts for patients who are likely to seek specialized acute rehabilitation services at other facilities due to their age or their special rehabilitative and medical needs. At a minimum, an applicant shall specifically account for patients with a spine or brain injury and pediatric patients; and

The applicant's projection of need for adult acute rehabilitation beds accounts for its projected mix of adult patients and does not include patients needing specialized services for spine or brain injury who are likely to receive services at specialized facilities. In addition, the applicant does not provide inpatient rehabilitation services to pediatric patients and thus did not include this population in projections. (DI #2, pp.23-25).

Staff concludes that the applicant satisfies Subparagraph (d)(ii) of this standard.

(iii) The applicant's projection of need for adult acute rehabilitation beds accounts for in-migration and out-migration patterns among Maryland health planning regions and bordering states.

The applicant's projection of bed need through CY 2023 accounts for the in-migration of residents of Delaware (estimated at 23 percent of total patient days) and the applicant states there is not excessive out-migration that exceeds 50 percent of acute rehabilitation discharges. (DI#2, pp.23-25).

The applicant has documented that about 23% of its patients come from a neighboring county in Delaware, and projects that pattern to continue. The applicant has accounted for this in its planning. Staff concludes that this subpart of the standard is met.

(e) An applicant that proposes a specialized program for pediatric patients, patients with brain injuries, or patients with spinal cord injuries shall submit explanations of all assumptions used to justify its projection of need.

Paragraph (e) of the standard is not applicable to this project.

(f) An applicant that proposes to add additional acute rehabilitation beds or establish a new health care facility that provides acute inpatient rehabilitation services cannot propose that the beds will be dually licensed for another service, such as chronic care.

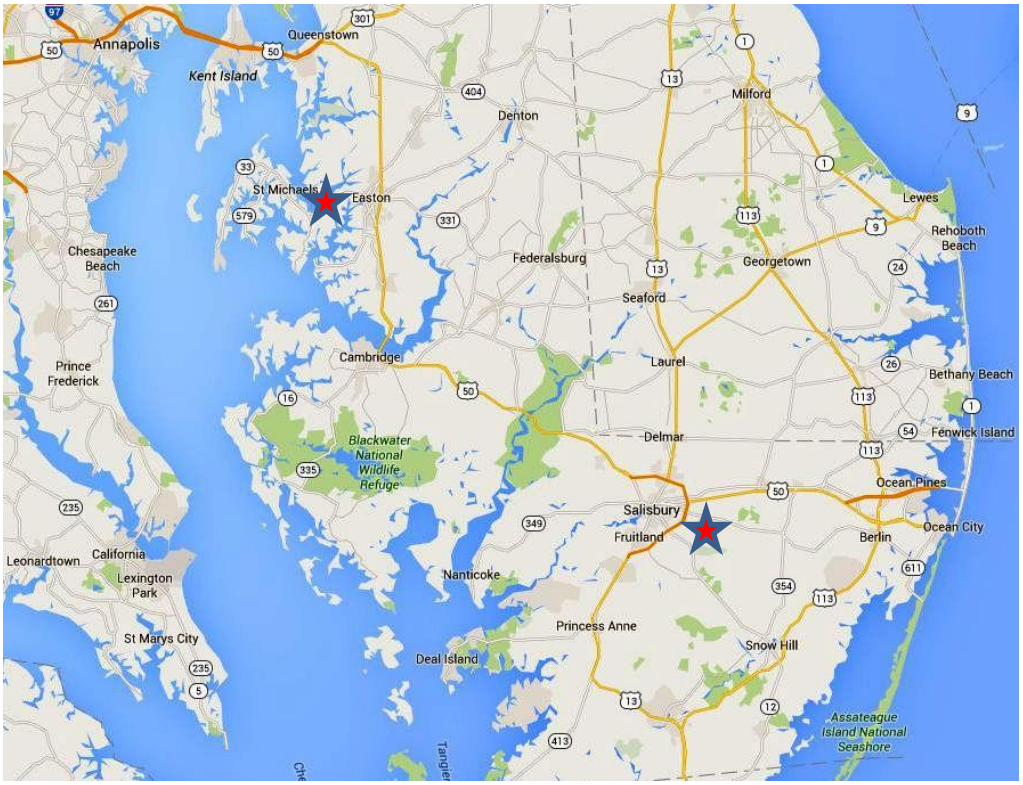
The applicant is not proposing dual licensure of beds. Paragraph (f) does not apply to the proposed project

(3) Impact.

A project shall not have an unwarranted adverse impact on the cost of hospital services or the financial viability of an existing provider of acute inpatient rehabilitation services. A project also shall not have an unwarranted adverse impact on the availability of services, access to services, or the quality of services. Each applicant must provide documentation and analysis that supports:

(a) Its estimate of the impact of the proposed project on patient volume, average length of stay, and case mix, at other acute inpatient rehabilitation providers;

Encompass-Salisbury states that the addition of ten beds will not have any adverse impact on the cost of hospital services, the financial viability of any other existing provider of acute inpatient rehabilitation services or the availability of services, access to care, or the quality of services. (DI #2, p.25). The applicant points out that the only other regional provider of acute rehabilitation is SMC-Easton, located approximately 50 miles from Salisbury. (DI #2, p. 26). See map below. The applicant notes – and staff agrees – that the applicant hospital has a distinct service area that does not significantly overlap with the applicant's. For these reasons, Staff concludes that the addition of ten beds at Encompass-Salisbury will not have an unwarranted adverse impact on SMC-E, the other provider of acute inpatient rehabilitation services in the planning region.



(b) Its estimate of any reduction in the availability or accessibility of a facility or service that will likely result from the project, including access for patients who are indigent or uninsured or who are eligible for charity care, based on the affected acute rehabilitation provider's charity care policies that meet the minimum requirements in .04A(1)(a) of this Chapter;

The applicant states the project, by increasing the number of beds, will increase the availability and accessibility of its services by providing services to patients who are unable to access care currently due to high bed occupancy. It states that private rooms will permit admission of additional and more medically complex patients, and that its commitment to provide two percent of total operating expenses to charity care will increase access for patients who are indigent or uninsured. (DI #2, p.28).

Given the unsubstantial overlap of the applicant's service area with SMC-E and the applicant's commitment to provide two percent charity care, staff concludes that the applicant meets Paragraph (b) of this standard.

(c) Its estimate of any reduction in the quality of care at other providers that will likely be affected by the project; and

Encompass-Salisbury states the project will not have a negative impact the quality of care of other providers. (DI #2, p. 28). For reasons previously noted, staff concludes that the proposed project satisfies Paragraph (c) of the standard.

(d) Its estimate of any reduction in the ability of affected providers to maintain the specialized staff necessary to provide acute inpatient rehabilitation services.

The applicant states the project is not anticipated to reduce the ability of the nearest provider of this service, SMC-Easton, to maintain the specialized staff necessary to provide acute inpatient rehabilitation services, especially given its plan to downsize its own 20-bed unit to 14 beds, thus reducing its need for staff. (DI #2, p.28).

Staff notes SMC-E's plans to downsize its acute inpatient rehabilitation unit in its CON application to relocation SMC-E. Thus, access to specialized staff is unlikely. Staff concludes that Encompass-Salisbury meets Paragraph (d) of the standard.

In summary, regarding the entirety of the Impact standard, staff concludes that the proposed project is not likely to have an unwarranted adverse impact on the cost of hospital services or the financial viability of an existing provider of acute inpatient rehabilitation services, or on the availability of services, access to services, or the quality of services.. Thus, the project complies with this standard.

(4) Construction Costs.

(a) The proposed construction costs for the project shall be reasonable and consistent with current industry and cost experience in Maryland.

(b) For a hospital that is rate-regulated by the Health Services Cost Review Commission, the projected cost per square foot of a hospital construction project or renovation project shall be compared to the benchmark cost of good quality Class A hospital construction given in the Marshall Valuation Service® guide, updated using Marshall Valuation Service® update multipliers, and adjusted as shown in the Marshall Valuation Service® guide as necessary for site terrain, number of building levels, geographic locality, and other listed factors. If the projected cost per square foot exceeds the Marshall Valuation Service® benchmark cost, any rate increase proposed by the hospital related to the capital cost of the project shall not included the amount of the projected construction cost that exceeds the Marshall Valuation Service® benchmark and those portions of the contingency allowance, inflation allowance, and capitalized construction interest expenditure that are based on the excess construction cost.

As a special rehabilitation hospital rather than a general hospital, the applicant is not rate regulated by the Health Services Cost Review Commission in a comprehensive manner. It is primarily a recipient of Medicare reimbursement under Medicare's prospective payment system for IRFs. Additionally, this project primarily involves renovation of existing space, so the MVS construction cost index, which is an index for gauging the reasonableness of new construction, is of limited relevance. The applicant states that its calculation of MVS benchmark costs of new construction of a "convalescent hospital," a facility category that comes closest as an analog to an IRF, is $263 per square foot, which is "significantly greater" than its renovation or limited new

construction cost. For these reasons, staff concludes that this standard is inapplicable to this project.

(5) Safety.

The design of a hospital project shall take patient safety into consideration and shall include design features that enhance and improve patient safety.

The applicant states that its facility meets the requirements of the Internal Building Code and National Fire Protection Agency, and that the expansion project takes patient safety into consideration by including design features that enhance and improve patient safety, such as non-slip floor materials and finishes, critically placed handrails, strategically placed lighting to assist in patient visibility, and a centrally located nurse station to facilitate visibility and quick response. (DI#2, p.29). Staff notes that increased use of private patient rooms also enhances patient safety.

Staff concludes that the project complies with this standard.

(6) Financial Feasibility.

A hospital capital project shall be financially feasible and shall not jeopardize the long-term financial viability of the hospital.

(a) Financial projections filed as part of a hospital CON application must be accompanied by a statement containing each assumption used to develop the projections.

The applicant's main assumptions are:

- Existing referral relationships and intensity of services provided will not change, nor will its market share in the Eastern Shore region it serves;
- Discharges will increase at the same rate as the population by age cohort, i.e, a constant use rate;
- Length of stay will remain consistent at 13.2 days; and
- In-migration from areas outside the region will remain constant at 23 percent.

(b) Each applicant must document that:

(i) Utilization projections are consistent with observed historic trends in the use of the applicable service(s) by the service area population of the hospital or State Health Plan need projections, if relevant;

(ii) Revenue estimates are consistent with utilization projections and are based on current charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care provision, as experienced by the applicant hospital or, if a new hospital, the recent experience of other similar hospitals;

(iii) Staffing and overall expense projections are consistent with utilization projections and are based on current expenditure levels and reasonably anticipated future staffing levels as experienced by the applicant hospital, or if a new hospital, the recent experience of other similar hospitals; and

The applicant's projections are shown in the table immediately below.

Table III-3: Actual and Projected Utilization and Financial Statistics by Calendar Year

	Actual		Projected					
	2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Discharges	1,467	1,542	1,605	1,634	1,667	1,780	1,812	1,845
Patient Days	19,784	20,430	21,144	21,659	22,010	23,499	23,919	24,349
Average Length of Stay	13.5	13.2	13.2	13.3	13.2	13.2	13.2	13.2
Licensed Beds	59	59	64	64	64	74	74	74
Occupancy %	91.9%	94.9%	90.5%	92.7%	94.2%	87.0%	88.6%	90.1%
Outpatient Visits	10,245	10,054	5,121	1,821	1,821	1,821	1,821	1,821
Net Operating Revenue	$ 26.7M	$ 28.8M	$30.9M	$ 31.4M	$ 32.1M	$ 34.2M	$34.8M	$ 35.5M
Total Operating Expenses	$ 19.1M	$ 20.7	$ 21.8M	$ 22.1M	$ 22.7M	$24.0M	$ 24.3M	$ 24.8M
Net Income (Loss)	$ 4.7M	$ 4.9	$ 5.3M	$ 5.4M	$ 5.4M	$ 5.9M	$ 6.1M	$ 6.2M

Note: Revenue and expense figures dollars are rounded and based on uninflated projections.
(DI #2, Att. 1, Tables F and G).

Encompass-Salisbury states that its projected utilization numbers are based on its historical experience and expected population growth in the 65+ age cohort (in 2018 82 percent of discharges were 65+). The applicant projects that by 2023 discharges will grow by 15% above 2018 levels. Occupancy is projected to remain constant with the additional ten beds. (DI #2, Table F).

The applicant projects an increase of 28.6 FTE's will be required by this project and states that the projection of staffing and overall expenses are consistent with its utilization projections. (DI #2, Table L).

Staff finds that the utilization, revenue, and expense projections submitted by the applicant are consistent with historical trends, and concludes that this subpart has been met by the applicant.

(iv) The hospital will generate excess revenues over total expense (including debt service expenses and plant and equipment depreciation), if the applicant's utilization forecast is achieved for the specific services affected by the project within five years or less of initiating operations with the exception that a hospital proposing an acute inpatient rehabilitation unit that does not generate excess revenues over total expenses, even if utilization forecasts are achieved for the services affected by the

project, may demonstrate that the hospital's overall financial performance will be positive.

The financial tables presented in the application show that the applicant has operated profitably in recent years and projects continued profitable operations after project implementation. (DI #2, Table G).

Staff concludes that this project is consistent with the Financial Feasibility standard.

(7) Minimum Size Requirements.

(a) A proposed acute inpatient rehabilitation unit in a hospital shall contain a minimum of 10 beds and shall be projected to maintain an average daily census consistent with the minimal occupancy standard in this Chapter within three years.

(b) A proposed acute inpatient rehabilitation specialty hospital shall contain a minimum of 30 beds and shall be projected to maintain within three years an average daily census consistent with the minimum occupancy standard in this Chapter.

Neither part of this standard is applicable to this project.

(8) Transfer and Referral Agreements.

Each applicant shall provide documentation prior to licensure that the facility will have written transfer and referral agreements with facilities, agencies, and organizations that:

(a) Are capable of managing cases that exceed its own capabilities; and

The applicant provided copies of transfer agreements that it maintains with Peninsula Regional Medical Center and Atlantic General Hospital. (DI #2, Att. 11). Staff concludes that the applicant satisfies Paragraph (a) of this standard.

(b) Provide alternative treatment programs appropriate to the needs of the persons it serves.

The applicant states that it maintains good working relationships within the health care community and works closely with home health providers and long-term care providers to make referrals that meet the needs of patients being discharged. (DI #10, p.10).

Based on information provided by Encompass-Salisbury, staff concludes that this standard is met.

(9) Preference in Comparative Reviews.

In the case of a comparative review of applications in which all standards have been met by all applicants, the Commission will give preference to the applicant that

offers the best balance between program effectiveness and costs to the health care system as a whole.

This standard is not applicable to the proposed project.

B. NEED

COMAR 10.24.01.08G(3)(b) Need. The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

The project's alignment with the need analysis in the Acute Inpatient Rehabilitation Services Chapter of the State Health Plan was discussed earlier in this staff report, under the need standard, COMAR 10.24.09.04B(2), *supra*, p. 10.

To supplement its position, the applicant maintains that the proposed project is needed by the service area population because there is unmet need in the community, as evidenced by the number of patients who seek treatment and cannot be admitted because the hospital has high bed occupancy. The applicant states that in 2018, 296 patients were not admitted because a bed was not available at the time admission was sought. The applicant states that there is not just a need for more beds, but a need for more private rooms, stating that the lack of private rooms limits the effective capacity of the hospital. Factors such as the need for gender compatibility and accommodating patients that must be placed in isolation because of the possible presence of an infectious agent can result in an inability to place two patients in a semiprivate room. (DI #2, p.34). The proposed project will add 14 private rooms, enhancing the facility's effective capacity to admit patients and operate a higher levels of bed occupancy. (DI #2, p.34).

Staff recommends that the Commission find that this project has satisfied the need criterion.

C. AVAILABILITY OF MORE COST-EFFECTIVE ALTERNATIVES

COMAR 10.24.01.08G(3)(c) Availability of More Cost-Effective Alternatives. The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.

As described earlier in this report, Encompass-Salisbury exercised an alternative approach to expanding access to its services when it received a determination from MHCC staff that a five bed increase in the licensed capacity of inpatient rehabilitation beds was not subject to CON review in 2018. The beds were brought on line in May of 2018.

The applicant states that the current proposed project seeks to address a continuing insufficiency in the number of available beds for the care of adult, special inpatient rehabilitation patients. The applicant states that in seeking the most cost effective way to achieve its goals, it

compared two other alternatives: constructing a new patient care wing; and leasing and operating space at a nearby health care facility.

The option of constructing a new patient care wing was rejected because the most cost-effective design plan would have added a minimum of 24 private patient rooms and beds. Not only was it more costly, but it would also add more beds than needed to service the population's needs. Finally, its footprint would encroach upon the parking lot, taking convenient parking spaces and would require the acquisition or lease of nearby land for an expansion of its parking capacity at some future date.

The option of operating a unit in a satellite facility was rejected. The applicant dismissed this option without consideration of specific facility partner, expressing doubt that it could find a partner close to Encompass-Salisbury that would have available space. Primarily, though, the applicant rejected this option because the applicant believes that non-hospital facilities which provide rehabilitation services are not capable of providing the hospital level of care needed by its patients. It maintains that a nursing home or skilled nursing facility ("nursing facility") is not a comparable setting to a rehabilitation hospital, despite some similarities. For instance, the applicant maintained that:

- The two types of facilities serve a different patient profile. A nursing facility provides comprehensive or long term care and an IRF is focused solely on rehabilitation;
- The regulations governing the frequency and duration of therapy visits are more stringent for an IRF than for a nursing facility;
- CMS regulation requires that 60 percent of admissions to an IRF must be for one or more of 13 specific diagnoses. This is not the case for nursing facilities; and
- IRF's must be medically supervised by a rehabilitation physician and provide care by personnel medically trained/certified in rehabilitation services, in contrast to nursing facilities, which must have a medical director, but not a rehabilitation physician, and whose therapy staff would not have the same level of certification.

(DI #10, pp. 11-14).

The applicant states that the proposed project is the alternative that delivers the most cost-effective solution to the problem of an insufficient bed and patient room capacity to meet demand for the facility.

Staff recommends that the Commission find that the proposed project is a cost-effective approach to meeting the applicant's objectives.

D. VIABILITY OF THE PROPOSAL

COMAR 10.24.01.08G(3)(d) Viability of the Proposal. The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

Availability of Resources to Implement the Proposed Project

The estimated capital cost of this proposed project is $5,717,000, funded out of cash reserves. (DI #2, Att.12). The applicant provided copies of audited financial statements for Encompass Health Corporation and Subsidiaries which showed ample reserves and profitable operations for the years ending 2015, 2016, and 2017. (DI #2, Att.14).

Availability of Resources to Sustain the Proposed Project

The applicant has operated profitably in recent years and projects continued profitable operations after project implementation. (DI#2, Table G).

Staff concludes that the proposed project is viable.

E. COMPLIANCE WITH CONDITIONS OF PREVIOUS CERTIFICATES OF NEED

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

The applicant has not received a CON in the past. This criterion is not applicable.

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.

As discussed under the impact standard, COMAR 10.24.09.04B(3), *supra*, *p. 15*, the applicant states the project will have no impact on patient volume, average length of stay, or case mix at other acute inpatient rehabilitation providers. The only other acute inpatient rehabilitation provider on the Eastern Shore is University of Maryland Shore Medical Center at Easton which has submitted a CON application that will scale back the size of its rehabilitation hospital from 20 to 14 beds. In addition Easton and Salisbury obtain referrals and patients from different acute care hospitals and markets and therefore the addition of ten beds is not likely to have any substantive impact on its services. (DI #2, p.42).

Staff concludes that the applicant is proposing a project that is likely to allow for an increase in its service volume without negatively affecting the other Eastern Shore IRF. The addition of 10 special hospital beds will improve access to the applicant hospital for residents of

its service area. Staff recommends that the Commission find that the impact of this project is acceptable.

IV. SUMMARY OF RECOMMENDATION

Based on its review of the proposed project and the project's compliance with the Certificate of Need review criteria, COMAR 10.24.01.08 G(3)(a)-(f), and with the applicable standards in Acute Inpatient Rehabilitation Services Chapter, staff has concluded that the project complies with the applicable SHP standards, is needed, is a cost-effective approach to meeting the project's objectives, is viable and will have an impact that is positive with respect to the applicants' ability to provide inpatient rehabilitation services demanded in its service area. For these reasons, staff recommends that the Commission APPROVE the application of Encompass-Salisbury for a Certificate of Need with the following condition:

> In its request for first use approval of any or all of the approved beds, Encompass-Salisbury shall provide information, acceptable to Commission staff, that: details the activities it has undertaken following approval of the Certificate of Need to increase the amount of charity provided to patients; and demonstrates its progress in achieving the level of charity care to which it has committed (i.e., charity care equivalent to two percent of total operating expenses). If staff concludes that Encompass-Salisbury's demonstration of progress is not satisfactory, further action regarding this Certificate of Need may be considered by the Commission at a public meeting.

IN THE MATTER OF	*	**BEFORE THE**
	*	
REHABILITATION HOSPITAL	*	**MARYLAND**
	*	
CORPORATION OF AMERICA,	*	**HEALTH**
	*	
LLC, d/b/a ENCOMPASS HEALTH	*	**CARE**
	*	
REHABILITATION HOSPITAL	*	**COMMISSION**
	*	
OF SALISBURY	*	
	*	
Docket No. 18-22-2435	*	

*** ***

FINAL ORDER

Based on the analysis and findings in the Staff Report and Recommendation, it is, this 19th day of December, 2019:

ORDERED, that the application of Rehabilitation Hospital Corporation of America, LLC, d/b/a Encompass Health Rehabilitation Hospital of Salisbury for a Certificate of Need to expand its special rehabilitation hospital in Salisbury by adding 14 private patient rooms and converting four semi-private rooms to private rooms, for a net increase of ten beds at a cost of $5,717,000 be, and hereby is, **APPROVED**, with the following condition:

> In its request for first use approval of any or all of the approved beds, Encompass-Salisbury shall provide information, acceptable to Commission staff, that: details the activities it has undertaken following approval of the Certificate of Need to increase the amount of charity provided to patients; and demonstrates its progress in achieving the level of charity care to which it has committed (i.e., charity care equivalent to two percent of total operating expenses). If staff concludes that Encompass-Salisbury's demonstration of progress is not satisfactory, further action regarding this Certificate of Need may be considered by the Commission at a public meeting.

APPENDIX 1

RECORD OF THE REVIEW

RECORD OF THE REVIEW

Docket Item #	Description	Date
1	Letter of Intent received and acknowledged.	8/6/18
2	Certificate of Need Application received.	10/5/18
3	Receipt Certificate of Need Application acknowledged.	10/10/18
4	MHCC Staff requests publication of notice of receipt of application in the Daily Times.	10/10/18
5	MHCC Staff requests the Maryland Register to publish notice of receipt of application.	10/10/18
6	Notice of receipt of application published in the Daily Times.	10/31/18
7	MHCC staff questions attachments to CON application via e mail correspondence.	2/18/19
8	MHCC staff sends request for completeness information.	2/22/19
9	Completeness information extension until 3/15/19 granted.	3/5/19
10	Completeness information received.	3/15/19
11	MHCC staff notifies applicant that formal start of review of application will be 5/24/19.	5/9/19
12	Commission staff requests publication of the notice of formal start of review in the next edition of Daily Times.	5/9/19
13	Commission staff requests publication of the notice of formal start of review in the next edition of Maryland Registrar.	5/9/19
14	Commission staff sends a copy of the CON application to the Wicomico County Health Department for review and comment.	5/9/19
15	Notice of formal start of review published in the Daily Times.	5/16/19
16	Email exchanges between Carolyn Jacobs of Jacobs and Dembert Law Offices and Kevin McDonald of MHCC to clarify information on organizational structure and bed utilization.	6/20/19
17	Email exchange between Carolyn Jacobs of Jacobs and Dembert Law Offices and Kevin McDonald of MHCC providing an updated Initial Financial Assistance Application.	7/31/19
18	Kevin McDonald of MHCC requests additional information.	8/23/19
19	Email exchange between Carolyn Jacobs of Jacobs and Dembert Law Offices and Kevin McDonald of MHCC contains response with additional information requested.	10/7/19
20	E mail exchange between Kevin McDonald of MHCC and Walter Smith of Encompass Health requesting additional information.	10/16/19
21	Carolyn Jacobs of Jacobs and Dembert Law Offices requests extension to file additional information.	10/28/19

22	E mail exchange between Kevin McDonald of MHCC and Carolyn Jacobs of Jacobs and Dembert Law Offices grants extension until 11/22/19 to file additional information.	11/14/19
23	Carolyn Jacobs of Jacobs and Dembert Law Offices responds with additional information requested.	11/22/19
24	Email from Carolyn Jacobs of Jacobs and Dembert Law Offices provides newspaper article for the record.	12/3/19
25	Email exchange between Jeanne Marie Gawel of MHCC and Carolyn Jacobs of Jacobs and Dembert Law Offices to provide answers to questions on quality data source and charity care policy.	12/4/19
26	Email exchange between Carolyn Jacobs of Jacobs and Dembert Law Offices and Kevin McDonald of MHCC provides response to subpart (b) of the charity care standard.	12/12/19
27	Email exchange between Rich Coughlan of DHG Healthcare and Kevin McDonald of MHCC provides additional information on source of utilization data presented in the application.	12/12/19
28	Email from Carolyn Jacobs of Jacobs and Dembert Law Offices with modification to initial financial assistance application.	12/13/2019