

<p>IN THE MATTER OF THE</p> <p>CHANGE IN BED CAPACITY OF</p> <p>FORT WASHINGTON HEALTH CENTER</p> <p>AND CLINTON HEALTHCARE CENTER</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE</p> <p>MARYLAND</p> <p>HEALTH CARE</p> <p>COMMISSION</p>
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Docket No. 23-16-EX015

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

I. INTRODUCTION

A. Background

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

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

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

B. The Applicant

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

communities and long-term acute care hospitals. The privately held company was founded by Stephen Rosedale in 1984 and operates 18 CCFs in Maryland, in 10 counties and Baltimore City:

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

C. The Project

The proposed project involves two CommuniCare facilities in Prince George’s County: Clinton Nursing, LLC d/b/a Clinton Healthcare Center (Clinton) and Livingston Leasing Co., LLC d/b/a Fort Washington Health Center (Fort Washington). The project will result in enlargement of Fort Washington, which will add 46 beds, and a corresponding reduction of bed capacity operated at Clinton. Both facilities currently operate triple (three-bed) and quad (four-bed) rooms. However, after the project is completed, neither facility will operate patient rooms that accommodate more than two patients.

The applicant states that this proposed project is the second step of a comprehensive strategic and capital improvement plan to eliminate all patient rooms licensed for triple or quad beds throughout CommuniCare’s 18 Maryland facilities. (DI #5, pp.1-2). The long-term plan involves relocating and replacing CCFs and expanding and downsizing several CCFs, in addition to renovating existing facilities.

The project addressed in this report is the second phase of CommuniCare’s reconfiguration of Prince George’s County CCFs. In October 2022, the Commission granted CommuniCare an exemption from CON with conditions for the first phase of its Prince George’s County plan (Dkt. No. 22-16-EX014) (Clinton/Forestville Project). That project involved the reduction of bed capacity at Clinton from 267 beds to 230 beds and a corresponding increase in bed capacity at Forestville Healthcare Center (Forestville), from 162 to 199 beds.

Upon completion of the Clinton/Forestville Project, Forestville would eliminate all triple and quad rooms and Clinton would reduce the number of triple and quad rooms. The Commission imposed a condition on the exemption requiring CommuniCare to temporarily delicense CCF beds at Clinton upon completion of the Clinton/Forestville Project to eliminate the operation of any triple and quad rooms at the facility.

In this phase, Clinton will further reduce its licensed bed capacity by 46 beds, allowing Fort Washington, which currently has 150 beds, to increase its bed capacity to 196 beds through construction and renovation. This reduction of bed capacity at Clinton would fully eliminate any triple and quads at the Clinton facility. MHCC has not identified any additional need for CCF beds

in Prince George’s County, but CommuniCare’s request for exemption maintains the existing bed supply without increases.

The project plan is for Fort Washington to renovate 8,596 square feet (SF) of existing space and add 32,420 SF of new construction to its current 54,833 SF facility to accommodate the additional beds and eliminate all quad rooms. Clinton will need no additional structural renovations. The total cost of the project will be \$18,098,308. (DI #10, Exhibit 1, Table B). CommuniCare will finance the project with about \$3.6 million in cash, with the remaining balance of \$14.5 million financed through a U.S. Department of Housing and Urban Development (HUD) secured mortgage loan.

The current bed complement, bed complement following the Clinton/Forestville Project, and the bed complement proposed in this request are shown in the table below:

Figure 1: Bed Complement

46-Bed Redistribution

Facility	Current	Clinton/Forestville Project	Proposed
Clinton	267	230	184
Fort Washington	150	N/A	196

Current Bed Distribution, Distribution following the Clinton/Forestville Project and Proposed Bed Distribution in this Request by Facility and Patient Room Type

Current	Private	Semi-Private	Triple	Quad	Total
Clinton	8	68	37	3	267
Fort Washington	6	48	0	12	150
Clinton/Forestville	Private	Semi-Private	Triple	Quad	Total
Clinton	8	102	6 ¹	0	230
Proposed	Private	Semi-Private	Triple	Quad	Total
Clinton	44	70	0	0	184
Fort Washington	20	88	0	0	196

Source: (Dkt. No. 22-16-EX014 and DI #1, p.3).

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

The Commission may exempt certain actions proposed by a merged asset system comprised of two or more health care facilities from the requirement of CON review and approval. Under COMAR 10.24.01.04A, one of those permitted actions is “a change in the bed capacity of an existing health care facility pursuant to the consolidation or merger of two or more health care facilities” subject to certain notification, information, and demonstration requirements. In this request for an exemption from CON review, the relocation of 46 beds from Clinton to Fort Washington is possible because CommuniCare is a merged asset system that includes both CCFs.

¹Based on the condition in Docket No. 22-16-EX014, Clinton would not be permitted to operate these rooms as triples upon the completion of the Forestville/Clinton Project.

III. NOTICE BY THE COMMISSION TO THE PUBLIC

Notice of this request for an exemption from CON review was published in the *Washington Times* on September 15, 2023 and the *Maryland Register* on October 6, 2023, in accordance with COMAR 10.24.01.04C(1). No comments were received in response to publication of these notices.

IV. PUBLIC INFORMATION HEARING

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

V. PROCEDURAL HISTORY

Docket Item #	Description	Date
1	Exemption request filing	April 14, 2023
2	MHCC staff requests additional information	May 11, 2023
3	Applicants' request for additional time to answer questions and staff approval	May 23, 2023
4	Applicants' second request for additional time to answer questions	June 5-June 30, 2023
5	First set of completeness responses received-incomplete response	July 24, 2023
6	First set of completeness responses received remainder of response	August 14, 2023
7	Email exchange regarding exhibit attachments	August 15, 2023
8	Independent accountant report submitted by applicant	August 17, 2023
9	MHCC Staff requests second completeness information	August 24, 2023
10	Second set of completeness responses received	September 8, 2023
11	Review is published in the <i>Washington Times</i>	September 15, 2023
12	Review is published in the <i>Maryland Register</i>	October 6, 2023

VI. DETERMINATION OF EXEMPTION FROM CERTIFICATE OF NEED REVIEW

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

- (a) Is in the public interest;
- (b) Is not inconsistent with the State Health Plan...; and
- (c) Will result in more efficient and effective delivery of health services.

A. Is in the Public Interest

CommuniCare states that the consolidation and redistribution of the CCF beds from Clinton to Fort Washington is in the public interest because the elimination of multi-bed rooms (three or more patients in a single room) allows for increased privacy for nursing home residents without changing the bed capacity in Prince George's County, a jurisdiction projected to have an

adequate supply of CCF beds. Additionally, the increased privacy allows for more private visitation with families and at the same time less disruption to others in the room. Lastly, the applicant states that modernizing the room and bed configuration will also allow the facility to be an enhanced community resource. (DI # 1, pp.4-5).

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

B. Is not inconsistent with the State Health Plan

The applicable standards of the State Health Plan are discussed in Appendix 1 to this report. While the applicant satisfied most of the State Health Plan standards for CCFs, it was unable to demonstrate that at least 70 percent of all the comprehensive care facilities owned or operated by the applicant or a related or affiliated entity for three years or more had an average overall Centers for Medicare & Medicaid Services (CMS) star rating of three or more stars in CMS's most recent five quarterly refreshes for which CMS data is reported.² COMAR 10.24.20.05A(8)(a).

Despite this deficiency, and as further explained in Appendix 1, Staff recommends that the Commission find that the project is not inconsistent with this standard because the applicant seeks to improve two facilities that do have average or above-average performance (Clinton 3.2 stars and Fort Washington 4.6 stars). The performance of the CCFs was measured on June 7, 2023, the date the exemption request was filed, and included an average of the last five quarterly refreshes from April 2022 to April of 2023.

In addition, the State Health Plan requires an applicant for a CON to submit documentation or agree to submit documentation of a written Memorandum of Understanding (MOU) with Medicaid to maintain, at a minimum, the proportion of Medicaid patient days established by MHCC for the jurisdiction or region in which the CCF is located. [COMAR 10.24.20.05A(2)(a)] Neither facility has currently entered into a MOU with Medicaid. While a condition on the Clinton/Forestville Project exemption required Clinton to pursue a MOU with Medicaid (Dkt # 22-16-EX014), that project is not yet complete and it is unclear whether it will be complete prior to the completion of the Clinton/Fort Washington project. The applicant indicates that Fort Washington will accede to a similar condition and enter into a MOU with Medicaid. (DI #1, Exh. 1, p. 2). Therefore, Staff recommends the following condition be placed on the approval of this exemption request:

² "CMS created the Five-Star Quality Rating System to help consumers, their families, and caregivers compare nursing homes more easily...the Nursing Home Care Compare website features a quality rating system that gives each nursing home a rating of between 1 and 5 stars. Nursing homes with 5 stars are considered to have much above average quality, and nursing homes with 1 star are considered to have quality much below average. There is one Overall 5-star rating for each nursing home and separate ratings for health inspections, staffing, and quality measures." CMS, Five-Star Quality Rating System, <https://www.cms.gov/medicare/health-safety-standards/certification-compliance/five-star-quality-rating-> (last visited Oct. 6, 2023).

CommuniCare shall execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with COMAR 10.24.20.05A(2)(b) for the Clinton and Fort Washington facilities and provide a copy of the memoranda to the Commission before a request for first use review and approval.

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

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

The proposed project will eliminate 12 quad rooms currently at Fort Washington and the six remaining triple rooms at Clinton, leaving only private and semi-private rooms at the facilities. This change in the bed distribution will enhance efficiency as bed availability for admissions will not be limited by factors such as gender compatibility. The project will also enhance effective health care services by adding more private rooms which will allow the CCFs to isolate residents for any potential infection outbreaks.

With the completion of the addition to Fort Washington, the CCF will operate with 20 private and 88 semi-private inpatient rooms. (DI #10, Exh. N, Table A). The following chart is a breakdown of the number of inpatient beds by nursing unit at this CCF.

Nursing Beds Per Unit at Fort Washington Before and After Project

Nursing Unit Size (beds)	Before	After
Fort Washington		
1North	26	26
1South	24	24
2North	26	24
2South	24	24
3North	26	24
3South	24	24
Addition Floor 1		25
Addition Floor 2		25

(DI #10, Exh. N, Table A).

In addition, the project will create a smaller nursing unit size at Clinton which will allow for more personalized and effective care as seen in the chart below. (DI #1, p.4).

Nursing Beds Per Unit at Clinton Before and After Project

Nursing Unit Size (beds)	Before	After
Clinton		
Unit 1 West	30	27
Unit 2 East	48	40
Unit 2 West	48	30
Unit 3 East	56	45
Unit 3 West	48	42

(DI #1, p.4).

Given the elimination of quad and triple rooms at the facilities and the reduction in nursing unit size, Staff recommends that the Commission find that the project will result in the delivery of a more efficient and effective health care services.

VII. STAFF RECOMMENDATION

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

**IN THE MATTER OF THE
CHANGE IN BED CAPACITY OF
FORT WASHINGTON HEALTH CENTER
AND CLINTON HEALTHCARE CENTER**

*** BEFORE THE
* MARYLAND
* HEALTH CARE
* COMMISSION
*
*

Docket No. 23-16-EX015

ORDER

Having reviewed and considered the information and analysis contained in the Staff Report and Recommendation, it is, this 19th day of October 2023, hereby:

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

ORDERED that the request for exemption from Certificate of Need review filed by Health Care Facility Management, Inc. d/b/a CommuniCare Family of Companies (CommuniCare) for a change in the bed capacity of two CommuniCare facilities in the same jurisdiction, Livingston Leasing Co., LLC d/b/a Fort Washington Health Center (Fort Washington), which will add 46 comprehensive care facility (CCF) beds, and Clinton Nursing, LLC d/b/a Clinton Healthcare Center (Clinton), which will eliminate 46 CCF beds, is hereby **APPROVED** with the following condition:

1. CommuniCare shall execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with COMAR 10.24.20.05A(2)(b) for the Clinton and Fort Washington facilities and provide a copy of the memoranda to the Commission before a request for first use review and approval.

APPENDIX 1
CONSISTENCY WITH THE STATE HEALTH PLAN

APPENDIX 1

The Commission may approve an exemption from CON review for the relocation of bed capacity if the merged asset system proposing the project has provided the required information, and the Commission, in its sole discretion, finds that the proposed action *is not inconsistent with the State Health Plan*. COMAR 10.24.01.04E(2)(b). The following is a review of the proposed project against the SHP standards to provide this assessment.

COMAR 10.24.01.08G(3)(a) State Health Plan. An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria. The State Health Plan standards applicable in this review are found in COMAR 10.24.20, Comprehensive Care Facility Services.

COMAR 10.24.20.05 Comprehensive Care Facility Standards

(1) Bed Need and Average Annual Occupancy.

- (a) For a relocation of existing comprehensive care facility beds currently in the inventory, an applicant shall demonstrate need for the beds at the new site in the same jurisdiction. This demonstration may include, but is not limited to, a demonstration of unmet needs by a particular patient population, high utilization of comprehensive care facility beds in the jurisdiction during the past five years, and the ways in which the relocation will improve access to needed services or improve the quality of comprehensive care facility services.**
- (b) An applicant proposing a project that will not add comprehensive care facility beds to a jurisdiction but will add beds to an existing facility by relocation of existing licensed or temporarily delicensed comprehensive care facility beds within a jurisdiction, shall demonstrate that the facility being expanded operated all of its licensed beds at an occupancy rate of 90 percent or higher during the last two fiscal years for which the annual Maryland Long Term Care Survey data is available.**

This project's bed redistribution will improve the quality of CCF services at Clinton and Fort Washington by improving the clinical and residential environment at the facilities through the elimination of patient rooms with more than two beds. (DI #1, p.15).

The applicant states that 2019 and 2020 are the two most recent fiscal years of the Maryland Long Term Care Survey data available. In 2019, both the Clinton and Fort Washington facilities exceeded the 90% occupancy threshold with occupancy rates at 96 percent and 97 percent respectively. In 2020, Fort Washington exceeded the threshold with a 92 percent occupancy rate and Clinton was slightly under with 88 percent occupancy. However, Clinton is not expanding and therefore does not need to meet the 90% occupancy threshold. In addition, 2020 was a year impacted by the COVID-19 pandemic and the Clinton facility's large number of multiple bed rooms had decreased occupancy rate for infection control. (DI #1, Exh 1, p. 1).

Staff concludes that the applicant has met the standard.

(2) Medical Assistance Participation.

- (a) The Commission may approve a Certificate of Need for a comprehensive care facility only for an applicant that participates, or proposes to participate, in the Medicaid program, and only if the applicant submits documentation or agrees to submit documentation of a written Memorandum of Understanding (MOU) with Medicaid to maintain the proportion of Medicaid patient days required by .05A(2)(b) of this Chapter.**
- (b) Each applicant shall agree to serve and maintain a proportion of Medicaid patient days that is at least equal to the proportion of Medicaid patient days in all other comprehensive care facilities in the jurisdiction or region, whichever is lower, calculated as the weighted mean minus the 25th percentile value across all jurisdictions for each year based on the most recent Maryland Long Term Care Survey data and Medicaid Cost Reports available to the Commission, as published in the *Maryland Register*.**
- (c) An applicant for new comprehensive care facility beds has three years during which to achieve the applicable proportion of Medicaid participation from the time the facility is licensed and shall show a good faith effort and reasonable progress toward achieving this goal in years one and two of its operation.**
- (d) An applicant that seeks to expand or replace an existing comprehensive care facility shall modify its MOU upon expansion or replacement of its facility to encompass all of the comprehensive care facility beds in the expanded or replaced facility and to include a Medicaid percentage that reflects the most recent Medicaid participation rate, unless the facility's existing MOU encompasses all beds at a percentage that is equal to or greater than the most recent Medicaid participation rate.**
- (e) An applicant shall agree to continue to admit Medicaid residents to maintain its required level of participation when attained and have a written policy to this effect.**
- (f) Prior to licensure, an applicant shall execute a written Memorandum of Understanding with the Medical Assistance Program of the Maryland Department of Health to:
Achieve and maintain the level of Medicaid participation required by .05A(2)(b) of this Chapter; and Admit residents whose primary source of payment on admission is Medicaid.**
- (g) An applicant may show evidence why this rule should not apply.**

Currently, neither Clinton nor Fort Washington have a Memoranda of Understanding (MOU) with Medicaid that formalize the minimum level of Medicaid participation that each CCF

must maintain. The applicant states that Fort Washington is willing to pursue an MOU with Medicaid on completion of this project. (DI #6, p.3). Clinton is required to sign an MOU as a condition of the Clinton/Forestville Project exemption.

The most recent Required Medicaid Participation Rates published on the MHCC website are for Fiscal Year 2021, which show a minimum participation rate for Prince George's County of 40.1 percent (lower than the Southern Maryland overall minimum of 42.5 percent). The applicant demonstrated that both CCFs involved in this project met the minimum rate in FY2020, the most recent year for which data is available. Medicaid patient days at Fort Washington (52%) and Clinton (45%) both exceed the threshold. (DI #1, p.2).

While neither facility has a current MOU with Medicaid, both facilities exceed the percentage that a new MOU would require and agree to continue to admit Medicaid residents to maintain MOU compliance. CommuniCare does not project that the percentage of patient days comprised by Medicaid recipients at the facilities will materially change. (DI #1, Exhibit 2, p.3).

Staff concludes that notwithstanding that both Clinton and Fort Washington do not have existing MOUs, both facilities substantially meet the Medicaid participation rate. Staff recommends the following condition be included in an approval of this request to enable CommuniCare to meet this standard:

CommuniCare shall execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with COMAR 10.24.20.05A(2)(b) for both the Clinton and Fort Washington facilities and provide a copy of the memoranda to the Commission before a request for first use review and approval.

(3) Community-Based Services.

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

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

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

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

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

The applicant provided a document that is distributed to all prospective residents that provides information on the availability of community-based services in the area, including the Money Follows the Person program and community waiver programs. (DI #1, Exhibit 2).

The applicant states that it uses section Q of the MDS to assess a resident's interest in and willingness to receive information on community-based alternatives to nursing home care. The applicant documented this by providing the MDS policy as Exhibit 3 and sample completed section Q of the MDS with the protected health information removed as Exhibit 4. (DI #1, p.4).

CommuniCare included its discharge policy as Exhibit F. The CommuniCare policy states that it starts discharge planning within 7 days of admission. Residents who are receiving short-term skilled care receive a weekly care plan meeting that includes discharge planning. The applicant confirms that all residents receive discharge planning at least 6-month intervals during the first 24 months. (DI #5, p.4).

The applicant shared a handout given to all residents with information on home and community-based services (DI #1, Exhibit 2). The applicant also states that once initial discharge planning goals are established, the resident and/or the resident's representative are given access to information on services based on the resident's needs such as the Money Follows the Person Program or information on drug and alcohol rehabilitation. CommuniCare included additional examples of information on community-based alternatives with the application at Exhibit 6. (DI #1, p.4).

The applicant has shown its commitment to community-based services through its use of a variety of sources such as community waivers and The Money Follows the Person program. The applicant also has documented its discharge planning process that included community-based options through the use of its policies, handouts, and its completion of the MDS. Staff concludes that the applicant has met this standard.

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

- (a) In a new construction project:**

- (i) Develop rooms with no more than two beds for each resident room;**
- (ii) Provide individual temperature controls for each room;**
- (iii) Assure that no more than two residents share a toilet; and**
- (iv) Identify in detail, by means of architectural plans or line drawings, plans to develop a comprehensive care facility that provides a cluster/**

neighborhood design or a connected household design, rather than an institutional design, consistent with the most recent FGI Guidelines.

(b) In a renovation or expansion project:

- (i) Reduce the number of resident rooms with more than two residents per room;**
- (ii) Provide individual temperature controls in each newly renovated or constructed room;**
- (iii) Reduce the number of resident rooms where more than two residents share a toilet; and**
- (iv) Document that the applicant considered development of a cluster/neighborhood design or a connected household design and if the project includes an institutional model document why the alternative models were not feasible.**

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

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

The applicant states that through the project, it will eliminate rooms with more than two residents per room, will provide individual temperature controls for each newly renovated or constructed room, and will assure that no more than two residents share a toilet. (DI #1, Exh. 1, p.5). The applicant states that the main objective of the exemption request is to eliminate the 12 rooms at Fort Washington with more than two residents to a room. (DI #1, p. 2). Clinton will also eliminate its 6 triple bed rooms.

CommuniCare states that it considered a cluster/neighborhood design but that it was not reasonably possible when working with the existing restraints of the current building layout. (DI #1, p.5) The applicant provided a letter from its architect as Exhibit 7 affirming that the Fort Washington project complies with all applicable FGI guidelines. There is no architect letter for the Clinton facility as there are no structural renovations. (DI #1, p.6).

Staff concludes that the applicant has met this standard.

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

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

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

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

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

The applicant states that per its electronic medical record system, the most common diagnoses cared for at both facilities are weakness, need for assistance with personal care, hypertension, GERD, falls, hyperlipidemia, depression, abnormal gait, pain, vascular disease, history of COVID, history of TIA, cerebral infarction, diabetes, asthma, dementia, behavioral disturbance, anxiety, and arthritis. In addition, Clinton has an onsite dialysis center. Both facilities provide care for a variety of diagnosis and both short term and long-term patient needs; however neither facility has a dedicated respiratory or dementia unit. (DI #1, pp.5-6).

The applicant includes an architect's letter in Exhibit 7 stating that Fort Washington will meet current FGI guidelines. The applicant also states that the new common areas at Fort Washington will promote socialization and ease of ambulation. The applicant included multiple figures showing the common areas which will include an enclosed patio, dining areas, living room, nurse's stations, equipment alcoves, and an expanded rehabilitation gym.

Staff concludes that the applicant has identified the types of patients served by both CCFs and that the design of Fort Washington will minimize the negative aspects of an institutional environment. (DI #1, pp. 6-11). Staff finds that the exemption project complies with this standard.

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

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

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

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

The applicant states that the project will eliminate operation of any rooms housing more than two patients, increasing privacy for residents, and is consistent with the FGI Guidelines. There are no life safety code waivers at either facility from the Office of Health Care Quality or the Fire Marshall. (DI #1, p.12).

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

(7) Public Water. Unless otherwise approved by the Commission and the Office of Health Care Quality in accordance with COMAR 10.07.02.26, an applicant for a comprehensive care facility shall demonstrate that its facility is, or will be, served by a public water system that meets the Safe Drinking Water Act standards of the Maryland Department of the Environment.

The applicant states that both facilities are served by the Prince George's County public water system, which meets the referenced Safe Water Drinking Act standard. (DI #1, p,12).

Staff concludes this standard has been met.

(8) Quality Rating.

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

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

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

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

Because CommuniCare owns or operates CCFs in Maryland, staff reviewed CommuniCare's Maryland CCFs for compliance with this standard. While the applicant has 18 CCF facilities in Maryland, one of the facilities, Pleasantville, was acquired in January 2022 and is therefore excluded from this calculation because it has not been owned and operated by CommuniCare for three years or more. The table below shows that CommuniCare has achieved the required average star rating in only three (18%) out of the seventeen facilities within the last five quarterly refreshes.

Table 2: CommuniCare Maryland Facilities¹ 5-Star Performance (data available on 6/7/23)

	4/2023	1/2023	10/2022	7/2022	4/2022	Average
Anchorage	2	1	1	1	2	1.4
Bel Pre	2	1	1	3	5	2.4
Blue Point	2	3	2	2	2	2.2
Clinton	3	3	3	3	4	3.2
Cumberland	1	2	2	2	2	1.8
Ellicott City	1	1	1	1	1	1
Fayette	2	2	2	2	2	2
Forestville	2	1	2	2	3	2
Ft. Washington	5	4	5	5	4	4.6
Hagerstown	1	1	1	1	1	1
Holly Hill	1	1	1	1	1	1
Kensington	2	2	2	2	2	2
Laurelwood	1	1	1	1	1	1
Marley Neck	3	3	3	4	4	3.4
Northwest	2	1	1	1	1	1.2
South River	3	2	3	3	2	2.6
Westminster	1	1	1	1	1	1

Data was accessed on June 7, 2023, from www.medicare.gov/care-compare

However, at the time of the submission of the exemption request, Clinton and Fort Washington, the two CCFs involved in this exemption request, had an average overall star rating of three or more stars in CMS’s most recent five quarterly refreshes for which CMS data is reported. The applicant states that, although it has not achieved the threshold for its overall Maryland star rating, its facilities have remained consistently above average under the quality measures portion of the five-star rating. CommuniCare states that although state surveys are intensive it responds effectively to any plan of correction and maintains a quality assurance program to monitor the plan of correction. The applicant also states that staffing challenges are being met by increased compensation/benefit packages, sign-on bonuses, referral bonuses, creation of its own staffing company, nursing assistant training programs, and recruiting overseas (sponsoring green cards and first three months of housing). Lastly, CommuniCare states that it utilizes telehealth and telemedicine to achieve high- quality measures for its facilities. (DI #1, p.14).

CommuniCare provided documentation of its quality assurance program for the Clinton and Fort Washington CCFs. The applicant provided its Quality Improvement and Performance Improvement policy as well as sign in sheets to demonstrate attendance at the Quality Assurance meetings. (DI #1, Exhibits 8 and 9).

This request is similar to the Clinton/Forestville Project exemption in which only five (29%) of the seventeen CCF facilities operated by the applicant had an average overall CMS star rating of three or more stars. At the time of that request, both Clinton and Forestville had an overall rating of 3.4 stars over the last five quarterly refreshes. Because that project involved a better room configuration for two of the CommuniCare CCFs with acceptable recent performance, Staff

¹ CommuniCare has 18 Maryland facilities, however, on facility, Pleasantville was acquired in January 2022. Because it has not been owned or operated by CommuniCare for three years or more years, it is not included in this calculation.

recommended that the Commission find that the project was not inconsistent with quality rating standard.

For the same reasons, Staff recommends that the Commission find that this project is not inconsistent with the quality rating standard, despite the relatively low overall star rating for the Maryland CCFs. Staff believes this is a reasonable interpretation of how this standard should apply to this particular exemption request. While the Clinton facility has a 3.2-star average, the Fort Washington facility has a 4.6-star average, which is the highest star rating of the applicant's seventeen CCFs that it operates in Maryland. The elimination of inpatient bed rooms with three or more beds will help to modernize the design and physical layout for these two facilities, which will improve the level and quality of care provided for both the patients and the staff. The applicant is not seeking to establish a new facility or expand overall bed capacity.

Staff believes that this standard should not stand in the way of improving these two facilities that have above-average performance, particularly given the public interest served in eliminating triple and quad rooms. This standard should be used to limit the ability of sub-performing facilities or companies from altering their bed capacity until their performance is brought to average or above-average levels. An exemption request involving CCFs with below average composite scores would be inconsistent with the State Health Plan.

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

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

(a) An applicant shall demonstrate its commitment to effective collaboration with hospitals by documenting its successful efforts in reducing inappropriate readmissions to hospitals, improving the overall quality of care, and providing care in the most appropriate and cost-effective setting. The demonstration shall include:

- (i) Data showing a reduction in inappropriate hospital readmissions;**
- (ii) Data showing improvements in the quality of care and provision of care in the most appropriate setting.**

(b) An applicant shall demonstrate its commitment to providing an effective continuum of care by documenting its collaborative efforts with Medicare-certified home health agencies and hospices to facilitate home-based care following comprehensive care facility discharge and shall facilitate delivery of

hospice services for terminally ill residents. The demonstration shall document that the applicant has:

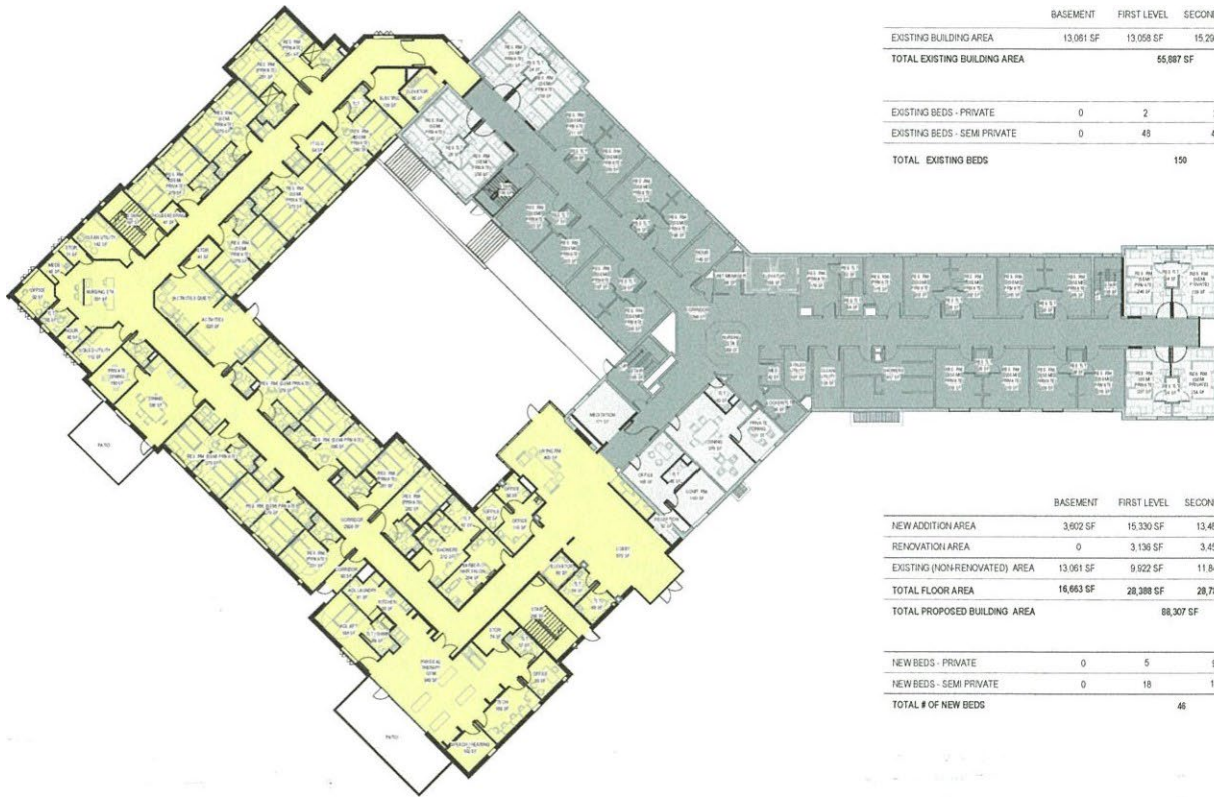
- (i) Planned for the provision of home health agency services to residents who are being discharged; and**
- (ii) Arranged for hospice and palliative care services, when appropriate, for residents who are being discharged.**

Fort Washington and Clinton have rehospitalization rates for short-stay patients that compare favorably with the state and national averages (19.8 and 18.8 percent respectively), demonstrating success in reducing inappropriate hospital re-admissions and providing care in the most appropriate setting. (DI #1, p.19). The applicant states that both Clinton and Fort Washington work with multiple home health and hospice agencies such as Adventist, Amedisys, Bayada, Revival, VNA, Medstar, Dubois, Capital Caring, Hospice of the Chesapeake, and Seasons Hospice to provide an effective continuum of care. (DI #1, Exhibit 10).

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

APPENDIX 2

FORT WASHINGTON RENOVATION DRAWINGS



	BASEMENT	FIRST LEVEL	SECOND LEVEL	THIRD LEVEL
EXISTING BUILDING AREA	13,061 SF	13,058 SF	15,206 SF	14,472 SF
TOTAL EXISTING BUILDING AREA		55,887 SF		

EXISTING BEDS - PRIVATE	0	2	2	2
EXISTING BEDS - SEMI PRIVATE	0	48	48	48
TOTAL EXISTING BEDS		150		

	BASEMENT	FIRST LEVEL	SECOND LEVEL	THIRD LEVEL	TOTAL
NEW ADDITION AREA	3,602 SF	15,330 SF	13,488 SF	0	32,420 SF
RENOVATION AREA	0	3,136 SF	3,455 SF	2,005 SF	8,596 SF
EXISTING (NON-RENOVATED) AREA	13,061 SF	9,922 SF	11,841 SF	12,407 SF	47,291 SF
TOTAL FLOOR AREA	16,663 SF	28,388 SF	28,784 SF	14,472 SF	88,307 SF
TOTAL PROPOSED BUILDING AREA		88,307 SF			

NEW BEDS - PRIVATE	0	5	9	0	14
NEW BEDS - SEMI PRIVATE	0	18	14	0	32
TOTAL # OF NEW BEDS		46			

FORT WASHINGTON HEALTHCARE CENTER

DEPARTMENT PLAN- LEVEL 1





FORT WASHINGTON HEALTHCARE CENTER

DEPARTMENT PLAN-LEVEL 2



FORT WASHINGTON HEALTHCARE CENTER

DEPARTMENT PLAN- LEVEL 3