

BALTIMORE NURSING AND REHABILITATION, LLC
CERTIFICATE OF NEED APPLICATION FILED APRIL 10, 2015
MATTER NO. 15-24-2366
RESPONSE TO COMPLETENESS QUESTIONS DATED MAY 11, 2015

PROJECT BUDGET

1. Please note that the CON standard in the Nursing Home chapter of the State Health Plan regarding Medical Assistance Participation states that "... the Commission may approve a Certificate of Need for a nursing home only for an applicant that participates, or proposes to participate, in the Medical Assistance Program, and only if the applicant documents a written Memorandum of Understanding with Medicaid to maintain the proportion of Medicaid patient days required by .05A 2(b) of this Chapter." Your application modeled annual budgets at 47% of patient-days. Given that if the project is approved it would include a condition that would require an MOU to maintain a level of Medicaid participation at 58.18%¹ of patient-days. Please submit a revised Table G showing at least that level of Medicaid participation.

This Request was withdrawn by MHCC upon information clarification.

PART III - APPLICANT HISTORY, STATEMENT OF RESPONSIBILITY

2. Your response to question 12 in the May 11 letter was incomplete; it did not describe the nature of the deficiencies at Mid-Atlantic of Delmar, and what corrections were made.

Mid-Atlantic of Delmar, LLC – On May 2, 2013 through May 10, 2013 an unannounced visit and complete facility census was conducted by the Delaware Department of Health and Social Services. The nature of the deficiencies at Mid-Atlantic of Delmar involved the following: a) failing to consult with a physician and/or immediately notify a responsible party for 6 of 17 sampled residents who had a significant change in condition requiring physical intervention; b) failing to ensure three of 17 residents were free from neglect; c) failing to immediately report thoroughly investigate allegations of neglect for two of the 17 residents; f) for two of 17 sampled residents, the facility failed to provide medically-related social services to enable the residents to attain their highest practicable physical, mental, and psychosocial well-being; g) for one of the 17 sampled residents, the facility failed to ensure that the care plan was updated to reflect identified care needs; h) for six out of 17 sampled residents, the facility failed to ensure that the

¹ The current required level in Baltimore City is 58.18% [http://mhcc.maryland.gov/mhcopacies/hofs/hcfs/Ito/documents/Ito part rate 2013 20150320.pcif](http://mhcc.maryland.gov/mhcopacies/hofs/hcfs/Ito/documents/Ito%20part%20rate%202013%20150320.pdf)

residents received the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care; i) for two out of 17 sampled residents, the facility failed to ensure that two residents with pressure ulcers received the treatment and services necessary to promote healing and prevent new sores from developing; j) for one of the 17 sampled residents, the facility failed to follow established policy/procedure by replacing the gastrostomy tube via the PEG method; k) for one of 17 residents reviewed and three sub-sample residents, the facility failed to ensure that the resident environment was as free of accident hazards as possible; l) for one of the 17 sampled residents, the facility failed to provide proper treatment of care; m) for one of 17 sampled residents, the facility failed to provide or obtain mental health rehabilitative services for a resident admitted with a mental illness diagnosis; n) for seven of the 17 sampled residents, the facility was not administered in a manner that enabled it to use its resources effectively and efficiently to attain the highest practicable well-being of each resident; o) for seven sampled residents, the facility failed to ensure that the medical director was enabled to perform the role of ensuring implementation of policies and procedures as well as coordinating medical care in the facility; for two of the sampled residents, the facility failed to ensure accurately documented and systematically organized clinical records. The complete Survey is attached as **Exhibit A**. Also included in Exhibit A is a chart reflecting the level of deficiencies mentioned. The formal response providing the corrective actions taken by the facility will be submitted under separate cover shortly. As evidenced in Exhibit G to the First Response to Completeness Questions, Delmar Nursing and Rehabilitation Center regained substantial compliance with Federal participation requirements as of September 18, 2013. We note that this facility has been sold and is no longer part of Mid-Atlantic.

CONSISTENCY WITH GENERAL REVIEW CRITERIA (COMAR 10.24.01.08G(3))

(b) Need

3. Notwithstanding the general letter from Brian Bailey expressing excitement about "continuing to explore the opportunity to partner with Mid-Atlantic to develop a truly novel approach to help avoiding hospitalizations and lowering hospital re-admissions via a state-of-the-art post-acute center," applicant's statements on p.34 that: "MAHC will be working in partnership with UMMC in bundled payment models" and "MAHC will be working in partnership with UMMC on care protocols to promote use of the lower cost serving setting" would be strengthened by more tangible statements about those plans from the potential hospital partners.

We have spoken to Brian Bailey and requested an additional letter which he informed us he would provide, and which we will forward when received. We are currently in negotiation with the University of Maryland Department of Medicine about leasing space on the first and second floors in the building to consolidate their outpatient services which we believe will help further promote the synergy between the facility and the care of residents. We will keep you informed of the progress of this initiative, but it is too early in the Project to arrange for anything definitive in terms of leased space.

Please also note that recently, on July 14, 2015, CMS announced a new episode-based payment model that will be mandatory for hospitals in 75 metropolitan statistical areas (MSAs). Under this model, a single target price for two DRGs (joint replacement procedures) will be established for a 90-day episode, to include all hospital, nursing home, home health, and physician services. This initiative is similar to earlier “Bundled Payment Initiatives,” but CMS has established this model (for the two highest volume Medicare DRGs) as **mandatory** for hospitals in 75 MSA’s across the country.

As a waiver state not operating under the IPPS model, Maryland currently is not subject to this new payment model. At the same time, Maryland may be considering participating in this initiative which would drive protocol development and close working relationships between hospitals and nursing homes for these orthopedic cases.

Finally, it is worth noting that this initiative explicitly includes the waiver of the three-day hospital stay rule: any hospital that participates in this initiative will be permitted to discharge patients to a nursing home (with a three star rating or higher) without a three day acute care stay requirement. A new study now indicates that lengths of hospital stays increased with the three-day rule in place and decreased when it was waived. *See, e.g., “Medicare Three-Day Rule May Needlessly Prolong Some Hospital Stays, Study Suggests.” Health and Life Sciences Law Daily* (August 5, 2015), attached hereto as **Exhibit B**, (referencing full text of study published in *Health Affairs*, (vol. 34, no. 3, 1324-1330, August 2015)). We believe it is far more likely than not that Maryland will have some form of waiver from the three-day rule or other bundling approach in place by the time the facility opens.

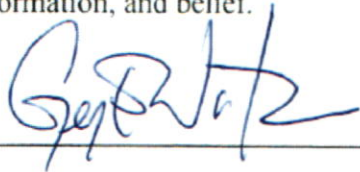
(f) Impact on Existing Providers and the Health Care Delivery System

4. Your response to question 27 included the statement that "Almost two-thirds of West Baltimore residents over the age of 65 (and similarly, almost two thirds of Baltimore City residents over the age of 65) who utilize nursing homes are placed at nursing homes outside of Baltimore City" (p. 36) seems to overstate the outmigration when compared to the table presented on p. 20 (which identifies the percentage of city residents served at Maryland nursing homes outside Baltimore City as 42%). Please reconcile the data presented.

The statement should have conveyed the following: More than 40% of West Baltimore residents, over the age of 65 years, who are admitted to nursing homes in Maryland are admitted to nursing homes *outside* of Baltimore City. Similarly, more than 40% of all Baltimore City residents over the age of 65 years who are admitted to nursing homes in Maryland, are admitted to nursing homes *outside* of Baltimore City. We apologize for the error.

AFFIRMATION

I hereby declare and affirm under the penalties of perjury that the facts stated in this response to completeness questions and its attachments are true and correct to the best of my knowledge, information, and belief.



AFFIRMATION

I hereby declare and affirm under the penalties of perjury that the facts stated in this response to completeness questions and its attachments are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read "Mumukshu", is written over a horizontal line.

AFFIRMATION

I hereby declare and affirm under the penalties of perjury that the facts stated in this response to completeness questions and its attachments are true and correct to the best of my knowledge, information, and belief.

Michael J. Nathan

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
Exhibit A	Complaint Survey of May 10, 2013
Exhibit B	Health and Life Sciences Law Daily 3-Day Rule Study Reference