



December 3, 2024

VIA Email

Darci Smith, Esquire
Gordon Feinblatt LLC
1001 Fleet Street, Suite 700
Baltimore, Maryland 21202

Re: Foundations Inpatient LLC
Application for Certificate of Need to establish
an Intermediate Care Facility

Dear Ms. Smith:

Maryland Health Care Commission (MHCC or Commission) staff has reviewed the above-referenced Certificate of Need (CON) application. Please provide additional explanations corresponding to the following questions/information. Failure to satisfactorily address each question may lead to the denial of the application.

PART I

1. Provide an organizational chart that shows/explains the relationships between MBM Ventures, Foundations Recovery Center, LLC, Foundations Inpatient LLC (i.e., the applicant), and Amatus Health.
2. The availability and adequacy of utilities - The response provided was insufficient. Identify the provider of each utility (water, electricity, sewage, natural gas, etc.) that will serve the facility. Specify the steps that will be necessary to obtain utilities

PART II

3. Provide a list of assumptions related to budget.
4. Provide any contingencies for the budget.
5. Provide an explanation of the budgeted items, start-up costs (i.e., staff, rent and utilities, and food/supplies) vs. 'moveable equipment' on Table B.
6. Include in the budget any expenses incurred for the preparation of this application (legal/contractual) or the processing of the application going forward.

PART IV/STATE HEALTH PLAN

7. Approval rules related to facility size - Foundations has not supplied any evidence for why the 50-bed standard for applicants establishing a new intermediate care facility (ICF) should not apply. Provide evidence of the health and financial need for (25) additional adult beds or revise your application to decrease the bed capacity to 50 Level 3.7 beds.

Foundations' primary justification appears to be that it will increase its bed capacity post-implementation regardless of the number of beds approved. The Commission does not find this justification persuasive.

8. Sliding Fee Scale – Provide the process used for the determination of charity care at Foundations, including which combination of five documents will be required before a determination of eligibility is made and how long the process will take.

9. Indigent and gray area patients – Explain how Foundations will track the number of bed days for indigent or gray area patients at the facility and how Foundations will admit more of these patients if bed days for indigent or gray area clients fall below 15%?

10. Information regarding charges- Provide a draft of the document that will inform patients of charges for patient services at Foundations. Will this information be available at the time of referral to the facility?

11. Quality assurance - Affirm each of the following:

- a. Foundations will obtain accreditation by an appropriate entity before ICF operations begin. The Commission notes that the JCAHO letter, Exhibit 6, refers to “residential care services” (i.e., Level 3.5) and the survey period is due to expire December 2024.
- b. Foundations will notify the Commission and the Behavioral Health Administration (BHA) within 15 days if its accreditation is revoked.
- c. Foundations understands that if it loses its accreditation, it may be permitted to operate on a provisional basis with the approval of the Commission and pending remediation of any deficiency that caused the revocation.
- d. Foundations must notify the Commission if it loses State certification and must cease operations until BHA notifies the Commission that the deficiencies have been corrected.
- e. Foundations understands that effective on the date that BHA revokes State certification, the regulations at COMAR 10.24.01.03D governing temporary delicensure of a health care facility will apply to its ICF bed capacity.



13. Utilization review and control programs – Revise the Transfer – Internal/External policy to state that each patient’s discharge plan will include 12 months of aftercare. Cite the specific language in Exhibit 7 which refers to the provision of 12-month aftercare.
14. Provide the criteria that determines program ineligibility referred to in Exhibit 5 – Program Eligibility.
15. Transfer and referral agreements – The referral agreements provided all state “Incoming Referral Agreement”. Confirm that all agreements include both transfers to and referrals from the facility.
16. Provide the names, contact information, and facility type related to each of the referral agreements provided, including acute care hospitals; halfway houses; therapeutic communities; long term care facilities; local alcohol and drug abuse intensive and other outpatient programs; local community mental health centers; Baltimore County’s mental health and alcohol and drug abuse authorities; BHA; and Baltimore County’s agencies that provide prevention, education, and other services.
17. Provide the same for facilities for which referral agreements have not yet been signed but will be sought prior to first use approval.
18. Outpatient alcohol and drug abuse programs – The sole outpatient treatment center with which an agreement has been made is in Hagerstown. The driving distance between Windsor Mill (Baltimore County) and Hagerstown (Washington County) is over 60 miles. Explain how Foundations will coordinate or provide transportation to this outpatient facility in Hagerstown.
19. Is Foundations in talks with other providers of outpatient services within the greater Baltimore area for clients post-discharge? List the names, locations, and level of services offered for these programs and the status of these discussions.
20. Best practices for patient discharge includes a warm handoff (i.e., a process of transferring a patient’s care between two members of the healthcare team face-to-face and in front the patient) that can include transportation to the new program, involvement of families, and meeting social needs). How will Foundations conform to this best practice?
21. Program Reporting – Affirm that Foundations will agree to report data to BHA if requested and participate in any comparable collection program specified by the Department of Health.
22. Need - Provide a response that includes a quantitative analysis of the primary and secondary service area, the population size and demographics, and the expected population growth. Provide a table of drug overdoses and deaths for jurisdictions in the



primary and secondary service area and explain how this data supports the need for the proposed beds.

23. Provide the following information:

- a. A projection of the percentage of patients that will come from Baltimore Detox Center (BDC)? Since it is expected that this population will represent the majority of patients, show the breakdown of admissions/discharges by gender and jurisdiction.
- b. The number of BDC patients released to Level 3.7 inpatient programs each month over the last 12 months. To which Level 3.7 facility are these clients currently transferred?
- c. The number of BDC patients that were waitlisted for Level 3.7 care after detox due to a lack of available beds.
- d. How was an Average Length of Stay (ALOS) of 30 days calculated? Provide the current ALOS for Level 3.7 programs in Maryland and the source for your data.

24. Will patients completing the BDC program have a choice of inpatient Level 3.7 programs to which they can be transferred or will they automatically be transferred to the proposed facility? From which other providers could patients be referred besides BDC?

25. Cost effective alternatives - The response provided was insufficient. Provide a response that includes alternatives to the current plan. Describe the planning process used to determine the current proposed project.

26. Viability - Affirm that there have been no audited financial statements for the past two years for the entities and parent companies.

27. The CPA letter provided as Exhibit 13 does not state the total funds available to support the project. Provide a CPA letter with exact availability of funds in dollars that matches or exceeds the requirement of \$286K stated in the application. As the facility does not plan to have a positive net income through 2026, the letter should include the availability of funds to cover the net loss.

28. Will Foundations fill empty Level 3.7 beds with Level 3.5 patients if it is unable to meet full occupancy with Level 3.7 patients? How will this affect the financial viability of the facility?

29. Compliance with terms and conditions of previous CONs – Affirm that BDC has met all the conditions from the November 16, 2023 project change. Demonstrate how BDC is complying with Condition 1 of the project change in meeting the 15% gray area and indigent patients for 2023 and YTD 2024.



30. Affirm that the problems encountered with the BDC CON will not be repeated for the Foundations CON. Specifically, any changes in the program prior to first use will be reported to the facility in a timely manner, and that Foundations will submit a project change request for changes in the project cost or floor plan.

31. Impact – The response provided was insufficient. Address elements a-d of this criteria. Specifically, provide data on where patients are currently receiving care, the payer mix of these individuals, how many of those patients will be seen at Foundations instead, and why this won't impact the operations of those facilities. Discuss the impact on the cost to the health care delivery system.

32. Health Equity - Provide the demographic breakdown of the entirety of the population to be served (both private and public pay patients), especially for the primary and secondary service area, and how the proposed health equity plan will benefit these populations. Explain how Foundations will address substance use health disparities that exist. How will the facility address the needs of dual diagnosis patients?

33. Character and Competence - Indicate the percent ownership interest of each owner of the real property, bed rights, and operations (including MBM Ventures, LLC, Lyon Group I Joint Ventures, LLC, Amatus Health, LLC, Baruch Raban, and Aharon Kibel). Include the following information for any person with 5% or more ownership interest in the real property, bed rights, or operations of the facility:

- for each individual/entity identified, disclose any involvement in the ownership, development, or management of another health care facility¹
- for each individual/entity and facility identified, disclose if any license has been suspended or revoked, or been subject to any disciplinary action (such as a ban on admissions) in the last 5 years
- for each individual/entity and facility identified, disclose inquiries in the last 10 years from any federal (Centers for Medicare and Medicaid Services or CMS) or state authority, or other regulatory body regarding possible non-compliance with any state, or federal requirements for the provision of, the quality of, or the payment for health care services that have resulted in actions leading to the possibility of penalties, admission bans, probationary status, or other sanctions
- for each individual/entity and facility identified, disclose any prior experience in owning and/or operating chemical dependency and substance abuse services. List the name and location for these programs.

¹ Note that Exhibit 13 lists numerous facilities owned or operated by Baruch Raban and Amatus Health., LLC that were not included in Section 3 of the application but are provided as evidence of viability of the owners.



TABLES

34. Table A shows that there will be 25 beds for female patients and 50 for male patients. Where in the facility will be the female wing and where will be the male wing. How will male and female patients be separated for patient safety?
35. Provide a larger scale floor plan of the facility including the dimensions for each of the bedrooms. Show the location of each of the beds that will house patients in the facility. How much space (square footage) will be provided for each patient?
36. How many toilets and showers will be available for patients?
37. Table B shows total Project Budget adding up to \$849,946 (\$238,630 + \$611,316) in building lease costs, which does not match the stated requirement of \$286,256.00 on Page 6 of the application. Explain the discrepancy and amend the document so that these figures are the same.
38. Table B shows the Annual Lease Cost for Building at \$611K; however, the Facility Expenses, rent, taxes, utilities (2d) under Table F are \$581K. Explain the discrepancy.
39. Table E shows revenues of \$4.1 million from Level 3.7 patients in 2024. Explain how this revenue will be generated since the CON will not be approved before 2025. Correct the revenue and expense tables to include only Level 3.7 services after the CON is approved.
40. Table E shows that the facility will have 2,250 discharges annually, while the Executive Summary of the Project states that the project will serve 900 patients annually. Explain the discrepancy.
41. Table E/F- The revenue and expense table are based on 100% occupancy year-round. Explain how this is possible, taking into consideration the changeover of rooms after discharge, possible patients dropping out of care unexpectedly, open beds available for emergency admissions, etc.
42. Table F - Will food be prepared on site or will it be brought in by outside suppliers? Show the cost of food service on the revenue and expense table (including a projected inflation allowance for food costs over the entire projection period).
43. Table F - In CY 2024, management fees are \$581K and increase by 103% to \$1.1 M in CY 2025. Explain the reason behind the increase.
44. Table F - Foundations is paying Amatus Health a yearly management fee of around \$510K for CY 2024 that is supposed to increase to \$1M in CY 2025; however, per Exhibit 13 CPA letter, Amatus Health is going to be financing the new project. Explain how this financing arrangement is expected to work with an exact plan of the funding.



45. The revenue and expense table does not show a positive net income in the first years of operation. When does Foundations project to see a net income? Provide projections in Table E and F for at least four years or until the net income is positive for two full years of operation after the proposed project breaks even.
46. Other than facility rent/taxes/utilities and Amatus contracting, the expenses for the facility do not increase year over year from 2025 through 2026. Explain how this is possible, given the costs of salaries, benefits, and supplies may rise over this period.
47. Submit the statement of assumptions to support Tables E and F. Include the assumptions used in the charity care figures as the facility plans to provide 80% of its bed days to Medicaid patients.
48. Table G - Provide information on any projected salary changes or staffing changes through the final year of the project.
49. Table G - There is no provision for facility maintenance in the staffing plan. Explain how Foundations will address janitorial services, facility maintenance, and facility security.
50. Table G - Provide the cost of benefits for facility employees.
51. Table G - Will the food plan for clients be overseen by a nutritionist? If so, show the cost of the nutritionist on the staffing plan and the revenue and expense table.
52. Table G – The discharge planning policy calls for an Alumni Coordinator to follow up on discharged patients. Include this staff member in the staffing plan.
53. Table G - Calculate the total of the line items such as Administration, Direct Care, Support as well as Regular Employees grand total.


Please submit four copies of the responses to the above questions and the requests for additional information within ten working days of receipt. Also submit the response electronically, in both Word and PDF format, to our CON mailbox at mhcc.confilings@maryland.gov. If additional time is needed to prepare a response, please let me know at your earliest convenience.



As with the request itself, all information supplementing the request must be signed by person(s) available for cross-examination on the facts set forth in the supplementary information, who shall sign a statement as follows: "I hereby declare and affirm under the penalties of perjury that the facts stated in this application and its attachments are true and correct to the best of my knowledge, information, and belief."

Should you have any questions regarding this matter, please contact me at (410) 764-3232.

Sincerely,



Moira Lawson
Program Manager

cc: Baruch Raban, MBM Ventures
Aharon Kibel, Amatus Health
Ewurama Shaw-Taylor, Chief, Certificate of Need
Deann Dunn, Coordinator for Health Facilities Planning and Development
Wynee Hawk, Director, Health Facilities Planning and Development
Caitin Tepe, AAG
Alexa Bertinelli, AAG
Lucy Wilson, M.D, Health Officer, Baltimore County
Oksana Likhova, Office of Health Care Quality

