MARYLAND
Health Care
Commission

**DATE:** **October 21, 2021**

**TO:** **Commissioners**

**FROM:** **Wynee E. Hawk, Esq.**
**Chief, Certificate of Need**

**SUBJECT:** **Avenues Recovery Center of Chesapeake Bay, LLC**
**Docket No. 21-09-2449**

Enclosed is the staff report and recommendation for a Certificate of Need (CON) application filed by Avenues Recovery Center of Chesapeake Bay, LLC (Avenues). Avenues proposes to establish a 20-bed alcoholism and drug abuse intermediate care facility (ICF). ICF is a term in the State Health Plan (SHP) to mean withdrawal management (WM), commonly referred to as "detoxification" services, and treatment services at a level of care defined by the American Society of Addiction Medicine (ASAM) as medically monitored intensive inpatient services.

The proposed site of the facility is an existing center for alcoholism and drug abuse treatment operating in Cambridge (Dorchester County) on the Eastern Shore. It currently provides a lower level of WM and treatment services and is proposing to introduce the higher Level 3.7 inpatient services on to its existing residential services.

The total estimated cost for the proposed project is $55,000. There are no construction, renovation or other changes required to the physical plant. The project will be funded with cash.

Commission staff analyzed the proposed project's compliance with the applicable State Health Plan criteria and standards in COMAR 10.24.14 and the other applicable CON review criteria at COMAR 10.24.01.08, and recommends that the project be APPROVED with the following conditions:

1. Avenues Recovery Center of Chesapeake Bay shall document the provision of a minimum of 15% of patient days to indigent and gray area patients, as defined at COMAR 10.24.14.08B(9) and (11), by submitting annual reports auditing its total days and the provision of days to indigent and gray area patients as a percentage of total days. Such audit reports shall be submitted to the Commission following each fiscal year, from the project's inception and continuing for five years thereafter;
2. Avenues Recovery Center of Chesapeake Bay must receive preliminary accreditation for the Level 3.7 services it will provide, including withdrawal

management and post-withdrawal treatment programming, by the Commission on the Accreditation of Rehabilitation Facilities (CARF) prior to First Use Approval by the Commission and must timely receive final accreditation by CARF;

3. Avenues Recovery Center of Chesapeake Bay shall provide documentation of transfer and referral agreements prior to First Use approval by the Commission with: 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 center(s); the Eastern Shore's mental health and alcohol and drug abuse authorities; the Behavioral Health Administration; and the Eastern Shore agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services. Documentation may include letters of agreement or acknowledgement from the facilities; [COMAR 10.24.14.05J(2)]
4. Avenues Recovery Center of Chesapeake Bay shall document referral agreements, prior to First Use approval by the Commission, demonstrating that at least 15 percent of its annual patient days, required by COMAR 10.24.14.08, will be incurred by the indigent or gray area populations, including days paid under a contract with the Behavioral Health Administration or a jurisdictional alcohol or drug abuse authority, or the Medical Assistance program; [COMAR 10.24.14.05K(2)] and
5. To demonstrate that outpatient programs are available to its proposed patient population, Avenues Recovery Center of Chesapeake Bay shall provide written referral agreements or arrangements with outpatient programs that meet the requirements of COMAR 10.24.14.05O(1) through (4), prior to First Use approval by the Commission.

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| **IN THE MATTER OF** | * | |
| | * | **BEFORE THE** |
| **AVENUES RECOVERY CENTER** | * | |
| | * | **MARYLAND HEALTH** |
| **OF CHESAPEAKE BAY LLC** | * | |
| | * | **CARE COMMISSION** |
| **Docket No. 21-09-2449** | * | |

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# STAFF REPORT AND RECOMMENDATION

**October 21, 2021**

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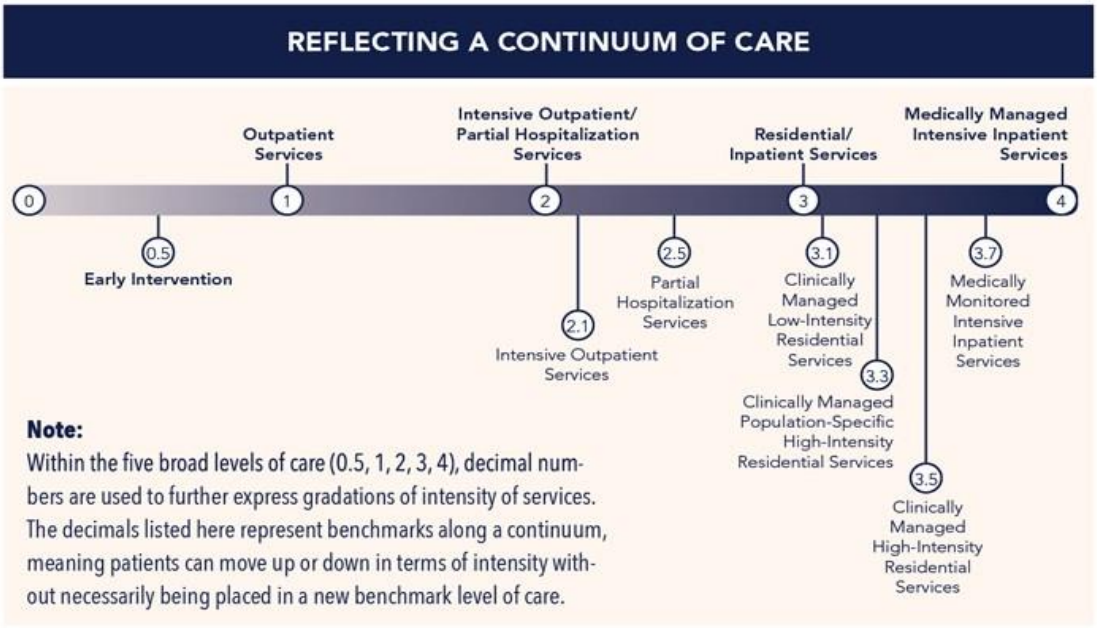
# I. INTRODUCTION

## A. Background

Avenues Recovery Center of Chesapeake Bay, LLC (Avenues) proposes to establish a 20-bed alcoholism and drug abuse intermediate care facility (ICF). MHCC uses this term in the State Health Plan (SHP) to mean withdrawal management (WM), commonly referred to as "detoxification" services, and treatment services at a level of care defined by the American Society of Addiction Medicine (ASAM) as medically monitored intensive inpatient services. On the spectrum of WM and treatment services for substance use disorder, this is Level 3.7. Avenues proposes to function as a "Track One" ICF, as defined in the SHP, admitting a majority of private pay patients.

The proposed site of the facility is an existing center for alcoholism and drug abuse treatment operating in Cambridge (Dorchester County) on the Eastern Shore. It provides a lower level of WM and treatment services, including "residential services" (see Level 3.1, 3.3, and 3.5 in the following figure) and, thus, is proposing to introduce and overlay the higher Level 3.7 inpatient services on to its existing residential services, at an initial capacity of 20 beds. The ASAM level of care taxonomy is used by the Maryland Department of Health's Behavioral Health Administration (BHA) to classify levels of treatment in Maryland. Please see Figure 1 below for the continuum of ASAM-level services.

**Figure 1**




Source: The ASAM Criteria - American Society of Addiction Medicine
http://asamcontinuum.org/knowledgebase/what-are-the-asam-levels-of-care/

A Certificate of Need (CON) is required for Level 3.7/3.7WM inpatient addictions treatment and ASAM Level 4.0 (hospital-level) medically managed intensive inpatient services. The Maryland Health Care Commission (Commission) does not regulate the spectrum of lower-level withdrawal management and treatment programs (Level 3.5 and below), which include both outpatient programs and residential facilities. Please see Appendix 2 for a crosswalk and description of ASAM level services. A CON is required to establish or relocate an ICF, or to establish, relocate, or add beds to a hospital-level alcoholism and drug abuse treatment service. Once established, a licensed and operating ICF may add beds without CON review and approval. This change in the scope of CON regulation became effective in 2019.

There has been legislative activity in recent years that is relevant to the review of CON applications to establish new ICFs. In 2018, the Commission endorsed elimination of CON regulation of ICF services as part of an appropriate response to the opiate and opioid overdose crisis and the calls for more treatment programming. The proposed legislation that would have eliminated CON regulation of these ICFs failed. Stakeholders opposed to this narrowing of the scope of CON regulation stated that continued inclusion of ICFs as a regulated facility category is necessary to prevent a substantial influx of new facilities providing poor quality care and engaging in undesirable practices aimed at maximizing revenue rather than effectively rehabilitating addicted patients. The Commission experience indicates that some existing ICFs (specifically, "Track 2" ICFs that primarily rely on public payment sources) lack resources to adequately prepare CON applications to expand bed capacity and have difficulty engaging consultants to assist them in the process, due to cost constraints. In recent years, expansion of capacity in these more inclusive ICFs has lagged behind the establishment and expansion of Track I capacity, which primarily serve patients with private insurance or an income level providing an ability of pay.

The Commission convened a CON Modernization Task Force in 2018 that recommended, among other things, eliminating the requirement to obtain CON approval of changes in bed capacity (1) by an alcoholism and drug abuse treatment intermediate care facility or by a residential treatment center and (2) by a hospital for acute psychiatric beds. The report also noted, as a potential solution to issues identified, the utility of eliminating CON for changes in health care facility bed capacity, more generally.

The legislation to enact those recommendations was passed in 2019 (HB626) eliminating the requirement to obtain a certificate of need (CON) from the Commission before changing the bed capacity of two categories of regulated health care facility: (1) a licensed intermediate care facility that offers residential or intensive substance-related disorder treatment services; or (2) an existing, licensed general hospice program. *See* Annotated Code of Maryland, Health-General Article § 19-120 (h)(2)(v). This change in the law makes the bed need projection standard in the SHP obsolete, which will be discussed later in this report.

### B. The Applicant

Avenues is owned by the Livorno Trust, Yehuda Alter, and Yosef Cohen. The same three owners are also responsible for the management of eight other SUD facilities across the country.

Included in the common ownership are Avenues Recovery Center in Prince Frederick, MD,[1] three programs located in Pennsylvania (Philadelphia, Scranton, and Valley Forge), two in Louisiana (Metairie and New Orleans), and one facility each in Indiana (Fort Wayne) and New Hampshire (Concord). (DI #16, p. 1, Ex. 34).

Livorno Trust, Yehuda Alter, and Yosef Cohen are also principles for Rehab Ventures, LLC, a management company for all Avenues health care facilities and Avenues Recovery Center, LLC, a limited liability company, that maintains a website providing information on all the treatment programs and services available at the nine Avenues programs.[2]

**C. The Project**

Avenues is proposing to establish a 20-bed "Track One" ICF[3] with ASAM level 3.7 and 3.7WM services for adults in an existing facility located at 821 Fieldcrest Road in Cambridge. The applicant currently operates as a 104-bed center for the treatment of substance use disorders. It is accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF)[4] to provide the continuum of care from Level 1.0 outpatient care to Level 3.5 residential services. (DI #5, p. 6).

The applicant describes the proposed configuration for the 20-bed ICF as follows:

> The intent is to convert 20 total beds (seven bedrooms) into 3.7 and 3.7WM beds located in the South Wing (40,180 square feet). Of the seven bedrooms, six of them will have three beds per bedroom, and one bedroom will have two beds. The South Wing was chosen because of the more private setting for patients in need of higher levels of care. The South Wing is located the closest to the clinical offices, group rooms, medical offices, dining area, fitness room, game room, and Yoga room for ease of access for patients experiencing withdrawal symptoms for level 3.7WM patients and post-acute withdrawal symptoms for level 3.7 patients. (DI #13, p. 11).

Please see Appendix 3 for a Floorplan Diagram. (DI #5, Exh. 3).

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[1] The Prince Frederick facility provides Level 3.5 and lower residential, partial hospitalization, outpatient services and crisis stabilization services. (DI #13, p. 3).

[2] Further information available at: www.avenuesrecovery.com.

[3] A Track One ICF, operates "private beds" in a facility which admits a majority of private-pay patients. Track One facilities are required to provide no less than 15 percent of the facility's annual patients days to the indigent and gray area population, subject to findings with respect to financial feasibility. COMAR 10.24.14.04. The other type of ICF defined in the SHP is a "Track Two" ICF, a facility with "publicly-funded beds" that "reserve at least 50 percent of their proposed annual adolescent or adult bed capacity for indigent or gray area patients." *Id.* "Indigent" patients are those who qualify for services under the Maryland Medicaid program. COMAR 10.24.14.08B(11). "Gray area" patients do not so qualify but have an annual income (from any source) that is no more than 180 percent of the current Federal Poverty Index and have no insurance for alcohol and drug abuse treatment services. COMAR 10.24.14. 08.B(9)

[4] Further information available at: http://www.carf.org/home/.

Avenues states that the inpatient rooms were newly remodeled prior to opening the current center in Fall 2020 and that the 20 beds will flex between Level 3.7 and Level 3.7WM. (DI #13, p. 2). Patients "at Level 3.5 services or lower will not be located in the South Wing unless all other beds in the facility are occupied and there is availability in the South Wing." (DI #13, p. 4). Avenues states that it will make every attempt to keep patients together by level of care**.**

The total estimated cost for the proposed project is $55,000. There are no construction, renovation or other changes required to the physical plant. The project will be funded with cash.

**D. Summary of Staff Recommendation**

Staff recommends approval of the Avenues project because it complies with the applicable standards in COMAR 10.24.14, a chapter of the SHP addressing the review of Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services. The project is a cost effective approach to expanding ICF capacity on the Eastern Shore, making this level of care more available and accessible, and viability of the project has been demonstrated. Staff recommends that, if the Commission approves a CON for this project, the following five conditions be included regarding the provision of care to the indigent and gray area population, accreditation, transfer agreements, and referral agreements with providers of outpatient alcohol and drug abuse programs:

1. Avenues Recovery Center of Chesapeake Bay shall document the provision of a minimum of 15% of patient days to indigent and gray area patients, as defined at COMAR 10.24.14.08B(9) and (11), by submitting annual reports auditing its total days and the provision of days to indigent and gray area patients as a percentage of total days. Such audit reports shall be submitted to the Commission following each fiscal year, from the project's inception and continuing for five years thereafter;
2. Avenues Recovery Center of Chesapeake Bay must receive preliminary accreditation for the Level 3.7 services it will provide, including withdrawal management and post-withdrawal treatment programming, by the Commission on the Accreditation of Rehabilitation Facilities (CARF) prior to First Use Approval by the Commission and must timely receive final accreditation by CARF;
3. Avenues Recovery Center of Chesapeake Bay shall provide documentation of transfer and referral agreements prior to First Use approval by the Commission with: 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 center(s); the Eastern Shore's mental health and alcohol and drug abuse authorities; the Behavioral Health Administration; and the Eastern Shore agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services. Documentation may include letters of agreement or acknowledgement from the facilities; [COMAR 10.24.14.05J(2)]
4. Avenues Recovery Center of Chesapeake Bay shall document referral agreements, prior to First Use approval by the Commission, demonstrating that at least 15 percent of its annual patient days, required by COMAR 10.24.14.08B(20), will be incurred by the indigent or gray area populations, including days paid under a contract with the

Behavioral Health Administration or a jurisdictional alcohol or drug abuse authority, or the Medical Assistance program [COMAR 10.24.14.05K(2)]; and

5. To demonstrate that outpatient programs are available to its proposed patient population, Avenues Recovery Center of Chesapeake Bay shall provide written referral agreements or arrangements with outpatient programs that meet the requirements of COMAR 10.24.14.05O(1) through (4), prior to First Use approval by the Commission.

## II. PROCEDURAL HISTORY

### A. Record of the Review

Please see Appendix 1, Record of the Review.

### B. Local Government Review and Comment

Roger Harrell, Dorchester County Health Officer, submitted a letter of support for the Avenues Recovery Center of Chesapeake Bay CON application. (DI #21).

### C. Other Support and Opposition to the Project

Avenues submitted letters supporting the project from public officials and representatives of other health care providers and local law enforcement agencies that are arrayed below by category. (DI #5, Exh. 26).

**Public Officials**

Senator Adelaide "Addie" Eckhardt, Legislative District 37 (Caroline, Dorchester, Talbot, and Wicomico Counties)
Jay L. Newcomb, President, County Council of Dorchester County
Andrew Bradshaw, Mayor, City of Cambridge
William A. Christopher, President/CEO, Dorchester Chamber of Commerce, Inc.

**Other Health Care Providers**

Jonathan P. Forte, Senior Vice President/Chief Operating Officer, Choptank Community Health
Kathryn G. Dilley, Executive Director, Mid Shore Behavioral Health

**Local Law Enforcement Agencies**

Joseph Hughes, Director of Corrections, Dorchester County Department of Corrections
Mark K. Lewis, Chief of Police, City of Cambridge Department of Police

## III. REVIEW AND ANALYSIS

### A. STATE HEALTH PLAN

***COMAR 10.24.01.08G(3)(a) State Health Plan. An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.***

The relevant State Health Plan chapter is COMAR 10.24.14, Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services (ICF Chapter). The ICF Chapter, at Regulation .05, includes the following "Certificate of Need Approval Rules and Review Standards for New Substance Abuse Treatment Facilities and for Expansions of Existing Facilities."

**.05A. Approval Rules Related To Facility Size. Unless the applicant demonstrates why a relevant standard should not apply, the following standards apply to applicants seeking to establish or to expand either a Track One or a Track Two intermediate care facility.**

**(1) The Commission will approve a Certificate of Need application for an intermediate care facility having less than 15 beds only if the applicant dedicates a special population as defined in Regulation .08.**

**(2) The Commission will approve a Certificate of Need application for a new intermediate care facility only if the facility will have no more than 40 adolescent or 50 adult intermediate care facility beds, or a total of 90 beds, if the applicant is applying to serve both age groups.**

**(3) The Commission will not approve a Certificate of Need application for expansion of an existing alcohol and drug abuse intermediate care facility if its approval would result in the facility exceeding a total of 40 adolescent or 100 adult intermediate care facility beds, or a total of 140 beds, if the applicant is applying to serve both age groups.**

Avenues seeks to establish a 20-bed adult Track One ICF program that provides Level 3.7 and Level 3.7WM services. This CON application meets Subsections (1) and (2) of this standard. Subsection 3 is not applicable.

Staff concludes that the project meets this standard.

**.05B. Identification of Intermediate Care Facility Alcohol and Drug Abuse Bed Need.**

**(1) An applicant seeking Certificate of Need approval to establish or expand an intermediate care facility for substance abuse treatment services must apply under one of the two categories of bed need under this Chapter:**

**(a) For Track One, the Commission projects maximum need for alcohol and drug abuse intermediate care beds in a region using the need projection**

**methodology in Regulation .07 of this Chapter and updates published in the *Maryland Register*.**

The bed need projection methodology for Track One facilities, whose patients are primarily private pay, is set forth in COMAR 10.24.14.07B(7) and is illustrated in Table III-1. Using this methodology, Avenues calculated a net bed need range of 42 to 93 beds for the target year 2025. (DI #5, pp. 32-33).

Staff used the same methodology in Regulation .07B(7) for the Eastern Shore,[5] using 2020 as the base year (the most recent year for which the number of Medicaid recipients is available) and obtaining the number of Medical Assistance recipients aged 18 years and older for the Eastern Shore region from The Hilltop Institute. The target year is 2025 (five years from the base year). The calculation resulted in an excess bed supply range of 57 to 102 beds by 2025.

The differences reflect use of different assumptions of the Projected Adult Population (18 years and older) and the Indigent Adult Population (18 years and older) used in the respective methodology calculations.

**Table III-1: Projected Bed Need for Alcoholism and Drug Abuse ICF Beds Serving Adults (18 years and older) in Eastern Shore**

| | MHCC Projected 2020 | MHCC Projected 2025 |
|---|---|---|
| **Projected Adult Population (18 years and older) – Projected 2020(1)** | 368,569 | 384,446 |
| **Indigent Adult Population (18 years and older) - Eastern Shore(2)** | 85,301 | 85,301 |
| (a) **Non-Indigent Population** | 283,268 | 299,145 |
| (b) **Estimated Number of Substance Abusers (a*8.64%(3))** | 24,474 | 25,846 |
| (c1) **Estimated Annual Target Population (b*25%)** | 6,119 | 6,462 |
| (c2) **Estimated Number Requiring Treatment (c1*95%)** | 5,813 | 6,138 |
| (d) **Estimated Population requiring ICF/CD (15%-30%)**(4) | | |
| (d1) Minimum (c2*0.15) | 872 | 921 |
| (d2) Maximum (c2*0.30) | 1,744 | 1,842 |
| (e) **Estimated Range requiring Readmission (10%)** | | |
| (e1) Minimum (d1*0.1) | 87 | 92 |
| (e2) Maximum (d2*0.1) | 174 | 184 |

[5] Includes Caroline, Cecil, Dorchester, Kent, Queen Anne, Somerset, Talbot, Wicomico and Worcester Counties.

| | | |
|---|---|---|
| **Total Discharges from out-of-state** | N/A | N/A |
| (f) Range of Adults **Requiring ICF/CD Care** | | |
| Minimum (d1+e1+out of state) | 959 | 1,013 |
| Maximum (d2+e2+out of state) | 1,918 | 2,026 |
| (g) **Gross Number of Adult ICF Beds Needed** | | |
| (g1) Minimum = ((f*14 ALOS)/365)/0.85 | 43 | 46 |
| (g2) Maximum = ((f*14 ALOS)/365)/0.85 | 87 | 91 |
| (h) **Existing Track One Inventory ICF/CD beds**[5] | 148 | 148 |
| (**i) Net Private ICF/CD Bed Need** | | |
| Minimum (g1-h) | (105) | (102) |
| Maximum (g2-h) | (61) | (57) |

Based on COMAR 10.24.14.07(B)(7), Method of Calculation for Private Beds.

(1) MHCC projections –population interpolated from Maryland Department of Planning, December 2020. Historical and Projected Total Population Projections for Maryland Jurisdictions (December 2020).

(2) Data from The Hilltop Institute and the Maryland Medical Assistance Program regarding Medical Assistance recipients for population age 18 years and older for CY 2020. (DI #22)

(3) The prevalence rate for adults (age 18 years and over) alcohol or Illicit drug dependence or abuse is 6.89%, as reported in the 2017-2018 National Survey on Drug Use and Health: Model-Based Prevalence Estimates (50 States and the District of Columbia), Table 23 Substance Use Disorder in the Past Year, by Age Group and State: Percentages, Annual Averages Based on 2017 and 2018 NSDUHs. Available at: https://www.samhsa.gov/data/sites/default/files/reports/rpt23235/2k18SAEExcelTabs/NSDUHsaePercents2018.pdf

(4) COMAR 10.24.14.07B(4)(e) states "For the Eastern Shore it is assumed that 15 to 30 percent of the adult target treatment population are assumed to require care in an intermediate care facility."

(5) Track One Medically Monitored Intensive Inpatient & Withdrawal Management Facilities (non-forensic) MHCC records & Behavioral Health Administration, MDH levels of care, which includes 123 beds at Recovery Centers at Bracebridge Hall (Earleville, MD, Cecil County); 16 beds at Warwick Manor Behavioral Health (East New Market, Dorchester County); and 9 beds at Hudson Health Services (Salisbury, Wicomico County).

Note: The AF Whitsitt Center (26 beds) in Chestertown is the only Track Two Level 3.7/3.7 WM facility operating on the Eastern Shore.

## Need for the Proposed Project

In light of the results of the bed need calculations, Avenues addresses the following factors to support the need for establishing a 20-bed Track One Level 3.7/3.7WMICF. The applicant states that the Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services chapter of the SHP is obsolete. Further, the assumptions and data used in this chapter are old and in need of updating, and specifically, "The MHCC should not deny the people of Maryland, including residents of the Eastern Shore, access to needed addiction treatment based on a chapter that is 19 years old." (DI #5, p. 34).

Another issue is the limited availability of utilization data, since the facility has only been in operation since Fall of 2020. As a result, Avenues states that they anticipate the facility in Cambridge will be comparable to the service area served by the Avenues-Prince Frederick facility in Calvert County. Avenues-Prince Frederick serves "the needs of all residents in Maryland and

not solely the needs of the population in which the facility is located in either Dorchester County or the Eastern Shore health planning region." (DI #5, pp. 38-40).

For the period January 1, 2019 through November 12, 2020, the applicant states that nearly half the patients served by the Prince Frederick facility reside in zip code areas requiring a 50-minute or longer drive. (DI #13, p. 13 and #5, pp. 38-40). The applicant reports that the Prince Frederick facility's service area included residents from 22 of the 24 jurisdictions in Maryland,[6] with approximately 49% from outside Southern Maryland[7] and includes residents from out-of-state. (DI #5, p. 38). For the period December 2020 through February 2021, Avenues states that over 56.5% of the patients who received non-CON regulated services (Level 3.5 and lower) at the Cambridge facility resided from counties outside of the Eastern Shore. (DI #5, p. 39).

In a 2020 report, the Maryland Opioid Operational Command Center identified that there was no ASAM Level 3.7WM bed capacity in Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, and Worcester Counties, and no ASAM Level 3.7 beds in Caroline, Queen Anne's, Somerset, Talbot, and Worcester Counties.[8] Avenues indicates that the proposed 20-bed program in Cambridge will provide needed ICF level beds for the counties in the middle and lower portions of the Eastern Shore.

The applicant raised the implications of 2019 legislation[9] that removed the CON requirement for existing ICFs seeking to increase bed inventory. With the implementation of this legislation, the applicant states it is "counterintuitive to apply a quantitative need requirement for additional beds through new facilities when the MHCC has removed any CON requirement for adding additional beds for existing facilities," with the result that "existing facilities can increase their beds unfettered, eliminating the possibility of new facilities being approved to provide increased services, choice of providers, and access for Medicaid providers, " (DI #5, p. 37).

Finally, Avenues notes that even though they are applying for 20 Track One beds, it projects providing approximately 73.7 percent in Medicaid inpatient days by CY 2023, serving both private and publicly reimbursed patients. The bed need methodology in this standard includes the 123 licensed beds at RCA-Bracebridge Hall in Earleville, Cecil County, which the applicant states does not accept and treat Medicaid enrolled patients. With the approval of RCA's 123 beds, these beds "eliminate the chance that a facility that does accept Medicaid and/or proposes 3.7WM beds will ever obtain approval to provide care on the Eastern Shore." (DI #5, p. 40). As will be discussed shortly, staff reports that Warwick Manor Behavioral Health's 16 Track One Level 3.7/3.7WM beds did not serve Medicaid-enrolled patients in the past two calendar years.[10]

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[6] The Avenues-Prince Frederick facility did not report treating patients from either Garrett or Somerset Counties for this time period.

[7] Jurisdictions in Southern Maryland includes Calvert, Charles, Prince George's, and St. Mary's Counties.

[8] Maryland Opioid Operational Command Center, 2020 Annual Report, January 1, 2020 – December 31, 2020 (Released on April 13, 2020), Table 7, Full Opioid Intervention Team (OIT) Program Inventory as of December 31, 2020, p. 24. Available at: https://beforeitstoolate.maryland.gov/wp-content/uploads/sites/34/2021/04/2020-annual-report-final.pdf.

[9] House Bill 626, codified at Annotated Code of Maryland, Health-General Article § 19-120 (h)(2)(v).

[10] *Infra*, pp. 9 -10.

Avenues presented evidence that RCA does not serve Medicaid patients. (DI #16, p. 3). RCA -Bracebridge Hall stated that "(its) facility will not serve patients covered by Medicaid" in its request for a change in an approved CON, approved by the Commission (Docket No. 15-07-2363).[11]

Commission staff confirmed that RCA-Bracebridge Hall does not serve Medicaid patients. In response to staff's request for historical utilization by its program, Jennifer Shalk, Admissions Director, RCA at Bracebridge Hall, reported that this facility did not provide any Level 3.7 or 3.7WM utilization to the Medicaid population in either 2019, 2020, or 2021. (DI #30).

In addition, staff also confirmed that Warwick Manor Behavioral Health in East New Market, Dorchester County, has not provided Level 3.7/3.7WM services to the Medicaid population. James Wheatley, Director of Admissions at Warwick Manor, in response to staff's inquiry on recent Level 3.7 and 3.7WM bed utilization, stated that "Our facility …utilizes Partial Hospitalization Treatment Level 2.5 with boarding, which meets the needs of detox, withdrawal management and treatment of our patients." (DI #27). Warwick Manor did not report providing either Level 3.7 or 3.7WM services to Medicaid-enrolled patients in either 2019, 2020, or 2021. To summarize, the 139 Level 3.7 and/or 3.7WM beds at RCA-Bracebridge Hall and Warwick Manor do not report serving Medicaid enrolled patients.

Of the remaining licensed Track One and Track Two facilities on the Eastern Shore, Commission staff reports that the A.F. Whitsitt Center and the Hudson Health Services Level 3.7/3.7WM SUD beds reported the following utilization for Medicaid-enrolled patients in the table below. (DI #Susan Bradley, BHA, 9/30/2021). As shown in Table III-2, the 35 Level 3.7/3.7WM beds at these two facilities served 980 patients in FY 2020, with an average length of stay of 17.5 days for each patient.

[11] RCA-Bracebridge Hall received CON approval on December 16, 2016 to establish an ICF SUD facility with 21 bed ASAM Level 3.7 services and 87 residential beds that the applicant expects to license as ASAM level 3.5 that were not subject to CON review. Subsequently, on August 30, 2019, the Commission determined, pursuant to Health General-Article, §19-120(h)(2)(v), that RCA-Bracebridge Hall, as a licensed intermediate care facility ("ICF") that offers residential or intensive substance-related disorder treatment services, was approved to increase its ICF bed capacity from 21 to 108 Level 3.7 beds. Finally, on April 30, 2020, the Commission granted approval to RCA-Bracebridge Hall to add 15 beds licensed to provide Level 3.7 beds, increasing the facility's capacity from 108 to 123 beds, that became effective on May 8, 2020.

**Table III-2: Number of Individuals Served Receiving 3.7 or 3.7WM Services at AF Whitsitt Center and Hudson Health Services, FY 2020**

| Facility | Number of Level 3.7/ 3.7WM beds | Number of Patients Served^ | Total Patient Days | ALOS |
|---|---|---|---|---|
| **AF Whitsitt Center** | **26** | 413 | 6,024 | **14.6** |
| **Hudson Health** | **9** | 567 | 11,086 | **19.6** |
| **Total** | **35** | 980 | 17,110 | **17.5** |

^ Unduplicated total is the total unduplicated number served between the 2 services.
Source: Behavioral Health Administration's Optum PBHS Claims system (DI #31)

While the applicant seeks to establish a 20-bed Track One ICF, Avenues projects the number of inpatient days serving Medicaid patients receiving ICF services increasing from 3,346 days in CY 2022 to 5,110 days in CY 2023. (DI #13, pp. 22-23). The applicant expects to serve a significant number of private pay and Medicaid enrolled patients, with a patient day payor source breakdown of 26.3% private pay and 73.7% Medicaid days by CY 2023.

**Staff Analysis and Recommendation**

Using the bed need projection methodology in COMAR 10.24.14.07 of the ICF Chapter a bed surplus is projected for Track One beds in the Eastern Shore region. This result would not support adding the proposed 20-bed ICF.

However, staff agrees with the applicant that this bed need projection methodology has been made obsolete, but not primarily because of its age. The steps and assumptions, which are updatable, are not illogical as a forecasting model. Its obsolescence is primarily caused by the changes made to the scope of CON regulation in 2019 legislation, which were supported by the Commission. MHCC no longer has the authority to limit ICF bed supply by comprehensively regulating changes in such bed supply, in the way, for example, that MHCC controls hospital and nursing home bed capacity. The inventory of beds has increased significantly since the law freed existing ICFs to add any number of ICF beds without CON approval. This increase in the inventory of beds is driving the surplus bed capacity results produced by the methodology. Given the change in statute and planned updates to COMAR 10.24.14, which were identified as a priority for SHP redevelopment by MHCC earlier this year, the bed need methodology in the existing ICF chapter cannot logically be retained and applied in this review.

Staff also notes that the applicant would not appear to function in the same manner as other Track One facilities on the Eastern Shore by participating in serving Medicaid patients at a level that staff would consider indicative of a Track Two ICF. The bed need projection methodology is only intended to serve as a gauge of the need for Track One beds.

Given these facts, staff recommends that the Commission set aside the bed need projection methodology in the ICF SHP, finding it to be inapplicable under the 2019 statutory changes in the

scope of CON regulation of changes in health care facility bed capacity. This means that the Need criterion at COMAR 10.24.01.08G(3)(b),[12] not the inapplicable need standard in the ICF SHP, is recommended for use in this review.

**.05C. Sliding Fee Scale. An applicant must establish a sliding fee scale for gray area patients consistent with the client's ability to pay.**

Avenues states that the facility "will utilize a sliding fee schedule for uninsured and unfunded persons consistent with the individual's ability to pay and based on the Federal Poverty Guidelines…." (DI #5, p. 14). The applicant indicates the following fee schedule utilizes "the discount percentages from the standard billing rate charged to insurance carriers charged for each service:" (DI #5, Exh. 6, p. 1).

**Avenues Recovery Center of Chesapeake Bay – Sliding Fee Scale**

| Individual's Income based on Federal Poverty Guidelines (FPG) | Discount Percentages |
|---|---|
| < 100% of FPG | 75% discount |
| <150% but >100% of FPG | 50% discount |
| <200% but >150% of FPG | 25% discount |

Source: DI #5, p. 14.

Staff concludes that the application meets this standard.

**.05D. Provision of Service to Indigent and Gray Area Patients.**

**(1) Unless an applicant demonstrates why one or more of the following standards should not apply or should be modified, an applicant seeking to establish or to expand a Track One intermediate care facility must:**

**(a) Establish a sliding fee scale for gray area patients consistent with a client's ability to pay;**

Avenues submitted a sliding fee scale, which was discussed in the prior standard.

**(b) Commit that it will provide 30 percent or more of its proposed annual adolescent intermediate care facility bed days to indigent and gray area patients; and**

Not applicable.

[12] COMAR 10.24.01.08G(3)(b) provides:

> The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served and established that the proposed project meets those needs.

**(c) Commit that it will provide 15 percent of more of its proposed annual adult intermediate care facility bed days to indigent or gray area patients.**

The purpose of this standard is to require Track One ICFs to serve a minimum percentage of indigent and gray area patients. Applicants are required to establish a sliding fee scale for gray area patients consistent with a client's ability to pay and commit to provide a specific percentage of bed days to indigent and gray area patients. The standard permits an applicant to demonstrate why one or more of the requirements should not apply. The standard also offers applicants the opportunity[13] to propose an alternative to providing the minimum required indigent and gray area patient days so long as the availability of ICF services for indigent or gray area patients in the applicant's health planning region increases. Applicants can base this alternative on consideration of specific population needs and financial feasibility.

Avenues states that the applicant is "committed to provide at least 15 percent of its proposed annual adult intermediate care facility bed days to indigent or gray area patients." (DI #5, p.15). With start of operations in CY 2021, Avenues reports that approximately 89 percent of patient days served at the Cambridge facility were for Medicaid patients; the applicant expects the continuum of services offered, including the proposed beds, will result in recording over 82 percent of its total inpatient days, for all levels of WM or treatment, as Medicaid days by CY 2023. (DI #16, Exh. 37, Table D, Revenues and Expenses, Uninflated, Entire Facility). In the proposed 20 ICF beds, it projects that approximately 73.7 percent of its patient days will be Medicaid days by CY 2023. (DI #13, p. 24-25).

To ensure that it meets this target, Avenues indicates it will track daily ICF bed utilization by payor mix, including a category for gray area and indigent patients, reviewing this data at least monthly. Because the applicant currently accepts Medicaid patients, "it does not foresee a drop" in meeting the requirements of this standard. (DI #5, p. 15). If the number of gray area or indigent patient days falls below 15 percent, it states that "Avenues is confident that outreach efforts in addition to already executed referral agreements will enable Avenues to quickly raise its percentage to above 15 percent."

Staff recommends that the Commission find the application to be in compliance with this standard and also recommends that, if the Commission approves this application, it attaches the following condition:[14]

> Avenues Recovery Center of Chesapeake Bay shall document the provision of a minimum of 15% of patient days to indigent and gray area patients, as defined at COMAR 10.24.14.08B(9) and (11), by submitting annual reports auditing its total days and the provision of days to indigent and gray area patients as a percentage of

[13] Part 2 of this standard, not shown here for brevity.

[14] In response to staff's completeness questions dated June 8, 2021, Avenues stated it would comply with this condition should staff recommend an approval to its CON application. (DI #13, p. 6).

total days. Such audit reports shall be submitted to the Commission following each fiscal year, from the project's inception and continuing for five years thereafter.

Subsections .05D(2), (3), and (4) of this standard apply to existing Track One intermediate care facilities. As such, they are not applicable to this project.

**.05E. Information Regarding Charges. An applicant must agree to post information concerning charges for services, and the range and types of services provided, in a conspicuous place, and must document that this information is available to the public upon request.**

Avenues states that it "agrees to post a fee schedule describing the range and types of services, and their respective charges" in a conspicuous place and will make this information available to the public upon request. (DI #5, p. 16). The applicant provided an example of the announcement it will post to the public (DI #13, Exh. 30) and an example of a table with the range and type of services provided and the charges for these services offered at Avenues. (DI #5, Exh. 8).

Staff concludes that the applicant complies with this standard.

**.05F. Location. An applicant seeking to establish a new intermediate care facility must propose a location within a 30-minute one-way travel time by automobile to an acute care hospital.**

Avenues states that the University of Maryland Shore Medical Center at Easton is "16.8 miles and a 24-minute one-way auto trip" from its facility. (DI #13, p. 6). The applicant also notes that the University of Maryland Shore freestanding medical facility in Cambridge, replacing the UM Shore Medical Center in 2021, will include a 22-bed emergency department, six private observation beds and a separate, three-bed unit for the assessment and treatment of patients needing behavioral health emergency care, as well as intensive outpatient behavioral health services . . .[15]" (DI#13, pp. 6-7).

Staff concludes that the facility location meets this standard.

**.05G. Age Groups.**

**(1) An applicant must identify the number of adolescent and adult beds for which it is applying, and document age-specific treatment protocols for adolescents ages 12-17 and adults ages 18 and older.**

**(2) If the applicant is proposing both adolescent and adult beds, it must document that it will provide a separate physical, therapeutic, and educational environment**

[15] Avenues states that the University of Maryland Dorchester facility is 2.3 miles, an eight minute travel time, at most times, from the Avenues project site. (DI #5, p. 16).

**consistent with the treatment needs of each age group including, for adolescents, providing for continuation of formal education.**

**(3) A facility proposing to convert existing adolescent intermediate care substance abuse treatment beds to adult beds, or to convert existing adult beds to adolescent beds, must obtain a Certificate of Need.**

The applicant states that the proposed 20 bed ICF will serve adults (18+ years). The applicant does not propose the conversion of existing adult beds to adolescent beds.

**.05H. Quality Assurance.**

**(1) An applicant must seek accreditation by an appropriate entity, either the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), in accordance with CFR, Title 42, Part 440, Section 160, the CARF…The Rehabilitation Accreditation Commission, or any other accrediting body approved by the Department of Health and Mental Hygiene. The appropriate accreditation must be obtained before a Certificate of Need-approved ICF begins operation, and must be maintained as a condition of continuing authority to operate an ICF for substance abuse treatment in Maryland.**

The applicant states and provides evidence that Avenues is currently accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF). (DI #5, Exh. 12).

**(a) An applicant seeking to expand an existing ICF must document that its accreditation continues in good standing, and an applicant seeking to establish an ICF must agree to apply for, and obtain, accreditation prior to the first use review required under COMAR 10.24.01.18; and**
**(b) An ICF that loses its accreditation must notify the Commission and the Office of Health Care Quality in writing within fifteen days after it receives notice that its accreditation has been revoked or suspended.**
**(c) An ICF that loses its accreditation may be permitted to continue operation on a provisional basis, pending remediation of any deficiency that caused its accreditation to be revoked, if the Office of Health Care Quality advises the Commission that its continued operation is in the public interest.**

The applicant states that it understands and acknowledges that if it loses its accreditation, that Avenues:

(a) Must notify the Commission and the Office of Health Care Quality in writing within fifteen (15) days after it receives notice that its accreditation has been revoked or suspended; and
(b) May be permitted to continue operation on a provisional basis, pending remediation of any deficiency that caused its accreditation to be revoked, if the Office of Health Care Quality advises the Commission that its continued operation is in the public interest.

Staff notes that this standard is outdated and that the Behavioral Health Administration of MDH, rather than OHCQ, would be the MDH division involved in overseeing this requirement when accreditation is lost or in jeopardy.

**(2) A Certificate of Need-approved ICF must be certified by the Office of Health Care Quality before it begins operation, and must maintain that certification as a condition of continuing authority to operate an ICF for substance abuse treatment in Maryland.**

The applicant states and documented that Avenues is licensed by the Behavioral Health Administration "under COMAR 10.63 Community-Based Behavioral Programs." (DI #5, Exh. 11).

**(a) An applicant seeking to expand an existing ICF must document that its certification continues in good standing, and an applicant seeking to establish an ICF must agree to apply for certification by the time it requests that Commission staff perform the first use review required under COMAR 10.24.01.18.**
**(b) An ICF that loses its State certification must notify the Commission in writing within fifteen days after it receives notice that its accreditation has been revoked or suspended, and must cease operation until the Office of Health Care Quality notifies the Commission that deficiencies have been corrected.**
**(c) Effective on the date that the Office of Health Care Quality revokes State certification from an ICF, the regulations at COMAR 10.24.01.03C governing temporary delicensure of a health care facility apply to the affected ICF bed capacity.**

The applicant states that it understands and acknowledges that if it loses its State certification, that Avenues:

(a) Must notify the Commission in writing within fifteen days after it receives notice that its certification has been revoked or suspended, and must cease operation until the Office of Health Care Quality notifies the Commission that deficiencies have been corrected.
(b) Effective on the date that the Office of Health Care Quality revokes State certification from an ICF, the regulations at COMAR 10.24.01.03C governing temporary delicensure of a health care facility apply to the affected ICF bed capacity.

As previously noted, the Behavioral Health Administration now licenses ICFs. Upon CON approval of the project, Avenues indicates it will obtain and maintain "preliminary accreditation from CARF and then BHA licensure" for inpatient level of care treatment. (DI #5, p. 18).

On the basis of the applicant's response to this standard as outlined above, the applicant meets this standard, but staff recommends that if the project is approved by the Commission, the Certificate of Need contain the following condition:

Avenues Recovery Center of Chesapeake Bay must receive preliminary accreditation for the Level 3.7 services it will provide, including withdrawal management and post-withdrawal treatment programming, by the Commission on the Accreditation of Rehabilitation Facilities (CARF) prior to First Use Approval by the Commission and must timely receive final accreditation by CARF.

**.05I. Utilization Review and Control Programs.**

**(1) An applicant must document the commitment to participate in utilization review and control programs, and have treatment protocols, including written policies governing admission, length of stay, discharge planning, and referral.**

Avenues states that it "has utilization review and control programs in place to ensure proper and appropriate record keeping for all patients." (DI #13, p. 7). The applicant provides copies of its written policies, which include utilization review/patient records (DI #5, Exh. 13), treatment planning protocols (DI #5, Exh. 10), admissions (DI #5, Exh. 14), discharge planning and length of stay (DI #5, Exh. 15), communication (referrals) ( DI #5, Exh. 16), and assessments (DI #5, Exh. 17).

The applicant states that utilization review includes the daily treatment team, which consists of personnel from clinical, medical, and case management, which meets to review current census and patient identified needs. The Clinical Supervisor conducts weekly group supervision and monthly individual supervision that include record reviews and identifying areas for improvement. Also, the Clinical Supervisor is responsible for reviewing and signing off on assessments and progress notes on an ongoing basis. The utilization review will include chart reviews for all open and closed records. (DI #13, p. 7).

Avenues states that it has policies in place for admissions, length of stay, discharge planning, and referral that are CARF compliant. (DI #5, p. 7). Finally, using a multidisciplinary team that includes administrative staff, clinical staff, medical staff, and case management, this team meets to provide input regarding the needs for any necessary patient referrals. (DI #5, p. 8).

**(2) An applicant must document that each patient's treatment plan includes, or will include, at least one year of aftercare following discharge from the facility.**

Avenues Discharge Planning Policy states that "All (discharge) plans include at least one (1) year of aftercare following discharge from Avenues." (DI #5, Exh. 15, p. 2). The applicant states that the aftercare plans are developed with the knowledge and cooperation of the patient, primary therapist, treatment team, and other parties as deemed appropriate, and that staff members will assist patients in obtaining needed services prior to discharge. DI #13, pp. 19-20).

Staff concludes that the application meets the utilization review standard.

**.05J. Transfer and Referral Agreements.**

**(1) An applicant must have written transfer and referral agreements with facilities capable of managing cases which exceed, extend, or complement its own capabilities, including facilities which provide inpatient, intensive and general outpatient programs, halfway house placement, long-term care, aftercare, and other types of appropriate follow-up treatment.**

**(2) The applicant must provide documentation of its transfer and referral agreements, in the form of letters of agreement or acknowledgement from the following types of facilities:**

**(a) Acute care hospitals;**
**(b) Halfway houses, therapeutic communities, long-term care facilities, and local alcohol and drug abuse intensive and other outpatient programs;**
**(c) Local community mental health center or center(s);**
**(d) The jurisdiction's mental health and alcohol and drug abuse authorities;**
**(e) The Alcohol and Drug Abuse Administration and the Mental Hygiene Administration;**
**(f) The jurisdiction's agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services; and,**
**(g) The Department of Juvenile Justice and local juvenile justice authorities, if applying for beds to serve adolescents.**

Avenues submitted the following table that lists the transfer and referral agreements between Avenues Recovery Center of Chesapeake Bay with the following SUD organizations and providers on the Eastern Shore.

**Table III-3: Avenues Recovery Center of Chesapeake Bay**
**Transfer and Referral Agreements**

| Provider Category | Agreement or contact with: |
|---|---|
| Acute care hospitals | University of Maryland Shore Regional Health |
| Halfway houses, therapeutic communities, long-term care facilities, and local alcohol and drug abuse intensive and other outpatient programs | Homes4Hope, LLC<br>Foundation Recovery House<br>Humble House Recovery<br>The Gratitude House<br>Misha House, LLC<br>New Life Addiction Counseling |
| Local community mental health center or center(s) | Community Behavioral Health |
| The jurisdiction's mental health and alcohol and drug abuse authorities | Midshore Behavioral Health<br>(Submitted letter of support) |

| | |
|---|---|
| The Behavioral Health Administration of MDH (formerly the Mental Hygiene Administration with its division of Alcohol and Drug Abuse) | N/A |
| The jurisdiction's agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services | One Promise Counseling and DUI Education<br>Turning Corners<br>New Life Addiction Counseling |
| Other | N/A |

Source: DI #5, pp. 20-21 and Exh. 19.

Staff concludes that Avenues has executed transfer and referral agreements and recommends that the Commission find the applicant is in compliance with this standard, with the following condition attached to any CON that is granted, in order to assure full compliance when the project is ready to open:

> Avenues Recovery Center of Chesapeake Bay shall provide documentation of transfer and referral agreements prior to First Use approval by the Commission with: 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 center(s); the Eastern Shore's mental health and alcohol and drug abuse authorities; the Behavioral Health Administration; and the Eastern Shore agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services. Documentation may include letters of agreement or acknowledgement from the facilities; [COMAR 10.24.14.05J(2)]

**.05K. Sources of Referral.**

**(1) An applicant proposing to establish a new Track Two facility must document to demonstrate that 50 percent of the facility's annual patient days, consistent with Regulation .08 of this Chapter, will be generated by the indigent or gray area population, including days paid under a contract with the Alcohol and Drug Abuse Administration or a jurisdictional alcohol or drug abuse authority.**

Since Avenues seeks to establish a Track One facility, this standard is not applicable.

**(2) An applicant proposing to establish a new Track One facility must document referral agreements to demonstrate that 15 percent of the facility's annual patient days required by Regulation .08 of this Chapter will be incurred by the indigent or gray area populations, including days paid under a contract with the Alcohol or Drug Abuse Administration or a jurisdictional alcohol or drug abuse authority, or the Medical Assistance program.**

Avenues states that its facility, as an existing provider of SUD services, has developed contacts and relationships with various organizations, including for profit, non-profit, and

Federally Qualified Health Centers (FQHCs) located in both Prince Frederick and Cambridge. (DI #5, p. 21 and DI #13, pp. 8-9). The applicant states that these organizations include acute care hospitals, detention centers, and health departments, which "do not treat patients or clients (or inmates) based on ability to pay or payor source, and are likely to refer patents/clients who are members of the indigent/gray area population."

The applicant states that the Cambridge facility currently receives referrals from the following organizations, which serve patients/clients who may be in the indigent or gray area population: (DI #13, p. 9).

1. University of Maryland Baltimore Washington Medical Center
2. University of Maryland Shore Medical Centers (Dorchester and Easton)
3. Wicomico Detention Center
4. Dorchester County Detention Center
5. Wicomico County Community Outreach Addictions Team (COAT)
6. Frederick Memorial Hospital
7. Calvert Health Department
8. Dover Behavioral Health

Staff concludes that the applicant meets this standard, with a recommendation that the following condition be attached to any CON that is granted, in order to assure full compliance when the project is ready to open:

> Avenues Recovery Center of Chesapeake Bay shall document referral agreements, prior to First Use approval by the Commission, demonstrating that at least 15 percent of its annual patient days, required by COMAR 10.24.14.08, will be incurred by the indigent or gray area populations, including days paid under a contract with the Behavioral Health Administration or a jurisdictional alcohol or drug abuse authority, or the Medical Assistance program; [COMAR 10.24.14.05K(2)]

**.05L. In-Service Education. An applicant must document that it will institute or, if an existing facility, maintain a standardized in-service orientation and continuing education program for all categories of direct service personnel, whether paid or volunteer.**

The applicant provided a copy of the orientation and training policy for all new employees, volunteers, trainees, and interns for Avenues Recovery Center facilities. (DI #5, Exh. 20, pp. 1-3). All new staff must complete training prior to beginning their job duties, and will receive annual training updates. The policy states that Avenues will "provide ongoing development and educational opportunities for the enhancement of knowledge, skills, and abilities,….adhering to regulatory compliance regarding training required for certain credentialed positions." The applicant states that it shall commit resources to programs which meet organizational mission, improve efficiency, and/or encourage professional development.

Staff concludes that the application meets this standard.

**.05M. Sub-Acute Detoxification. An applicant must demonstrate its capacity to admit and treat alcohol or drug abusers requiring sub-acute detoxification by documenting appropriate admission standards, treatment protocols, staffing standards, and physical plant configuration.**

Avenues includes a copy of the "Detoxification" policy with the application. (DI #5, Exh. 21 and DI #13, Exh. 32). This policy is in accordance with ASAM Patient Placement Criteria and in compliance with CARF guidelines. (DI #13, p. 10). The applicant's response provides an outline that addresses the program's admissions standards, treatment protocols, staffing standards, and physical plant configuration for the detoxification program. (DI #13, pp. 10-11).

Staff concludes that the application meets this standard.

**.05N. Voluntary Counseling, Testing, and Treatment Protocols for Human Immunodeficiency Virus (HIV). An applicant must demonstrate that it has procedures to train staff in appropriate methods of infection control and specialized counseling for HIV-positive persons and active AIDS patients.**

Avenues submitted a copy of its HIV policy. (DI #5). The facility will provide initial HIV/AIDS counseling, risk assessment, and referral support for testing, post-test counseling, appropriate treatment, and related needs to patients. The applicant states that it will provide staff with training on "Infection Control, Communicable Diseases, Universal Precaution, and in counseling HIV-positive persons and active AIDS patients."

Staff concludes that the application meets this standard.

**.05O. Outpatient Alcohol & Drug Abuse Programs.**

**(1) An applicant must develop and document an outpatient program to provide, at a minimum: individual needs assessment and evaluation; individual, family, and group counseling; aftercare; and information and referral for at least one year after each patient's discharge from the intermediate care facility.**

The applicant submitted a copy of its policy on Outpatient Treatment for patients who meet the placement criteria for this service. (DI #5, Exh. 23). The facility currently operates both an ASAM Level 1.0 Outpatient Services and Level 2.1 Intensive Outpatient programs in Cambridge. (DI #5, Exh. 11 and 12). The Outpatient Treatment policy addresses: individual needs assessment and evaluation; individual, family, and group counseling: and aftercare. The applicant states that the discharge plan will include at least one (1) year of aftercare following discharge from Avenues. (DI #5, Exh. 15, p. 2).

**(2) An applicant must document continuity of care and appropriate staffing at off-site outpatient programs.**

The applicant states that "Avenues ensures continuity of services by providing….a capacity of 35 patients with a counselor-patient ratio of 1:35. If a patient is unable to participate in the Avenues outpatient program, the Case Management Team will facilitate alternate arrangements for patients near their residences or sober homes." (DI #13, p.12 and DI #5, Exh. 24, p. 2).

**(3) Outpatient programs must identify special populations as defined in Regulation .08, in their service areas and provide outreach and outpatient services to meet their needs.**

The applicant states that Avenues "treats all patients who meet its admission criteria, including a projected 73.7 percent of Medicaid inpatient days, which includes special populations as defined by COMAR 10.24.14.08.24." (DI #5, p. 25 and #16, p. 25). The regulation defines "special population" as "those populations that historically have not been or are not served by the alcohol and drug abuse treatment delivery system including, women and women with dependent children, the elderly, the homeless, the poor, adolescents, persons with mixed dependencies, hearing impaired, the disabled, minorities, and others with special needs."

**(4) Outpatient programs must demonstrate the ability to provide services in the evening and on weekends.**

The applicant states that "Avenues is committed to ensuring access to services on weekends and evenings" by coordinating appointments with the patient's case manager or counselor. (DI #13, p. 12). Avenues will have designated on-call staff who will be available by phone 24 hours a day, 7 days a week.

**(5) An applicant may demonstrate that outpatient programs are available to its patients, or proposed patient population, through written referral agreements that meet the requirements of (1) through (4) of this standard with existing outpatient programs.**

While the applicant refers to the transfer and referral agreements submitted with its CON application (DI #5, Exh. 19), these agreements do not address the requirements as stated in paragraphs (1) through (4).

While staff recommends that the Commission find the application meets this standard, staff recommends that any approval be issued with the following condition, to assure that Avenues Recovery Center of Chesapeake Bay has a robust referral network for patients seeking on-going treatment following treatment:

> To demonstrate that outpatient programs are available to its proposed patient population, Avenues Recovery Center of Chesapeake Bay shall provide written referral agreements or arrangements with outpatient programs that meet the requirements of COMAR 10.24.14.05O(1) through (4), prior to First Use approval by the Commission.

**.05P. Program Reporting. Applicants must agree to report, on a monthly basis, utilization data and other required information to the Alcohol and Drug Abuse Administration's Substance Abuse Management Information System (SAMIS) program, and participate in any comparable data collection program specified by the Department of Health and Mental Hygiene.**

The Behavioral Health Administration has contracted with Optum, Inc., since January 1, 2020 as the Administrative Service Organization (ASO) to collect data from publicly-funded providers (Track Two) only. Thus, Avenues proposed Track One facility would not be required to report utilization data to the State. Avenues agrees to participate and report, on a monthly basis, utilization data and other required information "in any comparable data collection program" specified by the Maryland Department of Health. (DI #5, p. 26).

Staff concludes that the applicant meets this standard.

## B. NEED

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

As discussed previously in this report, MHCC staff believe that the State Health Plan need standard, which employs a bed need projection methodology for proposed Track One ICFs, is not applicable, because MHCC no longer regulates all changes in ICF bed capacity. Additionally, as a provider of service to Medicaid patients, the proposed ICF is not a typical Track One facility, the only type of ICF to which the bed need projection has been historically applied.

The applicant has submitted information to support a finding that the project is needed. It indicates and provides information supporting the conclusion that its proposed ICF will likely serve the population residing throughout the State of Maryland, as well as out-of-state residents, and not just the Eastern Shore region. The applicant also makes a creditable case that Medicaid enrollees are a medically underserved population on the Eastern Shore, with only 35 ICF beds (20% of the total) providing services to this low-income population.

On this basis, staff recommends that the Commission find that the proposed project does meet a population need for improved access to services for indigent households

## C. AVAILABILITY OF MORE COST-EFFECTIVE ALTERNATIVES

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

Avenues states it reviewed the existing Track One facilities on the Eastern Shore "to assure that Avenues is capable of providing the full range of services and continuity of care needed by patients seeking alcohol and drug abuse treatment services." (DI #5, p. 41). The applicant states that creation of a full continuum of care generally requires that patients receive withdrawal management care upon admission with the subsequent provision of ASAM Level 3.7 care afterwards. Therefore, approval of the proposed project will allow Avenues to provide a full range of services to both private pay patients and patients relying on public payment sourcess who reside on the Eastern Shore and in Maryland.

With regard to the eight Avenues Recovery Center SUD facilities operated across the country, the applicant states that they "have implemented an intensive and individualized clinical and medical curriculum of Levels 3.7 and 3.7WM" at the two Avenues facilities operated in Louisiana, and have successfully opened similar programs at the Avenues-Lake Ariel (Pennsylvania) and Avenues–Fort Wayne facilities. (DI #13, p. 22). The applicant states that the Avenues staff is well trained and that staff members are constantly working these programs to meet each patient's needs. The applicant's goal for this CON project is to bring the same level of expertise and services to the Eastern Shore.

In addition to establishing this service in Cambridge, the applicant indicates its facility is inviting and aesthetically beautiful. Avenues offers SUD programs in "a modern, clean, and safe environment to all patients regardless of their payor source." (DI #5, p. 22). By establishing the ICF at minimal costs, the applicant expects this facility to be "a true asset to the Eastern Shore and the State of Maryland at large." (DI #13, p. 22-23).

In response to why the applicant did not consider establishing the proposed ICF program at the Avenues Recovery Center of Maryland, located in Prince Frederick, the applicant stated that the Prince Frederick center "does not fit the proper building code for these levels of care." (DI #13, p. 23).

Staff recommends that the Commission find the proposed project is a cost-effective alternative for providing additional ICF service capacity available to all payor types on the Eastern Shore.

## D. VIABILITY OF THE PROPOSAL

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

**Availability of Financial Resources**

The estimated cost to establish the proposed ICF is $55,000. As an existing 104 bed center to the treatment of SUD operating in Cambridge, there are no capital costs associated with

establishing this program. The cost for this project is for legal ($40,000) and consulting fees ($15,000).

Benzion Spielman of Roth & Co., Certified Public Accountants & Consultants, has served as the accounting firm for the Avenues Group of Drug Rehab Centers (Centers), including Avenues Recovery Center of Chesapeake Bay, from its inception. (DI #16, Exh. 35). After a review of the Center's current financial information, which included recently filed income tax returns and internally generated financial statements for all facilities, the consultant's letter states that "The Centers have been a successful and profitable endeavor since they have begun operations….The Centers have consistently achieved annual cash profits, in excess of approximately $1,900,000 on average."

The letter states that "There is no reason to believe that Avenues would have any financial difficulty in successfully funding the certificate of need costs for this project…" The accountant states that "Since January 1, 2021, Avenues has continued to achieve positive cash flow and has been exceeding budgeted amounts." Mr. Spielman concludes that "Avenues Group of Drug Rehab Centers" has adequate funds to cover the costs associated for both the Certificate of Need and to cover any deficits in revenues over expenses at Avenues.

## Projected Financial Performance

Avenues reports initiation of services in Cambridge in 2021. Table III-3 below shows that the 104-bed facility projected an occupancy rate of 61.3 percent. With the projected start of operation for the ICF program on January 1, 2022,[16] the applicant projects the 20-bed program will have an average annual occupancy rate of 60.8 percent in CY 2022, and stabilize at an average annual occupancy rate of 95 percent by CY 2023, the second full year of operation.

**Table III-4: Avenues Recovery Center of Chesapeake Bay Current and Projected Utilization Projections, CY 2021 through CY 2023**

| | Current Year | Projected Years | |
|---|---|---|---|
| | CY2021 | CY2022 | CY2023 |
| Discharges | | | |
| Residential | 776 | 746 | 864 |
| Level 3.7 and 3.7WM | | 634 | 991 |
| Patient Days | | | |
| Residential | 23,269 | 22,379 | 25,915 |
| Level 3.7 and 3.7WM | | 4,441 | 6,935 |
| Average Length of Stay | | | |
| Residential | 30.0 | 30.0 | 30.0 |
| Level 3.7 and 3.7WM | | 7.0 | 7.0 |
| No. Licensed Beds | | | |

[16] DI #16, Exh. 37, Table C, Assumption.

| | | | |
|---|---|---|---|
| Residential | 104 | 84 | 84 |
| Level 3.7 and 3.7WM | | 20 | 20 |
| Avg Annual Occupancy | | | |
| Residential | 61.3% | 92.6% | 84.5% |
| Level 3.7 and 3.7WM | | 60.8% | 95.0% |
| Outpatient Visits | | | |
| Other | 365 | 365 | 365 |

Source: DI #16, Exh. 37, Table C, Statistical Projections - Entire Facility.

The ALOS for patients in the proposed ICF program is 7.0 days. As previously discussed, the approval of the proposed project will allow Avenues to offer a full range of services and provide continuity of care for its patients. Once the patient has stabilized, the applicant would either refer these patients to the Level 3.5 or 3.3 residential services or outpatient services offered at its Cambridge facility, [17]or if necessary, refer the patient to another SUD provider to receive the appropriate level of care.

Avenues Revenue and Expense statement indicates that the 104-bed facility operated with a loss of about $180,000 in CY 2021, the facility's first year of operation.

**Table III-5: Avenues Recovery Center of Chesapeake Bay**
**Revenues and Expenses, CY 2021 through CY 2023**

| | Current Year Projected | Projected Years | |
|---|---|---|---|
| | CY2021 | CY2022 | CY2023 |
| Revenue | | | |
| Inpatient Services | $12,228,765 | $21,412,606 | $24,816,737 |
| Outpatient Services | $109,500 | $109,500 | $109,500 |
| Gross Patient Service Revenues | $12,338,265 | $21,522,106 | $24,926,237 |
| Allowance For Bad Debt | $149,724 | $217,282 | $231,053 |
| Contractual Allowance | $4,852,067 | $10,658,000 | $13,373,600 |
| Charity Care | $146,000 | $146,000 | $146,000 |
| Net Patient Service Revenue | $7,190,475 | $10,500,824 | $11,175,584 |
| Other Operating Revenues | | | |
| **Net Operating Revenue** | $7,190,475 | $10,500,824 | $11,175,584 |
| Expenses | | | |
| Salaries & Wages (including benefits) | $2,692,048 | $4,538,936 | $4,538,936 |
| Contractual Services | $200,000 | $300,000 | $300,000 |
| Supplies | $590,844 | $829,615 | $830,375 |
| Other Expenses | | | |

[17] Avenues states that "The ALOS as a patient transitions through the residential continuum from 3.7-WM, 3.7, 3.5, and 3.3 would average to 35 days total." (DI #13, p. 26).

| | | | |
|---|---|---|---|
| Insurance | $50,000 | $50,000 | $50,000 |
| Professional Fees | $24,000 | $24,000 | $24,000 |
| Marketing | $120,000 | $120,000 | $120,000 |
| Billing & UR | $374,310 | $543,205 | $577,632 |
| Utilities/Facility Costs | $261,000 | $360,000 | $360,000 |
| Repairs & Maintenance | $60,000 | $72,000 | $72,000 |
| Property Taxes | $60,000 | $60,000 | $60,000 |
| Rent | $303,600 | $303,600 | $303,600 |
| Management Fees | $1,200,000 | $1,440,000 | $1,440,000 |
| General & Administrative | $1,435,000 | $1,476,000 | $1,476,000 |
| **Total Operating Expenses** | $7,370,802 | $10,117,356 | $10,152,543 |
| **Income** | | | |
| Income from Operation | ($180,327) | $383,468 | $1,023,041 |
| Non-Operating Income | | | |
| **Net Income (Loss)** | ($180,327) | $383,468 | $1,023,041 |

Source: DI #16, Exh. 37, Table D, Revenues & Expenses, Uninflated - Entire Facility.

With the proposed ICF program starting on January 1, 2022, including adjustments for bad debt, contractual allowance, and charity care, Avenues projects that it will generate income from operations immediately. Avenues expects to make a net profit of over $380,000 in the first year, increasing to over $1.0 million by CY 2023.

## Work Force Projections

Avenues' Workforce table indicates the facility currently has 85.0 FTEs (salaried and contractual) for the 104-bed SUD center. The following is a profile of the current and projected staffing upon project approval.

**Table III-6: Avenues Recovery Center of Chesapeake Bay**
**Current and Projected Workforce, CY 2021 through CY 2023**

| | Current Entire Facility | | Proposed Project Changes | | Projected Entire Facility | |
|---|---|---|---|---|---|---|
| | Current Year FTEs | Current Year Total Cost | Current Year FTEs | Current Year Total Cost | FTEs | Total Cost |
| **Regular Employees** | | | | | | |
| *Total Administration* | 2.0 | $270,000 | 1.0 | $135,000 | 3.0 | $405,000 |
| *Total Direct Care* | 65.0 | $2,510,000 | 7.0 | $295,000 | 72.0 | $2,805,000 |
| *Total Support Staff* | 17.0 | $625,000 | 0.0 | 0 | 17.0 | $625,000 |
| *Regular Employees Total* | 84.0 | $3,405,000 | 8.0 | $430,000 | 92.0 | $3,835,000 |
| **Contractual Employees** | | | | | | |
| Total Administration | 1.0 | $200,000 | 0.5 | $100,000 | 1.5 | $300,000 |
| *Contractual Employees Total* | 1.0 | $200,000 | 0.5 | $100,000 | 1.5 | $300,000 |
| Benefits | | $625,007 | | $78,929 | | $703,936 |
| Total Cost | 85.0 | $4,230,007 | 8.5 | $608,929 | 93.5 | $4,838,936 |

Source: DI# 16, Exh. 37, Table G, Workforce Information.

With the establishment of the 20-bed ICF, the applicant expects to hire an additional 8.5 FTEs (both salaried and contractual), at an additional cost of $608,929 in salaries and benefits. Avenues has a recruiter on staff and does not expect any problems in recruiting, hiring, and/or staffing the proposed program. (DI #13, pp. 26-27).

**Community Support**

As previously discussed in this staff report, the proposed project received letters of support from public officials, other substance use disorder programs, and law enforcement programs. (DI #5, Exh. 26).

Staff recommends that the Commission find the proposed project is viable on the basis of resource availability and documentation of support.

## E. COMPLIANCE WITH CONDITIONS OF PREVIOUS CERTIFICATES OF NEED

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

Avenues has not received any prior approval for a CON in Maryland.

## F. IMPACT ON EXISTING PROVIDERS AND THE HEALTH CARE DELIVERY SYSTEM

***COMAR 10.24.01.08G(3)(f) Impact on Existing Providers and the Health Care Delivery System. An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.***

Avenues states that CON approval will have a positive impact and improve patient access to Track One ICF services. The applicant lists the following three factors to support this statement: (DI #5, p. 44).

1. While located in Cambridge, the applicant states that "(O)ver 50 percent of its current patients come from outside the Eastern Shore." Avenues anticipates that it will be a statewide facility and the majority of its patients will come from outside the Eastern Shore. As previously discussed in the Bed Need section[18], the applicant uses historical patient origin data from the Avenues–Prince Frederick facility that indicates the proposed program

[18] Supra, p. 6-12

will serve people who reside in 22 of the 24 jurisdictions in Maryland, as well as out-of-state. The applicant expects the Cambridge facility will serve the same if not a broader geographic reach in patients from all over the State of Maryland and out-of-state. (DI #5, p. 38);

2. There is a need for ICF beds on the Eastern Shore. In its 2020 Annual Report, January 1, 2020–December 31, 2020 (Released on April 13, 2020)[19], the Maryland Opioid Operational Command Center reports that there were no Level 3.7WM capacity in Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, and Worcester Counties, and no Level 3.7 beds in Caroline, Queen Anne's, Somerset, Talbot, and Worcester Counties. (Staff notes that this is not consistent with MHCC's information with respect to the A. F. Whittsitt center's operation in Kent County.) Avenues indicates that the proposed 20-bed program in Cambridge will provide needed ICF services to the counties in the middle and lower portions of the Eastern Shore.

3. The applicant states that while the 123 licensed beds at RCA–Bracebridge Hall provide both Level 3.7 and 3.7WM care (DI #13, p. 20), the facility does not accept Medicaid enrollees. (DI #16, p. 3). While staff is aware that Warwick Manor Behavioral Health is licensed to provide Level 3.7/3.7WM care, this facility has not reported utilizing these 16 beds for Medicaid in the past two years. (DI #27).

Presently, approximately 87 percent of Avenues' patient days are from Medicaid-enrolled patients. (DI #13, p. 25). Since the proposed 20-bed ICF is projected to serve a high proportion of Medicaid patients as a component of its overall payor mix, Avenues projects that it will not have an adverse impact on either the RCA-Bracebridge Hall or Warwick Manor programs, and will have a minimal impact on Hudson Health.

Avenues does not expect the establishment of its Track One ICF to have an adverse impact on either costs or charges to the health care system. The applicant states that for beds reimbursed either by public funds or by insurers, these payors set the reimbursement rates for the services offered in these facilities. (DI #5, p. 44). For out-of-network providers, although rates are negotiated with the insurance companies, all rates are generally within a narrow range of reimbursement from other sources.

Staff concludes that the proposed project will have minimal impact, if any, on the existing ICF providers on the Eastern Shore. Staff recommends that the Commission find the proposed project will improve access to ICF services for all residents of the Eastern Shore, at all income ranges, and have a minimal impact on cost or charges for these services.

[19] Located on Table 7, Full Opioid Intervention Team (OIT) Program Inventory as of December 31, 2020, p. 24. Available at: https://beforeitstoolate.maryland.gov/wp-content/uploads/sites/34/2021/04/2020-annual-report-final.pdf.

## IV. STAFF RECOMMENDATION

Based on review and analysis of the CON application, staff recommends that the Commission find that the project proposed by Avenues Recovery Center of Chesapeake Bay complies with the applicable State Health Plan standards. The applicant has provided evidence to support the need for the project and has demonstrated that the project is a lower cost alternative to most other approaches to expanding availability of this level of service. The project is financially viable. It will not have an adverse impact on service accessibility, cost and charges, or other providers of health care services. Finally, the applicant intends to serve Medicaid patients and has made the commitment to serving low-income patients as required by the SHP.

Accordingly, Staff recommends that the Commission **APPROVE** the application of Avenues Recovery Center of Chesapeake Bay for a Certificate of Need to establish a 20-bed ICF for adults, at an approved cost of $55,000, with the following conditions:

1. Avenues Recovery Center of Chesapeake Bay shall document the provision of a minimum of 15% of patient days to indigent and gray area patients, as defined at COMAR 10.24.14.08B(9) and (11), by submitting annual reports auditing its total days and the provision of days to indigent and gray area patients as a percentage of total days. Such audit reports shall be submitted to the Commission following each fiscal year, from the project's inception and continuing for five years thereafter;
2. Avenues Recovery Center of Chesapeake Bay must receive preliminary accreditation for the Level 3.7 services it will provide, including withdrawal management and post-withdrawal treatment programming, by the Commission on the Accreditation of Rehabilitation Facilities (CARF) prior to First Use Approval by the Commission and must timely receive final accreditation by CARF;
3. Avenues Recovery Center of Chesapeake Bay shall provide documentation of transfer and referral agreements prior to First Use approval by the Commission with: 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 center(s); the Eastern Shore's mental health and alcohol and drug abuse authorities; the Behavioral Health Administration; and the Eastern Shore agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services. Documentation may include letters of agreement or acknowledgement from the facilities; [COMAR 10.24.14.05J(2)]
4. Avenues Recovery Center of Chesapeake Bay shall document referral agreements, prior to First Use approval by the Commission, demonstrating that at least 15 percent of its annual patient days, required by COMAR 10.24.14.08, will be incurred by the indigent or gray area populations, including days paid under a contract with the Behavioral Health Administration or a jurisdictional alcohol or drug abuse authority, or the Medical Assistance program; [COMAR 10.24.14.05K(2)] and
5. To demonstrate that outpatient programs are available to its proposed patient population, Avenues Recovery Center of Chesapeake Bay shall provide written referral agreements or arrangements with outpatient programs that meet the requirements of COMAR 10.24.14.05O(1) through (4), prior to First Use approval by the Commission.

| | | |
|---|---|---|
| **IN THE MATTER OF** | * | |
| | * | **BEFORE THE** |
| **AVENUES RECOVERY CENTER** | * | |
| | * | **MARYLAND HEALTH** |
| **OF CHESAPEAKE BAY LLC** | * | |
| | * | **CARE COMMISSION** |
| **Docket No. 21-09-2449** | * | |
| | * | |

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**FINAL ORDER**

Based on Staff's analysis and recommendations, it is this 21st day of October 2021, **ORDERED** that the application of Avenues Recovery Center of Chesapeake Bay, LLC for a Certificate of Need to establish a 20-bed Track One Intermediate Care Facility providing ASAM Level 3.7 Medically Monitored Intensive Inpatient and Level 3.7WM Medically Monitored Intensive Inpatient Withdrawal Management services in Cambridge, at an approved cost of $55,000, be, and hereby is, **APPROVED**, with the following conditions:

1. Avenues Recovery Center of Chesapeake Bay shall document the provision of a minimum of 15% of patient days to indigent and gray area patients, as defined at COMAR 10.24.14.08B(9) and (11), by submitting annual reports auditing its total days and the provision of days to indigent and gray area patients as a percentage of total days. Such audit reports shall be submitted to the Commission following each fiscal year, from the project's inception and continuing for five years thereafter;
2. Avenues Recovery Center of Chesapeake Bay must receive preliminary accreditation for the Level 3.7 services it will provide, including withdrawal management and post-withdrawal treatment programming, by the Commission on the Accreditation of Rehabilitation Facilities (CARF) prior to First Use Approval by the Commission and must timely receive final accreditation by CARF;
3. Avenues Recovery Center of Chesapeake Bay shall provide documentation of transfer and referral agreements prior to First Use approval by the Commission with: 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 center(s); the Eastern Shore's mental health and alcohol and drug abuse authorities; the Behavioral Health Administration; and the Eastern Shore agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services. Documentation may include letters of agreement or acknowledgement from the facilities; [COMAR 10.24.14.05J(2)]
4. Avenues Recovery Center of Chesapeake Bay shall document referral agreements, prior to First Use approval by the Commission, demonstrating that at least 15 percent of its annual patient days, required by COMAR 10.24.14.08, will be incurred by the indigent or gray area populations, including days paid under a contract with the Behavioral Health Administration or a jurisdictional alcohol or drug abuse authority, or the Medical Assistance program; [COMAR 10.24.14.05K(2)] and

5. To demonstrate that outpatient programs are available to its proposed patient population, Avenues Recovery Center of Chesapeake Bay shall provide written referral agreements or arrangements with outpatient programs that meet the requirements of COMAR 10.24.14.05O(1) through (4), prior to First Use approval by the Commission.

# APPENDIX 1:

# RECORD OF THE REVIEW

# Record of the Review

| Item # | Description | Date |
|---|---|---|
| 1 | Carolyn Jacobs, Esq., submits on behalf of Avenues Recovery Center of Chesapeake Bay, LLC, its Letter of Intent to establish a 20-bed Track One Alcoholism and Drug Abuse Intermediate Care Facility in Cambridge, Dorchester County. | 12/8/2020 |
| 2 | Commission staff sends a notice soliciting additional Letters of Intent for Substance Abuse Services on the Eastern Shore to the *Maryland Register* for publication. | 12/18/2020 |
| 3 | Commission staff sends formal acknowledgement of receipt of the Letter of Intent to Carolyn Jacobs, Esq., and that no other Letters of Intent for Substance Abuse Services on the Eastern Shore were submitted. | 2/8/2021 |
| 4 | Carolyn Jacobs, Esq., sends a modification to the Letter of Intent. | 4/13/2021 |
| 5 | Carolyn Jacobs, Esq., submits on behalf of Avenues Recovery Center of Chesapeake Bay, LLC, a Certificate of Need application (CON) to establish a 20 bed Track One Level 3.7 and Level 3.7Withdrawal Management (WM) Medically Monitored Intensive Inpatient treatment program. | 4/19/2021 |
| 6 | Commission staff acknowledges receipt of application for Avenues Recovery Center of Chesapeake Bay, LLC, to Hudi Alter, Avenues Recovery Center. | 4/20/2021 |
| 7 | Commission staff submits to *Dorchester Star* a request to publish a notice of receipt of the CON application. | 4/20/2021 |
| 8 | Commission staff submits to *Maryland Register* a request to publish a notice of receipt of the CON application. | 4/20/2021 |
| 9 | Commission staff submits to *Star Democrat* a request to publish a notice of receipt of the CON application. | 4/23/2021 |
| 10 | Following completeness review, Commission staff sends to applicant a request for completeness information. | 4/29/2021 |
| 11 | Carolyn Jacobs, Esq., requests and MHCC staff grants an extension of time to submit responses to April 29th request for completeness information to June 1, 2021. | 5/4/2021 |
| 12 | Carolyn Jacobs, Esq., requests and MHCC staff grants an additional extension of time to submit response to April 29th request for completeness information to June 8, 2021. | 5/26/2021 |
| 13 | Carolyn Jacobs, Esq., submits applicant's responses to completeness questions. | 6/8/2021 |
| 14 | Commission staff submits second request for completeness information and clarification to first round of completeness questions. | 6/23/2021 |
| 15 | Carolyn Jacobs, Esq., requests and MHCC staff grants an additional extension of time to submit response to June 23rd request for completeness information to July 16, 2021. | 7/6/2021 |
| 16 | Carolyn Jacobs, Esq., submits responses to second request for completeness information and clarification to first round of completeness questions. | 7/16/2021 |
| 17 | Commission staff sends notice to applicant of the docketing for formal review of Avenues Recovery Center of Chesapeake Bay with starting date on August 13, 2021. | 8/2/2021 |
| 18 | Commission staff sends notice to *Dorchester Star* for formal start of review of Avenues Recovery Center of Chesapeake Bay's CON application. | 8/2/2021 |
| 19 | Commission staff sends notice to *Maryland Register* for formal start of review of Avenues Recovery Center of Chesapeake Bay's CON application. | 8/2/2021 |
| 20 | Commission staff submits request to Dorchester County Department of Health for review and comment on Avenues Recovery Center of Chesapeake Bay's CON application. | 8/2/2021 |
| 21 | Roger Harrell, Dorchester County Health Officer, submitted a letter of support for the Avenues Recovery Center of Chesapeake Bay CON application. | 8/5/2021 |
| 22 | Commission staff submits request and Laura Goodman, Deputy Director for Health Care Financing Administration at Maryland Department of Health, submitted | 8/5/2021 |

| | | |
|---|---|---|
| | information from The Hilltop Institute regarding the number of Maryland Medicaid recipients aged 18 years and older by jurisdiction for CY 2020. | |
| 23 | *Star Democrat* publishes notice of formal start for Avenues Recovery Center of Chesapeake Bay's CON application. | 8/6/2021 |
| 24 | Commission staff requests historical utilization data from Recovery Centers of America at Bracebridge Hall. | 8/16/2021 |
| 25 | Commission staff requests historical utilization data from Hudson Health Services. | 8/16/2021 |
| 26 | Commission staff requests historical utilization data from Warwick Manor Behavioral Health. | 8/24/2021 |
| 27 | James Wheatley, Director of Admissions, Warwick Manor Behavioral Health, submitted response to August 24th data request. | 8/25/2021 |
| 28 | Commission staff sends via e-mail follow-up request for historical utilization data from Recovery Centers of America at Bracebridge Hall. | 9/2/2021 – 9/3/2021 |
| 29 | Commission staff sends via e-mail follow-up request for historical utilization data from Hudson Health Services. | 9/2/2021 – 9/7/2021 |
| 30 | Jennifer Shalk, Admissions Director, Recovery Centers of America at Bracebridge Hall, submitted via e-mail response August 16th data request. | 9/7/2021 |
| 31 | Commission staff and Behavioral Health Administration staff exchange via e-mails request for Medicaid utilization of Level 3.7/3.7WM ICFs on Eastern Shore. Susan Bradley, Director – Office of IT and Data, Behavioral Health Adminstration, submitted via e-mail Medicaid ICF utilization data for AF Whitsitt Center and Hudson Health Services. | 9/27/2021 – 10/7/2021 |
| 32 | Commission staff requests via email and receives clarification on sources of referral to Avenues Recovery Center of Chesapeake Bay. | 10/15/2021 |

# APPENDIX 2:

# AMERICAN SOCIETY OF ADDICTION MEDICINE

# CONTINUUM OF CARE TREATMENT PROGRAMS

What is ASAM Level 3.7?[20]

Called the Medically Monitored High-Intensity Inpatient Services for adolescents and Medically Monitored Intensive Inpatient Services Withdrawal Management for adults, this level of care provides 24-hour nursing care with a physician's availability for significant problems in Dimensions 1, 2, or 3. Patients in this level of care require medication and have a recent history of withdrawal management at a less intensive level of care, marked by past and current inability to complete withdrawal management and enter into continuing addiction treatment. This is the appropriate setting for patients with subacute biomedical and emotional, behavioral, or cognitive problems that are so severe that they require inpatient treatment. Level 3 encompasses residential services that are described as co-occurring capable, co-occurring enhanced, and complexity capable services, which are staffed by designated addiction treatment, mental health, and general medical personnel who provide a range of services in a 24-hour treatment setting. A detailed description of the services typically offered in this level of care, the care setting, and how to identify what patients would benefit best from these services based on an ASAM dimensional needs assessment, begins on page 265 of The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions (2013).

The same publication describes ASAM Level 3.7-WM: Medically Monitored Intensive Inpatient Withdrawal Management care[21] as having the following attributes:

- Services are delivered in a freestanding withdrawal management center with inpatient beds
- Services are provided 24 hours daily with observation, monitoring, and treatment
- Services include specialized clinical consultation; supervision for cognitive, biomedical, emotional, and behavioral problems; medical nursing care; and direct affiliation with other levels of care

The following is an ASAM Criteria Crosswalk for Level 1.0 through 4.0 Services: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions[22]

[20] Available at: http://www.mtpca.org/wp-content/uploads/ASAM-Adult_Criteria_Crosswalk.pdf.

[21] https://www.medicaid.gov/state-resource-center/innovation-accelerator-program/iap-downloads/reducing-substance-use-disorders/asam-resource-guide.pdf, at pp. 10-13.

[22] Available at: **http://www.mtpca.org/wp-content/uploads/ASAM-Adult_Criteria_Crosswalk.pdf.**

The ASAM Criteria Crosswalk: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions

| **Adult Levels of Care** | **DIMENSION 1:** Acute Intoxication and/or Withdrawal Potential | **DIMENSION 2:** Biomedical Conditions and Complications | **DIMENSION 3:** Emotional, Behavioral, or Cognitive Conditions and Complications | **DIMENSION 4:** Readiness to Change | **DIMENSION 5:** Relapse, Continued Use, or Continued Problem Potential | **DIMENSION 6:** Recovery/Living Environment |
|---|---|---|---|---|---|---|
| **LEVEL 0.5** | No withdrawal risk | None or very stable | None or very stable | Willing to explore how current alcohol, tobacco, other drug, or medication use, and/or high-risk behaviors may affect personal goals | Needs an understanding of, or skills to change, current alcohol, tobacco, other drug, or medication use patterns, and/or high risk behavior | Social support system or significant others increase the risk of personal conflict about alcohol, tobacco, and/or other drug use |
| Early Intervention<br>**OTP – LEVEL 1** | Physiologically dependent on opioids and requires OTP to prevent withdrawal | None or manageable with outpatient medical monitoring | None or manageable in an outpatient structured environment | Ready to change the negative effects of opioid use, but is not ready for total abstinence from illicit prescription or non-prescription drug use | At high risk of relapse or continued use without OTP and structured therapy to promote treatment progress | Recovery environment is supportive and/or the patient has skills to cope |
| Opioid Treatment Program<br>**LEVEL 1** | Not experiencing significant withdrawal, or at minimal risk of severe withdrawal. Manageable at Level 1-WM (See withdrawal management criteria) | None or very stable, or is receiving concurrent medical monitoring | None or very stable, or is receiving concurrent mental health monitoring | Ready for recovery but needs motivating and monitoring strategies to strengthen readiness. Or needs ongoing monitoring and disease management. Or high severity in this dimension but not in other dimensions. Needs Level 1 motivational enhancement strategies | Able to maintain abstinence or control use and/or addictive behaviors and pursue recovery or motivational goals with minimal support | Recovery environment is supportive and/or the patient has skills to cope |
| Outpatient Services<br>**LEVEL 2.1** | Minimal risk of severe withdrawal, manageable at Level 2-WM (See withdrawal management criteria) | None or not a distraction from treatment. Such problems are manageable at Level 2.1 | Mild severity, with potential to distract from recovery; needs monitoring | Has variable engagement in treatment, ambivalence, or a lack of awareness of the substance use or mental health problem, and requires a structured program several times a week to promote progress through the stages of change | Intensification of addiction or mental health symptoms indicate a high likelihood of relapse or continued use or continued problems without close monitoring and support several times a week | Recovery environment is not supportive, but with structure and support, the patient can cope |
| Intensive Outpatient Services<br>**LEVEL 2.5** | Moderate risk of severe withdrawal manageable at Level 2-WM (See withdrawal management criteria) | None or not sufficient to distract from treatment. Such problems are manageable at Level 2.5 | Mild to moderate severity, with potential to distract from recovery; needs stabilization | Has poor engagement in treatment, significant ambivalence, or a lack of awareness of substance use or mental health problem, requiring a near-daily structured program or intensive engagement services to promote progress through the stages of change | Intensification of addiction or mental health symptoms, despite active participate in a Level 1 or 2.1 program, indicates a high likelihood of relapse or continued use or continued problems without near-daily monitoring and support | Recovery environment is not supportive, but with structure and support and relief from the home environment, the patient can cope |
| Partial Hospitalization Services<br>**LEVEL 3.1** | No withdrawal risk, or minimal or stable withdrawal. Concurrently receiving Level 1-WM (minimal) or Level 2-WM (moderate) services (See withdrawal management criteria) | None or stable, or receiving concurrent medical monitoring | None or minimal; not distracting to recovery. If stable, a co-occurring enhanced program is required | Open to recovery, but needs a structured environment to maintain therapeutic gains | Understands relapse but needs structure to maintain therapeutic gains | Environment is dangerous, but recovery is achievable if Level 3.1 24-hour structure is available |
| Clinically Managed Low-Intensity Residential Services<br>**LEVEL 3.3** | At minimal risk of severe withdrawal. If withdrawal is present, manageable at Level 3.2-WM (See withdrawal management criteria) | None or stable, or receiving concurrent medical monitoring | Mild to moderate severity; needs structure to focus on recovery. Treatment should be designed to address significant cognitive deficits. If stable, a co-occurring capable program is appropriate. If not, a co-occurring enhanced program is required. | Has little awareness and needs interventions available only at Level 3.3 to engage and stay in treatment. If there is high severity in Dimension 4 but not in any other dimension, motivational enhancement strategies should be provided in Level 1 | Has little awareness and needs interventions available only at Level 3.3 to prevent continued use, with imminent dangerous consequences, because of cognitive deficits or comparable dysfunction | Environment is dangerous and patient needs 24-hour structure to learn to cope |
| Clinically Managed Population –Specific High-Intensity Residential Services<br>**LEVEL 3.5** | At minimal risk of severe withdrawal. If withdrawal is present, manageable at Level 3.2-WM (See withdrawal management criteria) | None or stable, or receiving concurrent medical monitoring | Demonstrates repeated inability to control impulses, or unstable and dangerous signs/symptoms require stabilization. Other functional deficits require stabilization and a 24-hour setting to prepare for community integration and continuing care. A co-occurring enhanced setting is required for those with severe and chronic mental illness | Has marked difficulty with, or opposition to, treatment, with dangerous consequences. If there is high severity in Dimension 4 but not in any other dimension, motivational enhancement strategies should be provided in Level 1 | Has no recognition of the skills needed to prevent continued use, with imminently dangerous consequences | Environment is dangerous and the patient lacks skills to cope outside of a highly structured 24-hour setting |
| Clinically Managed High-Intensity Residential Services<br>**LEVEL 3.7** | At high risk of withdrawal, but manageable at Level 3.7-WM and does not require the full resources of a licensed hospital (See withdrawal management criteria) | Requires 24-hour medical monitoring but not intensive treatment | Moderate severity; needs a 24-hour structured setting. If the patient has a co-occurring mental disorder, requires concurrent mental health services in a medically monitored setting | Low interest in treatment and impulse control is poor, despite negative consequences; needs motivating strategies only safely available in a 24-hour structured setting. If there is high severity in Dimension 4 but not in any other dimension, motivational enhancement strategies should be provided in Level 1 | Unable to control use, with imminently dangerous consequences, despite active participation at less intensive levels of care | Environment is dangerous and the patient lacks skills to cope outside of a highly structured 24-hour setting |
| Medically Monitored Intensive Inpatient Services<br>**LEVEL 4** | At high risk of withdrawal and requires Level 4-WM and the full resources of a licensed hospital (See withdrawal management criteria) | Requires 24-hour medical and nursing care and the full resources of a licensed hospital | Because of severe and unstable problems, requires 24-hour psychiatric care with concomitant addiction treatment (co-occurring enhanced) | Problems in this dimension do not qualify the patient for Level 4 services. If the patient's only severity is in Dimension 4, 5, and/or 6 without high severity in Dimensions 1, 2, and/or 3, then the patient does not qualify for Level 4 | Problems in this dimension do not qualify the patient for Level 4 services. See further explanation in Dimension 4 | Problems in this dimension do not qualify the patient for Level 4 services. See further explanation in Dimension 4 |
| Medically Managed Intensive Inpatient Services | | | | | | |

## ASAM LEVELS OF CARE FOR ADULT DETOXIFICATION[23]

### Introduction

This review outlines the five levels of detoxification care outlined by the American Society of Addiction Medicine (ASAM). The following depicts the five levels of detoxification care that ASAM has identified.

### Level I-D
### AMBULATORY DETOXIFICATION WITHOUT EXTENDED ON-SITE MONITORING

1. Organized outpatient service.
2. May be delivered in an office setting, healthcare or addiction treatment facility or in a patient's home.
3. Trained clinicians provide medically supervised evaluation, detoxification and referral services in regularly scheduled sessions.
4. Services should be delivered under a defined set of policies and procedures or medical protocols.

### Level II-D
### AMBULATORY DETOXIFICATION WITH EXTENDED ON-SITE MONITORING

1. Organized outpatient service.
2. May be delivered in an office setting or healthcare or addiction treatment facility.
3. Trained clinicians provide medically supervised evaluation, detoxification, and referral services in regularly scheduled sessions.
4. Essential to this level of care is the availability of appropriately credentialed and licensed nurses (RN, LPN) who monitor patients over a period of several hours each day of service.

### Level III-D
### RESIDENTIAL/INPATIENT DETOXIFICATION

There are two different parts within this level. The first is Level III-D, or Residential/Inpatient Detoxification. Criteria are provided for two types of Level III detoxification programs:

1. The "residential" level has in the past been synonymous with rehabilitation services.
2. Detoxification services and the "inpatient" level of care have been synonymous with acute inpatient hospital care.

### Level III.2-D
### CLINICALLY MANAGED RESIDENTIAL DETOXIFICATION

1. Sometimes referred to as "social setting" detoxification.
2. Organized service that may be delivered by appropriately trained staff who provide 24 hour supervision, observation, and support for patients who are intoxicated or are experiencing withdrawal.
3. Characterized by emphasis on peer and social support.

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[23] **Source:** **https://www.ci2i.research.va.gov/paws/pdfs/asam.pdf**

## Level III.7-D
## MEDICALLY MONITORED INTENSIVE INPATIENT DETOXIFICATION

The second part of this level is Level III.7-D, defined by the following characteristics:
1. Organized service delivered by medical and nursing professionals, which provides for 24-hour medically supervised evaluation and withdrawal management.
2. A permanent facility with inpatient beds and services that are delivered under a defined set of physician-approved policies and physician-monitored procedures or clinical protocols.
3. 24-hour observation, monitoring, and treatment are available.
4. Relies on established clinical protocols to identify patients who are in need of medical services beyond the capacity of the facility in order to transfer such patients to the appropriate level of care.
4. Provides care to patients whose withdrawal signs and symptoms are sufficiently severe to require 24-hour inpatient care.
5. Sometimes provided by overlapping with Level IV-D services (as a "step down" service) in a specialty unit of an acute general or psychiatric hospital.
6. Full resources of an acute general hospital or a medically managed intensive inpatient treatment program are not necessary.

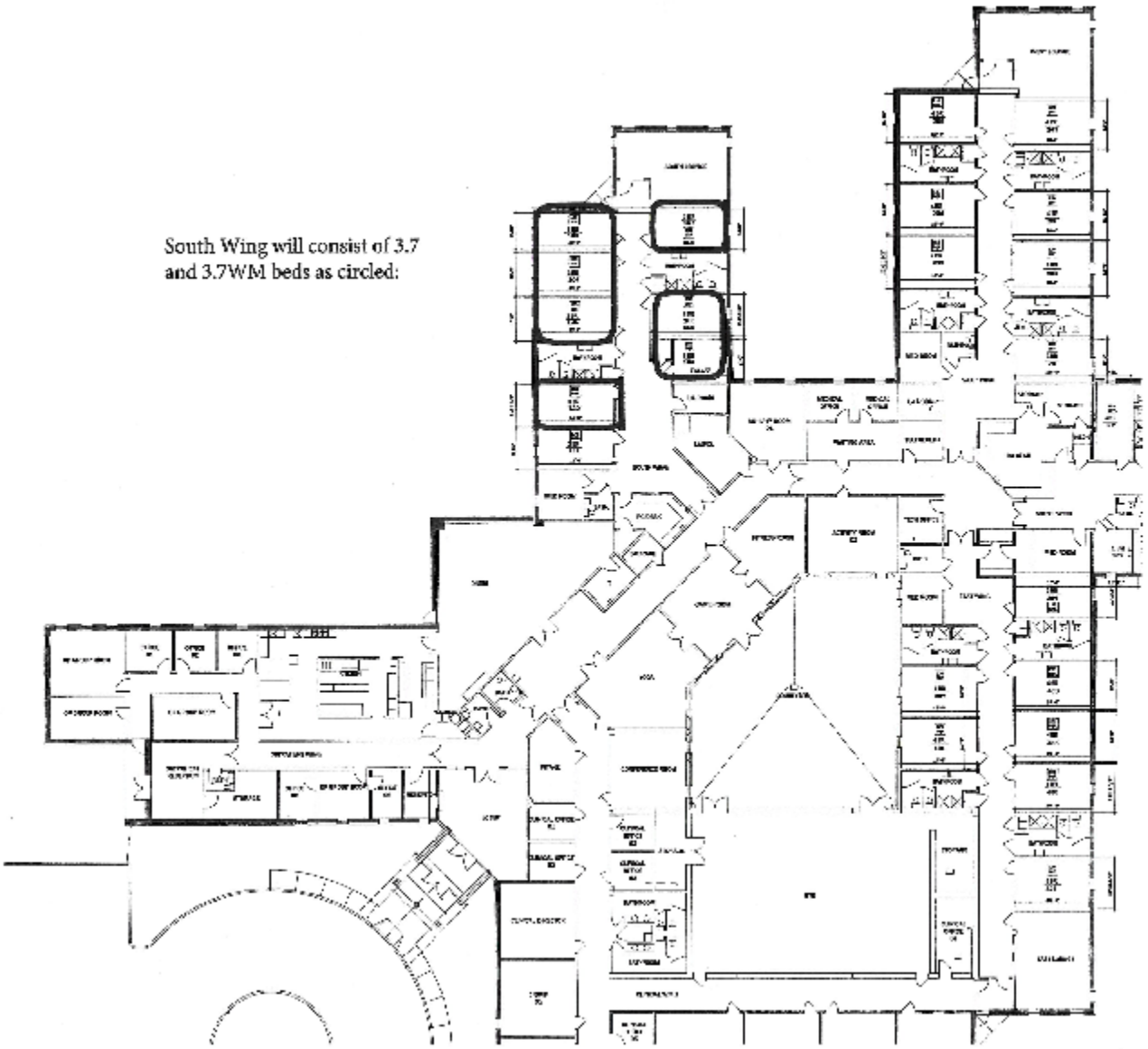
## Level IV-D
## MEDICALLY MANAGED INTENSIVE INPATIENT DETOXIFICATION

1. Organized service delivered by medical and nursing professionals, which provides for 24-hour medically directed evaluation and withdrawal management in an acute care inpatient setting.
2. Provides care to patients whose withdrawal signs and symptoms are sufficiently severe to require primary medical and nursing care services.
3. 24-hour observation, monitoring, and treatment are available.
4. Specially designed for acute medical detoxification.

# APPENDIX 3:

# FLOORPLAN DIAGRAM

South Wing will consist of 3.7 and 3.7WM beds as circled:



**APPENDIX 4:**

**BENZION SPIELMAN, ROTH & CO.**

**CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS**

**JULY 14, 2021.**

**(DI #16, Exh. 35).**

Roth&Co

July 14, 2021

Maryland Healthcare Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

RE: Avenues Recovery Center of Chesapeake Bay LLC

Dear Sir or Madam,

We have been the accountants for the Avenues Group of Drug Rehab Centers (the "Centers") from inception through present, as their independent public accounting firm, preparing their financial statements and income tax returns. Avenues Recovery Center of Chesapeake Bay LLC (Avenues-Chesapeake Bay) is one of the Avenues Group of Drug Rehab Centers. We are now tasked with addressing the ability of Avenues-Chesapeake Bay to fund the costs associated with its Certificate of Need application. The Centers have been a successful and profitable endeavor since they have begun operations. The Centers have provided us with current financial information, including recently filed income tax returns and internally generated financial statements for all facilities. The Avenues-Chesapeake Bay facility is fully up and running and we understand the expenses relating to obtaining the certificate to be approximately $65,000. There is no reason to believe that Avenues-Chesapeake Bay would have any financial difficulty in successfully funding the certificate of need costs for this project.

The Centers have traditionally maintained monthly cash balances in excess of the estimated cost of this project. The Centers have consistently achieved annual cash profits, in excess of expenses of approximately $1,900,000 on average. Since January 1, 2021, Avenues-Chesapeake Bay has continued to achieve positive cash flow and has been exceeding budgeted amounts.

Based on the historic financial success, and continued positive operations, we believe that Avenues Group of Drug Rehab Centers appears to have the adequate funds to cover the costs associated with the Avenues-Chesapeake Bay Certificate of Need as well as any deficits in revenues over expenses at Avenues-Chesapeake Bay.

If you should have any questions, please feel free to contact us at any time at 718-975-3399.

Sincerely,

Benzion Spielman, CPA

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