

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Blue Heron Health and Rehabilitation, LLC/CON #10619
1800 North Wabash Ave., Suite 300
Marion, Indiana 46952

Authorized Representative: Ryan Ott
(765) 664-5400

2. Service District/Subdistrict

District 5, Subdistrict 5-1 (Pasco County)

B. PUBLIC HEARING

A public hearing was not held or requested regarding the proposed project, no letters of support were submitted by the applicant and none were received independently by the Agency in support of the proposal.

C. PROJECT SUMMARY

Blue Heron Health and Rehabilitation, LLC (CON application #10619) also referenced as Blue Heron, BH or the applicant, is a newly-formed entity which seeks to add 35 beds to the 106-bed community nursing home presently under construction, which was approved via Exemption #E190002. The #E190002 combined CON #10492 (64 beds) and #10508 (42 beds) to establish a 106-bed community nursing home presently under construction in the Seven Oaks Community Development District, within Wesley Chapel, in ZIP Code 33544, Pasco County, Florida (District 5, Subdistrict 1). If approved, the proposed 35-bed addition to #E190002 results in a 141-bed community skilled nursing facility (SNF).

The controlling management interest of the applicant's parent, Tender Loving Care (TLC) Management, Inc., currently operates:

- Lake Wales Health Care Operations Company, LLC d/b/a Astoria Health and Rehabilitation Center (District 6, Subdistrict 5 - Polk County)

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- Bridgewater Park Health and Rehabilitation Center (District 3, Subdistrict 4 – Marion County)

The applicant expects issuance of licensure in November 2021 and initiation of service in January 2022.

The project involves a total project cost of \$5,577,467, with 21,610 gross square feet (GSF) of new construction. The total construction cost is \$3,180,125. The total project cost includes land cost, building cost, equipment cost, project development costs, financing costs and startup costs.

Pursuant to project approved, CON application #10619, Schedule C, indicates the following condition(s):

1. Maintaining the location in the Seven Oaks Community Development District where the applicant's 106-bed facility is presently under construction.
2. Providing Medicaid managed care at 50 percent of total resident days of care.

Total GSF and Project Cost of CON application #10619				
Applicant	Number of Beds	GSF	Cost \$	Cost Per Bed
Blue Heron Health and Rehabilitation, LLC	Add 35 community beds	21,610	\$5,577,467	\$159,356.20

Source: CON application #10619, Schedules 1 and 9

Should the proposed project be approved, the applicants' condition would be reported in the annual condition compliance report, as required by Rule 59C-1.013(3), Florida Administrative Code.

Issuance of a CON is required prior to licensure of certain health care facilities and services. The review of a CON application and ultimate approval or denial of a proposed project is based upon the applicable statutory criteria in the Health Facility and Services Development Act (408.031-408.045, Florida Statutes and applicable rule criteria within Chapters 59C-1 and 59C-2, Florida Administrative Code. An approved CON does not guarantee licensure of the proposed project. Meeting the applicable licensure requirements and licensure of the proposed project is the sole responsibility of the applicant.

D. REVIEW PROCEDURE

The evaluation process is structured by the certificate of need review criteria found in Section 408.035, Florida Statutes. These criteria form the basis for the goals of the review process. The goals represent desirable outcomes to be attained by successful applicants who demonstrate an overall compliance with the criteria. Analysis of an applicant's capability to undertake the proposed project successfully is conducted by assessing the responses provided in the application, and independent information gathered by the reviewer.

Applications are analyzed to identify strengths and weaknesses in each proposal. If more than one application is submitted for the same type of project in the same district, applications are comparatively reviewed to determine which applicant best meet the review criteria.

Section 59C-1.010(3)(b), Florida Administrative Code, allows no application amendment information subsequent to the application being deemed complete. The burden of proof to entitlement of a certificate rests with the applicant. As such, the applicant is responsible for the representations in the application. This is attested to as part of the application in the Certification of the Applicant.

As part of the fact-finding, the consultant, Steve Love, analyzed the application in its entirety with consultation from the financial analyst, Kimberly Noble, Bureau of Central Services, who evaluated the financial data and Scott Waltz of the Office of Plans and Construction, for conformance with the architectural criteria.

E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA

The following indicate the level of conformity of the proposed project with the criteria and application content requirements found in sections 408.035, and 408.037, Florida Statutes, and applicable rules of the State of Florida, Chapters 59C-1 and 59C-2, Florida Administrative Code.

1. Fixed Need Pool

- a. Does the project proposed respond to need as published by a fixed need pool? Or does the project proposed seek beds or services in excess of the fixed need pool? Rule 59C-1.008 (2), Florida Administrative Code.**

In Volume 45, Number 194, of the Florida Administrative Register dated October 4, 2019, need for 35 community nursing home beds was published in the fixed need pool for District 5, Subdistrict 1 for the July 2022 Planning Horizon.

As of October 4, 2019, Subdistrict 5-2 has 1,948 licensed and 106 CON approved yet to be licensed community nursing home beds. As previously mentioned, the 106 beds are approved for the applicant (E#190002). As of December 26, 2019, the application omissions deadline for the October 2019 “Other Beds and Programs” batching cycle, there were no additional exemptions or expedited CON applications pending approval to add community nursing home beds to District 5, Subdistrict 1 – Pasco County.

For the 12-month period ending on June 30, 2019, Subdistrict 5-1 had a total of 16 licensed community SNFs, with 1,948 licensed community beds and a total occupancy/utilization rate of 90.50 percent. The reviewer generates the table below to account for Subdistrict 5-1, District 5 and state community nursing home utilization for the 12 months ending June 30, 2019.

Subdistrict 5-1, Pasco County, Utilization July 1, 2018 – June 30, 2019

Area	Community Beds	Bed Days	Patient Days	Total Occupancy
Total – Subdistrict 5-1	1,948	708,830	641,517	90.50%
Total – District 5	9,627	3,511,665	3,096,538	88.18%
Total – State of Florida	81,510	29,507,650	25,088,910	85.03%

Source: Florida Nursing Home Bed Need Projections by District and Subdistrict, issued October 4, 2019

Blue Heron Health and Rehabilitation, LLC submitted the application in response to the fixed need pool for 35 community nursing home beds published in Volume 45, Number 194, of the Florida Administrative Register, dated October 4, 2019.

Blue Heron provides an extensive need analysis (pages 1-1 through 1-16 of the application). According to the applicant, with the development of the 141 community nursing home beds, the following benefits occur:

- Increases the availability of community nursing home beds in a region of Pasco County that lacks them
- Integrates the skilled nursing beds with assisted living providing the area with supportive housing for seniors
- Provides a facility managed by a company with a strong quality focus, including the operation of 5-star skilled nursing facilities in Florida and Indiana
- Offers all private rooms and private bathrooms to the bed complement where few currently exist

The applicant provides the following information for Blue Heron’s bed addition as well as total impact on the subdistrict.

Analysis of Need and Blue Heron’s Facility

Factor	Need
Formula Produced Beds=	2,089
Licensed Beds=	1,948
Approved Beds=	106
Net Need with Blue Heron's Addition	
Resident Day Capacity=	711,020
Resident Day Target 92%=	654,138
Blue Heron Resident Day Target @90%=	11,498
Blue Heron ADC=	31.5
Remaining Days Less Blue Heron's 35 Beds=	699,523
Net Need with Blue Heron's 141 Beds	
Remaining Days Less Blue Heron's 35 Beds=	699,523
Blue Heron's 106 Bed Days=	38,690
Blue Heron Resident Day Target @90%=	34,821
Add Blue Heron's Days associated with 35 Beds	11,498
Total Blue Heron's Days	46,319
Remaining Days Less Blue Heron's 141 Patient Days	664,702
Average Daily Census of Remaining Days	1,821
Licensed Beds=	1,948
Occupancy Rate of Subdistrict	93.5%

Source: CON application #10619, page 1-14, Table 1-3

The applicant explains that in the information summarized above, Blue Heron is the entity with the only approved beds of 106. BH also explains that the forecast of 2,089 is the result of the formula which includes the licensed and approved beds and that the difference is 35 beds, the published net need. BH contends that with a target occupancy rate of 90 percent for the 35 beds, there is an average daily census of 31.5.

The applicant then explains that in the next section of the above table, the total facility of 141 beds adds to the 11,498 forecasted resident days in the 35 beds to the 34,821 resident days (at 90 percent occupancy for the 106 beds) to achieve a facility total of 46,319 resident days. BH contends that the balance of resident days, 664,702 represents an average daily census of 1,821 persons, representing an occupancy rate of 93.5 percent for the subdistrict.

The applicant previously indicated that the combined CON projects (accounted for through #E190002) and this bed-addition project (CON application #10616) will be at the same site in ZIP Code 33544.

2. **Agency Rule Preferences**

Please indicate how each applicable preference for the type of service proposed is met. Chapter 59C-1.036, Florida Administrative Code.

Chapter 59C-1.036 of the Florida Administrative Code does not contain preferences relative to community nursing home beds nor does the Agency publish specific preferences for these facilities. However, the rule does contain standards the Agency utilizes in assessing an applicant's ability to provide quality care to the residents.

- a. **Geographically Underserved Areas. In a competitive certificate of need review within the nursing home subdistrict as defined in 59C-2.200, Florida Administrative Code, the Agency shall award a certificate of need if the applicant meets all applicable criteria for a geographically underserved area as specified in subsection 408.032(18), Florida Statutes, and if the applicant meets the applicable statutory certificate of need review criteria specified in section 408.035, Florida Statutes, including bed need according to the relevant bed need formula contained in this rule. If the applicant is awarded a certificate of need based on the provisions of this paragraph, the applicant shall agree that the nursing facility will be located in a county without a nursing facility, or in the center of an area within the subdistrict of a radius of at least 20 miles which meets the definition of a geographically underserved area. The center of the geographically underserved area shall be the proposed nursing home location in the application.**

CON application #10619 was not submitted to remedy a geographically underserved area as defined above. This project is to address the Agency's published need for 35 community nursing home beds, published in the fixed need pool for District 5, Subdistrict 1 (Pasco County) for the July 2022 Planning Horizon.

- b. **Proposed Services. Applicants proposing the establishment of Medicare-certified nursing facility beds to be licensed under Chapter 400, Florida Statutes, shall provide a detailed description of the services to be provided, staffing pattern, patient characteristics, expected average length of stay, ancillary services, patient assessment tools, admission policies and discharge policies.**

The applicant indicates that the proposed facility will be utilized for both short-term and long-term care, with participation in the Medicare and Medicaid Programs. Per the applicant, another benefit addresses

supportive care with assisted living facility (ALF) services in the same building. BH indicates no nursing homes in the area and only four ALFs proximate to the site,

The applicant lists the following stated features:

- All private rooms
- Flat screen TVs
- Beside telephones
- In-room safes
- Wi Fi throughout the facility
- Custom-designed furnishings
- Push button and audio nurse call system
- Pressure reducing mattress
- Microfiber linens
- Complimentary in-room coffee, tea and beverage service
- In-room temperature controls
- High ceilings with oversized windows
- Restaurant-style dining
- Beauty salon
- Laundry Services
- Medical Transportation Assistance
- Activities available 7 days a week
- 24-Hour Visitation
- 24-Hour RN Coverage
- Handicapped accessible van
- State of the Art Therapy Gym and Equipment

Per the applicant, BH's design features residential amenities with a focus on comfort and safety.

Regarding rehabilitative and restorative services, BH states that focus on short-term rehabilitation includes licensed professionals and certified assistants with experience in the following disciplines:

- Physical Therapy
 - Hip, knee and other joint replacements
 - Assistive devices and accommodations to amputations or disability
- Speech Therapy
 - Dysphagia (swallowing techniques)
- Occupational Therapy
- Respiratory Therapy

The following regimen of care is also stated:

- Stroke Rehabilitation
- Pain Management
- WoundCare
- Stroke Rehabilitation
- Pain Management
- WoundCare

The applicant points out that each individual's needs subsequent to the assessment receives follow-through and follow-up with services that change, or add or modify the regimen in the plan of care. The applicant further points out that Creative Health Solutions (CHS) provides through agreement physical, occupational and speech therapy services.

Regarding medical services, BH states that appropriate services in frequency, amount and duration occur such as:

- Skilled nursing services with licensed professionals 24 hours a day whether a brief or extended stay is required
- Nursing services featuring: IV, nutrition and wound care teams, respiratory treatments, feeding tubes, and pain management
- Specialized activities
- Psychological services
- Family support
- Assistance with activities of daily living

Regarding contract services, BH states that employees as well as contractors provide the following:

- Physician consults
- X-rays
- Laboratory tests
- Psychiatric consults or services
- Podiatry services
- Dental consults or services
- Optometric and ophthalmic services or consults

The applicant's Schedule 6A indicates a current total of 83.0 FTEs (this is pursuant to #E190002), 32.5 FTEs added pursuant to this proposal in year one (CY 2022), 44.5 FTEs added pursuant to this proposal in year two (CY 2023) and a new total of 158.5 FTEs. The reviewer partially reproduces the applicant's Schedule 6A, with the applicant's incremental FTEs added in year one and in year two. The reviewer notes specific FTE increases for this project include LPNs, nurses' aides and food service aides. See the table below.

**Blue Heron Health and Rehabilitation, LLC
Proposed 35-Bed Addition to the Existing #E190002
Staffing Pattern**

Position	Year One Ending 12/31/2022	Year Two Ending 12/31/2023
Administration		
Assistant Administrator	1.0	1.0
Clerical	1.0	1.0
Medical Records	1.0	1.0
MDS Coordinator	1.0	1.0
Nursing		
RN	2.0	2.0
LPN	5.0	10.0
Nurses Aides	12.0	18.0
Dietary		
Cooks	1.0	1.0
Food Service Aides	1.0	2.0
Social Services		
Social Services Director	1.0	1.0
Activities Director	1.0	1.0
Housekeeping		
Housekeepers	3.0	3.0
Laundry		
Laundry Aides	2.0	2.0
Plant Maintenance		
Maintenance Assistance	0.5	0.5
Grand Total	32.5	44.5

Source: CON application #10619, Schedule 6A (partial)

Notes to Schedule 6A indicate that staffing projects reflect the number and mix of patients derived from the analysis that support the project.

The applicant’s recruitment and retention regimens are described (pages 5-3 to 5-6 of the application). BH provides an overview of TLC Management’s senior executive staff on pages 5-1 to 5-3 of the application.

Regarding services, BH uses the Agency Hospital Inpatient Discharge Database (CY 2018) to provide the table below. While Blue Heron includes 23 discharge categories, the CON reviewer’s table below shows the first five highest volume discharge categories (in rank order highest to lowest) – 70.5 percent of the total discharges and aggregates the remaining 16 discharge categories as “All Other MDCs” - (the remaining 29.5 percent of the total discharges to nursing homes.

**Number of Persons Aged 65+ from Pasco County
Discharged from Pasco Hospitals to Nursing Homes
By Major Diagnostic Category
2018 Ranked from Highest to Lowest**

MDC	Cases	Percent
08 Diseases & Disorders of the Musculoskeletal System & Conn Tissue	1,228	22.0%
05 Diseases & Disorders of the Circulatory System	878	15.7%
11 Diseases & Disorders of the Kidney & Urinary Track	631	11.3%
18 Infectious & Parasitic Diseases, Systemic or Unspecified Sites	614	11.0%
04 Diseases & Disorders of the Respiratory System	586	10.5%
All Other MDCs (A Total of 16 Remaining MDCs)	1,639	29.5%
Grand Total	5,576	100.0%

Source: CON application #10619, page 2-7, Table 2-1 (partial)

BH particularly points out that MDC 08, *Musculoskeletal System and Connective Tissue Disorders*, is the highest volume MDC and that of the DRGs that fall within the MDC 08 category, many require post-acute rehabilitation. The applicant BH provides brief additional narrative regarding its proposed services/staff/equipment for the top three MDCs (08, 05 and 11) on pages 2-8 and 2-9 of the application.

Regarding other post-acute services, Blue Heron discusses proposed services/staff/equipment/therapy/treatment to control pain, infections (including kidney and urinary tract infections), renal failure, medically-complex patients, stroke diagnosis and those who have wound care needs (pages 2-10 and 2-11 of the application). The applicant provides additional narrative concerning admission and care planning (pages 2-11 through 2-13 of the application) as well as discharge planning (pages 2-13 and 2-14 of the application). BH provides the parent's (TLC Management's) written care plan policy on CON application #10619, page 2-15, Exhibit 2-1.

c. Quality of Care. In assessing the applicant's ability to provide quality of care pursuant to s. 408.035 (1) (c), Florida Statutes, the agency shall evaluate the following facts and circumstances:

1. Whether the applicant has had a Chapter 400, Florida Statutes, nursing facility license denied, revoked or suspended within the 36 months prior to the current application.

Blue Heron is a developmental stage entity, yet to begin operation and therefore this provision does not apply.

2. **Whether the applicant has had a nursing facility placed into receivership at any time during the period of ownership, management or leasing of a nursing facility in the 36 months prior to the current application.**

Blue Heron is a developmental stage entity, yet to begin operation and therefore this provision does not apply.

3. **The extent to which the conditions identified within subparagraphs 1 and 2 threatened or resulted in direct significant harm to the health, safety or welfare of the nursing facility residents.**

This provision does not apply.

4. **The extent to which the conditions identified within subparagraph 3 were corrected within the time frames allowed by the appropriate state agency in each respective state and in a manner satisfactory to the agency.**

This provision does not apply.

5. **Rule 59C-1.036 (4) (f) Harmful Conditions. The Agency shall question the ability of the applicant to provide quality of care within any nursing facility when the conditions identified in the subparagraph (e) 1 and (e) 2 result in the direct, significant harm to the health, safety or welfare of a nursing facility resident, and were not corrected within the time frames allowed by the appropriate state agency in each respective state and in a manner satisfactory with the Agency.**

According to CON application #10619, BH at this point in time represents a developmental stage and has no operations and therefore maintains that this provision does not apply.

- d. **Rule 59C-1.036 (5) Utilization Reports. Within 45 days after the end of each calendar quarter, facilities with nursing facility beds licensed under Chapter 400, Florida Statutes shall report to the Agency, or its designee, the total number of patient days, which occurred in each month of the quarter, and the number of such days that were Medicaid patient days.**

BH states an understanding concerning the requirements to report to the Suncoast Health Council. BH comments that data include the above-cited utilization reports as well as to the Agency with respect to required licensure and financial requirements attendant to operating a licensed nursing facility.

2. Statutory Review Criteria

- a. Is need for the project evidenced by the availability, quality of care, accessibility and extent of utilization of existing health care facilities and health services in the applicant's service area? ss. 408.035(1)(a) and (b), Florida Statutes.**

The applicant contends that the proposed project enhances Blue Heron's effort to provide necessary skilled nursing and supportive care in the south-central region of Pasco County. BH points out that the proposal integrates the 106-bed SNF (#E190002) that becomes 141 beds with approval of this project.

Availability

Earlier in this report (item E.1.a.), the Agency indicated that in Volume 45, Number 194, of the Florida Administrative Register dated October 4, 2019, need for 35 community nursing home beds was published in the fixed need pool for District 5, Subdistrict 1 (Pasco County) for the July 2022 Planning Horizon. Therefore, the Agency concurs that SNF bed availability/accessibility is limited in the area, to the extent that a need for 35 community nursing home bed was generated in the fixed need pool methodology. The applicant uses the Agency's Florida Nursing Home Bed Need Projections by District and Subdistrict publications to cite that for each of the 12-month periods for the seven years ending June 30, 2019, total occupancy rates for each of those seven years have been at 90.50 percent, or higher (CON application #10619, page 3-2, Table 3-1). This indicates persistently high occupancy rates for the seven years referenced.

Quality of Care

With respect to quality, the applicant states that TLC, Inc. (its parent), operates facilities in Indiana, with management controlling interest in two facilities in Florida, with each facility in Florida having 120 community nursing home beds:

- Astoria Health and Rehabilitation Center in Polk County (District 6, Subdistrict 5) – since April 20, 2010
- Bridgewater Park Health and Rehabilitation Center in Marion County (District 3, Subdistrict 4) – since April 13, 2017

The reviewer notes that for the rating period of April 2017 – September 2019 last updated November 2019, Blue Heron affiliated facilities -

- Astoria Health and Rehabilitation Center had an overall inspection rating of four stars
- Bridgewater Park Health and Rehabilitation Center had an overall inspection rating of five stars¹

The five-star quality rating is the highest rating. The applicant includes the two facilities ratings on page 3-3, Figure 3-1 of the application. Blue Heron emphasizes that all TLC affiliates focus on people – employees and residents – and that BH benefits from the sponsorship of TLC Management, carrying the policies and procedures that lead to high quality care.

Access

The applicant defines access as consisting of geographic access, eligibility for the service, payers for the service and use of the service. Within Pasco County, the applicant states that the high nursing home occupancy (90.5 percent for the 12 months ending June 30, 2019) reflects consistent demand for care and underscores the importance of increasing the bed supply of nursing home beds within the area. Blue Heron indicates that geographic access within Pasco County is important given the dispersion of the 16 community nursing homes, which are not proximate to its proposed project location in the south-central part of Pasco County. The applicant provides a diagram to reflect the dispersion of community nursing home beds within Pasco County (CON application #10619, page 3-4, Figure 3-4). BH indicates that no nursing homes exist in the central region of Pasco County. BH also indicates that to the east of BH, there is no nursing home within the first 10 miles and to the west of BH, there is no nursing home within the first 19.5 miles.

Extent of Utilization

The applicant reiterates high occupancy percentages within Pasco County (90.5 percent for the 12 months ending June 30, 2019) and that the new facility's location increases availability for Wesley Chapel residents, those in the Seven Oaks Community Development District, and Zip Code 33544.

Blue Heron provides additional responses to the project's conformity with Health Care Access Criteria (Rule 59C-1.030(2), Florida Administrative Code) on pages 3-6 through 3-9 of CON application #10619.

¹ Source - the Agency for Health Care Administration website @ <https://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx>

b. Does the applicant have a history of providing quality care? Has the applicant demonstrated the ability to provide quality care? ss. 408.035(1)(c), Florida Statutes.

The applicant indicates that the Patient Protection Affordable Care Act possesses directives that promote quality in the provision of health care services through mobilizing best practices in nursing home Quality Assurance Performance Improvement (QAPI). Further, national directives foster consistency and uniformity through the application of standards that apply to all nursing homes participating in the Medicare and Medicaid programs. The applicant outlines the twelve steps of quality assurance and performance improvement evaluation in nursing homes as outlined by CMS which is reproduced below:

- Step 1: Leadership, responsibility, and accountability
- Step 2: Develop a deliberate approach to teamwork
- Step 3: Take your QAPI “Pulse” with a self-assessment
- Step 4: Identify your organization’s guiding principles
- Step 5: Develop your QAPI plan
- Step 6: Conduct a QAPI awareness campaign
- Step 7: Develop a strategy for collecting & using QAPI data
- Step 8: Identify your gaps and opportunities
- Step 9: Prioritize quality opportunities and charter performance improvement (PIPs)
- Step 10: Plan, conduct, and document PIPs
- Step 11: Get to the “root” of the problem
- Step 12: Take systemic action

Blue Heron indicates that the controlling interest of the proposed project remains with TLC, Inc., which has been in operation for over 25 years and operates 16 SNFs, six ALFs and five independent living communities operating in Indiana and Florida. The applicant maintains that in order to ensure competencies, employees receive training that includes inspiration to exceed expectations and time management in order to direct resources to deliver care to residents of high quality.

BH states awards/recognition for employees and affiliates include:

- TLC Gold Award – Performance
- TLC Silver Award – Teamwork
- TLC Bronze Award – Servant Leadership
- TLC Chairman Award – Perfect Survey
- Twelve Month Overall Census Development Award
- Operations Award Most Improved

The applicant states that six affiliate facilities are listed as five-star facilities in *U.S. News & World Report's Best Nursing Homes* list. Blue Heron states that Astoria Health and Rehabilitation Center received a four-star rating while scoring a five-star rating on five of eight factors. The reviewer notes that Astoria Health and Rehabilitation Center has a CMS five-star overall quality rating as of February 13, 2020². The five-star (much above average) rating is the highest achievable in the CMS quality rating system.

The applicant discusses INTERACT® program, an acronym for "Interventions to Reduce Acute Care Transfers", with an overall goal to reduce the frequency of transfers to acute care hospitals/hospital readmissions. BH points out that INTERACT® has four basic types of goals:

1. Quality Improvement tools
2. Communication tools
3. Decision Support tools
4. Advance Care Planning tools

BH points out that these tools have been designed to help staff improve care, but not increase unnecessary paperwork.

Regarding performance improvement, BH states that participation in a local Quality Innovation Network-Quality Improvement Organization (QIN-QIO) initiative gives access to valuable resources, including evidence based improvement strategies that are aligned with other major health quality initiatives and that help prepare for participation in the Centers for Medicare & Medicaid Services' Quality Payment Program. BH contends that working with a QIN-QIO provides knowledge on critical health care quality and safety issues while discovering real-world best practices.

Blue Heron states joining the affiliates of Tender Loving Care Management, Inc. adopting the processes and procedures for full implementation of the Providigm QAPI Accreditation Program and that the four major standards below provide the framework, engaged in quarterly assessment during a 12-month period:

- Comprehensive – Nursing home staff complete and enter into the Abaqis web-based program a sufficient number of assessments. The assessments consist of the admission record review, census record review, family interview, resident interview, resident observation and staff interview

² Source - Medicare and Nursing Home Compare Care @ <https://www.medicare.gov/nursinghomecompare/>

- Continuous – The ongoing activities that address the variables that define quality reported for two alternating quarters
- Coverage – Assessment occurs of residents’ admission records and census records in sufficient numbers without repetition of records
- Corrective – Areas undergoing improvement appear in the system as Stage 2 activities, showing active analysis toward correction

Blue Heron states that residents’ rights form an important aspect to the environment of care and ensure each resident with protections, rights and recourse. Further, the Resident Council and Family Council will provide Blue Heron with directives to engage with residents and their families on matters of importance to them. Monthly meetings will follow bylaws that provide for the election of officers and duties of responsibilities. Blue Heron indicates that meetings will be documented during sessions and agendas will be provided for follow-up. The applicant provides 22 bulleted elements that assure residents’ rights (pages 4-5 and 4-6 of the application).

Blue Heron indicates that resident activities form an important aspect of the daily lives of residents. These activities will provide engaging and meaningful experiences to enhance the lives of residents and provide socialization, enjoyment, education and stimulation, including physical and mental exercises. Further, these activities accomplish the following objectives:

- To provide a planned range of meaningful, purposeful activities that reflect the residents’ interests, skills and enjoyments
- To promote adaptation and restoration of functions
- To continue the fostering of individual interests and pursuits for enjoyment, for creativity, for mastery and for purpose
- To maximize the expression of individualism, through groups and family involvement, spiritual development and independence

The applicant states that activities are planned and published in newsletters and posters in order to notify families and residents when activities occur. An activity director will participate with residents during an admission review and assessment process to identify each person’s interests which will be incorporated into the patient’s plan of care. A list of activities is provided on page 4-7 of CON application #10619.

Blue Heron’s parent, TLC Management, Inc., currently has management controlling interest of the following two SNFs, with 120 community nursing home beds each:

- Astoria Health and Rehabilitation Center in Polk County (District 6, Subdistrict 5) – since April 20, 2010

- Bridgewater Park Health and Rehabilitation Center in Marion County (District 3, Subdistrict 4) – since April 13, 2017

For the three-year period ending November 20, 2019, the applicant’s two affiliate Florida SNFs, collectively, had a total of five substantiated complaints. A single complaint can encompass multiple complain categories. See the table below.

**TLC Management, Inc.
Three-Year Substantiated Complaint History
November 20, 2016 – November 20, 2019**

Complaint Category	Number Substantiated
Quality of Care/Treatment	2
Dietary Services	1
Resident/Patient/Client Abuse	1
Resident/Patient/Client Rights	1
Unqualified Personnel	1

Source: Florida Agency for Healthcare Administration Complaint Records

- c. What resources, including health manpower, management personnel, and funds for capital and operating expenditures, are available for project accomplishment and operation? ss. 408.035(1)(d), Florida Statutes.**

Analysis:

The purpose of our analysis for this section is to determine if the applicant has access to the funds necessary to fund this and all capital projects. Our review includes an analysis of the short and long-term position of the applicant, parent, or other related parties who will fund the project. The analysis of the short and long-term position is intended to provide some level of objective assurance on the likelihood that funding will be available. The stronger the short-term position, the more likely cash on hand or cash flows could be used to fund the project. The stronger the long-term position, the more likely that debt financing could be achieved if necessary to fund the project. We also calculate working capital (current assets less current liabilities) a measure of excess liquidity that could be used to fund capital projects.

The applicant is a development stage company with \$200,000 in cash and cash equivalents and no revenue or expenses. A letter from Regions bank indicated that the principals maintain over \$10,000,000 in deposits. However, other than the letter, no proof was provided (bank statements, etc.) for the \$10,000,000.

Capital Requirements and Funding:

The applicant indicates on Schedule 2 capital projects totaling \$37,328,554, which consists of this CON, to add 35 beds to a previous CON for \$5,577,467, CON #10492 to construct a 64-bed nursing home and CON #10508 to add 42 beds to the same nursing home, resulting in a 141-bed facility. The applicant states that they have \$1,394,367 in hand. The remaining \$4,183,100 will be financed.

The applicant submitted a letter from Regions Bank, indicating that Regions is interested in financing the \$7,000,000 needed for the proposed 35-bed addition. A letter of interest from a bank is not a guarantee of funding.

Conclusion:

Funding for this project is contingent on the execution of a loan agreement with Regions Bank and possibly cash infusion by the principals.

- d. What is the immediate and long-term financial feasibility of the proposal? ss.408.035 (1)(f), Florida Statutes.**

Analysis:

The immediate and long-term financial feasibility of the project is tied to expected profitability. The purpose of our analysis for this section is to evaluate the reasonableness of the applicant's profitability projections and, ultimately, whether profitability is achievable for this project. Our analysis includes an evaluation of net revenue per patient day (NRPD), cost per patient day (CPD), nurse staffing ratios, and profitability. We compared the NRPD, CPD and profitability to actual operating results from skilled nursing facilities as reported on Medicaid cost reports (2016, 2017 and 2018 cost report years). For our comparison group, we selected skilled nursing facilities with similar Medicaid utilizations to the utilization projected by the applicant on a per patient day basis (PPD). Comparison group data was adjusted for inflation to match the second year projection (inflation factor was based on the New CMS Market Basket Price Index as published in the 2nd Quarter 2019, Health Care Cost Review.

NRPD and CPD fall within the group range and are considered reasonable projections. Profitability or operating margin may be overstated by the applicant. Below is the result of our analysis.

	Projections Per Applicant		Comparative Facilities		
	Total	PPD	Highest	Median	Lowest
Net Revenues	\$ 19,736,750	\$ 426.11	\$ 457.67	\$ 355.75	\$ 229.37
Total Expenses	\$ 15,647,205	\$ 337.82	\$ 852.21	\$ 355.12	\$ 294.15
Operating Income	\$ 4,089,545	\$ 88.29	\$ 28.58	\$ 4.06	\$ (406.40)
Margin	21%				
Occupancy	90%		98%	90%	21%
Medicaid	50%		60%	53%	41%
Medicare	37%		46%	21%	1%

Staffing:

Section 400.23(3)(a)(1), Florida Statutes, specifies a minimum certified nursing assistant staffing of 2.5 hours of direct care per resident per day and a minimum licensed nursing staffing of 1.0 hour of direct resident care per resident day. Based on the information provided in Schedule 6, the applicant’s projected staffing meets the licensed nursing staffing requirement.

The projected NRPD and CPD fall within the group range and are considered reasonable. The operating income may be overstated. The total cost appears to include at least the minimum staffing required.

Conclusion:

This project appears to be financially feasible based on the projections provided by the applicant, however; the operating margin may be overstated.

- e. **Will the proposed project foster competition to promote quality and cost-effectiveness? ss. 408.035(1)(g), Florida Statutes.**

Analysis:

Strictly from a financial perspective, the type of competition that would result in increased efficiencies, service, and quality is limited in health care. Cost-effectiveness through competition is typically achieved via a combination of competitive pricing that forces more efficient cost to remain profitable and offering higher quality and additional services to attract patients from competitors. Since Medicare and Medicaid are the primary payers in the nursing home industry, price based competition is limited. With a large portion of the revenue stream essentially fixed on a per patient basis, the available margin to increase quality and offer additional services is limited. In addition, competitive forces truly do not begin to take shape until existing business’ market share is threatened. The publication of need in this area suggests that there is an unmet and untapped customer base for a new entrant to absorb. Since nursing

home services are limited to available beds and the need formula suggest excess capacity in the market to fill those beds, the impact on market share would be limited. The combination of the existing health care system's barrier to price based competition via fixed price payers and the existence of unmet need in the district limits any significant gains in cost effectiveness and quality that would be generated from competition.

Conclusion:

This project is not likely to have a material impact on competition to promote quality and cost-effectiveness.

- f. Are the proposed costs and methods of construction reasonable? Do they comply with statutory and rule requirements? ss. 408.035(1)(h), Florida Statutes; Ch. 59A-4, Florida Administrative Code.**

The applicant has submitted all information and documentation necessary to demonstrate compliance with the architectural review criteria. The cost estimate for the proposed project provided in Schedule 9, Table A and the project completion forecast provided in Schedule 10 appear to be reasonable. A review of the architectural plans, narratives and other supporting documents did not reveal any deficiencies that are likely to have a significant impact on either construction costs or the proposed completion schedule.

The plans submitted with this application were schematic in detail with the expectation that they will be necessarily revised and refined prior to being submitted for full plan review. The architectural review of this application shall not be construed as an in-depth effort to determine complete compliance with all applicable codes and standards. The final responsibility for facility compliance ultimately rests with the applicant. Approval from the Agency for Health Care Administration's Office of Plans and Construction is required before the commencement of any construction.

- g. Does the applicant have a history of providing health services to Medicaid patients and the medically indigent? Does the applicant propose to provide health services to Medicaid patients and the medically indigent? ss. 408.035(1)(i) Florida Statutes.**

Blue Heron's Schedule 7 projects 6,388 total annual patient days for the 35-bed project in year one, with 3,194 or 50.0 percent being Medicaid HMO patient days and 11,498 total annual patient days in year one, with

5,749 or 50.0 percent being Medicaid HMO patient days. The applicant indicates that Schedule 7's line 14 "accounts a charity allowance" which is shown to be \$564 in year one and \$1,036 in year two.

The applicant proposes to condition CON application #10619 (Schedule C), to 50 percent of the facility's total annual resident days being provided to Medicaid managed care residents.

F. SUMMARY

Blue Heron Health and Rehabilitation, LLC (CON application #10619) also referenced as Blue Heron, BH or the applicant, is a newly-formed entity which seeks to add 35 community nursing home beds to the 106-bed community nursing home presently under construction (through #E190002, which combined CON #10492 – 64 beds and CON #10508 – 42 beds). The proposal is located within the Seven Oaks Community Development District, Wesley Chapel, Florida 33544 (District 5, Subdistrict 1). If approved, CON application #10619 and #E190002, combined, results in a 141-bed community nursing home.

The parent, TLC Management, Inc., has management controlling interest of facilities in Indiana and Florida.

The project involves a total project cost of \$5,577,467, with 21,610 GSF of new construction. The total construction cost is \$3,180,125. The total project cost includes land cost, building cost, equipment cost, project development costs, financing costs and startup costs.

The applicant includes two Schedule C conditions.

Need

In Volume 45, Number 194, of the Florida Administrative Register dated October 4, 2019, a fixed need for 35 community nursing home beds was published for District 5, Subdistrict 1 for the July 2022 Planning Horizon. The applicant is responding to the fixed need pool publication.

The applicant presents the following need justifications to support project approval:

- The proposal is located in the Seven Oaks Community Development District
- There is no other existing or CON approved SNF project located within ZIP Code 33544

- There is no existing or CON approved SNF project in Pasco County within 10 miles to the east or within 19.5 miles to the west of the proposed project
- The project increases the availability of community nursing home beds in a region of Pasco County that lacks them
- Integrates the skilled nursing beds with assisted living providing the area with supportive housing for seniors and an opportunity to age-in-place, particularly for those residing in south/south-central Pasco County
- Provides a facility managed by a company with a strong quality focus, including the operation of five-star SNFs in Florida and Indiana
- Offers all private rooms and private bathrooms to the bed complement where few currently exist
- Subdistrict 5-1 (Pasco County's) persistent high total occupancy over the seven-year period ending June 30, 2019 with 90.5 percent for the 12 months ending June 30, 2019

Quality of Care

- The applicant states intent to implement the twelve steps of quality assurance and performance improvement evaluation in nursing homes as outlined by CMS for the proposed project
- The parent, TLC, Inc., has been in operation for over 25 years and operates 16 SNFs, six ALFs and five independent living communities, with operations in Indiana and Florida
- TLC uses the INTERACT® program, an acronym for "**I**nterventions to **R**educe **A**cute **C**are **T**ransfers", with an overall goal to reduce the frequency of transfers to acute care hospitals/hospital readmissions
- The applicant cites affiliate SNFs in Florida overall quality ratings:
 - Astoria Health and Rehabilitation Center – four stars
 - Bridgewater Park Health and Rehabilitation Center – five stars
- Blue Heron will benefit from the sponsorship of TLC Management, carrying the policies and procedures that lead to high quality care
- For the three-year period ending November 20, 2019, TLC's two affiliate Florida SNFs, collectively, had a total of five substantiated complaints.
- The applicant demonstrated the ability to provide quality care.

Cost/Financial Analysis:

- Funding for this project is contingent on the execution of a loan agreement with Regions Bank and possibly cash infusion by the principals.
- This project appears to be financially feasible based on the projections provided by the applicant; however, the operating margin may be overstated.
- This project is not likely to have a material impact on competition to promote quality and cost-effectiveness.

Architectural Analysis

- The cost estimate for the proposed project provided in Schedule 9, Table A and the project completion forecast provided in Schedule 10 appear to be reasonable.
- The architectural plans, narratives and other supporting documents did not reveal any deficiencies that are likely to have a significant impact on either construction costs or the completion schedule.

Medicaid/Indigent Care Commitment

- Schedule 7 of the application indicates that 50 percent of year one and for year two total annual patient days will be provided to Medicaid HMO residents.
- Schedule C of the application states the facility will be –“Providing Medicaid managed care at 50 percent of total resident days of care”.

G. RECOMMENDATION

Approve CON #10619 to add 35 community nursing home beds to the 106-bed SNF presently under construction (through #E190002) to establish a 141-bed community nursing home in Subdistrict 5-1, Pasco County. The total project cost is \$5,577,467. The project involves 21,610 GSF and a construction cost of \$3,180,125.

CONDITION: Maintaining the location in the Seven Oaks Community Development District where the applicant's 106-bed facility is presently under construction.

AUTHORIZATION FOR AGENCY ACTION

The authorized representative of the Agency for Health Care Administration adopted the recommendation contained herein and released the State Agency Action Report.

DATE: _____

James B. McLemore
Operations & Management Consultant Manager
Certificate of Need