MARYLAND
Health Care
Commission

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

DATE: June 20, 2024

TO: Commissioners

FROM: Jeanne Marie Gawel, Acting Chief, Certificate of Need

SUBJECT: Hillhaven SNF Operator, LLC Docket # 24-16-2469

Enclosed is the staff report and recommendation concerning a Certificate of Need (CON) request filed by Hillhaven SNF Operator, LLC (Hillhaven). Hillhaven SNF Operator, LLC is the owner of both the bed rights and the operator, and the real property is owned by Hillhaven SNF Realty, LLC (Hillhaven Realty). Hillhaven proposes adding a 32-bed wing to its existing 66 bed nursing home in Prince George's County. In addition to its 66 CCF beds, Hillhaven has 62 Assisted Living beds. The proposed project has 24,834 square feet (SF) of new construction and 1,300 SF of renovations. The total estimated cost of the project is $7,550,000. The applicant identified the source of project funding as $2,750,000 in cash and a mortgage for the remaining $4,800,000. The applicant states that the primary goal of the proposed project is to increase access to Comprehensive Care Facility (CCF) beds for residents of Prince George's County.

Staff concludes that the project complies with the standards in COMAR 10.24.20, the State Health Plan for Facilities and Services: Comprehensive Care Facility Services (Nursing Home Chapter). Staff also conclude that there is a need for the project and that it is cost-effective, viable, and has a positive impact. Staff also concludes that the applicant has appropriately responded to the criterion on Health Equity and Character and Competence. Staff recommends that that the Commission APPROVE Hillhaven's application for Certificate of Need with the following conditions:

1. For three years after receiving first use, Hillhaven shall demonstrate progress in increasing the number of Medicaid patient days as a proportion of total patient days. Hillhaven shall file reports semi-annually with the Commission that identify the number and percentage of patient days and total patient days at Hillhaven for the previous period for Medicaid and other payor sources;

2. Prior to seeking first use approval, Hillhaven shall document that the percentage of Medicaid patient days as a proportion of total patient days meets or exceeds the requirement in its most recently signed Memorandum of Understanding with the Maryland Medical Assistance Program; and

3. Hillhaven shall continue to maintain the minimum proportion of Medicaid patient days required in Prince George’s County in its Memorandum of Understanding with the Maryland Medical Assistance Program.

IN THE MATTER OF	*	**BEFORE THE**
	*	
HILLHAVEN SNF OPERATOR, LLC	*	**MARYLAND HEALTH**
	*	
d/b/a STERLING CARE HILLHAVEN	*	**CARE COMMISSION**
	*	
Docket No. 24-16-2469	*	
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STAFF REPORT AND RECOMMENDATION
June 20, 2024

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I. INTRODUCTION

A. The Applicant

The applicant, Hillhaven SNF Operator, LLC d/b/a Sterling Care Hillhaven (Hillhaven) is a 66-bed proprietary comprehensive care facility (CCF, or nursing home).[1] Hillhaven SNF Operator, LLC is the owner of both the bed rights and the operator and the real property is owned by Hillhaven SNF Realty, LLC (Hillhaven Realty) as shown in Figure 1 below. In addition, the Hillhaven facility has 66 CCF beds, it also has 62 assisted living beds. The CCF provides skilled nursing services, long-term care, and rehabilitation services. Hillhaven is located in Adelphi, in Prince George's County, off interstate 95. The original building was built in 1960. Hillhaven is a licensed provider of care to both Medicare and Medicaid patients[2].

Figure 1

Ownership	Legal Name	For This Report
Real Property	Hillhaven SNF Realty, LLC	Hillhaven Realty
Bed Rights	Hillhaven SNF Operator, LLC	Hillhaven
Operations	Hillhaven SNF Operator, LLC	Hillhaven

Hillhaven is principally owned by Jeff Kagan (35%), Nathan Jakobovits (35%). Under the same umbrella of Sterling Care (Sterling) since January 2018, these two principals own and operate eight nursing homes and two assisted living facilities across the State of Maryland[3]:

- Sterling Care Belair
- Sterling Care Bethesda
- Sterling Care Forest Hill
- Sterling Care Frostburg Village (also assisted living)
- Sterling Care Hillhaven (also assisted living)
- Sterling Care Riverside
- Sterling Care Rockville
- Sterling Care South Mountain[4].

The remaining ownership of Hillhaven belongs to Yoni Grunbaun (11%) and 19 percent is owned by other investors, none of which owns more than five percent individually. (DI #5, Exhibit).

B. The Project

Hillhaven proposes adding a new wing with 32 private CCF beds to its existing 66 CCF bed count. The proposed project has 24,834 square feet (SF) of new construction and 1,300 SF of renovations. (DI #5, p.58).

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[1] Sterling Care Hillhaven was purchased in August 2023

[2] https://sterlingcarehealth.com/

[3] In addition, Hillhaven's principals have affiliated facilities in Connecticut (Havencare at Filosa, Havencare at Hancock Hall), Michigan (Lynwood Manor), and Rhode Island (Pawtucket Falls).

[4] https://sterlingcarehealth.com/

Table I-1: Hillhaven's Current, Adjusted, and New CCF Beds

Bed Type	Current	Adjusted	Net New	Project End
Semi-private	56	(2)	0	54
Private	10	2	32	44
Total	**66**	**0**	**32**	**98**

Source: DI #5, p.6.

The applicant states that the primary goal of the proposed project is to increase access to CCF beds for residents of Prince George's County. (DI #5, p.43). The Commission's own latest bed need projection for nursing home beds projects the need for 32 additional beds in Prince County in 2022. *(infra, p.25).* According to the applicant, the project would address the growing population 75 years and older in Prince George's County. As shown in Table I-2, the 85-years and older population are projected to almost double between 2020 and 2030. (DI #5, p.36).

Table I-2: Population Distribution, Prince George's County, CY 2020-2030

Age	2020	2025	2030	Percent Change (2020-2025)	Percent Change (2025-2030)
Under 65	785,048	775,246	766,308	(0.3) %	(0.2) %
65 to 74	78,533	88,497	95,181	2.4%	1.5%
75 to 84	34,686	45,839	56,288	5.7%	4.2%
85+	12,872	16,442	23,182	5.0%	7.1%
Total	**911,139**	**926,024**	**940,959**	**0.3%**	**0.3%**

Source: DI #5, p.36.

The total estimated cost of the project is $7,550,000. The applicant identified the source of project funding as $2,750,000 in cash and a mortgage for the remaining $4,800,000. (DI #14, Table C, p.542).

C. Characteristics of the Service Area Population: Prince George's County Demographics and Community Health

The current population of Prince George's County is 966,689. The population is predominantly Black (58.6%), compared to Maryland where the population is predominantly White (46.9%). The largest population by age group is 25-34-year-olds, representing 14 percent of the population, while in Maryland, 55-64-year-olds make up the largest part of the population (13%). In Prince George's County 5.4 percent of families are living below the poverty level, more than in Maryland at 4.2 percent. Prince George's County also has a slightly higher unemployment rate (5.8%) than Maryland (4.7%). The following table compares the health of Prince George's County to the Healthy People 2030 Progress Tracker published by the Prince George's County Health Department which contains national objectives to improve health and well-being by 2030.

Table I-3: Measures of Healthy People Progress Tracker 2030

Measure	Prince George's County	Healthy People 2030 Target
Age-adjusted death rate due to breast cancer*	25.3	15.3
Age-adjusted death rate due to cancer*	147.4	122.7
Age-adjusted death rate due to colorectal cancer*	13.5	8.9
Age-adjusted death rate due to lung cancer*	27.7	25.1
Age-adjusted death rate due to prostate cancer*	27.2	16.9
Age-adjusted death rate due to cerebrovascular disease*	48.1	33.4
Mammogram in the past 2-years	77.9%	80.3%
People with a usual primary care provider	80.1%	84%
Persons with health insurance	89.2%	92.4%
High blood pressure prevalence	***35.5%***	***41.9%***
Tuberculosis incidence rate*	6.7	1.4
Infant mortality rate (deaths per 1,000 live birth)	5.5	5.0
Pre-term births	11.1%	9.4%
Age-adjusted death rate due to suicide*	***6.4***	***12.8***
Adults engaging in regular physical activity	***50.5%***	***29.7%***
Adults who smoke	7.6%	6.1%
Insufficient sleep	40.8%	26.7%

Source: https://www.pgchealthzone.org/indicators/index/dashboard?alias=hp2030
Data was accessed on March 5, 2024
*Deaths per 100,000

Of the 17 measures in the Table I-3, Prince George's County is only on track to meet three by 2030: a lower rate of high blood pressure prevalence, a lower age-adjusted death rate due to suicide, and a higher number of adults engaging in physical activity. Prince George's County recognizes these measures as a comprehensive set of key disease prevention and health promotion objectives. Tracking these measures helps the County assess its health status and build an agenda for community health improvement.[5]

D. Recommended Decision

Staff concludes that the project complies with the standards in COMAR 10.24.20, the State Health Plan for Facilities and Services: Comprehensive Care Facility Services (Nursing Home Chapter). Staff also conclude that there is a need for the project and that it is cost-effective, viable, and has a positive impact. Staff also concludes that the applicant has appropriately responded to the criterion on Health Equity and Character and Competence. Staff recommends that that the Commission APPROVE Hillhaven's application for Certificate of Need with the following conditions:

1. For three years after receiving first use, Hillhaven shall demonstrate progress in increasing the number of Medicaid patient days as a proportion of total patient days. Hillhaven shall file reports semi-annually with the Commission that identify the number and percentage of patient days and total patient days at Hillhaven for the previous period for Medicaid and other payor sources;

2. Prior to seeking first use approval, Hillhaven shall document that the percentage of

[5] https://www.pgchealthzone.org/indicators/index/dashboard?alias=hp2030

Medicaid patient days as a proportion of total patient days meets or exceeds the requirement in its most recently signed Memorandum of Understanding with the Maryland Medical Assistance Program; and

3. Hillhaven shall continue to maintain the minimum proportion of Medicaid patient days required in Prince George's County in its Memorandum of Understanding with the Maryland Medical Assistance Program.

II. PROCEDURAL HISTORY

The Maryland Health Care Commission (MHCC or Commission) published its CCF bed need projection in the Maryland Register on December 1, 2023. It shows a need for 32 additional comprehensive care beds in Prince George's County by 2022.[6] The applicant originally filed a letter of intent for 34 beds; however, after consultation at the pre-application conference, the applicant revised its letter of intent to propose a project with 32 beds. Hillhaven was the only applicant to submit a letter of intent for this review.

A. Record of the Review

Please see Appendix 1, Record of the Review.

B. Local Government Review and Comment

No comments were received from a local government body.

C. Community Support

The Commission received four letters of support for this nursing home expansion project. These letters express support for the project and state that Hillhaven is a quality nursing home care provider. Letters came from:

- Daniel Cochran, President of Shady Grove Medical Center
- Anthony Stahl, PhD, President of White Oak Medical Center
- Robert A. Longest, Executive Director of the Rockville Nursing Home Foundation
- Kevin D. Heffner, President, and CEO of LifeSpan Network
(DI, #1, Exhibit 24).

D. Interested Party

There are no interested parties in this review.

III. PROJECT CONSISTENCY WITH REVIEW STANDARDS AND CRITERIA

[6] https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_ltc/documents/chfc_ccf_bedneed_projections_target2022_20190927.pdf

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.

A. COMAR 10.24.20 - Comprehensive Care Facility Standards

(1) Bed Need and Average Annual Occupancy.

(a) For a relocation of existing comprehensive care facility beds currently in inventory, an applicant shall demonstrate the 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.

(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.

This standard is not applicable because the applicant is neither relocating its facility nor relocating beds within the county.

(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.

(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*.

(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.

(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.

(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.

(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.

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

<u>Applicant's Response</u>

Historically, the Hillhaven facility has not met the MOU threshold of 46.7 percent. Applicant states that it has owned Hillhaven Operator for less than a year and should not be held accountable for the facility's prior failure to meet the Medicaid MOU requirements. However, in response to paragraphs (a) and (b) of the standard, Hillhaven has negotiated a new MOU with Medicaid, which decreases the threshold from 46.7 percent to 40.1 percent, in line with the current required county participation rates.[7] (DI # 5, Exhibit 11).

The applicant agrees to work to meet its newly negotiated Medicaid participation threshold of 40.1 percent. To that end, applicant outlined the following actions it will take at each daily case mix meeting:

1) The Medicaid case mix percentage will be reviewed and compared with the current MOU goals.
2) Admissions for the day and upcoming days/weeks will be planned with the goal of maintaining or exceeding current MOU targets for Medicaid.
3) Target percentage will be reviewed in consideration of infection control policies and room sharing requirements.

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[7] https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_ltc/documents/chcf_ltc_nh_med_assist_part_rates_fy21_20230519.pdf

4) If warranted, available rooms will be targeted each day for Medicaid occupancy, according to the Medicaid census during that period.
5) Daily, discharge planners, and other referral sources will be informed of our Medicaid availability (if needed) or anticipated Medicaid availability, as needs dictate.
6) Rooms will be prioritized for Medicaid residents to meet or exceed MOU requirements.

The application states that these steps will be monitored as part of the monthly quality assurance meeting and action plans will be put in place if the facility falls behind. (DI #12, p.337). In response to paragraph (c), the applicant states that it plans to meet the threshold for Prince George's County of 40.1 percent by year one, and in subsequent years. The applicant agrees to modify its MOU with Medicaid to reflect the most current participation rate that includes the additional beds, as required by paragraph (d). (DI #5, p.p.24-25).

For paragraph (e), the applicant states it currently admits Medicaid residents and Medicaid-pending residents and will continue to do so to maintain its MOU threshold. Currently nine of the 55 in-house Residents are Medicaid-pending which shows the applicant's commitment to serving the Medicaid population. (DI #12, p.336).

For paragraph (f), the applicant has recently re-negotiated the MOU with Medicaid and is working to achieve and maintain its threshold. The applicant also states that when it acquired the facility in 2023, the Medicaid occupancy was 36 percent. The current Medicaid census ranges between 38 and 42 percent depending on the day. (DI #12, p.336).

<u>Staff Analysis</u>

The applicant proactively secured a new MOU with Medicaid prior to the CON review, which demonstrates its commitment to serving the Medicaid population of Prince George's County. Since it acquired the facility in 2023, the percentage of Medicaid residents has increased. Depending on the daily census, the MOU percentage benchmark is already being met on some days. Further, the applicant has provided a comprehensive series of steps it will take at its daily case mix meeting, including a plan to monitor compliance as part of its quality assurance program. Staff concludes that the applicant complies with the Medical Assistance Participation standard.

Staff recommends that any CON issued for the project include the following conditions:

1. For three years after receiving first use, Hillhaven shall demonstrate progress in increasing the number of Medicaid patient days as a proportion of total patient days in reports it shall file semi-annually with the Commission that identify the number and percentage of Medicaid patient days and total patient days at Hillhaven for the previous period, also providing this information for other payor sources during that time period;

2. Prior to seeking first use approval, Hillhaven shall document that the percentage of Medicaid patient days as a proportion of total patient days meets or exceeds the requirement in its most recently signed Memorandum of Understanding with the Maryland Medical Assistance Program; and

3. Hillhaven shall continue to maintain the minimum proportion of Medicaid patient days required in Prince George's County in its Memorandum of Understanding with the Maryland Medical Assistance Program.

(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;

(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;

(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

(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.

Applicant's Response

In response to paragraph (a), the applicant states that it provides information on community-based services to newly admitted residents. (DI #5, p.26). Hillhaven provides examples of Maryland Department of Health flyers with information on the availability of community-based services, information on the "Money Follows the Person Program" and the community-based waiver program. (DI #5, Exhibit 3 and DI #12, Exhibit 31).

Hillhaven states that it uses Section Q of the MDS to assess a resident's interest and willingness for community-based alternatives to nursing home care. (DI #5, p.26). The applicant provided the flyers included in the admissions packet. The applicant also states that every resident receives a sourcebook of community resources that has more than 200 pages of information. This sourcebook's table of contents is provided in Exhibit 32. (DI #12, p.339).

For paragraph (c), Hillhaven states that it starts discharge planning upon admission for all residents. It will provide a 24-month plan reviewing at 6-month intervals with the onset of this new project. (DI #5, p.26). Its discharge planning policy includes a discharge checklist, transfer/discharge notice, and transfer/discharge policy. (DI #12, p.339).

The applicant states that it provides access to agencies that provide education and outreach concerning community-based alternatives in response to paragraph (d). (DI #5, p.27). Its most recently planned and provided educational offerings included dementia workshops with the Alzheimer's Association, mental health awareness, first aid, resident rights, and resident abuse. (DI #12, p.339).

Staff Analysis

Hillhaven provides examples of its community-based services outreach efforts that include flyers, checklists, educational offerings, and information about community-based alternatives, as well as policies to ensure adherence to those provisions. It also uses Section Q of MDS 3.0 for assessment and develops discharge plans as required. Staff concludes that the applicant complies with the Community-Based Services standard, based on the documentation provided.

(4) Appropriate Living Environment. An applicant shall provide each resident with 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.

(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.

(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:

(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.

Applicant Response

Hillhaven states that paragraph (a) is not applicable because this is an expansion project, not the construction of a new facility. However, the applicant states that the new rooms will meet the standard for occupancy, temperature control, and toilets. The applicant also states that the construction is in line with the most recent FGI guidelines. (DI #5, p.27).

For paragraph (b), the applicant states that Hillhaven does not contain patient rooms with more than two beds. Further, each newly constructed room will have individual temperature controls. The new construction will have only private and semi-private rooms and each room will have a toilet. In the facility's current layout, there are 28 semi-private rooms that have four residents per toilet (two semi-private rooms with a shared toilet in-between). The new construction will reduce the number of semi-private rooms (these semi-private rooms share toilets in-between) by two and will reduce the number of rooms where four residents share a toilet from to 27. (DI #5,

p.27, 28).

Further, the applicant states that it considered other alternatives. After consideration, it chose a traditional institutional model over a cluster/neighborhood or a household design because the existing space at the site was limited. Hillhaven states that it did not want to "over-build" in a dense urban neighborhood. According to the applicant, the most important goals are to increase the number of beds in the county and to increase the number of private rooms in the facility. The applicant states that the chosen design best meets those goals. (DI #5, p.28).

The applicant originally provided a letter from the architect affirming that the project design would comply with all applicable 2018 FGI guidelines to satisfy paragraph (c) (DI #5, Exhibit.13). In response to a question on why the most recent 2022 FGI guidelines were not used, the applicant provided a replacement letter from the architect stating that the 2022 FGI guidelines will be adhered to in the design process. (DI #12, p.340).

Staff Analysis

Staff concurs that due to the constraints of the current building a more modern neighborhood design is not feasible. However, the proposed project incorporates an appropriate living environment design that is in line with current FGI guidelines. It provides an affirmation letter from the architect. The design meets standards for occupancy, temperature controls, and toilets. Staff concludes that the applicant complies with the Appropriate Living Environment standard.

(5) 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;

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;

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.

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.

Applicant's Response

For paragraph (a), Hillhaven states that it serves and will continue to serve long term care and short stay residents with chronic illness and diagnoses including, but not limited to, chronic obstructive pulmonary disease, congestive heart failure, diabetes, hypertension, muscle weakness, and end stage renal disease. (DI #5, p.29). The applicant provided an overview of the types of services provided by the facility to meet the residents' care needs, as well as a listing of diagnoses and conditions found in Exhibit 14. (DI #5, Exh. 14, pp. 2-4).

The applicant states that paragraphs (b) and (c) of the standard are not applicable because, while the applicant will care for residents with respiratory therapy needs, and dementia, the facility will not have a specialized unit for either patient type.

The applicant states that the design for the new wing is consistent with current FGI Guidelines and will provide opportunities for ambulation, self-care, socialization, and independence, thus satisfying paragraph (d). Private room additions will increase resident privacy. The common dining and living areas will increase engagement opportunities. All residents receive an activity calendar for notice of these opportunities for engagement. To encourage increased opportunities for ambulation, the new wing will be located near the fitness gym, which was designed by rehabilitation professionals for residents of all abilities and includes daily programming. In addition, nursing staff receive training on how to encourage resident independence and ambulation. The applicant states that resident care plans incorporate resident preferences regarding activities and other programs. (DI #5, p.30).

Staff Analysis

The applicant stated it has no plans to serve a specialized population and sufficiently described the range of diagnosis, conditions, and types of services offered to the current and proposed residents. Hillhaven documented adherence to FGI guidelines to create a safe and functional environment. (DI #5, p.30 and Exhibit 14). Staff agrees with applicant that paragraphs (b) and (c) are not applicable to this project and concludes that the applicant complies with the standard's applicable paragraphs (a) and (d).

(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;

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

(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.

Applicant's Response

Hillhaven states that there will be minor renovations to the existing facility that will

provide connections to the new wing and will meet FGI Guidelines. The applicant references the response to the Appropriate Living Environment standard of this report *(supra, p.12)* that addresses additional quality improvements to the rooms and bathrooms. (DI #5, p.31). Specifically, the proposed project will provide more private rooms, enhanced living areas for socialization, and access to the rehabilitation gym. (DI #5, p.30). In a completeness question, staff requested that the applicant show that there was enough common area space for the additional 32 residents using thresholds in the Office of Health Care Quality CCF regulations at COMAR 10.07.02. The applicant provided an analysis showing that the gym, dining, and multi-purpose space will exceed the minimum space required by COMAR 10.07.02.54, Comprehensive Care Facilities and Extended Care Facilities shown in Table III-1.

Table III-1: Required Square Feet in COMAR 10.07.02.54 Compared to Proposed Addition

Location	Square Feet Requirement		Existing Space	Net Square Feet Required	Additional Square Feet Proposed
	66 Existing Beds	32 Proposed Beds			
Physical Therapy Gym (based on peak treatment schedules)	708	343	1,590	(539)	0
Dining and Multipurpose Room	1,980	960	2,300	640	1,200

Source: DI #12, p. 342.

Location	Square Feet				
		66 Beds	32 beds	Additional Required (b+c-a)	Additional Proposed
	A	*b*	*c*	*d*	*e*
Physical Therapy Gym	1,590	708 Based on peak treatment schedules	343 Based on peak treatment schedules	(539)	0
	2,300	1,980	960	640	1,200

Source: DI #12, p. 342.

<u>Staff Analysis</u>

The proposed project will increase the number of private rooms in the facility, which will increase the quality of care and resident satisfaction. The private rooms will be added with adequate common area space for all of the nursing home residents. Hillhaven demonstrates that the proposed minor renovations and plans for the new wing are safe and resident centered. The applicant provided responses regarding consistency with the FGI Guidelines documented in the Appropriate Living Environment standard at 4(c*). (supra, p.12). There* are no known life safety code waivers that will be addressed by the project. Staff concludes that the applicant complies with this standard.

(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.

Applicant's Response

The applicant states that the facility currently uses the Prince George's County public water system, which meets the referenced Safe Water Drinking Act standards, and that the new expansion will access the same water source. (DI #5, p.31). The applicant budgeted $70,000 in contingency allowance in case the current utilities are not enough to support the new addition. (DI #12, p.335).

Staff's Analysis

The proposed project will utilize the same water source that is currently being used at the facility, which meets the Safe Water Drinking Act standards. The applicant has also included funds in its contingency allowance budget line in case additional money is needed to tie in public water. Staff concludes that the applicant complies with this standard.

(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.

(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.

(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 affected entity.

(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 Caity; and

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

Applicant's Response

Sterling Care operates eight affiliated nursing homes and two assisted living facilities in Maryland (since the applicant is a Maryland operator, only Maryland facilities owned for three or more years were a part of this analysis). The eight nursing home locations are: Sterling Care Belair, Sterling Care Bethesda, Sterling Care Forest Hill, Sterling Care Frostburg Village (also assisted living), Sterling Care Hillhaven (also assisted living), Sterling Care Riverside, Sterling Care Rockville, and Sterling Care South Mountain[8]. Sterling Care is a CCF operator in Maryland; therefore, only Maryland facilities were used for this analysis. Sterling Care have owned four of these eight locations for three or more years: Frostburg, South Mountain, Riverside, and Rockville. The applicant provided the CMS star ratings calculation for its Maryland facilities in its Letters of Intent (LOI) Exhibit 16.

For paragraph (c), the applicant states that it has effective quality assurance programs at all of its facilities as evidenced by its achievement of a 5-star rating for CMS. (DI #5, p.32). Hillhaven provided its Quality Improvement and Performance Improvement (QAPI) policy, and the minutes from its most recent QAPI meeting. (DI #12, p.343 and Exhibits 35 and 36).

The applicant states that paragraph (d) is not applicable. (DI #XX).

Staff Analysis

Staff's review of CMS Compare's data yields a slightly different result than the applicant's submission. Staff's review of the Medicare Provider Information data confirmed that the applicant achieved an average (median) quality rating of three or more stars from the time of its most recent letter of intent (LOI) submission (January 2024) for at least 70 percent of its facilities as required by paragraph (a) and an average overall star rating as required in paragraph (b).

[8] https://sterlingcarehealth.com/

Table III-2: CMS Care Compare 5-Star Data for Sterling Care, January 2024 by Commission Staff

Facility/Acquired	Jan 2024	Oct 2023	July 2023	April 2023	Jan 2023	Median
Frostburg/2018	2	2	2	2	2	2
South Mountain/2018	3	3	3	3	2	3
Riverside/2019	4	4	5	5	5	5
Rockville/2020[9]	4	4	4	5	5	4

Source: Medicare Provider Information Download January 2023 to January 2024 accessed March 15, 2024, at medicare.gov/care-compare/

Notwithstanding the slight variation between applicant and staff's analysis, the conclusion is the same: At least 70 percent of Sterling Care's nursing homes scored three or more stars in CMS's most recent five quarterly refreshes and an average of three or more stars overall from the date of the applicant's LOI.

Staff reviewed Hillhaven's QAPI policy and the minutes from its most recent QAPI meeting noting that it included relevant quality measure tracking (vendor performance, 5-star results, human resources, safety) and concludes that the applicant complies with paragraph (c) of this standard. Paragraph (d) is not applicable as Hillhaven is an existing CCF owner/operator. Staff concludes that the applicant complies with this standard.

(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 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.

(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:

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[9] At the time of this report the other four Sterling Care Maryland facilities not owned long enough to be part of the analysis achieved the following star ratings: Sterling Care Belair 1 star, Sterling Care Bethesda 3 stars, Sterling Care Forest Hill 2 stars and Sterling Care Hillhaven 5 stars (last CMS data refresh May 29, 2024).

(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.

Applicant's Response

The applicant states that it has established collaborative relationships with other service providers, including:

- A hospital – Adventist White Oak
- Hospice programs – Amedisys and Montgomery
- Home health agencies – Adventist, Amedisys, Revival, Center Well, Human Touch, Holy Cross, and Home Call
- Assisted living providers – Placement agencies such as A Place for Mom, Care Patrol, Oasis, Carefinder, Epic, and Caring
- Adult Evaluation and Review Services – PASRR screen[10] on each new admission
- Adult day care program and other community providers – A sourcebook with listings.

Hillhaven documented the linkages by providing agreements or letters verifying the collaborative relationship. (DI #5, Exhibit 17 and DI #12, Exhibits 37 and 38).

For paragraph (a), the applicant provided Medicare Compare data accessed on January 24, 2024, showing that the facility ranks five out of five stars overall and achieved a lower, more favorable rate of 1.37 hospitalizations per 1,000 days, compared to the national rate of 1.83 hospitalizations per 1,000 days. (DI #5, p.33). To demonstrate its commitment to quality of care and provision of care in the most appropriate setting, the applicant shared data from its CMS Medicare Nursing Home Compare report in Exhibit 16 showing that the facility performs above the State average. (DI #5, Exhibit 16). The applicant also shared the below measures:

- Among long-stay patients, no falls, urinary tract admissions or catheters left in bladders.
- No emergency department visits compared with a Maryland rate of 0.84 per 1,000 long stay residents and national risk adjusted rate of 1.19 per 1,000.
- 22.7 percent of short-stay residents (risk-adjusted) were re-hospitalized after a nursing home admission, close to both the national (23 percent risk adjusted) and the Maryland average (21.5 percent).
- 51.2 percent of short stay residents returned to home or community, which is better when compared to 49 percent nationally.

[10] A PASRR screen is done on each new admission to determine that the potential resident does not have an intellectual disability, or mental illness that would be better served in a different facility other than a nursing home such as a group home or other more appropriate placement.

- 1.13 risk adjusted hospitalizations per 1,000 long-stay resident days, which compares well with national and Maryland averages at 1.84 and 1.33, respectively.
- 1.5 percent of long stay residents got antianxiety or hypnotic medication which is excellent when compared to national 19.4 percent and Maryland 14.5 percent. (DI #5, pp.33-34).

For paragraph (b), Hillhaven states that it starts discharge planning on the day of admission and works with home health agencies such as Adventist and Amedisys home health upon resident discharge. (DI #5, p.34 and DI #12 Exhibit 38). The applicant also uses the sourcebook if a resident wants to select a different provider. (DI #12, p.345). When appropriate, Hillhaven arranges hospice or palliative care for residents and identified linkages with Holy Cross Hospice, Montgomery Hospice, and Dr. Geetha Chilakamarri, a palliative care physician. (DI #5, p.34).

Staff Analysis

The applicant demonstrated collaboration with community providers through contracts and other listings. Hillhaven has documented a lower rate of hospital readmissions (lower scores are better for this measure) and demonstrates a commitment to providing care in the most appropriate setting, including home health. The applicant's linkages with palliative care providers show a commitment to quality care in all phases of life. Staff concludes that the applicant complies with this standard.

B. COMAR 10.24.01.08G(3)(b) Need.

The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated a need for the proposed project.

Applicant's Response

State Health Plan Projection

In accordance with COMAR 10.24.20.06, MHCC published a notice of jurisdictional bed need in 2019. This notice contained projections through 2022 and was the most recent available bed need projections for CCFs at the time of application. In the notice, MHCC projected a need for 32 CCF beds in Prince George's County. (DI #5, Exhibit 4).

Prince George's County Population

Hillhaven provided the analysis shown in Table III-3 to show that the population of Prince George's County is aging. Hillhaven states that from 2020 to 2030 the population 85 years and older will almost double and as this demographic grows, the need for nursing home services will increase. (DI #5, p.36).

Table III-3: Population Distribution, Prince George's County, CY 2020-2030

Age Group	2020	2025	2030	Percent Change (2020-2025)	Percent Change (2025-2030)
Under 65	785,048	775,246	766,308	-0.2%	-0.2%
65 to 74	78,533	88,497	95,181	2.4%	1.5%
75 to 84	34,686	45,839	56,288	5.7%	4.2%
85+	12,872	16,442	23,182	5.0%	7.1%
Total	**911,139**	**926,024**	**940,959**	**0.3%**	**0.3%**

Source: DI #5, p.36.

Occupancy and Migration Patterns

The purpose of the proposed project is to increase the accessibility of CCF beds to the service area, which includes Prince George's County and Montgomery County. For its need analysis, the applicant uses 2021 CCF use rates by age group for Prince George's County, assuming a consistent 16 percent in-migration rate applied to Prince George's population growth over the next several years. The analysis shows a need for an estimated additional 32,051 CCF patient days in Prince George's County between CY2020 and CY2028. Assuming an 88 percent occupancy rate, this translates to a projected net bed need of 185 additional beds in Prince George's County by 2028. (*infra*, *p.23*).

The applicant states that in 2020, Prince George's County had 62 CCF beds per 1,000 population over the age of 75, compared to the Maryland statewide rate of 70 CCF beds per 1,000 population over the age of 75. (DI #5, pp.37-38). The applicant states that between 2017 and 2019, an average of 35 percent of Prince George's County CCF residents out-migrated to other counties for CCF care due to unmet need. Table III-4 reflects the applicant's submission.

Table III-4: Prince George's County Resident CCF Admissions and Migration Patterns, CY 2017-2019

Year	Total Prince George's Resident Admissions	In Prince George's County	Outside of Prince George's County	Percent Outmigration
2017	10,105	6,401	3,704	36.7%
2018	10,098	6,580	3,518	34.8%
2019	10,401	6,867	3,534	34.0%
3-Year Average	**10,201**	**6,616**	**3,585**	**35.1%**

Source: DI #5, p.38.

Hillhaven's Bed Need Calculation

The applicant presents a projected growth in bed need beyond 2025. In its projection,

Hillhaven assumes a constant bed inventory from the Maryland Medicaid Cost Report[11] from 2022 forward.

Table III-5: Hillhaven's Projected CCF Bed Need in Prince George's County, CY 2020-2028

	2020	2021	2022	2023	2024	2025	2026	2027	2028
Gross Bed Need	2,549	2,102	2,343	2,420	2,502	2,587	2,670	2,758	2,851
Current CCF Bed Inventory	2,969	2,973	2,666	2,666	2,666	2,666	2,666	2,666	2,666
Net Bed Need (Surplus)	(420)	(871)	(323)	(246)	(164)	(79)	4	92	185

Source: DI #5, p.37.

Lack of Private Rooms

The applicant states that only 25 percent of nursing home beds in Prince George's County are private. Ten of those private beds are currently located at Hillhaven. The applicant proposes adding 32 private CCF beds to its existing 66-bed facility. The applicant states private rooms will minimize infection rates, increase privacy, maintain dignity, improve comfort, promote well-being and independence and improve resident satisfaction. (DI #5, p.38). Private rooms will also provide more appropriate space for equipment needs (dialysis/respiratory) in the delivery of health care services.

Current Constraints

The applicant states that the facility needs private rooms to meet communicable disease protocols, including quarantines and distancing requirements. Currently, semi-private rooms have to be used, resulting in the inability to use one of the beds. When multiple residents have COVID, many semi-private rooms cannot be used to full capacity. Expanding the number of private beds will allow the facility to operate more efficiently and at full capacity. (DI #5, p.40).

The applicant states that the current facility plant does not have enough space to meet the admission demand. Hillhaven forecasts 210 admissions in 2024, 227 in 2025 and 312 in 2026. The proposed project will allow Hillhaven to accommodate the increase in admissions. (DI #5, p.40).

[11] The applicant states that its methodology assumes that the inventory of available County CCF beds is 2,666, the number reported available in 2022 from the Maryland 2022 Medicaid Cost Report summary of Comprehensive Care beds (Exhibit 19). The applicant points out that the Exhibit 19 bed numbers differ when compared to the 2020 MHCC Long Term Care Survey (Exhibit 20). The applicant also states the LTC survey in Exhibit 20 includes two facilities that do not offer CCF beds, and it reports extra beds at Sacred Heart, Hyattsville. Sacred Heart reports 44 beds on CMS Medicare Compare, not 107, as noted on the MHCC LTC Survey Report. Staff notes that the applicant is comparing data from different years - 2020 LTC survey compared to 2022 cost-reports.

Table III-7 shows its projected admissions by resident's county for the first three project years after the project opens.

Table III-6: Hillhaven Projected Resident Admissions by County, CY 2025-2027

County	2025	2026	2027
Prince George's	190	261	261
Montgomery	30	41	41
Howard	4	5	5
Charles	4	5	5
Total Admissions	**227**	**312**	**312**

Source: DI #5, p.40.

Staff's Analysis

MHCC projects a bed need of CCF 32 beds for Prince George's County in the most current bed need projections. Likewise, the applicant presented trends and projections that demonstrate increasing utilization, admissions, and out-migration patterns to support the need for the project. Notably, Table III-5 shows the applicant's projected need for CCF beds in Prince George's County. (DI #5, p.38). The applicant also provided an assessment of the lack of private rooms and current facility constraints regarding infection control protocols. In addition, the applicant submitted demographic data about the aging population of Prince George's County. Table I-3 *(supra, p.5)* in the section on Characteristics of the Service Area Population: Prince George's County Demographics and Community Health also shows that Prince George's County has a higher prevalence of multiple types of cancer as well as cerebrovascular disease when compared to national numbers. A higher prevalence of chronic diseases is also a predictor of the future need for additional nursing home care. While staff can conclude that the project is needed based solely on the Commission's published bed need projections, applicant has provided additional data and demographic factors that lead staff to conclude that the project is needed.

C. COMAR 10.24.01.08G(3)(c). Alternatives to the Project.

The Commission shall consider the alternative approaches to meeting the need identified for the project that were considered by the applicant in planning the project and the basis for the applicants' choice of the project among considered alternatives. In a comparative review of applications within the same review cycle, the Commission shall compare the costs and the likely effectiveness of alternative projects in meeting identified needs, improving the availability and accessibility of care, and improving the quality of care.

Applicant's Response

The Hillhaven facility was last renovated in 2016. The applicant states that it collaborated with a team consisting of owners and project architects when planning for the proposed project. This work resulted in a goal of "increasing facility private room capacity within the constraints of

site, capital, market, and MHCC bed need opportunities" and to increase Prince George's County CCF capacity in private rooms. (DI #5, p.42). The applicant evaluated several alternative options to achieve these goals.

Option 1 – Status Quo

The applicant presented an option to leave the status quo. Hillhaven states that in-migration and out-migration statistics reflect that Prince George's County is surrounded by densely populated sectors of Montgomery County and the District of Columbia. Montgomery County facilities do not have enough capacity to absorb the projected need in Prince George's County. Impacted by COVID, the CCF bed occupancy in Prince George's County fell to an average of 81 percent in 2020, down from 89 percent the previous year. The applicant states that the occupancy percentage will continue to return to pre-pandemic levels, and doing nothing is unresponsive to the needs of the market. (DI #5, p.43).

Option 2 – Proposed Project

A second alternative was to add 32 beds to the existing facility, in line with the Commission's projected bed need for Prince George's County. This option would also increase the number of private beds at Hillhaven. COVID highlighted the importance of private rooms for infection control, but there are several other diagnoses that require isolation such as Multi Resistant Organisms, Influenza, RSV, Clostridium Difficile and Norovirus. Currently, Hillhaven takes one semi-private bed out of service for each additional quarantine resident. (DI #5, p.43). Additionally, the proposed project will also reduce the number of resident rooms in which more than two residents share a toilet.

The proposed project adds 32 beds at a capital cost of $7,550,000. Building a new bed addition at the existing Hillhaven facility, which is in good condition, is more cost effective than a full replacement facility. The applicant makes the assessment that the proposed project provides the most effective and efficient way to achieve Hillhaven's primary goal of increasing access to comprehensive care services. The applicant presented this as the best option.

Option 3 – Increase capacity without CON approval

The applicant states that an existing CCF may increase capacity by 10 beds or 10 percent (whichever is less), at two-year intervals, without CON approval, per COMAR 10.24.20.04(C). These are referred to as waiver beds. The applicant did not consider that waiver beds can only be added to the existing facility footprint without new construction. (DI #5, p.44).

Option 3 Revised – Larger Expansion

The applicant considered acquiring beds from another nursing home and had entered into a contract with a potential seller. However, upon learning there were no other applicants in this review, Hillhaven found it more cost effective to apply for a CON for 32 beds, rather than purchasing existing beds. While determining the best alternative, the applicant states that it also

considered a larger expansion due to the growing demand for beds in the Prince George's County, which would have consisted of applying for 32 beds and the purchase of existing beds from another facility. However, the infrastructure of the current building could not support a larger expansion, and the cost of purchasing additional beds was not cost-effective. (DI #14, p.4).

Staff's Analysis

The status quo will not advance Hillhaven's goals of increasing bed capacity and the number of private rooms in Prince George's County. In fact, there was a previous CON for Hillhaven Nursing and Rehabilitation Center (Docket # 21-16-2447) that was approved in July 2021 but was never executed which shared the same objective to increase private rooms in Prince George's County. During application review, Commission staff needed to ask the applicant for another alternative during the completeness review. The applicant complied and considered multiple options in its planning to increase capacity without obtaining a CON that, for various reasons, would not work without renovation or new construction. Staff concludes that the proposed addition of a new wing for 32 new beds is the most cost-effective approach for achieving the project's objectives.

D. COMAR 10.24.01.08G(3)(d). Project Financial Feasibility and Facility or Program Viability.

The Commission shall consider the availability of resources necessary to implement the project and the availability of revenue sources and demand for the proposed services adequate to ensure ongoing viability and sustainability of the facility to be established or modified or the service to be introduced or expanded.

Applicant's Response

Availability of Resources Necessary to Implement the Project

The total estimated cost of the proposed project is $7,550,000. The applicant expects to fund the project with cash and a mortgage[12]. (DI #14, Table C, p.542). Table III-7 summarizes the budget and sources of funds for the proposed project.

[12] The mortgage will be held by Hillhaven SNF Realty, LLC

Table III-7: Hillhaven's Proposed Project Budget

A.	**USE OF FUNDS**		
	1. CAPITAL COSTS		
		New Construction	
		Building	$5,500,000
		Site and Infrastructure	$1,180,000
		Architect/Engineering Fees	$400,000
		Permits (Building, Utilities, Etc.)	$70,000
		SUBTOTAL New Construction	$7,150,000
		Other Capital Costs	
		Movable Equipment	$150,000
		Contingency Allowance	$200,000
		SUBTOTAL Other Capital Costs	$350,000
		TOTAL CURRENT CAPITAL COSTS	$7,500,000
		TOTAL CAPITAL COSTS	**$7,500,000**
	2. Financing Cost and Other Cash Requirements		
		CON Application Assistance	$50,000
		SUBTOTAL	**$50,000**
		TOTAL USES OF FUNDS	**$7,550,000**
B.	**SOURCES OF FUNDS**		
	Cash		$2,750,000
	Mortgage		$4,800,000
		TOTAL SOURCES OF FUNDS	**$7,550,000**

Source : (DI #14, Table C).

In lieu of providing audited financial statements, the applicant provided a letter from Pease Bell Certified Public Accountants and Consultants attesting to the applicant having "access to efficient cash to provide the equity contribution." The consultants also state, "this is a strong company with a good reputation." (DI #12, Exhibit 22).

Availability of Resources Necessary to Sustain the Project

Table III-8 below summarizes selected actual and projected utilization and financial metrics for the CCF before and after the project's completion, projected to be complete in 2025. The applicant projects will be in the first full year of operation.

Table III-8: Selected Financial Measures Hillhaven, Current and Projected

Year	CY 2023	CY 2024	CY 2025	CY 2026	CY 2027	CY 2028	CY 2029
Beds	66	66	85	98	98	98	98
Admissions	405	210	227	312	312	312	312
Patient Days	21,198	21,740	25,088	32,193	32,193	32,281	32,193
Bed Occupancy	88%	90%	81.2%	90%	90%	90%	90%
Medicare*	24.9%	24.0%	24.0%	24.5%	24.5%	24.5%	24.5%
Medicaid*	18.9%	20.5%	24.6%	30.2%	30.2%	30.2%	30.2%
Self-Pay/ Commercial*	6.8%	6%	6%	6%	6%	6%	6%
Assisted Living*	49.5%	49.5%	49.5%	39.3%	39.3%	39.3%	39.3%
Medicaid as a % of CCF days	37.36%	40.65%	45.10%	49.78%	49.78%	49.78%	49.78%
Operating Revenues	$14,366,770	$14,468,148	$16,187,779	$19,171,598	$19,171,598	$19,224,123	$19,171,598
Operating Expenses	$14,653,868	$15,210,611	$16,161,566	$18,460,908	$18,460,908	$18,509,235	$18.460.908
Net Income	**$(287,098)**	**$(742,463)**	**$26,213**	**$710,690**	**$710,690**	**$714,888**	**$710,690**

* Percent of inpatient days
Source: DI #14, Tables D and F.

The applicant plans to implement the new beds by adding 19 in 2025, and the remaining beds by 2026, at which time all 32 proposed new beds are projected to be fully utilized. The applicant states that because Prince George's County needs the private rooms, it projects a 90 percent occupancy rate (high among nursing homes in the current market where the average was 81 percent in 2023[13]). The applicant projects that the incremental revenue associated with the expansion will exceed the incremental costs, for a net income of $710,690 by 2026. (DI #14, Table F).

Table III-8 also shows a positive net income beginning in 2025. The applicant states that the improved profitability is based on Sterling Care's experience as a CCF operator. The applicant also states that the previous owner's expense management was not as effective as its own. (DI #12, p.352).

Community Support

MHCC received four letters of support for this nursing home expansion project from local hospitals, a nursing home, and a senior care provider association *(supra, p. 7)*. These letters express support for the project and state that Hillhaven is a quality nursing home care provider. (DI #5, Exhibit 24).

Staff Analysis

Staff concludes that the applicant demonstrates that it has the means necessary to implement the proposed 32-bed expansion. The applicant projects corresponding growth in utilization, revenue so sustain the project in the future. Further economies of scale will be realized by adding these beds, which should improve the facility's financial performance over the long

[13] https://www.kff.org/other/state-indicator/nursing-facility-occupancy-rates/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

term. Staff notes there is little to no change in the percentage of inpatient days for Medicare, Medicaid, and self-pay/private residents. The assisted living percentage of inpatient days declines slightly due to the addition of the 32 new CCF beds. The applicant provides proof of community support for the proposed project. Staff recommends that the Commission find that this project is financially feasible and that the expanded CCF is viable, in the long term.

E. COMAR 10.24.01.08G(3)(e) Compliance with Terms and 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.

MH Adelphi Operating, LLC dba Hillhaven Nursing and Rehabilitation Center - Docket No. 21-16-2447 previously received a CON on July 15, 2021, when it was under prior ownership. The prior owners of Hillhaven sold the facility prior to beginning construction. Because a CON cannot be transferred, the sale voided the prior CON. COMAR 10.24.01.10J.

F. COMAR 10.24.01.08G(3)(f) Project Impact.

The Commission shall consider the impact of the proposed project on the costs and charges of existing providers of the facilities and services included in the project and on access to those facilities and services in the service area of the project.

<u>Applicant's Response</u>

The applicant states that this project will not have any significant impact on the viability of other CCFs in Prince George's County, as the State Health Plan projects a need for 32 additional CCF beds in Prince George's County. The applicant's analysis of bed need shows a deficit of 79 CCF beds beginning in 2025.The applicant points to factors such as a growing older population, high in-migration, and isolation requirements for infectious diseases, which lead to a demand for more beds in the county. (DI #5, p.47, Exhibit 18). The applicant projects that Hillhaven will be able to care for more Medicaid residents with the additional 32 beds. (DI #5, p.47). Hillhaven states that it accepts all payer groups and does not discriminate based on religion, race, or ethnicity. In addition, the barrier of too few private rooms in CCFs in Prince George's County will be partially addressed by the increase in private rooms at Hillhaven. (DI #5, p.48). The applicant states that the construction project will not impact cost and charges of other nursing homes because cost and charges are set by third party payors. Finally, the applicant shows that the project will have an increase of 33.50 FTEs (at an operating cost increment of $2,098,587) but states it will not negatively impact other providers. (DI #5, p.48). The applicant also has multiple affiliation agreements for training with college level clinical programs such as Frostburg University Nursing Program and George Washington University which it uses to build its workforce. (DI #5, p.54).

<u>Staff Analysis</u>

The addition of 32 nursing home beds is unlikely to have a negative impact on other providers in Prince George's County. The Commission has already identified a need for the same number of additional beds in the county. Instead, the project will have a positive impact for Hillhaven's patients and on health care delivery in Prince George's County by creating more private beds for nursing home care. Staff concludes the impact of the proposed project will be positive.

G. COMAR 10.24.01.08G(3)(g) Health Equity.

The Commission shall consider how a proposed project will address health care disparities in availability, accessibility, and quality of care among different populations within the service area. The Commission shall consider how social determinants of health within the service area of the proposed project create disparities in the delivery of health care.

The applicant conducted a needs assessment to identify specific health care needs and challenges faced by the target population. The applicant supplemented the findings by engaging local organizations, community leaders and local hospitals. Additionally, the applicant reached out to local residential buildings to determine the specific needs among different populations in the service area.

The applicant compared census information for Prince George's County with its resident population and states that the Hillhaven residents align closely with the county Census profile.

Table III-9: County and Facility Residents' Race

Race	Prince George's County	Hillhaven
White	27%	36.8%
Black or African American	64%	54.4%
Asian	4.4%	7.0%
American Indian	1.4%	0.2%

Source: (DI #5, p.50).

The applicant states that it is working on Health Equity in a variety of ways. The applicant found that individuals applying for its facility beds are often Medicaid beneficiaries. This project will expand the facility by 32 beds which will allow for more capacity to grant first priority to Medicaid beneficiaries and Medicaid pending residents. To help facilitate this growth, the applicant has designated a Medicaid specialist and corporate team member to assist residents in applying and obtaining Medicaid.

Further, the additional beds will allow the applicant to expand from its current 10 private rooms to 44 private rooms. Private rooms help address health care disparities by allowing for gender and cultural practice preferences and increase quality of care and infection control. Additionally, the private rooms allow for private conversations with social and clinical visitors as well as family members. The applicant notes that in the 2021 Maryland Long Term Care Survey, only 27 percent of Prince George's licensing nursing facility beds were in private rooms. At the conclusion of this project, the applicant will maintain 45 percent of the facility beds in private

rooms.

To help address language barriers, the applicant utilizes existing staff members who are fluent in languages other than English, such as Spanish, Russian, Creo, Tagalog, Hungarian and Patwa. If a resident faces additional language barriers, the applicant will provide language lines and boards to assist residents and their families.

The applicant ensures ongoing community engagement by organizing health education workshops at senior centers, hosting support groups and community forums, and facilitating access to healthcare resources. The applicant also holds resident council meetings where residents can discuss their unmet needs. Leadership reviews and addresses any cultural requests which may include food, entertainment, religious services and other special needs.

Staff undergo cultural competency training upon hire and annually. The applicant also plans to incorporate the Cultural Competency Assessment as a component of its Cultural Diversity Program. (DI #5, pp.50-51 and DI #12, p. 349). Lastly, the applicant included its Admission Policy, which states that the facility does not discriminate on the basis of race, culture, or gender. (DI #5, pp.49-51, Exhibit 27).

Staff Analysis

The criterion asks for how this project will address health care disparities. The term "health disparities" is often defined as a difference in which disadvantaged social groups—such as people with lower socioeconomic status, racial and ethnic minorities, women and other groups who have persistently experienced social disadvantage or discrimination—systematically experience worse health or greater health risks than more advantaged social groups.[14] Health disparities are caused by a multitude of factors referred to as social determinants of health (such as but not limited to safe housing, healthy food, access to health services, transportation, public safety, media and technology).[15]

In the introduction, *Characteristics of the Service Area Population: Prince George's County Demographics and Community Health* (*supra p.5)*, this report documents that the population of Prince George's County is predominantly Black (58.6%), compared to Maryland where the population is predominantly White (46.9%). Table I-1, which compares Black residents of Prince George's County fair on key health outcomes to the Healthy People 2030 benchmarks, shows that Prince George's County is above the threshold for prevalence of multiple cancers, including breast, colorectal, lung and prostate, and cerebrovascular disease. These types of diagnosis can lead to a need for short or long term stays in a nursing home facility.

In assessing this criterion, staff considers the actions a health care facility has taken to ensure

[14] https://www.nimhd.nih.gov/resources/understanding-health-disparities/minority-health-and-health-disparities-definitions.html
[15] https://www.thenationalcouncil.org/resources/integrated-health-coe-toolkit-purpose-of-this-toolkit/module-3-health-disparities-social-determinants/

that all individuals have fair and just opportunities to achieve optimal health, such as increasing access to care of underserved populations, providing culturally competent and patient centered care, providing health education and promotion, addressing social determinants of health, improving quality, and aligning leadership and governance with health equity principles.

The proposed project is in response to the need for 32 CCF beds in Prince George's County. The new wing that will be built as part of the project will have all modern private rooms creating needed access to skilled nursing care in a modern environment for the residents of Prince George's County. The additional beds will provide access to the highest level of quality available (a 5-star facility on CMS Care Compare) at a top-rated facility that has achieved high marks on its survey performance, staffing and quality measures. The project will expand access to much needed private rooms in Prince George's County and increase access for Medicaid beneficiaries and Medicaid pending residents. The facility is located near areas that Prince George's County has identified as medically underserved.[16]

In review of the criterion staff notes that the applicant uses a survey that assesses the ethnic, cultural, and religious needs of its residents and completes cultural competency training with its staff. The cultural competency training helps employees remember to be culturally sensitive when providing care. In addition, through ongoing community engagement, the applicant has also shown its desire to deliver equitable quality health care by providing a multiple part plan for community collaboration which includes community forums, newsletters, and social media platforms. The applicant has shown that it has assessed the needs in its service area and this project will assist in addressing the disparities in the health needs and quality of care in its service area.

H. 10.24.01.08G(3)(h) CHARACTER AND COMPETENCE.

The Commission shall assess the character and competence of an applicant based upon experience and past performance, including any records of violation in operating a health care service or facility.

Names and Address of Owners and Individuals responsible for Project Implementation

The applicant refers back to Exhibit 1 that shows no other party in the investor group owns more than 5 percent other than the primary owners, for which names and addresses were provided. (DI #5, p.53).

Involvement in Other Facilities

The applicant refers to Exhibit 8 which provides the ownership interests of Hillhaven's owners. Hillhaven is principally owned by Jeff Kagan (35%), Nathan Jakobovits (35%), and Yoni Grunbaun (11%). The remaining 19 percent is owned by other investors, none of which owns more than

[16] Huron, Assessing Prince George's County Healthcare and Social Needs and 10+ Year Investment Strategy p. 13-14 (Oct. 11, 2023).

five percent individually. (DI #5, p. 53). As discussed earlier, (*supra p*.4) Sterling owns eight facilities in Maryland and others in Connecticut, Michigan and Rhode Island.

Suspended or Revoked Licenses, or Disciplinary Action

The applicant states that no licenses have been revoked or suspended. It also refers to Exhibit 28 which is a listing of all disciplinary action with a scope/severity level of G or higher (actual harm) for the last five years. Two facilities previously owned by Jeff Kagan and Nathan Jakobovits, Lynwood Manor (Michigan) and Pawtuckett Falls (Rhode Island), had harm-tag penalties but neither had any license suspensions nor ban on admissions. Jeff Kagan and Nathan Jakobovits are now divested of these two facilities. (DI #5, p. 53).

Guilty Pleas or Convictions

The applicant states that no owners or individuals responsible for the project have ever plead guilty to or been convicted of a criminal offense connected with the ownership, development, or management of a health care facility. (DI #5, p.54).

Regulatory Inquiries

Lynwood Manor and Pawtuckett Falls were both were subject to disciplinary action with a scope/severity level of G or higher (actual harm). Pawtuckett Falls also had a temporary suspension of payments in 2022 which had since resolved. Jeff Kagan and Nathan Jakobovits divested of the facilities in January 2024. (DI #5, p.53 and Exhibit 9).

Positive Character Traits

Sterling Care is an active member of Maryland long-term care volunteer organizations that focus on improving the care environment in nursing homes. In the application, the applicant included a biography of Sterling Care's owners (Exhibit 3) and a copy of recent awards it has received (Exhibit 26). The applicant also states that Sterling Care has clinical affiliations with Frostburg University and George Washington University nursing programs for which it provides clinical training in its facilities. (DI #5, p.54).

Staff Analysis

Staff reviewed the applicant's assessment of character and competence. It disclosed that two facilities previously under common ownership received deficiencies G-level or higher, but the applicant no longer shares ownership with those facilities. In addition, Sterling Care shared its volunteering, awards, and partnerships with several nursing programs it works with as a demonstration of good character. Staff concludes that the information provided is credible and that the applicant has sufficiently documented its character and competence.

SUMMARY AND STAFF RECOMMENDATION

Staff concludes that this project complies with the State Health Plan COMAR 10.24.10 and that Hillhaven demonstrated the need for the project, its cost-effectiveness, its viability, and is consistent with the remaining Certificate of Need review criteria. Hillhaven also demonstrated that it has met the criterion for Health Equity and Character and Competence. In addition, the proposed project will create additional access to CCF beds for residents of Prince George's County, and increased access to private rooms.

Staff recommends that the Commission **APPROV**E Hillhaven's Certificate of Need application, with the following conditions:

1. For three years after receiving first use, Hillhaven shall demonstrate progress in increasing the number of Medicaid patient days as a proportion of total patient days in reports it shall file semi-annually with the Commission that identify the number and percentage of Medicaid patient days and total patient days at Hillhaven for the previous period, also providing this information for other payor sources during that time period;

2. Prior to seeking first use approval, Hillhaven shall document that the percentage of Medicaid patient days as a proportion of total patient days meets or exceeds the requirement in its most recently signed Memorandum of Understanding with the Maryland Medical Assistance Program; and

3. Hillhaven shall continue to maintain the minimum proportion of Medicaid patient days required in Prince George's County in its Memorandum of Understanding with the Maryland Medical Assistance Program.

IN THE MATTER OF	*	**BEFORE THE**
HILLHAVEN SNF OPERATOR, LLC	*	
d/b/a	*	
STERLING CARE HILLHAVEN	*	**MARYLAND HEALTH CARE**
	*	**COMMISSION**
	*	
Docket No. 24-16-2469	*	

*** ***

FINAL ORDER

Having reviewed and considered the information and analysis contained in the Staff Report and Recommendation, it is this 20th day of June 2024, 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 application for Certificate of Need submitted by Hillhaven SNF Operator, LLC to add 32 comprehensive care facility beds through construction of a new wing to its facility located in Adelphi, Prince George's County, at a cost of $7,550,000 is hereby **APPROVED,** subject to the following conditions:

1. For three years after receiving first use, Hillhaven shall demonstrate progress in increasing the number of Medicaid patient days as a proportion of total patient days in reports it shall file semi-annually with the Commission that identify the number and percentage of Medicaid patient days and total patient days at Hillhaven for the previous period, also providing this information for other payor sources during that time period;

2. Prior to seeking first use approval, Hillhaven shall document that the percentage of Medicaid patient days as a proportion of total patient days meets or exceeds the requirement in its most recently signed Memorandum of Understanding with the Maryland Medical Assistance Program; and

3. Hillhaven shall continue to maintain the minimum proportion of Medicaid patient days required in Prince George's County in its Memorandum of Understanding with the Maryland Medical Assistance Program.

MARYLAND HEALTH CARE COMMISSION

Appendix 1
Record of the Review

RECORD OF THE REVIEW

Docket No. **24-16-2469**

Item #	Description	Date
1	Commission staff acknowledged receipt of Letter of Intent	1/3/24
2	Pre-application meeting	1/10/24
3	Letter of support received from Lifespan	2/6/24
4	Applicant sent a revised letter of intent	2/23/24
5	CON application received	2/27/24
6	Acknowledged receipt of application	2/28/24
7	Commission staff requested that the Washington Times publish notice of receipt of application	2/28/24
8	Commission staff requested that the Maryland Register publish notice of receipt of application	2/28/24
9	Notice published in Washington Times	3/1/24
10	First request for completeness information	3/8/24
11	Request to file an extension on submitting completeness until 4/5/24	3/24/24
12	Applicant first completeness response	4/4/24
13	Commission staff additional completeness questions	4/5/24
14	Applicant second completeness response	4/16/24
15	Application docketed notice in Maryland Register	5/3/24
16	Email exchange on health equity data	5/8/24

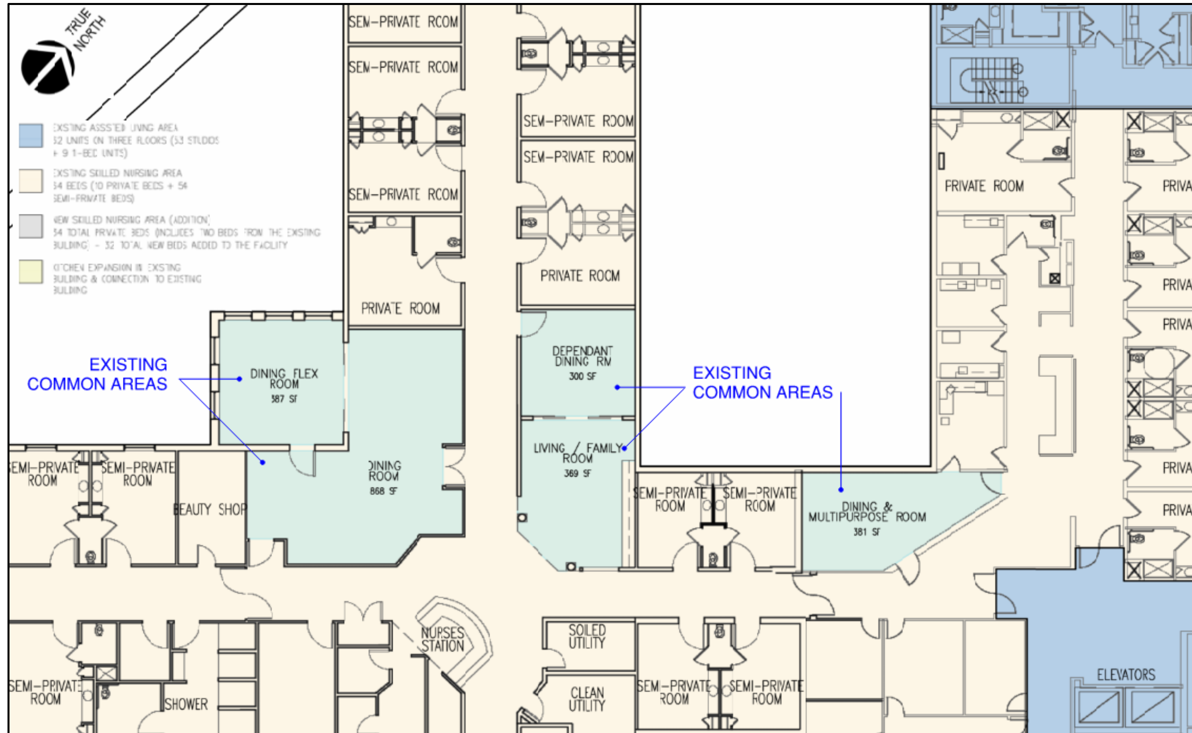
Appendix 2
Facility Drawings

Hillhaven Current

Hillhaven Renovated

Source: (DI #5, p.9).

Existing Floor Plan



Proposed Floor Plan

EXISTING ASSISTED LIVING AREA
62 UNITS ON THREE FLOORS (53 STUDIOS + 9 1-BED UNITS)
EXISTING SKILLED NURSING AREA
64 BEDS (10 PRIVATE BEDS + 54 SEMI-PRIVATE BEDS)
NEW SKILLED NURSING AREA (ADDITION)
34 TOTAL PRIVATE BEDS (INCLUDES TWO BEDS FROM THE EXISTING BUILDING) - 32 TOTAL NEW BEDS ADDED TO THE FACILITY
KITCHEN EXPANSION IN EXISTING BUILDING & CONNECTION TO EXISTING BUILDING
TRUE NORTH
UNIT 20
UNIT 19
1 BED UNIT (TYPE A3)
272 SF
CLEAN UTILITY
89 SF
UNIT 28
UNIT 29
1 BED UNIT (TYPE A1)
226 SF
UNIT 30
1 BED UNIT (TYPE A1)
224 SF
UNIT 18
1 BED UNIT (TYPE A1)
224 SF
OUTDOOR ACTIVITY / RECREATIONAL SPACE
UNIT 15
1 BED UNIT (TYPE A3)
270 SF
UNIT 16
1 BED UNIT (TYPE A3)
270 SF
UNIT 15
1 BED UNIT (TYPE A1)
224 SF
SHOWER 01
SHOWER 02
SHOWER 03
M/E
51 SF
UNIT MANAGER
116 SF
CHARTING
122 SF
STORAGE
43 SF
CORRIDOR
3,330 SF
COMMON SHOWER ROOM
296 SF
TOILET
44 SF
STORAGE
81 SF
CLEAN UTILITY
82 SF
MED. RM.
81 SF
NURSES STATION 2A
305 SF
MULTIPURPOSE & DINING SPACE
1,204 SF
STORAGE
45 SF
CORRIDOR
TRASH
SOILED UTILITY
82 SF
1 BED UNIT (TYPE A1)
224 SF
UNIT 05
1 BED UNIT (TYPE A1)
236 SF
UNIT 04
1 BED UNIT (TYPE A1)
236 SF
UNIT 03
1 BED UNIT (TYPE A1)
UNIT 02
1 BED UNIT (TYPE A2)
231 SF
UNIT 01
STORAGE
18 SF
NOURISHMENT
222 SF
1 BED UNIT (TYPE A4)
312 SF
UNIT 34 - ISOLATION

Appendix 3
Project Implementation Schedule

Project Implementation Schedule

An application for a CON or other Commission approval shall propose a schedule for implementation of the project in accordance with COMAR 10.24.01.12A(1) that specifies the estimated time for, at a minimum, the following project implementation steps: Obligation of Capital Expenditure, Beginning Construction, Complete Construction and Full Operation.

In developing the schedule, please note that COMAR 10.24.01.12C requires a holder to obligate at least 51 percent of the approved capital expenditure for a project involving building construction, renovation, or both, as documented by a binding construction contract or equipment purchase order, within the following specified time periods:

- *(a) An approved new hospital has up to 36 months*
- *(b) A project involving an approved new non-hospital health care facility or involving a building addition or replacement of building space of a health care facility has up to 24 months*
- *(c) A project limited to renovation of existing building space of a health care facility has up to 18 months*
- *(d) A project that does not involve construction or renovation shall document that the approved project is complete and operational within 18 months.*

In a multiphase plan of construction with more than one construction contract approved for an existing health care facility, a holder has:

- *(a) Up to 12 months after approval to obligate 51 percent of the capital expenditure for the first phase of construction*
- *(b) Up to 12 months after completion of the immediately preceding phase of construction to obligate 51 percent of the capital expenditure for any subsequent approved phase*

Proposed Alternative Implementation Schedule

	Proposed Project Timeline	
Obligation of 51% of capital expenditure from approval date	24	months
Initiation of Construction within 4 months of the effective date of a binding construction contract	12	months
Time to Completion of Construction from date of capital obligation	36	months

Per COMAR 10.24.01.08 applicant proposes a longer schedule to accommodate expected long delays caused by plan reviews.