

**STATE AGENCY ACTION REPORT**  
**ON APPLICATION FOR CERTIFICATE OF NEED**

**A. PROJECT IDENTIFICATION**

1. **Applicant/CON Action Number**

**RSBRM Operator LLC/CON #10640**

c/o Marquis Health Services  
1608 Route 88, Suite 301  
Brick, New Jersey 08724

Authorized Representative: Shlomo Freundlich, CPA  
Vice President of Risk Management  
(732) 903-1971

2. **Service District/Subdistrict**

District 11/Subdistrict 11-1 (Miami-Dade County)

**B. PUBLIC HEARING**

A public hearing was not requested or held regarding the proposed project.

**Letters of Support**

CON application #10640 includes six letters of support in favor of the proposal.

The signatories of the support letters are as follows:

- J. Tyler Hollenbach, Senior Vice-President, West Gables Rehabilitation Hospital
- Lonnie Steckler, NHA, Owner/Operator and Vice-Chair, Florida Center for Assisted Living – The Pointe Assisted Living Community
- Marco Carrasco, MHSA, NHA, Administrator and President of Florida Health Care Association – Ponce Plaza Rehabilitation and Skilled Nursing
- Steve Hernandez, President, Star Medical Equipment Rental, Inc.

- Reynaldo Ortega, RT, RVS, President/CEO – Mobile Quality Diagnostic
- Bryan McCartney, Senior Executive Vice-President of Operations, Healthcare Services Group

**C. PROJECT SUMMARY**

**RSBRM Operator LLC (CON application #10640)**, also referenced as RSBRM or the applicant, a newly formed, private for profit Florida entity, proposes to construct a new 60-bed community nursing home at a site yet to be determined in Subdistrict 11-1, Miami-Dade County, through the voluntary delicensure of 60 community nursing home beds at West Gables Health Care Center.

RSBRM states it is an affiliate of Marquis Health Services and Tryko Partners, LLC. Marquis Health Services operates SNFs in New Jersey, Maryland, Pennsylvania, Virginia and New England. Tryko Partners, LLC is a private equity real estate group active in the acquisition of health care facilities, multi-family properties, and tax liens throughout the Northeast and Midwest.

CON application #10640, Exhibit 1-1, pages 1-13 and 1-14, include a signed and notarized letter from Shlomo Freundlich, authorized representative of West Gables Operator LLC d/b/a West Gables Health Care Center (owner/licensee) agreeing to delicense 60 community beds in conjunction with the proposed project.

The project involves 65,675 gross square feet (GSF) of new construction. The construction cost is \$8,756,700. Total project cost is \$13,844,400. Project cost includes land, building, equipment, project development, financing and start-up costs.

The applicant expects issuance of license in June 2023 and initiation of service in July 2023.

The applicant presents no Schedule C conditions pursuant to approval of this project.

<b>Total GSF and Project Costs of CON application #10640</b>					
<b>Applicant</b>	<b>CON app. #</b>	<b>Project</b>	<b>GSF</b>	<b>Costs \$</b>	<b>Cost per Bed</b>
RSBRM Operator LLC	10640	New 60-Bed Community Nursing Home through Delicensure of 60 Beds	65,675	\$13,844,400	\$230,740

Source: CON applications 10640, Schedules 1 and 9

**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 (subdistrict), applications are comparatively reviewed to determine which applicant best meets 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 with consultation from Financial Analyst Eric West of the Bureau of Central Services, who evaluated the financial data, and Scott Waltz of the Office of Plans and Construction, who reviewed the application 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 Florida Statutes, Sections 408.035, and 408.037; applicable rules of the State of Florida, Chapter 59C-1 and 59C-2 and 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.**

The reviewer notes that as of August 21, 2020, Subdistrict 11-1 had 53 community nursing homes with 8,281 licensed beds and 680 CON approved community nursing home beds. The subdistrict's nursing home beds averaged 87.62 percent utilization during the 12-month period ending June 30, 2020. The reviewer notes that effective October 15, 2020

- West Gables Operator LLC filed with the State to transact business in Florida as a foreign limited liability company organized in the State of Nevada
- RSBRM Operator LLC filed as a Florida limited liability company in the State of Florida<sup>1</sup>

West Gables Operator, LLC assumed ownership of West Gables Health Care Center effective December 1, 2020. The proposed project is not submitted in response to the fixed need pool and does not add community nursing beds within Subdistrict 11-1 (Miami-Dade County). The project, if approved, will not change the total community nursing home bed inventory count in the planning area.

Per RSBRM Operator LLC, the impetus for the project is the pending expiration of the lease of the third floor of the West Gables Rehabilitation Hospital building located at 2525 SW 7<sup>th</sup> Avenue, Miami, Florida 33155.

RSBRM states that the 75-bed assisted living facility (ALF) proposed to be on the second floor of the building will be built to nursing home code so that the remaining 60 community nursing home beds at West Gables Health Care Center can be added to the facility in the future. A four-step, multi-year plan to relocate 120 and add 15 community nursing home beds (via CON exemption) is provided on pages 1-3 and 1-4 of the application.

RSBRM uses the Agency's Florida Nursing Home Bed Need Projections by District and Subdistrict publications to provide total and Medicaid occupancy for District 11, Subdistrict 11-1 (Miami-Dade County) and Subdistrict 11-2 (Monroe County) for the 12-month periods ending June 30, 2016 through June 30, 2020. For a complete review of the applicant's table, see CON application #10640, page 1-8, Table 1-3. RSBRM concludes that the subdistrict's persistent use of nursing home beds indicates the importance placed within the continuum of care assuring needed health care for the elderly whose conditions require both short and long-term care.

RSBRM also provides Claritas, Inc., population estimates to indicate the age 65+ population and the age 85+ population in Subdistricts 11-1 and

<sup>1</sup> Source: Florida Department of State Division of Corporations @ <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName>

11-2, as well as in District 11 overall, for each year from 2020 to 2025. See the table below.

**Current Estimate and Forecast of the Number of Elderly Persons  
Age 65+ and Age 85+  
Subdistricts 11-1, 11-2 and District 11 Overall  
2020 to 2025**

<b>Area</b>	<b>2020 Pop Age 65+</b>	<b>2020 Pop Age 85+</b>	<b>2020 Total Pop</b>
Subdistrict 1	474,120	66,387	2,833,632
Subdistrict 2	17,270	1,636	75,013
<b>District 11</b>	<b>491,390</b>	<b>68,023</b>	<b>2,908,645</b>
<b>Area</b>	<b>2025 Pop Age 65+</b>	<b>2025 Pop Age 85+</b>	<b>2025 Total Pop</b>
Subdistrict 1	559,294	74,081	3,012,222
Subdistrict 2	20,018	1,794	77,456
<b>District 11</b>	<b>579,228</b>	<b>75,868</b>	<b>3,089,678</b>

Source: CON application #10640, page 1-9, Table 1-4 (partially reproduced)

RSBRM proceeds to indicate the area’s net growth (by age cohort and percentage). See the table below.

**Net Growth in the Number of Elderly Persons  
Age 65+ and Age 85+  
Subdistricts 11-1, 11-2 and District 11 Overall  
2020 to 2025**

	<b>CY 2020</b>	<b>CY 2025</b>	<b>Net Growth</b>	<b>Percent Increase</b>
<b>Subdistrict 11-1</b>				
Age 65+	474,120	559,294	85,174	18.0%
Age 85+	66,387	74,081	7,694	11.6%
Total Pop.	2,833,632	3,012,222	178,590	6.3%
<b>Subdistrict 11-2</b>				
Age 65+	17,270	20,018	2,748	15.9%
Age 85+	1,636	1,794	158	9.7%
Total	75,013	77,456	855*	1.1%**
<b>District 11</b>				
Age 65+	491,390	579,228	87,838	17.9%
Age 85+	68,023	75,868	7,845	11.5%
Total	2,908,645	3,089,678	181,033	6.2%

Source: CON application #10640, pages 1-9 & 1-10, Tables 1-4 & 1-5 (partially reproduced)

Note: \*The applicant’s Table 1-5 is arithmetically incorrect (77,456 – 75,013 = 2,443).

\*\*The correct percentage is approximately 3.26%, which round to 3.3% in the above format.

RSBRM maintains that in over the five-year period ending in 2025 shown above, the net growth in the Subdistrict 11-1 age 65+ population is 85,171, an 18.0 percent increase. The reviewer notes that the increase is

arithmetically 85,174. RSBRM also maintains that in summary, over the five-year period ending in 2025 shown above, the net increase in the Subdistrict 11-1 age 85+ population is an 11.6 percent increase.

RSBRM contends that to maintain Subdistrict 11-1's community bed ratio of 17 beds per 1,000 age 65+ population, an additional 1,488 community nursing home beds are needed, indicating that reducing the bed supply by 60 beds worsens the availability and access to care. In other words, the applicant contends that the prudent action is to retain the current 60 beds that are the subject of CON application #10640.

RSBRM uses previously stated tables in the application to indicate estimates, for each of the five years ending June 30, 2021 through June 30, 2025 regarding community nursing home total resident days (as well as Medicaid resident days) and corresponding occupancy rates for both total resident days and for Medicaid resident days, for District 11 overall and for Subdistrict 11-1 (Miami-Dade County) and Subdistrict 11-2 (Monroe County), for the age 65+ population. From these totals, the applicant presents averages for the five-year period. For a complete review of the applicant's table, see CON application #10640, page 1-11, Table 1-6. RSBRM concludes that:

- By 2021, occupancy rates with no increase (retaining the 60 beds in service) Subdistrict 11-1 attains an occupancy rate of 92.7 percent
- By 2025, occupancy rates with the approved 680 beds added to the current bed supply, Subdistrict 11-1 attains an occupancy rate of 97.8 percent

The applicant provides a year one and year two estimated forecast as follows:

**Forecast of Resident Days by Payer and  
Corresponding Average Daily Census (ADC)  
First Two Years of Operation (FY 2024 and FY 2025)**

<b>60-Bed Community Nursing Home</b>			
<b>Payer</b>	<b>Percent Nursing Home</b>	<b>Yr. One Days</b>	<b>Yr. Two Days</b>
Medicare	28%	3,889	5,906
Medicare Managed Care	23%	3,194	4,851
Medicaid Managed Care	39%	5,416	8,226
Private Pay/Others	10%	1,389	2,109
<b>Total</b>	<b>100.0%</b>	<b>13,888</b>	<b>21,098</b>
	<b>ADC</b>	38	58
	<b>Occupancy</b>	63.2%	96.3%
<b>75-Bed Assisted Living Facility</b>			
	<b>Days</b>	16,450	25,090
	<b>ADC</b>	<b>45</b>	<b>69</b>
	<b>Occupancy</b>	59.9%	91.6%
<b>Total for Applicant Entity</b>			
	<b>Total Days</b>	30,338	46,182
	<b>ADC</b>	<b>83</b>	
	<b>Occupancy</b>	62%	94%

Source: CON application #10640, page 3-11, Table 3-6 with the nursing home portion reproduced on page 9-1, Table 9-1

NOTE: The applicant’s ALF year one (total 16,450 patient days) and year two (total 25,090 patient days) are included in CON application #10640, Schedule 7 as “Other Payers”. The total entity ADC computes to 127 residents in year 2.

The reviewer notes that the applicant’s references to population demographics and dynamics, availability, utilization and quality of like services are addressed in items E.1.a, E.3.a and E.3.b of this report.

**2. Agency Rule Preferences**

**Does the project respond to preferences stated in Agency rules? 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 for Health Care Administration publish specific preferences for these facilities. However, the rule does contain standards the Agency utilizes in assessing the 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(13), 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.

The application is not submitted in order to remedy a geographically underserved area.

- 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 discharged policies.

RSBRM reiterates that as a new entity, it has no operations as a nursing home. However, RSBRM points out that the proxy nursing home that serves as the model for the relocation of the 60 beds (the impetus for CON application #10640) is New Eastwood Healthcare and Rehabilitation Center, located in Easton, Pennsylvania.

The reviewer notes that, as of December 28, 2020, New Eastwood Healthcare and Rehabilitation Center, 2125 Fairview Avenue, Easton, PA 18042, has an overall quality rating of five-of-five stars (much above average).<sup>2</sup> This overall rating is based on a nursing home's performance on health inspections, staffing and quality of resident care measures. New Eastwood Healthcare and Rehabilitation Center has the following quality ratings:

- Health inspections (four-of-five stars) – Above average

<sup>2</sup> Source: Centers for Medicare and Medicaid Services (CMS) Nursing Home Compare @ <https://www.medicare.gov/care-compare/results?searchType=NursingHome&page=1&city=Easton&state=PA&radius=10&sort=closest>

- Staffing (three-of-five stars) - Average
- Quality of resident care (five-of-five stars)

The applicant bullets 26 special features and 23 other amenities (pages 2-2 and 2-3 of the application). The reviewer notes that within the bulleted features/amenities, RSBRM provides additional narrative specific to rehabilitation and restorative services, briefly described below:

- *Pulmonary specialty care* – the program leader is a pulmonologist with a respiratory therapist in the nursing home. There is a description of care for residents that have specific pulmonary/respiratory needs including equipment items available/provided. The applicant states that with resident assessment and active programming, residents experience decreases, which in some cases prevents a return to hospital
  - The applicant includes a two-page pulmonary rehabilitation program requirement checklist (pages 2-5 and 2-6 of the application)
- *Cardiac specialty care* – the program benefits from a consulting cardiologist and with involvement from the physician, the program can utilize the Life Vest Therapy for residents with a Left Ventricular Assist Device (LVAD). Higher end monitoring of a pacemaker is described, with other focus on IV Lasix Therapy and Inotropic Drugs/Milrinone
  - The applicant includes a two-page cardiac rehabilitation program requirement checklist (pages 2-8 and 2-9 of the application)
- *Neurologic recovery unit* – the program leadership requires a consulting neurologist and a physiatrist that participate in the assessments and plans of care. Specialty equipment items are briefly listed/described
  - The applicant includes a two-page neurological rehabilitation program requirement checklist (pages 2-11 and 2-12 of the application)

The reviewer notes that the applicant's *pulmonary specialty care*, *cardiac specialty care* and the *neurologic recovery unit* programs outcome measures are identical:

- Re-hospitalization rate
- Length of stay
- Functional improvement
- Medication costs upon admission and at discharge
- Resident satisfaction surveys

RSBRM provides further narrative specific to rehabilitation and restorative services, briefly described below:

- *Urgent SNF™ Service* – a focus on right care/right time that may prevent admission to either the hospital or long-term care facility. Per the applicant, though admission criteria may not be met, the assessment provides a preventive set of interventions to allow the individual to remain at his or her own home after a round of interventions. RSBRM maintains that individuals who benefit from early interventions include those who may present with one or a combination of 13 bulleted histories (page 2-13 of the application). The applicant also maintains that in this program, the individual experiences:
  - A comfortable environment to relax, recover and rehabilitate
  - Multi-discipline therapy services available seven days per week as per physician orders
  - Specialty Cardiopulmonary Program with on-site respiratory therapist
  - Orthopedic rehabilitation
  - Life enriching recreational activities to infuse the spirit
  - Individualized ongoing discharge/transitional planning by nurse case manager and licensed social worker
  - Follow-up support and continued contact by clinical services team

Medical services under the medical director's supervision are stated to include:

- Skilled nursing services with licensed professionals 24 hours a day whether a brief or extended stay is required
- Specialized activities
- Psychological services
- Family support
- Assistance with activities of daily living (ADL)
- *Contract Services* – employees and contractors are stated to deliver integrative medicine, palliative and supportive care the include professionals and services such as:
  - Physician consults
  - X-rays
  - Laboratory tests
  - Psychiatric consults or services
  - Dental consults or services
  - Podiatry services
  - Optometric and ophthalmic services or consults

RSBRM states that the services listed above are most often provided to residents under contract arrangements, but this list is not complete as the following are provided by a supplier:

- Oxygen
- Assistive devices
- Durable medical equipment

Regarding admission and care planning, RSBRM indicates that the admission process coordinates evaluation of the individual with cooperation of his or her family to provide a baseline plan of care, with changes (additions/deletions) throughout the individual's stay. Planning includes a presumption of a return home or to a less restrictive setting. RSBRM also indicates that assessment and input is drawn from the following professionals:

- Attending physician
- Director of nursing
- Nursing assistants responsible for the resident's care
- Dietary manager
- Social services manager
- Activities director
- Therapists, as appropriate
- Consultants, as appropriate
- Others, as appropriate or necessary to meet the needs of the resident

According to the applicant, information addressed during initial evaluation by the admitting nurse includes, but is not limited to, the following factors:

- Medical diagnosis
- Description of skin conditions
- Current level of activity/mobility
- Cognitive status
- Diet orders
- Weight
- ADL performance
- Physical impairments

Per RSBRM, the guidelines in the Resident Assessment Instrument (RAI) manual suggest the following care planning areas for consideration in the long-term care setting:

- Functional status
- Rehabilitation/restorative nursing
- Health maintenance
- Discharge potential
- Medications
- Daily care needs

Relative to the six bulleted RAI areas listed above, RSBRM describes four major components (pages 2-15 and 2-16 of the application):

- Problem/concern statements
- Goal/objective statements
- Approaches
- Responsible discipline for each
- Review date for care plan

The applicant states that discharge planning begins with the initial assessment and like the plan of care, discharge plans change as progress occurs throughout the resident's stay. RSBRM bullets seven major discharge/discharge-related events/protocols/examples that pertain to discharge planning and briefly describes steps taken at the time of discharge on pages 2-16 and 2-17 of the application.

Schedule 6 illustrates that full-time equivalents (FTEs) for year one (ending June 30, 2024) total 74.0 and 101.3 for year two (ending June 30, 2025). The proposed project's year one and year two FTEs are shown in the table below.

<b>RSBRM Operator LLC/CON application #10640 Projected Year One and Year Two Staffing</b>		
	<b>Year One FTEs</b>	<b>Year Two FTEs</b>
<b>Administration</b>		
Administrator	1.0	1.0
Director of Nursing	1.0	1.0
Admissions	3.3	4.0
Bookkeeper	1.0	1.0
Secretary	2.0	2.0
Medical Records Clerk	1.7	2.0
Other: Nursing Admin-MDS Sched, CSR & wa	5.0	7.6
<b>Physicians</b>		
Medical Director (Contracted)	1.0	1.0
Other	--	--
<b>Nursing</b>		
RNs	5.6	8.5
LPNs	3.7	5.6
Nurses' Aides	16.0	24.3
<b>Ancillary</b>		
Physical Therapist	3.0	4.0
Speech Therapist	1.5	1.5
Occupational Therapist	3.0	3.0
Respiratory Therapist	--	--
<b>Dietary</b>		
Dietary Supervisor	1.0	1.0
Cooks	6.8	10.1
Dietary Aides (incl Servers)	2.8	4.1
<b>Social Services</b>		
Social Service Director	2.3	3.0
Activity Director	1.0	1.0
Activities Assistant	1.0	1.5
<b>Housekeeping</b>		
Housekeepers Supervision	1.0	1.0
Housekeepers	4.0	6.1
<b>Laundry</b>		
Laundry Aides	2.3	3.0
<b>Plant Maintenance</b>		
Maintenance Supervisor	1.0	1.0
Maintenance Assistance	2.0	3.0
<b>Total</b>	<b>74.0</b>	<b>101.3</b>

Source: CON application #10640, Schedule 6

The reviewer notes that RSBRM indicates it will contract with physician specialty practitioners and ancillary practitioners to provide rehabilitation and restorative services. Schedule 6 does not indicate the FTEs for the following practitioners:

- Pulmonologist
- Cardiologist
- Neurologist
- Psychiatrist
- Respiratory therapist

The applicant's Schedule 7 indicates that the average length of stay is 64 days for year one and 72 days for year two.

**c. Quality of Care. In assessing the applicant's ability to provide quality of care pursuant to s. 408.035(1), 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 application.**

RSBRM Operator LLC is a developmental stage entity and has not had a nursing home license denied, revoked, or suspended.

- 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.**

The applicant is a developmental stage entity and states that 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 is not applicable.

- 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 is not applicable.

- 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 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.**

The applicant indicates that this provision is not applicable.

- 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.**

The applicant states an understanding regarding required regular reporting that drives the Agency’s bed need methodology, as well as the liaison role played by the Health Council of South Florida, Inc.

**3. 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)(b) and (e), Florida Statutes.**

As of November 18, 2020 (the application deadline for the Nursing Homes and ICF/DD: 2<sup>nd</sup> Batching Cycle-2020), Subdistrict 11-1 had 8,345 licensed (8,282 community and 64 sheltered beds) and 680 approved community nursing home beds. During the 12-month period ending June 30, 2020, Subdistrict 11-1 averaged 87.62 percent utilization at 53 existing community nursing homes.

RSBRM maintains that availability is defined as how much of a resource exists and uses the Agency’s Florida Nursing Home Bed Need Projections by District and Subdistrict publications bed counts for the 12-month periods ending June 30, 2016 through June 30, 2020 to account for the current and projected CY 2025 nursing home beds-per-1,000 for Subdistrict 11-1 age 65 years and over residents. See the table below.

**Current Bed to Population Ages 65+ and Rate in 2025  
District 11/Subdistrict 11-1**

<b>Area</b>	<b>2020 Population Age 65+</b>	<b>Number of Community Beds</b>	<b>Beds/1,000 Age 65+</b>
Subdistrict 11-1	474,120	8,281	17
Approved Beds		680	
Increase with Approved Beds	474,120	8,961	19
Increase of 85,174+ in 2025 Bed rate 17/1,000 65+		1,488	17
Adjust Bed Rate with 2025 Pop. 65+ Subdistrict 11-1	559,294	10,449	19

Source: CON application #10640, page 3-2, Table 3-2

RSBRM explains that the proposed project (retaining the 60 beds stabilizes the market without over-bedding the subdistrict and maintains relative access for the subdistrict population to community nursing home beds, thus meeting the criterion of access.

Regarding the applicant's response concerning quality of care, see item E.3.b of this report.

RSBRM maintains that access covers several components such as geographic access, eligibility for the service, payers for the service and use of the service. RSBRM continues by stating that utilization also impacts access in that a nursing home bed that is full is not available when another seeks admission. The applicant reiterates that a location for the proposed project has not been determined.

RSBRM provides a map to depict the licensed community nursing homes in Subdistrict 11-1 and briefly discusses elderly population growth in Miami-Dade County, as described in item E.1.a of this report.

RSBRM points out the extent of utilization as it relates to the proposed project.

- First, RSBRM indicates that from 2016 to 2020, Miami-Dade County's community nursing home bed utilization has realized a decline of -1.0 compound annual growth rate (CAGR) but that this resident day decline over the five-year period is *de minimus* resulting in no change in existing operations at the subdistrict level (see CON application #10640, page 3-7, Table 3-3)
- Second, RSBRM indicates that from 2016 to 2020, West Gables' occupancy was:
  - Above 90 percent for each of the four years June 30, 2016 through June 30, 2019
  - 87 percent, for the 12 months ending June 30, 2020, while a drop in 0.6 percent in resident days, produces no effects in WGHCC's operations

The applicant also responds to Conformity with the Health Care Access Criteria (pages 3-8 to 3-11 of the application).

- b. Does the applicant have a history of providing quality of care? Has the applicant demonstrated the ability to provide quality care? Is the applicant a Gold Seal Program nursing facility that is proposing to add beds to an existing nursing home? ss. 408.035 (1)(c) and (j), Florida Statutes.**

As previously stated, RSBRM Operator LLC is a newly formed, private for-profit Florida entity, with no Florida licensure history. RSBRM restates its affiliation with Marquis Health Services and Tryko Partners,

LLC, with headquarters in Brick, New Jersey. West Gables Health Care Center is the applicant's (affiliates) first Florida facility. Tryko Partners/Marquis Health Services is stated to have over 4,100 skilled nursing beds and assisted living units with 30 facilities located across the Northeast and Midwest.

The applicant states its affiliates offer a legacy of exceptional health care, stating the following mission/values:

*Marquis is dedicated to meeting the clinical, functional, psychological and emotional needs of our residents. Residents and their families will receive quality services in a caring and compassionate atmosphere that recognizes each individual's needs and rights*

A brief narrative description of core values is provided on page 1-5 of the application:

- Respect
- Excellence
- Diversity
- Integrity
- Innovation
- Responsibility
- Education
- Tradition

The applicant also provides:

- A 2019 comparison of Marquis' affiliates 15 separate quality measures (CON application #10640, page 1-6, Table 1-1)
- Marquis affiliates overall rank from four-to-five STARS on resident satisfaction by four of the following rating organizations:
  - aPlaceforMom – 4.5 STARS
  - Healthgrades – 5.0 STARS
  - SeniorAdvisor.com – 4.2 STARS
  - WELLNESS – 4.0 STARS
- Marquis affiliates receiving recognition from:
  - The Joint Commission
  - Best Nursing Homes – US News & World Report
  - 5-Star Rated-CMS
  - Best Nursing Homes - Newsweek

RSBRM provides excerpts from a recent 'McKesson' article, which it states provide a framework for leadership to review how to improve overall effectiveness concerning quality assessment measures. McKesson partners with biopharma companies, care providers, pharmacies, manufacturers, governments and others to deliver the right medicines, medical products and health care services to the patients who need

them, when they need them — safely and cost-effectively.<sup>3</sup> The reviewer notes that there are 17 quality measures and five overarching strategies or tactics nursing homes can use in moving toward the right direction on all 17 measures (the applicant provides narrative under each stated strategy/tactic):

- Engaged leadership
- Staff participation
- Holistic care
- Staff education
- Effective products

RSBRM also highlights six measures from CMS claims data submitted by hospitals (pages vii and 3-4 of the application), which it states represent a significant focus on the effectiveness of a facility's services.

The applicant commits to adopting and adapting to retain the high quality (five-of-five overall inspection rating) currently documented in the Agency's quality inspection ratings (see CON application #10640, page 3-5, Figure 3-1).

RSBRM indicates an understanding of how to implement a comprehensive program of quality that requires ongoing assessment of how policies and procedures lead to positive outcomes.

Per RSBRM, CMS maintains that the intent of using standardized assessments among sub-acute care providers is to enable interoperability and access to longitudinal information for such providers to facilitate coordinated care, improved outcomes and overall quality outcomes. RSBRM provides two CMS excerpts from the website [www.cms.gov](http://www.cms.gov) -Skilled Nursing Facility (SNF) Quality Reporting Program (QRP) Measures and Technical Information (pages 4-2 and 4-3 of the application). These two excerpts provide greater detail with respect to the way in which measures are used to govern the assessment of a nursing home's operations and their policies and procedures on the care of residents.

RSBRM explains that by using universal definitions for how each element is measured, every nursing home can review the statistics within program care, and then compare that to larger numbers. Further, the foregoing measures become operational in nursing homes' Quality Assessment and Program Improvement (QAPI). The applicant describes a PLAN, ACT, DO, STUDY process in QAPI integration (CON application #10640, page 4-4, Figure 4-1). RSBRM maintains that understanding the dynamic nature of the quality assessment process as cyclic and ongoing, nursing homes can use teams to extend the way in which quality care is provided.

<sup>3</sup> Source - <https://www.mckesson.com/About-McKesson/>

Five QAPI elements are provided in CON application #10640, page 4-5, Figure 4-2:

- Design and scope
- Governance and leadership
- Feedback, data systems and monitoring
- Performance Improvement Projects (PIPs)
- Systematic analysis and systemic action

The applicant provides a detailed narrative of the above and a list of potentially preventable adverse events that professionals in the skilled care setting may expect to encounter:

- Medication – nine potential adverse event types
- Resident care – eight potential adverse event types
- Infections – four adverse event types

RSBRM contends that the QAPI process provides solutions at hand to address signs and symptoms that prevent these types of preventable adverse events.

RSBRM points out that nursing homes can assess operations within QAPI domains through a variety of tools that CMS identifies. The applicant includes:

- The six-page CMS Elements and Tools Available to Nursing Homes (CON application #10640, page 4-9, Exhibit 4-1)
- The two-page RSBRM QAPI Policy for Use in the Nursing Home (CON application #10640, page 4-16, Exhibit 4-2), including the following QAPI subheadings (with additional narrative for each):
  - Policy Statement
  - Policy Interpretation and Implementation
  - Authority
  - Implementation
  - Disclosure of Information
  - Coordination

RSBRM next addresses the importance of social, psychological, and functional needs of residents. The applicant comments that “normalization requires meaningful activities that allow each resident to pursue his or her interests, engage in leisure and recreation and promote engagement”. Benefits of activities are stated to 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, creativity, mastery and purpose

- To maximize individual expression in groups and family involvement, spiritual development and independence

A sample of typical activities is provided (CON application #10640, Exhibit 4-3, pages 4-19 through 4-23,). Further, quality of care equates with the residents' quality of life and that attention to each person with respect and purposeful acts support holistic care to restore, rehabilitate or maintain function.

The reviewer notes that the applicant references a letter of support from Palm Beach SNF Operations and the deploying of 150 community beds to a new local facility – stated to be an additional access point to nursing care (pages 4-7 and 4-8 of the application). However, Palm Beach SNF Operations LLC was the applicant in CON #10636.

**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.**

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 provided a development stage audit for RSBRM Operator LLC with total assets of \$225,000 and a net worth of \$225,000.

**Capital Requirements and Funding:**

Schedule 2 indicates capital projects totaling \$29,844,600 which consists of the CON currently under review and ALF beds.

The applicant indicated on Schedule 3 that the project will be funded through cash on hand and non-related company financing. The applicant provided a letter from InvestorsBank expressing interest to provide financing for up to \$33,000,000. However, a letter of interest is not a commitment to lend and if the applicant were not approved for the loan, it would have to seek financing elsewhere to fund the project.

**Conclusion:**

Funding for this project is likely, but not guaranteed.

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

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 (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 3rd Quarter 2020, Health Care Cost Review).

NRPD, CPD, and profitability or operating margin that fall within the group range are considered reasonable projections. Below is the result of our analysis.

	Projections Per Applicant		Comparative Facilities		
	Total	PPD	Highest	Median	Lowest
Net Revenues	\$ 8,925,300.00	\$ 423.16	\$ 2,016.45	\$ 448.40	\$ 321.83
Total Expenses	\$ 7,941,800.00	\$ 376.53	\$ 1,925.10	\$ 447.84	\$ 327.74
Operating Income	\$ 983,500.00	\$ 46.63	\$ 96.67	\$ 7.22	\$ (157.17)
Margin	11%				
Occupancy	96%		95%	89%	73%
Medicaid	39%		48%	40%	29%
Medicare	51%		52%	34%	9%

The projected NRPD, CPD, and profit fall within the group range and are considered reasonable. It should be noted that the applicant appears to erroneously include the assisted living facility resident days under the

“other payers” category rather than excluding them entirely. If these days are included as part of the skilled nursing facility NRPD, CPD and profit would be understated.

**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 meets this requirement in both years.

**Conclusion:**

This project appears to be financially feasible based on the projections provided by the applicant.

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

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.

**Conclusion:**

This project is not likely to have a material impact on priced-based 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 significant impact on either construction costs or the proposed completion schedule. The applicant expressed the intent to pursue a future CON through conversion of the assisted living beds

proposed on the second floor of the new building. This review does not include the additional beds, but the schematic design does appear to meet the current physical plant standards.

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 owner. 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 and propose the provision of 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**

A five-year history of Medicaid patient days and occupancy for the subdistrict, district and state is provided in the table below.

<b>Medicaid Patient Days and Medicaid Occupancy in Miami-Dade County, District 11 and Florida Five Years Ending June 30, 2020</b>					
<b>Medicaid Patient Days</b>					
<b>Area</b>	<b>JUL 2015 JUN 2016</b>	<b>JUL 2016- JUN 2017</b>	<b>JUL 2017- JUN 2018</b>	<b>JUL 2018 JUN 2019</b>	<b>JUL 2019- JUN 2020</b>
Miami-Dade County	1,932,456	1,942,379	1,918,179	1,941,874	1,925,040
District 11	1,967,531	1,980,932	1,957,703	1,986,780	1,972,998
Florida	16,097,612	16,077,665	15,962,594	16,282,260	16,585,176
<b>Medicaid Occupancy</b>					
<b>Area</b>	<b>JUL 2015 JUN 2016</b>	<b>JUL 2016- JUN 2017</b>	<b>JUL 2017- JUN 2018</b>	<b>JUL 2018 JUN 2019</b>	<b>JUL 2019- JUN 2020</b>
Miami-Dade County	68.88%	70.49%	70.33%	71.86%	72.20%
District 11	68.77%	70.32%	70.21%	71.77%	72.29%
Florida	62.73%	63.34%	63.23%	64.90%	66.15%

Source: Florida Nursing Home Bed Need Projections by District and Subdistrict, October 2016-October 2020 Batching Cycles

As shown in the table above, during the five-year period ending June 30, 2020, Subdistrict 11-1’s (Miami-Dade County) lowest 12-month Medicaid occupancy rate was 68.88 percent during the 12 months ending June 30, 2016 and its highest was 72.20 percent during the 12 months ending June 30, 2020.

The reviewer provides the following Medicaid/Medicaid Managed Care occupancy for the applicant’s 120-bed facility from which 60 beds are slated for delicensure to be relocated for the 12-month periods ending June 30, 2016 through June 30, 2020. See the table below.

West Gables Health Care Center Medicaid Occupancy 12-month periods ending June 2016 – June 2020			
FY	Total Patient Days	Medicaid Patient Days	Medicaid Occupancy
2016	40,966	12,612	30.79%
2017	41,623	15,400	37.00%
2018	41,415	14,200	34.29%
2019	40,566	13,911	34.29%
2020	38,308	14,989	39.13%
<b>Total</b>	<b>202,878</b>	<b>71,112</b>	<b>35.05%</b>

Source: Florida Nursing Home Bed Need Projections by District and Subdistrict, October 2016-October 2020 Batching Cycles

As a newly formed and recently licensed entity, the applicant does not have a history of providing care to Medicaid patients and the medically indigent. RSBRM’s projected year one and two of operations for the 60 SNF beds are shown below.

**Forecast of Resident Days by Payer and  
Corresponding Average Daily Census  
First Two Years of Operation Ending June 30, 2024 and 2025**

Payer	Percent Nursing Home	Yr. One Days	Yr. Two Days
Medicare	28%	3,889	5,906
Medicare Managed Care	23%	3,194	4,851
Medicaid Managed Care	39%	5,416	8,226
Private Pay/Others	10%	1,389	2,109
<b>Total</b>	<b>100.0%</b>	<b>13,888</b>	<b>21,098</b>
	<b>ADC</b>	38	58
	<b>Occupancy</b>	63.2%	96.3%

Source: CON application #10640, page 9-1, Table 9-1

The reviewer notes that the applicant’s Medicaid projections for years one and two are consistent with West Gables Care Center’s provision of Medicaid during the 12 months ending June 30, 2020.

**F. SUMMARY**

**RSBRM Operator LLC (CON application #10640)**, a newly formed, private for profit Florida entity, proposes to construct a new 60-bed community nursing home through the voluntary delicensure of 60 community nursing home beds at West Gables Health Care Center in Subdistrict 11-1, Miami-Dade County. The site for the proposed project has not been determined.

The project involves 65,675 GSF of new construction. The construction cost is \$8,756,700. Total project cost is \$13,844,400.

The applicant presents no Schedule C conditions.

**Need/Access:**

The proposed project is not in response to the fixed need pool nor does it add community nursing home beds to the State of Florida, District 11, or to Subdistrict 11-1 (Miami-Dade County).

The applicant states that the impetus for the project is the pending expiration of the existing West Gables Health Care Center's lease at 2525 SW 7<sup>th</sup> Avenue, Miami, Florida 33155. Additional factors supporting approval include:

- Subdistrict 11-1's projected elderly population growth (ages 65+ and 85+) from 2020 to 2025
- The subdistrict's current bed supply as well as the approved beds
- Subdistrict 11-1's community nursing home beds per 1,000 age 65+ population is 17 and to maintain parity in the bed supply, an additional 1,488 community nursing home beds are needed, indicating that reducing the bed supply by 60 (denying the proposal) worsens availability and access
- The subdistrict's projected 92.7 percent utilization in CY 2021, which is projected, even with including the 680 CON approved beds yet to be licensed, to increase to 97.8 percent by CY 2025

*The Agency finds that, on balance, the applicant demonstrated the applicable criteria specified in statute and rule to merit approval of the proposed project.*

**Quality of Care:**

RSBRM Operator LLC described familiarity with quality measure tools, protocols and its affiliates' experience in providing quality care.

**Financial Feasibility/Availability of Funds:**

- Funding for this project is likely but not guaranteed
- Based on the information provided in Schedule 6, the applicant's projected staffing meets the licensed nursing staffing requirements of ss 400.23(3)(a)1, Florida Statutes  
The project appears to be financially feasible
- The project is not likely to have a material impact on priced-based competition to promote quality and cost effectiveness

**Architectural Analysis**

- The applicant submitted all information and documentation necessary to demonstrate compliance with the architectural review criteria

- 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 project completion forecast for the proposed project in Schedule 10 and the cost estimates identified in Schedule 9 appear to be reasonable
- While the applicant expressed the intent to pursue a future CON through conversion of the assisted living beds proposed on the second floor of the new building:
  - This review does not include the additional beds, but the schematic design does appear to meet current physical plant standards

**Medicaid/Indigent Care Commitment**

- RSBRM projects approximately 39 percent of the 60-bed facility's total annual year one and year two patient days will be provided to Medicaid Managed Care residents

**G. RECOMMENDATION**

Approve CON #10640 to construct a new 60-bed community nursing home through the voluntary delicensure of 60 community nursing home beds at West Gables Health Care Center in District 11, Subdistrict 1, Miami-Dade County. The total project cost is \$13,844,400. The project involves 65,675 GSF of new construction and a construction cost of \$8,756,700.

**AUTHORIZATION FOR AGENCY ACTION**

Authorized representatives of the Agency for Health Care Administration adopted the recommendation contained herein and released the State Agency Action Report.

DATE: \_\_\_\_\_

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James B. McLemore  
**Operations and Management Consultant Manager**  
**Certificate of Need**