MARYLAND Health Care Commission

Randolph S. Sergent, Esq, Chairman
Ben Steffen, Executive Director

MEMORANDUM

TO: Commissioners

FROM: Wynee Hawk Chief, Certificate of Need

DATE: October 20, 2022

SUBJECT: Change in Bed Capacity of Forestville Healthcare Center and Clinton Healthcare Center
Docket No. 22-16-EX014

Enclosed is the revised staff report and recommendation for an Exemption from Certificate of Need (CON) application filed by CommuniCare Health Services (CommuniCare) to change the bed capacity between two of its Comprehensive Care Facilities (CCF) in Prince George's County, Maryland. The first CCF is Clinton Healthcare Center (Clinton) and the second is Forestville Healthcare Center (Forestville). The project will result in enlargement of Forestville, which will add 37 beds, and a corresponding reduction of bed capacity operated at Clinton. As a result of the project, neither of the facilities will operate patient rooms that accommodate more than two patients, after the project is completed.

The applicant states that this proposed project is the initial step in a more comprehensive strategic and capital improvement plan to eliminate all patient rooms licensed for three or four beds throughout CommuniCare's 18 Maryland facilities. The long-term plan involves closing and downsizing several CCFs, renovating existing facilities, and constructing new CCFs.

While future CommuniCare plans needing review by MHCC involve CCFs in Baltimore City and Carroll County, the project addressed in this report is the first phase of a reconfiguration of three Prince George's County CCFs. In this first phase, Clinton, currently 267 beds, will reduce its licensed bed capacity and temporarily delicense additional bed capacity allowing Forestville, currently 162 beds, to increase its bed capacity to 199 beds, through construction and renovation. As part of the construction/renovation, Forestville will gain 37 beds from Clinton as well as relocate all of its current triple bed rooms (31). At the completion of the construction/renovation the new, larger CCF will have only private and semi- private rooms. No need for additional CCF beds in Prince George's is identified by MHCC, so these moves maintain the existing bed supply without increases.

- The project plan is for Forestville to renovate 10,550 square feet (SF) of existing space and add 32,934 SF of new construction to its current 44,760 SF facility to accommodate the additional beds and eliminate all three-bed rooms. Clinton will need no structural renovations, only improvements to flooring, paint, artwork, and furnishings. The total cost of the project is $31,143,408.

Staff concludes that CommuniCare's application for an Exemption from a Certificate of Need is in the public interest, is not inconsistent with the State Health Plan and will result in the delivery of more efficient and effective health care services. Therefore, staff recommends that the Commission **APPROVE** the project with the following conditions:

1. CommuniCare will temporarily delicense CCF beds at Clinton upon completion of this project to eliminate operation of any three or four-bed rooms at Clinton.

2. CommuniCare agrees to execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with .05A(2)(b) of this Chapter for both the Clinton and Forestville facilities.

IN THE MATTER OF THE	*	**BEFORE THE**
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CHANGE IN BED CAPACITY OF	*	**MARYLAND**
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FORESTVILLE HEALTHCARE CENTER	*	**HEALTH CARE**
	*	
AND CLINTON HEALTHCARE CENTER	*	**COMMISSION**
	*	
Docket No. 22-16-EX014	*	

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REVISED STAFF REPORT AND RECOMMENDATION
REQUEST FOR EXEMPTION FROM CERTIFICATE OF NEED REVIEW

I. INTRODUCTION

A. Background

COMAR 10.07.02.01B(9) defines a comprehensive care facility (CCF) as a nursing home that admits residents requiring medical services and nursing services rendered by or under the supervision of a registered nurse, who: (a) are advanced in age; or (b) have a disease or a disability. CCFs are regulated "health care facilities" under Maryland law. Md. Code. Ann., Health-Gen §19-114(d)(1)(iii). A Certificate of Need (CON) issued by the Maryland Health Care Commission (MHCC) is required for the establishment of a health care facility, the relocation of a facility, or the addition of bed capacity at a facility. §19-120.

COMAR 10.24.01.04 allows health care facilities organized and operated within a "merged asset system" to use an alternate project review process for some projects that would otherwise require a CON. These projects may be considered under the review of a "request for exemption from CON review" rather than a CON application review. To approve an exemption request, MHCC must find that the project: (1) in in the public interest; (2) is not inconsistent with the State Health Plan; and (3) will result in the delivery of more efficient and effective health care services. COMAR 10.24.01.04E(2).

In this case, a company with many nursing homes (a reported 94 in seven states and 18 in Maryland) is proposing to enlarge and modernize one of those facilities, a Prince George's County CCF, in conjunction with downsizing a second Prince George's County CCF that it also owns and operates. Thus, the project is eligible for consideration as a request for exemption from CON review.

B. The Applicant

Health Care Facility Management, LLC, d/b/a CommuniCare Family of Companies (CommuniCare) is a large provider of post-acute care, which includes skilled nursing and rehabilitation centers, long-term care centers, assisted living communities, independent living

communities and long-term acute care hospitals. The privately-held company was founded by Stephen Rosedale in 1984 and operates 18 CCFs in Maryland, all doing business as "Healthcare Centers":

Anchorage – Salisbury (Wicomico)
Bel Pre – Silver Spring (Montgomery)
Blue Point – (Baltimore City)
Clinton – (Prince George's)
Cumberland – (Allegany)
Ellicott City – (Howard)
Fayette – (Baltimore City)
Forestville – (Prince George's)
Fort Washington – (Prince George's)
Hagerstown - (Washington)
Holly Hill – Towson (Baltimore County)
Kensington – (Montgomery)
Laurelwood – Elkton (Cecil)
Marley Neck – Glen Burnie (Anne Arundel)
Northwest – (Baltimore City)
Pleasant View – Mount Airy (Carroll)
South River – Edgewater (Anne Arundel)
Westminster – (Carroll)

C. The Project

The proposed project involves two CommuniCare facilities in Prince George's County: Clinton Nursing, LLC d/b/a Clinton Healthcare Center (Clinton) and Marlboro Leasing Co., LLC d/b/a Forestville Healthcare Center (Forestville). The project will result in enlargement of Forestville, which will add 37 beds, and a corresponding reduction of bed capacity operated at Clinton. These two facilities currently operate several triple (three-bed) and quad (four-bed) rooms. However, neither of the facilities will operate patient rooms that accommodate more than two patients after the project is completed.

The applicant states that this proposed project is the initial step in a more comprehensive strategic and capital improvement plan to eliminate all patient rooms licensed for three or four beds throughout CommuniCare's 18 Maryland facilities. (DI #1, pp.1-2 and DI #8, p.3). The long-term plan involves relocating and replacing CCFs and expanding and downsizing several CCFs, in addition to renovating facilities.

While CommuniCare plans to submit future requests for approval from MHCC with respect to CCFs in Baltimore City and Carroll County, the project addressed in this report is the first phase of a reconfiguration of three Prince George's County CCFs. In this phase, Clinton, which currently has 267 beds, will reduce its licensed bed capacity, and temporarily delicense additional bed capacity allowing Forestville, which currently has 162 beds, to increase its bed capacity to 199 beds through construction and renovation[1]. Forestville will internally relocate 31 beds from current three-bed rooms to private and semi-private rooms. In addition, Forestville will add 37 beds, congruent with the bed reductions at Clinton, yielding a larger CCF with private and semi-private rooms only. In the next phase, CommuniCare intends to propose to expand and renovate Fort Washington Healthcare Center, currently licensed to operate 150 beds, converting all rooms to private or semi-private accommodation and adding additional beds congruent with

[1] Temporary delicensing status will be employed by Clinton to allow for reduction in operating bed capacity upon completion of the Forestville expansion while retaining beds that will be proposed for addition at Fort Washington in a future filing.

further reduction in the bed capacity of Clinton. CommuniCare plans for Fort Washington to ultimately become a 196-bed facility and Clinton to be reduced to 180 beds. MHCC has not identified any additional need for CCF beds in Prince George's County, so these moves maintain the existing bed supply without increases.

The project plan is for Forestville to renovate 10,550 square feet (SF) of existing space and add 32,934 SF of new construction to its current 44,760 SF facility to accommodate the additional beds and eliminate all three-bed rooms. Clinton will need no structural renovations, only improvements to flooring, paint, artwork, and furnishings. The total cost of the project will be $31,143,408. Both the current bed complement, and the proposed bed complement are shown in the table below:

Figure 1: Bed Complement

37-Bed Redistribution

Current	Current	Proposed
Clinton	267	230
Forestville	162	199

Current and Proposed Bed Distribution by Facility and Patient Room Type

Current	Private	Semi-Private	Three-Bed	Four-Bed	Total
Clinton	8	68	37	3	267
Forestville	1	34	31	0	162
Proposed	Private	Semi-Private	Three-Bed	Four-Bed	Total
Clinton	8	111	0	0	230
Forestville	3	98	0	0	199

Source: (DI #1, p.4 and DI #11, p.2).

II. LEGAL QUALIFICATION FOR AN EXEMPTION FROM CERTIFICATE OF NEED REVIEW

The Commission may exempt certain actions proposed by a health care facility or merged asset system comprised of two or more health care facilities from the requirement of CON review and approval. Under COMAR 10.24.01.04A, one of those permitted actions is "a change in the bed capacity of an existing health care facility pursuant to the consolidation or merger of two or more health care facilities" subject to certain notification, information, and demonstration requirements. In this request for an exemption from CON review, the relocation of 37 beds from Clinton to Forestville is possible because CommuniCare is a merged asset system that includes both CCFs.

III. NOTICE BY THE COMMISSION TO THE PUBLIC

Notice of this request for an exemption from CON review was published in both the *Washington Post* and the *Maryland Register* on April 22, 2022, in accordance with COMAR 10.24.01.04C(1). No comments were received in response to publication of these notices.

IV. PUBLIC INFORMATION HEARING

A public informational hearing is required for certain hospital requests for an exemption from CON review. COMAR 10.24.01.04D. Because this exemption request does not involve hospitals, no public informational hearing was required as part of this review.

V. PROCEDURAL HISTORY

Docket Item #	Description	Date
1	Exemption request filing	April 19, 2022
2	Request to publish notice of exemption request in the *Maryland Register*	April 22, 2022
3	Request to publish notice of exemption request in the *Washington Times*	April 22. 2022
4	Notice published Washington Times	April 25, 2022
5	MHCC staff requests additional information	May 18,2022
6	Applicants' request for additional time to answer questions and staff approval through June 10, 2022	June 3, 2022
7	Applicants' second request for additional time to answer questions and staff approval through June 17, 2022	June 13, 2022
8	First set of completeness responses received	June 15, 2022
9	MHCC staff requests a second set of additional information.	June 23, 2022
10	Applicant requests extension to 7/13/22 to turn in second completeness	July 8, 2022
11	Second set of completeness received	July 12, 2022
12	Sollins to Gawel email exchange regarding one remaining quad room	July 15, 2022
13	Sollins to Gawel email exchange regarding shared toilets	August 12, 2022
14	Hawk to Sollins email exchange regarding legal name of applicant	September 7,2022
15	Staff Report and Recommendation	September 9, 2022
16	Letter from CommuniCare regarding proposed conditions	September 12, 2022
17	Memorandum from Wynee Hawk to Commissioners	September 14, 2022

VI. DETERMINATION OF EXEMPTION FROM CERTIFICATE OF NEED REVIEW

Pursuant to COMAR 10.24.01.04E(2), the Commission may approve an exemption from CON review for the relocation of bed capacity if the merged asset system proposing the project has provided the required information, and the Commission, in its sole discretion, finds that the proposed action:

(a) Is in the public interest;

(b) Is not inconsistent with the State Health Plan…; and

(c) Will result in more efficient and effective delivery of health services.

A. Is in the Public Interest

CommuniCare states that the consolidation and redistribution of the CCF beds from Clinton to Forestville is in the public interest because the elimination of multi-bedded rooms (three or more patients in a single room) allows for increased privacy for nursing home residents without changing the bed capacity in Prince George's County, a jurisdiction projected to have a more than adequate supply of CCF beds. Additionally, the increased privacy allows for more private visitation with families and at the same time less disruption to others in the room. Lastly, the applicant states that modernizing the room and bed configuration will also allow the facility to be an enhanced community resource. (DI # 1, pp.3-4).

Staff recommends that the Commission find that the proposed project is in the public interest.

B. Is not inconsistent with the State Health Plan

The applicable standards of the State Health Plan are discussed in Appendix 1 to this report. While the applicant satisfied most of the State Health Plan standards for CCFs, it was unable to demonstrate that at least 70 percent of all the comprehensive care facilities owned or operated by the applicant or a related or affiliated entity for three years or more had an average overall CMS star rating of three or more stars in CMS's most recent five quarterly refreshes for which CMS data is reported. COMAR 10.24.20.05A(8)(a). Despite this deficiency, and as further explained in Appendix 1, Staff recommends that the Commission find that the project is not inconsistent with this standard because the applicant seeks to improve two facilities that do have above-average performance.

In addition, the State Health Plan requires an applicant for a CON to submit documentation or agree to submit documentation of a written Memorandum of Understanding with Medicaid to maintain, at a minimum, the proportion of Medicaid patient days established by MHCC for the jurisdiction or region in which the CCF is located. [COMAR 10.24.20.05A(2)(a)] Because neither facility has entered a Memorandum of Understanding with Medicaid, Staff recommends the following condition:

> CommuniCare shall execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with .05A(2)(b) of this Chapter for both the Clinton and Forestville facilities and provide a copy of the memoranda to the Commission upon execution.

Staff recommends that the Commission find that the proposed project is not inconsistent with the applicable standards of the State Health Plan.

C. Will result in the delivery of more efficient and effective health care services

The proposed project will eliminate 31 three-bed rooms at Forestville. The project will also reduce the number of three- and four-bed rooms at Clinton.[2] This change in the bed distribution will enhance efficiency as bed availability for admissions will not be as limited by factors such as gender compatibility. The project will also enhance effectiveness by adding more private rooms which will allow them to isolate residents for any potential infection outbreaks. In addition, the project will create a smaller nursing unit size which will allow for more personalized and effective care as seen in the chart below. (DI #1, p.3).

Nursing Beds Per Unit, Clinton and Forestville Before and After Project

Nursing Unit Size (beds)		
	Before	**After**
Forestville		
1st East Wing	22	18
1st North Wing	30	24
1st West Wing	30	22
LL West Wing	20	18
LL North Wing	30	24
LL West Wing	30	22
Clinton		
Unit 1 West	40	30
Unit 2 East	58	48
Unit 2 West	58	48
Unit 3 East	59	56
Unit 3 West	52	48

(DI #1, p.3).

VII. STAFF RECOMMENDATION

Staff recommends that the Commission conditionally approve this request for exemption from CON to reconfigure bed capacity at Forestville and Clinton without increasing the supply of CCF beds. The project will improve the physical environment of two CCFs and should allow these CCFs to operate more efficiently and effectively. While CommuniCare operates other CCFs in Maryland which have recently performed at below average levels with respect to the Nursing Home Care composite star rating system, the two CCFs involved in this project have better performance.

[2] Operationally, these types of rooms will not be in use upon completion of this project. Temporary delicensure will be used to maintain the existence of beds in multi-bedded rooms pending approval and completion of the Fort Washington project, which has yet to be proposed and, like this project, will add beds being eliminated at Clinton.

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Docket No. 22-16-EX014	*	

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ORDER

Having reviewed and considered the information and analysis contained in the Staff Report and Recommendation, it is, this 20th day of October 2022, hereby:

ORDERED that the findings of fact and conclusions of law included in the Staff Report and Recommendation are adopted by the Maryland Health Care Commission and incorporated into this order; and it is further

ORDERED that the request for exemption from Certificate of Need review filed by Health Care Facility Management, Inc. d/b/a CommuniCare Family of Companies (CommuniCare) for a change in the bed capacity of two CommuniCare facilities in the same jurisdiction, Marlboro Leasing Co., LLC d/b/a Forestville Healthcare Center (Forestville), which will add 37 comprehensive care facility (CCF) beds, and Clinton Nursing, LLC d/b/a Clinton Healthcare Center (Clinton), which will eliminate at least 37 CCF beds, is hereby **APPROVED** with the following conditions:

1. CommuniCare will submit a request to temporarily delicense CCF beds at Clinton upon completion of this project to eliminate operation of any three or four-bed rooms at Clinton Healthcare Center.

2. CommuniCare shall execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with .05A(2)(b) of this Chapter for both the Clinton and Forestville facilities and provide a copy of the memoranda to the Commission upon execution.

APPENDIX 1

CONSISTENCY WITH THE STATE HEALTH PLAN

APPENDIX 1

The following is a review of the proposed project against the SHP standards to assess the proposal's consistency with 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. The State Health Plan standards applicable in this review are found in COMAR 10.24.20, Comprehensive Care Facility Services.

COMAR 10.24.20.05 Comprehensive Care Facility Standards

(1) Bed Need and Average Annual Occupancy.

(a) For a relocation of existing comprehensive care facility beds currently in the inventory, an applicant shall demonstrate need for the beds at the new site in the same jurisdiction. This demonstration may include, but is not limited to, a demonstration of unmet needs by a particular patient population, high utilization of comprehensive care facility beds in the jurisdiction during the past five years, and the ways in which the relocation will improve access to needed services or improve the quality of comprehensive care facility services.

This project will improve access to needed services and improve the quality of CCF services at the two CCFs involved in the project by modernizing the facilities and eliminating operation of patient rooms with more than two beds. (DI #1, Exhibit 3, Table A).

(b) An applicant proposing a project that will not add comprehensive care facility beds to a jurisdiction but will add beds to an existing facility by relocation of existing licensed or temporarily delicensed comprehensive care facility beds within a jurisdiction, shall demonstrate that the facility being expanded operated all of its licensed beds at an occupancy rate of 90 percent or higher during the last two fiscal years for which the annual Maryland Long Term Care Survey data is available.

The applicant states that the most recent two fiscal years of the Maryland Long Term Care Survey data available is for 2018 and 2019. The applicant provides the following information on the facilities occupancy rates that show that both facilities in the merger request have met and exceeded the 90 percent occupancy threshold, meeting the requirements of the standard. In addition, staff was able to access 2020 data which showed Clinton has an occupancy rate of 93.6 percent and Forestville 95.2 percent, also exceeding the occupancy threshold. (DI #1, Exhibit 3, Table D and DI# 8, Exhibit I, Table D).

Table 1: Clinton and Forestville Average Annual Bed Occupancy Rate, FY 2018 and 2019

CCF	2018			2019		
	Beds	Patient Days	Average Annual Occupancy Rate	Beds	Patient Days	Average Annual Occupancy Rate
Clinton	267	94,950	97.4%	267	93,612	96.1%
Forestville	162	56,594	95.7%	162	56,740	96.0%

(DI #1, Exhibit 2, Table D and DI# 8, Exhibit I, Table D).

Staff concludes that the applicant has met the standard.

(2) Medical Assistance Participation.

(a) The Commission may approve a Certificate of Need for a comprehensive care facility only for an applicant that participates, or proposes to participate, in the Medicaid program, and only if the applicant submits documentation or agrees to submit documentation of a written Memorandum of Understanding (MOU) with Medicaid to maintain the proportion of Medicaid patient days required by .05A(2)(b) of this Chapter.

The applicant currently participates in the Medicaid program at both CCFs however it states that neither Clinton nor Forestville have Memoranda of Understanding with Medicaid that formalize the minimum level of Medicaid participation that each CCF must maintain. (DI #2, p.5).

(b) Each applicant shall agree to serve and maintain a proportion of Medicaid patient days that is at least equal to the proportion of Medicaid patient days in all other comprehensive care facilities in the jurisdiction or region, whichever is lower, calculated as the weighted mean minus the 25th percentile value across all jurisdictions for each year based on the most recent Maryland Long Term Care Survey data and Medicaid Cost Reports available to the Commission, as published in the *Maryland Register*.

The applicant states that the most recent Medicaid Required Participation Rates published on the MHCC website are for 2019, which show the minimum for Prince George's County to be 42.3 percent (lower than the Southern Maryland overall minimum of 44.4 percent). The applicant demonstrated that both CCFs involved in this project met these minimums in the most recent year for which data is available, with Medicaid patient days accounting for over 50% of total patient days at both Forestville and Clinton. (DI #1, Exhibit 3, Table F and DI# 8, Exhibit I, Table F).

(c) An applicant for new comprehensive care facility beds has three years during which to achieve the applicable proportion of Medicaid participation from the time the facility is licensed and shall show a good faith effort and reasonable progress toward achieving this goal in years one and two of its operation.

The applicant is not applying for new CCF beds. This subpart is not applicable.

(d) An applicant that seeks to expand or replace an existing comprehensive care facility shall modify its MOU upon expansion or replacement of its facility to encompass all of the comprehensive care facility beds in the expanded or replaced

facility and to include a Medicaid percentage that reflects the most recent Medicaid participation rate, unless the facility's existing MOU encompasses all beds at a percentage that is equal to or greater than the most recent Medicaid participation rate.

The two facilities involved in the proposed project do not have MOUs with the Maryland Medicaid program.

(e) 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.

The applicant states that both facilities will continue to admit Medicaid residents. Neither facility has a current MOU with Medicaid. (DI #1, Exhibit 2, p.3 and DI #8, p.5).

(f) Prior to licensure, an applicant shall execute a written Memorandum of Understanding with the Medical Assistance Program of the Maryland Department of Health to:

(i) Achieve and maintain the level of Medicaid participation required by .05A(2)(b) of this Chapter; and

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

The applicant states that although neither CCF has a Medicaid MOU, both facilities exceed the minimal percentage of service to Medicaid patients currently required. The applicant also states that the percentage of total patients that are Medicaid recipients at the two CCFs is not expected to materially change as a result of this project. (DI #1, Exhibit 2, p.3).

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

The applicant did not respond to this subpart of the standard. Staff recommends the following condition be included in an approval of this request.

CommuniCare shall execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with .05A(2)(b) of this Chapter for both the Clinton and Forestville facilities and provide a copy of the memoranda to the Commission upon execution.

(3) Community-Based Services. An applicant shall demonstrate in writing its commitment to alternative community-based services and to minimizing the comprehensive care facility length of stay as appropriate for each resident and agree to:

(a) Provide information to every prospective resident about the existence of alternative community-based services, including Medicaid home and community-based waiver programs, Money Follows the Person Program, and other initiatives to promote care in the most appropriate settings;

The applicant provided a handout (Exhibit 4), distributed to all prospective residents, which documents the availability of community-based services in the area. The applicant also included the flyers it gives on admission on the Money Follows the Person program and community waiver programs (DI #8, Exh. B and F). Staff concludes that the applicant has met Paragraph (a) of this standard.

(b) Use Section Q of Minimum Data Set (MDS) 3.0 to assess the individual's interest in and willingness to pursue community-based alternatives;

The applicant states that it uses section Q of the MDS to assess a resident's interest in and willingness to receive information on community-based alternatives to nursing home care. The applicant documented this by providing the MDS policy and a sample completed section Q of the MDS with the protected health information removed. Staff concludes that the applicant has met this sub-part of the standard. (DI #8, Exh. C and D).

(c) Develop a discharge plan on admission with resident reassessment and plan validation at six-month intervals for the first 24 months. This plan is to be provided to the resident and/or designated representative; and

CommuniCare included its discharge policy as Exhibit 5. The CommuniCare policy states that it starts discharge planning within 72 hours of admission. Once a discharge is triggered by a desire to return to the community, the social service staff will update and evaluate the resident's goals, needs, and available resources. The staff will then assess each resident's ability to return to community living and discuss options with the resident or resident representative on a weekly basis. Upon discharge, the discharge plan will be given to the resident or representative. (DI #8, Exh. C).

Staff concludes that the applicant has met this sub-part of the standard.

(d) Provide access to the facility for all long-term care home and community-based services education and outreach efforts approved by the Maryland Department of Health and the Maryland Department of Disabilities to provide education and outreach for residents and their families regarding home and community-based alternatives.

The applicant shared a handout given to all residents with information on home and community-based services (DI #8, Exh. F). The applicant also states that it gives access to agencies that provide education and outreach concerning community-based alternatives and provided evidence of this in the form of copies of visitor sign-in sheets showing that providers of community-based services had accessed the facility. (DI #8, Exh. G).

Staff concludes that the applicant has met this standard.

(4) Appropriate Living Environment. An applicant shall provide to each resident an appropriate living environment that demonstrates compliance with the most recent FGI Guidelines. In addition, an applicant shall meet the following standards:

(a) In a new construction project:

(i) Develop rooms with no more than two beds for each resident room;

(ii) Provide individual temperature controls for each room;

(iii) Assure that no more than two residents share a toilet; and

(iv) Identify in detail, by means of architectural plans or line drawings, plans to develop a comprehensive care facility that provides a cluster/ neighborhood design or a connected household design, rather than an institutional design, consistent with the most recent FGI Guidelines.

The applicant states that it is not proposing building a new facility, so this sub-part is not applicable.

(b) In a renovation or expansion project:

(i) Reduce the number of resident rooms with more than two residents per room;

(ii) Provide individual temperature controls in each newly renovated or constructed room;

(iii) Reduce the number of resident rooms where more than two residents share a toilet; and

(iv) Document that the applicant considered development of a cluster/ neighborhood design or a connected household design and if the project includes an institutional model document why the alternative models were not feasible.

The applicant states that the proposed project fully complies with (b) (i), (ii), and (iii) and included facility drawings attached to this report as Appendix 2. (DI #8, p.8). The renovation and expansion of Forestville with a congruent reduction in bed capacity at Clinton will reduce the number of resident rooms with more than two residents per room. It will also provide individual temperature controls in each newly renovated or constructed room. It will reduce the number of resident rooms where more than two residents share a toilet; from 56 to 48 rooms at Forestville and from 106 to 97 at Clinton[1].

For (b)(iv) the applicant considered a cluster/neighborhood design but stated it was not reasonably possible when utilizing only minimal new construction and working within the confines of the renovation of an existing facility. (DI #1, Exhibit 2, p.4).

(c) The applicant shall demonstrate compliance with Subsection .05A (4) of this Regulation by submitting an affirmation from a design architect for the project that:

[1] Clinton currently has 106 shared toilets, 97 after bed reallocation to Forestville; Forestville currently has 56 shared toilets, 48 after bed reallocation.

(i) The project complies with applicable FGI Guidelines; and
(ii) Each design element of the project that deviates from the FGI Guidelines is justified by specific stated reasons.

The applicant provided a letter from the architect as Exhibit 6 affirming that the Forestville project complies with all applicable FGI guidelines. There is no architect letter for the Clinton facility as there are no structural renovations—only changes to flooring, artwork, and furnishings. (DI #11, p.3). Staff concludes that the applicant has met the standard by incorporating an appropriate living environment design that is in line with current FGI guidelines in its proposed project.

Staff concludes that the applicant has met the standard.

(4) Specialized Unit Design. An applicant shall administer a defined model of resident-centered care for all residents and, if serving a specialized target population (such as, Alzheimer's, respiratory, post-acute rehabilitation) demonstrate that its proposed facility and unit design features will best meet the needs of that population. The applicant shall:

(a) Identify the types of residents it proposes to serve, their diagnostic groups, and their care needs;

The applicant states that both facilities provide care for Alzheimer's dementia, rehabilitation, respite, hospice, bariatrics, cancer, cardiac, wounds, pain management/patient-controlled analgesia, intravenous therapy, tracheotomy, infectious diseases, and total parenteral nutrition. In addition, Forestville is identified as having a drug and alcohol program and Clinton an onsite dialysis center. (DI #1, Exh.1). Both facilities provide care for both short term and long-term patient needs. (DI #8, p.6).

(b) If developing a unit to serve respiratory patients, demonstrate the ability to meet Office of Health Care Quality standards in COMAR 10.07.02.14-1;

The applicant states that although it provides respiratory care, there is no specialized unit and thus, the merger will not include any specialized unit design.

(c) If developing a unit to serve dementia patients, demonstrate the ability to meet Office of Health Care Quality standards and the most current FGI Guidelines.

The applicant states that although it provides dementia care, there is no specialized unit and thus, the merger will not include any specialized unit design.

(d) Demonstrate that the design of the comprehensive care facility is consistent with current FGI Guidelines and serves to maximize opportunities for ambulation and self-care, socialization, and independence. An applicant shall also demonstrate that the design of the comprehensive care facility promotes a safe and functional environment and minimizes the negative aspects of an institutional environment.

The applicant includes an architect's letter in Exhibit 6 stating the facility will meet current FGI guidelines. The applicant also states that its common areas will promote socialization and ease of ambulation. The applicant included multiple figures showing the common areas which will have courtyards, an enclosed patio (secured for safety), dining areas (24-hour nourishment bars and a private dining area for large gatherings), activity areas, living rooms, internet cafes, a library, lounging space, and an expanded rehabilitation gym. Staff concludes that the applicant has met the standard by minimizing the negative aspects of an institutional environment.

(6) Renovation or Replacement of Physical Plant. An applicant shall demonstrate how the renovation or replacement of its comprehensive care facility will:

(a) Improve the quality of care for residents in the renovated or replaced facility;

The applicant states that the project will eliminate operation of any rooms housing more than two patients, increasing privacy for residents. (DI #1, Exhibit 2, p.5).

Staff concludes that the applicant has met this sub-part of the standard.

(b) Provide a physical plant design consistent with the FGI Guidelines; and

The applicant states that its project is consistent with the FGI Guidelines, and its response is detailed above in standard (5)(d) supra.

Staff concludes that the applicant has met this sub-part of the standard.

(c) If applicable, eliminate or reduce life safety code waivers from the Office of Health Care Quality and the Office of the Maryland State Fire Marshal.

Paragraph (c) is not applicable as there are no life safety code waivers at either facility from the Office of Health Care Quality or the Fire Marshall. (DI #1, Exhibit 2, p.5).

Staff concludes that the applicant has met the entirety of the Renovation/Replacement of Physical Plant standard by demonstrating that the renovations and the plans for new construction are resident-centered, and FGI Guidelines-compliant.

(7) 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 comprehensive care facility shall demonstrate that its facility is, or will be, served by a public water system that meets the Safe Drinking Water Act standards of the Maryland Department of the Environment.

The applicant states that both facilities are currently served by the Prince George's County public water system, which meets the referenced Safe Water Drinking Act standards, and that the new areas created with the merger will access the same water source. (DI #1, Exhibit 2, p.5).

Staff concludes this standard has been met.

(8) Quality Rating.

(a) An applicant shall demonstrate, at the time of letter of intent submission, that at least 70 percent of all the comprehensive care facilities owned or operated by the applicant or a related or affiliated entity for three years or more had an average overall CMS star rating of three or more stars in CMS's most recent five quarterly refreshes for which CMS data is reported.

(i) If the applicant or a related or affiliated entity owns or operates one or more comprehensive care facilities in Maryland, the CMS star ratings for Maryland facilities shall be used.

(ii) If the applicant or a related or affiliated entity does not own or operate comprehensive care facilities in Maryland, CMS star ratings for such facilities in the states in which it operates shall be used.

The relevant subpart is (i). Seventy percent of the 17 CommuniCare facilities for which this standard is applicable would be 12 facilities. The applicant has 18 CCF facilities in Maryland. One of the facilities, Pleasantville, was acquired in January 2022 and is not included in this calculation. The table below shows that CommuniCare has achieved this required average star rating in only five facilities (42 percent) within the last five quarterly refreshes. However, the two CCFs involved in this project did have acceptable average performance.

(b) An applicant that is an existing Maryland comprehensive care facility shall document, at the time of letter of intent submission, that it had an average overall star rating of three or more stars in CMS's most recent five quarterly refreshes for which CMS data is reported, unless the facility has been owned or operated by the applicant for fewer than three years.

Both facilities involved in the proposed project, Clinton and Forestville had an average overall star rating of three or more stars in CMS's most recent five quarterly refreshes for which CMS data is reported. (Both had an overall rating of 3.4 stars.)

Table 2: Medicare Star Ratings, Recent Five Quarterly Refreshes Through April 2022
CommuniCare Maryland CCFs Owned for Three Years or More

	Most recent five quarterly refreshes*					
Facility	1 – 4/22	2 -1/22	3 -10/20	4 -7/20	5 - 4/20	Average
Anchorage	2	1	1	1	1	1.2
Bel Pre	5	5	4	3	3	4.0
Blue Point	2	2	3	3	2	2.4
Clinton	4	4	3	3	3	3.4
Cumberland	2	2	1	1	1	1.4
Ellicott City	1	2	2	2	2	1.8
Fayette	2	2	2	2	2	2.0
Forestville	3	2	4	4	4	3.4
Ft. Washington	4	3	5	5	5	4.4
Hagerstown	1	1	1	1	1	1.0
Holly Hill	1	1	3	3	3	2.2
Kensington	2	3	4	3	2	2.8
Laurelwood	1	1	1	1	1	1.0

Marley Neck	4	5	5	4	4	4.4
Northwest	1	1	2	1	1	1.2
South River	2	3	3	3	3	2.8
Westminster	1	1	1	1	1	1.0

* Footnote from Care Compare: SNF QRP Data Dictionary, updated: October 2020
Note: For Q1 2020 and Q2 2020, providers were exempted from data submissions. For this reason, CMS will hold the data constant (i.e., freeze the data) following the October 2020 refresh. The affected Care Compare site refreshes that were scheduled to contain CY 2020 COVID-19 data (Q1 2020, and Q2 2020) include: January 2021, April 2021, July 2021, and October 2021. As a result, CMS will hold the October 2020 data constant until SNF QRP data refreshes on Care Compare in January 2022. Based on when Medicare froze the data, for this analysis we used the following time periods: April 2022, January 2022, October 2020, July 2020, April 2020.

The applicant states that, with the pandemic, many facilities have not had an annual survey in quite some time. CommuniCare states that it responds effectively to any plan of correction. The applicant also states that staffing challenges are being met by increased compensation/benefit packages, sign-on bonuses, referral bonuses, creation of its own staffing company, nursing assistant training programs, and recruiting overseas (sponsoring green cards and first three months of housing). Lastly, CommuniCare states that it utilizes telehealth and telemedicine to achieve high- quality measures for its facilities. (DI #8, p.19). The applicant reiterated that its facilities, although not achieving the overall scores desired, consistently scores high when just the quality domain is isolated from the overall scores. (DI #11, p.6).

Staff recommends that the Commission find that the proposed project, which allows a better room configuration for two of the CommuniCare CCFs that have acceptable recent performance, is not inconsistent with the quality rating standard, despite the relatively low star rating for most of the company's Maryland CCFs. Staff believes this is a reasonable interpretation of how this standard should apply to this particular exemption request. The applicant is not seeking to establish a new facility or expand overall bed capacity. Staff believes that this standard should not stand in the way of improving these two facilities that do have above-average performance, particularly given the public interest served in eliminating 3- and 4- bed rooms. This standard should be used to limit the ability of sub-performing facilities or companies from altering their bed capacity until their performance is brought to average or above-average levels. Staff views an exemption request involving CCFs with below average composite scores as being inconsistent with the State Health Plan.

In Staff's initial September 9, 2022 Report, Staff recommended memorializing this interpretation as a condition on CON approval. (DI #15). The proposed condition was subsequently revised as follows:

> CommuniCare shall demonstrate progress in improving its performance on the CMS Nursing Home Compare Five-Star Quality Rating System for its Maryland facilities. Any further reconfiguration of its CCFs in Maryland will only include changes at CCFs with a composite score of three or more stars until CommuniCare is able to meet the quality rating standard at COMAR 10.24.20.05A(8).

(DI #17.) CommuniCare opposed this condition, arguing that the Commission does not have authority to impose conditions on exemption requests[2] and that it is inappropriate to impose a condition that, it argues, makes a peremptorily adverse determination on projects that have not been filed and are not currently before the Commission. (DI #16.) After discussion with CommuniCare's counsel, Staff is no longer recommending the imposition of this condition. Staff agrees that any future CON application or request for exemption from CON review should be assessed based on its own merits and hopes that CommuniCare thoughtfully considers staff's analysis in this report prior to submitting another request to the Commission for approval.

Staff is currently considering what changes in this regulation should be considered to provide a more nuanced used of quality measures in regulating nursing home services. The objective will be maintenance of the principle that a substantial track record of sub-average performance should be a barrier to entering Maryland or expanding service capacity in Maryland while also allowing consideration of CCF replacement and reconfiguration projects that allow for needed modernization of CCF physical plant designs in ways that benefit patients and staff.

(c) An applicant shall demonstrate that it has an effective program of quality assurance functioning in each comprehensive care facility owned or operated by the applicant or a related or affiliated entity.

The applicant provided its Quality Improvement and Performance Improvement policy as well as sign in sheets to demonstrate attendance at the Quality Assurance meetings. (DI #11, Exh. A and B).

Staff concludes that the applicant has met this subpart of the standard.

(d) An applicant that has never owned or operated a comprehensive care facility shall demonstrate its ability:

(i) To develop and implement a quality assessment and performance improvement plan, consistent with requirements of the Maryland Office of Health Care Quality; and

(ii) To produce high-level performance on CMS quality measures.

Subpart (d) is not applicable as both facilities are owned by an experienced CCF owner/operator.

(9) Collaborative Relationships. An applicant shall document, by means of letters, for new applicants, and contracts, for existing facilities, its links with hospitals, hospice programs, home health agencies, assisted living providers, Adult Evaluation and Review Services, adult day care programs, and other community providers in the long-term care continuum.

(a) An applicant shall demonstrate its commitment to effective collaboration with hospitals by documenting its successful efforts in reducing inappropriate

[2] As explained further in DI #17, the Commission does have authority to impose conditions on exemptions from CON review and has routinely done so.

readmissions to hospitals, improving the overall quality of care, and providing care in the most appropriate and cost-effective setting. The demonstration shall include:

(i) Data showing a reduction in inappropriate hospital readmissions;

(ii) Data showing improvements in the quality of care and provision of care in the most appropriate setting.

Forestville and Clinton have rehospitalization rates for short-stay patients that compare favorably with the state and national averages (22.9 and 21.4 percent respectively), demonstrating success in reducing inappropriate hospital re-admissions and providing care in the most appropriate setting.[3] Forestville achieved a rehospitalization rate of 15.1 percent and Clinton achieved a rate of 16.3 percent on this measure in the most recent CMS refresh of hospital readmissions data in March 2022. (DI #1, pp.7-8).

(b) An applicant shall demonstrate its commitment to providing an effective continuum of care by documenting its collaborative efforts with Medicare-certified home health agencies and hospices to facilitate home-based care following comprehensive care facility discharge and shall facilitate delivery of hospice services for terminally ill residents. The demonstration shall document that the applicant has:

(i) Planned for the provision of home health agency services to residents who are being discharged; and

(ii) Arranged for hospice and palliative care services, when appropriate, for residents who are being discharged.

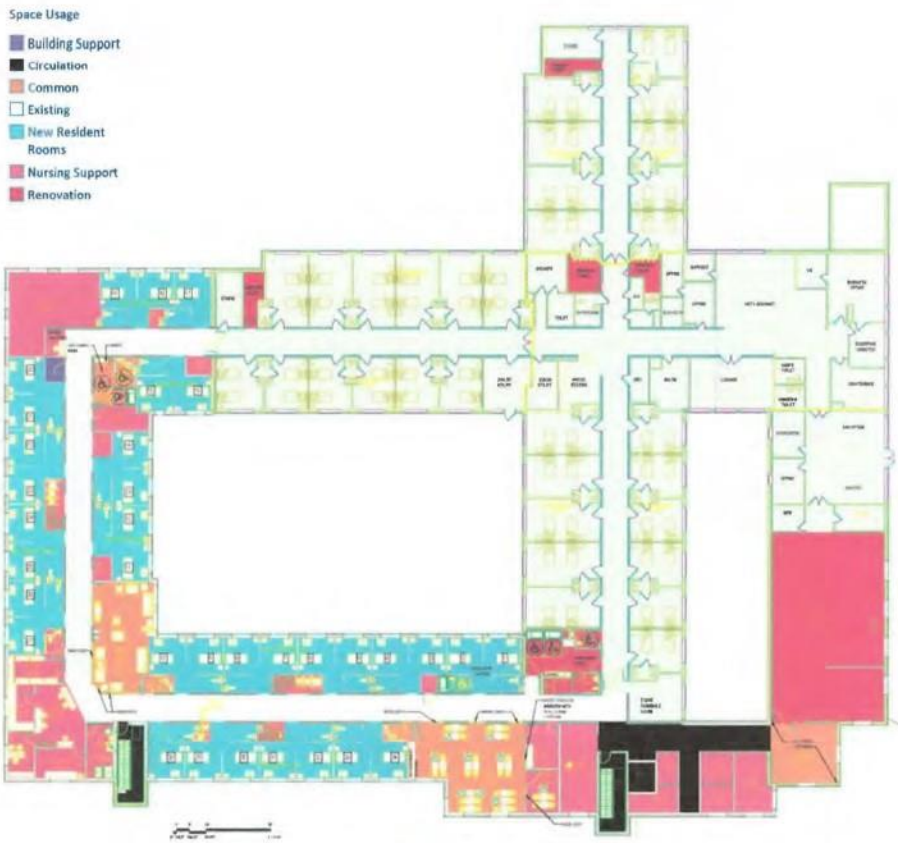
The applicant states that both Clinton and Forestville work with multiple home health agencies such as Amedisys, Bayada, Revival, VNA, Medstar, Professional Healthcare Agencies (PHA), Johns Hopkins Connection, Human Touch, and Dubois. Both facilities also contract with multiple hospices including Capital Caring, Hospice of the Chesapeake, Seasons Hospice and Heartland. (DI #1, Exh. 7).

Staff concludes that the applicant has shown both a commitment to reducing re-hospitalizations and collaboration with other community providers meeting each part of the standard.

[3] Applicant cited "most recent data available." April 19, 2022.

APPENDIX 2

FORESTVILLE RENOVATION DRAWINGS



UPPER LEVEL

AREA OF ADDITION =	15,786 SF
EXISTING BUILDING, AREA OF RENOVATION =	3,331 SF
EXISTING BUILDING (NON-RENOVATED) =	18,995 SF
TOTAL PROPOSED BUILDING AREA =	38,112 SF

UPPER LEVEL

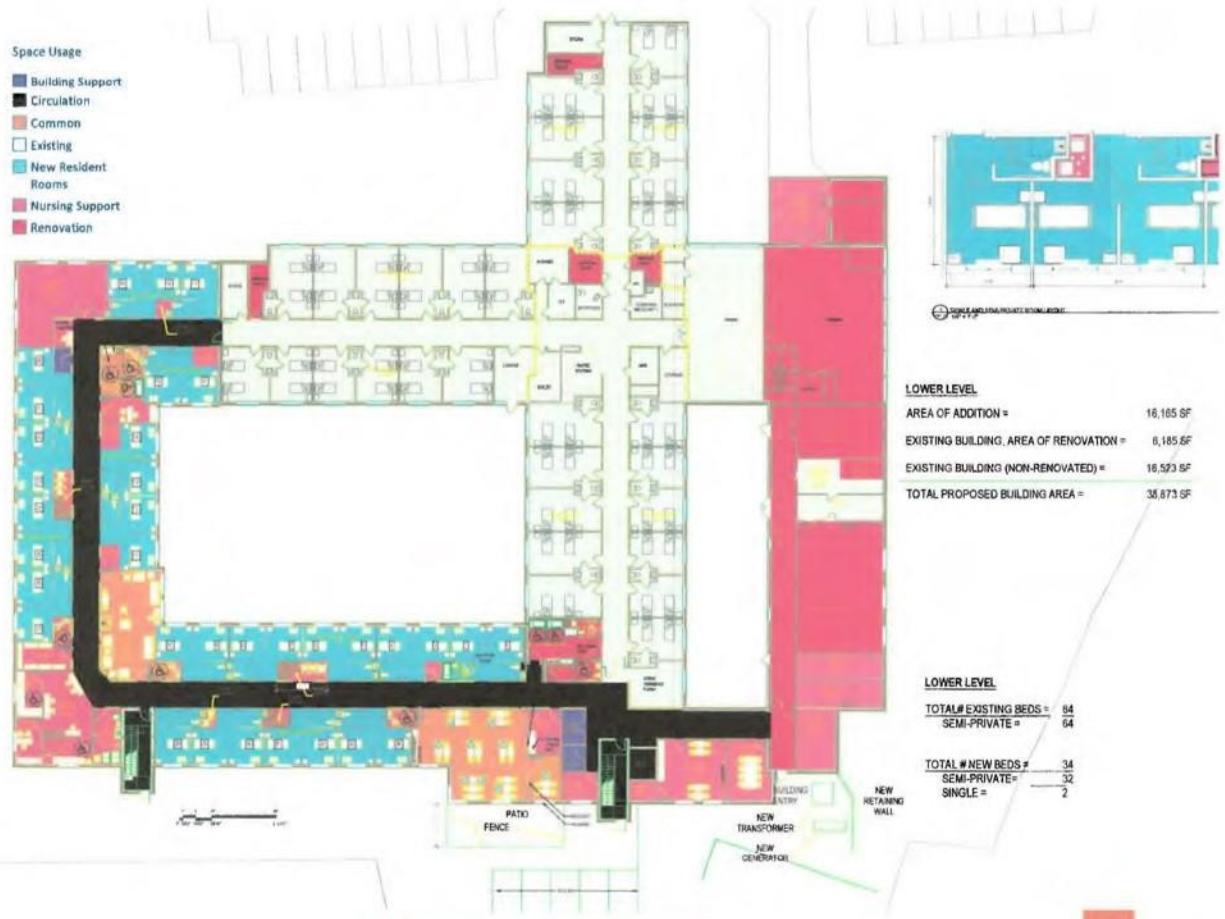
TOTAL # EXISTING BEDS =	64
SEMI-PRIVATE =	64

TOTAL # NEW BEDS =	34
SEMI-PRIVATE=	32
SINGLE =	2

3/32" = 1'-0"

FORESTVILLE ADDITION

FLOOR PLAN- UPPER LEVEL



LOWER LEVEL

AREA OF ADDITION =	16,165 SF
EXISTING BUILDING, AREA OF RENOVATION =	6,185 SF
EXISTING BUILDING (NON-RENOVATED) =	16,523 SF
TOTAL PROPOSED BUILDING AREA =	38,873 SF

LOWER LEVEL

TOTAL# EXISTING BEDS =	64
SEMI-PRIVATE =	64
TOTAL # NEW BEDS =	34
SEMI-PRIVATE=	32
SINGLE =	2

3/32" = 1'-0"

FORESTVILLE ADDITION

FLOOR PLAN - LOWER LEVEL