

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. **Applicant/CON Action Number**

Brevard Operations LLC/CON application #10751

10150 Highland Manor Drive, Suite 300
Tampa, Florida 33610

Authorized Representative: Ms. Tricia Thacker, CEO
Aston Health
(813) 558-6600

2. **Service District/Subdistrict**

District 7/Subdistrict 7-1 (Brevard County)

B. PUBLIC HEARING

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

Letters of Support

The application's Exhibit 1 included three letters of support which were quoted within the application. These were from Hussein Ballout, MD, Evolutionary Healthcare, Internal Medicine, Venu Luthra, MD, Internal Medicine at Viera, Guarang Patel, Medical Associates of Brevard. The letters hold a common theme of Aston Health's capabilities in addressing the growing elderly population, demand for and access to skilled nursing services, the provision of a state-of-the art nursing facility that will render top quality services, professional care, be a leading employer of choice and for an active leader in the area's medical landscape.

C. PROJECT SUMMARY

Brevard Operations LLC (CON application #10751), also referenced as Brevard Ops or the applicant proposes to establish a new 90-bed community nursing home in Brevard County (Subdistrict 7-1). The facility is planned to have 46 private and 22 semi-private rooms and at least one bariatric room at a site yet to be determined. The project is in response to the 90-bed fixed need pool for Subdistrict 7-1.

The applicant states that it will receive consulting services from Aston Health which provides these consulting services to 41 skilled nursing facilities and three assisted living facilities in Florida.

The 90-bed facility includes 80,639 GSF of new construction. The new construction cost is \$26,207,700. Total project cost, which includes land, building, equipment, project development, financing and start-up costs is \$36,462,100.

The applicant does not propose any conditions for project approval.

Issuance of a CON is required prior to licensure of the project. 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 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, Sarah Zimmerman, analyzed the application with consultation from Financial Analyst Kimberly Noble 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.

In Volume 49, Number 190 of the Florida Administrative Register dated September 29, 2023, a fixed need pool (FNP) of 90 community nursing home beds was published for Subdistrict 7-1 for the July 2026 planning horizon. There were no exemption requests or expedited CON applications to increase the subdistrict's community nursing home bed count subsequent to the FNP publication.

As of August 11, 2023, Subdistrict 7-1 had 21 community nursing homes with 2,819 licensed and 98 CON approved community nursing home beds pending licensure. The subdistrict's nursing homes reported 87.04 percent during the six-months and 84.11 percent occupancy during the 12 months ending June 30, 2023, respectively. See the table below for the 12-month occupancy data.

**Subdistrict 7-1 (Brevard County)
Community Nursing Home Utilization
July 2022—June 2023**

Facility	Licensed Beds	Bed Days	Patient Days	Total Occupancy
Anchor Care & Rehabilitation Center	120	43,800	38,896	88.80%
Atlantic Shores Nursing and Rehab Center	120	43,800	38,988	89.01%
Avante at Melbourne, Inc.	110	40,150	33,650	83.81%
Bedrock Rehab. and Nursing Center at Melbourne	138	50,370	27,239	54.08%
Indian River Center	179	65,335	49,016	75.02%
Island Health and Rehabilitation Center	120	43,800	33,757	77.07%
Life Care Center of Melbourne	120	43,800	40,995	93.60%
Life Care Center of Palm Bay	141	51,465	47,846	92.97%
Melbourne Terrace Rehabilitation Center	179	63,535	57,662	90.76%
Nursing & Rehabilitation of Melbourne	167	60,955	55,973	91.83%
Palms Rehabilitation and Healthcare Center, The	120	43,800	40,351	92.13%
Rockledge Healthcare & Rehabilitation Center	107	39,055	37,180	95.20%
Royal Oaks Nursing and Rehab Center	120	43,800	41,220	94.11%
Solaris Healthcare Merritt Island	180	65,700	61,812	94.08%
Sunrise Point Health and Rehabilitation Center	100	36,500	34,736	95.17%
The Terrace at Courtenay Springs	96	35,040	21,089	60.19%
Titusville Rehabilitation and Nursing Center	157	57,305	27,367	47.76%
Viera Del Mar Health and Rehabilitation Center	131	47,815	44,641	93.36%
Viera Healthcare and Rehabilitation Center	114	41,610	40,408	97.11%
Vista Manor	120	43,800	39,995	91.31%
West Melbourne Health & Rehabilitation Center	180	65,700	54,215	82.52%
Total	2,819	1,027,135	867,036	84.41%

Source: Florida Nursing Home Bed Need Projections by District and Subdistrict, published September 29, 2023.

The reviewer notes the current and projected population of Subdistrict 7-1, District 7, and the State of Florida for the current planning horizon. The population data is provided in the following tables.

**Subdistrict 7-1 (Brevard County)
Community Nursing Home Bed to Population Aged 65-74 Ratio
July 1, 2023 & July 1, 2026**

Area/Subdistrict	July 1, 2023 Population			July 1, 2026 Population		
	65+ - 74	75+	65+ Total	65+ - 74	75+	65+ Total
Brevard/7-1	91,293	76,514	167,807	99,703	84,376	184,079
District 7	298,104	225,497	523,601	327,926	255,612	583,538
State of Florida	2,660,625	2,281,200	4,941,825	2,866,418	2,539,406	5,405,824
Area/Subdistrict	July 2023 - July 2026 Increase			July 2023 - July 2026 Growth Rate		
	65+ - 74	75+	65+ Total	65+ - 74	75+	65+ Total
Brevard/7-1	8,410	7,862	16,272	9.21%	10.28%	9.70%
District 7	29,822	30,115	59,937	10.00%	13.35%	11.45%
State of Florida	205,793	258,206	463,999	7.73%	11.32%	9.39%

Source: Florida Agency for Health Care Administration Population Estimates published January 2023.

The community skilled nursing beds per 1,000 residents for the age 65+ to 74 cohort in Subdistrict 7-1 are in the following chart.

**Subdistrict 7-1 (Brevard County) District 7 & Florida
Community Nursing Home Bed to Population Aged 65+ Ratio
July 1, 2023 & July 1, 2026**

County/Area	Licensed Community Beds	July 1, 2023 Pop. Aged 65+	July 1, 2023 Beds per 1,000	Licensed & Approved Community Beds	July 1, 2026, Pop. Aged 65+	July 1, 2026, Beds per 1,000
Brevard	2,819	167,807	16.80	2,917	184,079	15.85
District 7	9,629	523,601	18.39	10,171	583,538	17.43
State of Florida	83,110	4,941,825	16.82	85,759	5,405,824	15.86

Source: Florida Agency for Health Care Administration Population Estimates published January 2023 and Florida Nursing Home Bed Need Projections by District and Subdistrict published September 29, 2023.

As the Agency’s fixed need formula places emphasis on the estimated bed rate for community SNF beds utilized by the population age 75+ in a subdistrict/district, the reviewer provides the following table for beds per 1,000 residents age 75+.

**Subdistrict 7-1 (Brevard County) District 7 & Florida
Community Nursing Home Bed to Population Aged 75+ Ratio
July 1, 2023 & July 1, 2026**

County/Area	Licensed Community Beds	July 1, 2023 Pop. Aged 75+	July 1, 2023 Beds per 1,000	Licensed & Approved Community Beds	July 1, 2026 Pop. Aged 75	July 1, 2026 Beds per 1,000
Brevard	2,819	76,514	36.84	2,917	84,376	34.57
District 7	9,629	225,497	42.70	10,171	255,612	39.79
State of Florida	83,110	2,281,200	36.43	85,759	2,539,406	33.77

Source: Florida Agency for Health Care Administration Population Estimates, January 2023 and Florida Nursing Home Bed Need Projections by District and Subdistrict published September 29, 2023.

Brevard notes its project is in response to the fixed need pool and asserts that the need for the proposed project is also shown by the letters of support and a need assessment within the following context:

- Population Demographics & Dynamics of Subdistrict 7-1
- Availability, Utilization and Quality of Services in Subdistrict 7-1
 - Availability
 - Nursing Home Utilization
- Projected Utilization
 - Implementation of the Project

Brevard Operations LLC provides three maps, the first is an overview of Subdistrict 7-1 showing the 2023 population age 65 and over by zip code. The second is a satellite image of Palm Bay (the area of interest for the project location showing “a high concentration of assisted living facilities” (ALFs), which adds “to the need for additional nursing home beds”. The applicant’s third map is “an overview of 15-mile radius of Palm Bay”, with hospitals, nursing homes and ALFs.

Brevard Ops contends the maps demonstrate the need for development a nursing facility with the “proximity to acute care hospitals is crucial to improve geographic access for Brevard County residents, along with further integration of the healthcare network within the subdistrict”.

Brevard Ops uses the Agency’s Florida Population Estimates and Projections 2018-2030, published January 2023, to show that as of January 2023, the population age 65 and over is 26 percent of Brevard County’s total population. Brevard County is projected to add 28,654 persons at a rate of 17.45 percent by January 2028, compared to an increase of one percent for those under the age of 65. The January 2028 Brevard County 65 and over population will increase to 192,840 and represent 28.97 percent of Brevard’s projected total population of 665,550. See the table below.

**Current and Projected Population by Age Cohort
Subdistrict 7-1 and Florida**

Area	January 2023 Population Estimates			January 2023 Population Distribution		
	0-64	65+	Total	0-64	65+	Total
Brevard	467,772	164,186	631,958	74.02%	25.98%	100.00%
District 7	511,610	511,610	3,063,991	83.30%	16.70%	100.00%
Florida	17,622,850	4,864,166	22,487,016	78.37%	21.63%	100.00%
Area	January 2028 Population Estimates			January 2028 Population Distribution		
	0-64	65+	Total	0-64	65+	Total
Brevard	472,710	192,840	665,550	71.03%	28.97%	100.00%
District 7	2,712,264	615,053	3,327,317	81.52%	18.48%	100.00%
Florida	18,281,793	5,636,261	23,918,054	76.44%	23.56%	100.00%
Area	Five Year Increase			Five Year Growth Rate		
	0-64	65+	Total	0-64	65+	Total
Brevard	4,938	28,654	33,592	1.06%	17.45%	5.32%
District 7	159,883	103,443	263,326	6.26%	20.22%	8.59%
Florida	658,943	772,095	1,431,038	3.74%	15.87%	6.36%

Source: CON application #10751, page 1-7, Table 1-1, from AHCA and Projections by AHCA District 2018 to 2030, published January 2023.

The applicant does not indicate why it chose a five-year projection to January 2028, when the Agency’s planning horizon is July 2026, and it indicates the project will be in service by July 2026.

Brevard Ops next presents the current (2023) and projected (2028) Population by ZIP Code of the age 65 and over populations and argues that the increasing senior population in Palm Bay makes it an ideal location for the new facility. The reviewer reproduces the age 65 and over portion of the applicant’s table below.

**Palm Bay Zip Code
Age 65 and Over Population**

Zip Code	2023 Pop, Age 65+	2028 Pop, Age 65+	Five-Year Increase, 65+	Five-Year Growth Rate, 65+
32905	6,672	7,521	849	12.72%
32907	9,335	11,000	1,665	17.84%
32908	2,027	2,721	694	34.24%
32909	6,672	7,521	849	12.72%
Palm Bay Total	24,878	29,877	4,999	20.09%
Brevard County Total	160,892	186,456	25,564	15.89%
Florida Total	4,971,932	5,772,529	800,597	16.1%

Source: CON application #10751, page 1-8, Table 1-2, from Claritas 2023 Population Estimates.

The table below shows the current number of beds per thousand seniors and the projected number by 2028, the proposed second year of the project.

Current (2023) and Projected (2023) Bed Availability**

Area		January 2023	January 2028 Without the Project	January 2028 With the Project
Brevard County	Beds	2,917	2,917	3,007
	Pop (65+)	164,186	192,840	192,840
	Beds/1000	18	15	16
Palm Bay	Beds	381	381	471
	Pop (65+)	24,878	29,877	29,877
	Beds/1000	15	13	16
Florida	Beds*	83,011	83,011	83,114
	Pop (65+)	4,864,166	5,636,261	5,636,261
	Beds/1000	17	15	15

** Reviewer assumes the date was a typographical error and was to read "2028."

*Projected beds assumes all approved beds are licensed by 2026

Source: CON application #10751, page 1-9, Table 1-3, from AHCA's Florida Population Estimates and Projections by AHCA District 2015 to 2030, published January 2023 (January midpoint population estimates) & AHCA's Florida Nursing Home Utilization by District and Subdistrict July 2022 - June 2023.

Brevard Ops states that the subdistrict will drop to 15 beds per 1,000 seniors and Florida decreases to 15 beds per 1,000 persons aged 65 and older by January 2028 if no beds are added noting that without its 90-bed project Palm Bay will have 13 beds per thousand which increases to 15 per thousand with the project. The applicant concludes that as the elderly population grows within Brevard County, the nursing home bed inventory decreases when viewed relative to the population with the effect of adding 90 beds to the subdistrict resulting in an increased the supply in an area of the county with a high concentration and growth rate for the elderly population where bed supply is limited. The applicant does not include the State's 2,649 CON approved beds in its projections, but and state beds per thousand ratio is fairly consistent with the reviewer's chart at the beginning of this report's Item 3. 1. a.

Brevard Ops presents a table summarizing nursing home utilization in Brevard County compared to Florida for the past five 12-month periods to support its contention that the county has not only seen an increase in community nursing home bed occupancy, but the planning area has

also outperformed the average occupancy of the state of Florida since the pandemic, with occupancy in Brevard County returning to pre-pandemic levels near 85 percent while the state averaged less than 80 percent occupancy for the most recent 12-month period ending June 30, 2023. The applicant notes that data shows a steady rise in occupancy rates from quarter to quarter in Brevard County with higher occupancy than the state indicating the growing demand for skilled nursing beds in the region. Further, the Brevard County nursing home use rate can be used to confirm projected need stating that for the 12-month period ending June 30, 2023, nursing facilities in Brevard County reported 867,036 patient days of care, for an average daily census of 2,375 and an average occupancy rate of 84.41 percent.

Brevard Operations contends that the Subdistrict’s 5,281 days per thousand age 65 can be used to project utilization. The table below has the projected utilization for July 2027—June 2028, the proposed second year of the project.

Projected Brevard County Patient Days and Occupancy for Year Two, 7/27 - 6/28 With and Without the Project

Projections based on use rate from: Brevard County	7/27-6/28
Brevard County Population 65+, January 1, 2028	192,840
Resident Days Forecasted for 7/27-6/28	1,018,352
Average Daily Census, 7/27-6/28	2,790
Existing and Approved Community Beds*	2,917
Projected Occupancy without the Project	95.6%
Projected Licensed Beds WITH the Project	3,007
Projected Occupancy WITH the Project	92.8%

*Assumes the 98 approved beds authorized by CON #10722 become licensed by 2028. Source: CON application #10751, page 1-12, Table 1-7, from AHCA’s Florida Population Estimates and Projections by AHCA District 2015 to 2030, published January 2023.

Brevard Ops states that its initial occupancy rate in the first year reflects a ramp up of admissions given the required time to obtain Medicare and Medicaid certification and the facility will attain an annual 85.75 percent occupancy rate in year two ending June 30, 2028. The applicant concludes that it has established consistency with the published need for 90 community nursing home beds and demonstrates entitlement to the certificate of need sought, based on:

- The growing senior population in the subdistrict leads to increasing demand for skilled nursing services
- Projected nursing home demand is expected to exceed supply without the project’s additional 90-beds given the strong growth rates among the 65 and over population, specifically within Palm Bay, the potential location for the proposed facility
- The proposed facility will improve geographic access to skilled nursing care for Brevard County residents when considering the four acute care hospitals are within a 15-mile radius of Palm Bay, underscoring the need for additional nursing home beds for rehabilitation following a hospital stay

- The project will help maintain the existing health care infrastructure of the subdistrict
- The proposal responds to the statutory criterion, demonstrating need and enhances both access and availability of skilled nursing care within the service area
- Projected nursing facility utilization, based on existing use rates and projected population growth in the 65 and over population indicates that the proposed beds will not have a negative impact on existing facilities once the new facility begins operations

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. Rule 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. 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.**

Brevard Operations states that it will participate in both the Medicare and Medicaid programs to promote access to both short-term and long-term care and provides detailed narratives on the services (i.e. therapy) and treatment programs it will provide. Disease specific programs detailed include cardiac rehabilitation, kidney failure, orthopedic rehabilitation, respiratory disease, stroke rehabilitation, and a four-bed bariatric unit. The reviewer notes that Brevard Ops states in its need analysis that the project will include "at least one bariatric bed". Brevard Ops details its planned palliative care for its residents indicating it will use the Cardinal Care Program (Exhibit 4 has the program standards and guidelines). Patient assessment, admission and discharge policies are described in detail.

The applicant’s Schedule 6 shows 68.7 FTEs in year one (ending June 30, 2027) FTEs and 98.5 FTEs in year two (ending June 30, 2028). Schedule 7 indicates the facility is projected to have 35.0 percent of its year one total and year two total annual patient days provided to Medicaid residents or 6,404 Medicaid days in year one and 9,886 in year two. The applicant refers to its Schedules 5 and 6 for further detail. The facility’s projected utilization is shown below.

**Brevard Operations LLC (CON application #10751)
90-bed Community Nursing Home Utilization
Years One & Two Ending June 30, 2027 & 2028**

	Year One	Year Two
Admissions	579	893
Patient Days	18,297	28,247
ALOS	31.6	31.6
ADC	50	77
Total Occupancy	55.70%	85.75%

Source: CON application #10751, pages 2-20 and 3-11.

Brevard Ops provides the top Major Diagnostic Categories (MDC) for hospital discharges to skilled nursing facilities for Brevard County residents aged 65 and over in the application’s table 2-2 on page 2-21, which the reviewer condenses below.

**Brevard County Residents Aged 65 and Over
CY 2022 Hospital Discharges to Skilled Nursing Facilities By MDC**

Major Diagnostic Category	Number	Percent
08 Diseases & Disorders of the Musculoskeletal System and Conn Tissue	1,577	24.08%
05 Diseases & Disorders of the Circulatory System	862	13.16%
04 Diseases & Disorders of the Respiratory System	861	13.15%
01 Diseases & Disorders of the Nervous System	664	10.14%
Total Top MDCs	3,964	60.53%
Remaining 18 MDCs	2,579	39.91%
Grand Total	6,548	100.00%

Source: CON application #10751, page 2-21, Table 2-2 (partially reproduced).

Brevard Operations notes that four MDCs account for 60.54 (probable rounding as 60.53 per the table above) percent of the discharges and the applicant addresses these stating that it already has experience in a variety of specialized programs and will continue to innovate to best meet residents' needs. Further, each individual is assessed during the admission process to develop a plan of care with specific goals identified and prescribed services identified to restore, to normalize and achieve functional capabilities.

Schedule 6 projections show 68.1 FTEs in year one (ending June 30, 2027) FTEs and 98.5 in year two FTEs (ending June 30, 2028). The applicant’s Schedule 7 indicates the facility is projected to have 6,404 Medicaid patient days in year one (35.0 percent) and 9,886 (35.0 percent) of these years’ total patient days. The applicant refers to its Schedules 5 and 6 for further details.

Brevard Ops states that its staff personnel deliver therapies adding that the facility design includes a large therapy suite equipped for rehabilitation and occupational therapy for activities of daily living. Further, this project benefits from innovative technologies that allow programing for each individual as functional improvements occur with an overall objective focusing on avoiding hospital admission or readmission. Brevard Ops assures that its protocols ensure healing and promote higher functional levels which in turn improves residents' health and quality of life.

b. Rule 59C-1.036 (4)(e) Quality of Care. In assessing the applicant's ability to provide quality of care pursuant to s. 408.035(3), 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.

Brevard Operations LLC responds that it has never had a nursing facility licensed denied, revoked, or suspended within the 36 months prior to the application.

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.

Brevard Operations LLC confirms that it has never had a nursing facility placed into receivership.

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 item 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 item 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 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.

This item does not apply.

6. **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 which were Medicaid patient days.

Brevard Operations LLC indicates it will provide the required data to the East Central Florida, Inc. that serves Health Planning District 7 and to the Agency for Health Care Administration which includes the above-cited utilization reports as well as required licensure and financial requirements attendant to operating a licensed nursing facility.

The applicant states its responses address the provisions of the rule and that its responses show conformity with the provisions and describe the proposed project's services.

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? Section 408.035 (1), (2) and (5), Florida Statutes.**

As of August 11, 2023, Subdistrict 7-1 had 21 community nursing homes with 2,819 licensed and 98 approved community nursing home beds. The subdistrict's nursing homes reported 87.04 percent total occupancy during the six-month period ending June 30, 2023, and 81.11 percent for the 12 months ending December 31, 2022. As previously stated, an FNP for 90 community nursing home beds in Subdistrict 7-1 was published in Volume 49, Number 190 of the Florida

Administrative Register dated September 29, 2023. There are no exemption requests or expedited CON applications to increase the subdistrict's community nursing home bed count subsequent to the FNP publication.

Brevard Operations LLC discusses the need calculation and notes that its 90-bed project is in response to the fixed need pool for Subdistrict 7-1. The applicant adds that the subdistrict's occupancy rate was 84.41 percent for the most recent 12-month period ending June 30, 2023. The applicant restates its previous need response that District 7 has a significant concentration of residents aged 65 and older and that the Palm Bay area (the proposed facility location) is also highly concentrated with seniors, with the five-year growth for the age 65 and older population outpacing the total population by approximately 13 percentage points.

Further, based on the current bed capacity for the subdistrict and AHCA population estimates, there are 15 community nursing home beds for every 1,000 of the senior population in Palm Bay and that the Brevard County rate for beds per 1,000 is 17 beds. Brevard Operations notes that when compared with the State of Florida, which also has 17 beds per thousand seniors, Palm Bay is experiencing significantly reduced availability for nursing home beds. The applicant contends that if approved, the project would increase the bed supply to 16 beds per 1,000 seniors, whereas without the project, bed availability would drop to 13 beds per 1,000 seniors.

Quality of care is addressed in item E.3.b. of this report.

The applicant states that access is defined as how potential users get to the service, or gain admittance, or enter the service adding that the components of access include geographic impediments, distance, time to travel, and eligibility criteria for qualifying for the service and considerations such as financial cost and methods of reimbursement from third parties.

Brevard Ops lists the five hospitals and includes a map that visually shows the distribution of acute care hospitals, nursing homes and ALFs within a 30-minute drive of Palm Bay. Regarding service access, the applicant reiterates that issues are evident, especially for short-term rehabilitative care as hospitals are the primary source of referrals for skilled nursing facilities and argues that there is a need for rehabilitation units for residents of this area. Brevard Operations states "The applicant's affiliated facilities maintain high occupancy rates, contributing to access issues because of lack of an available bed". The applicant repeats its response in item E.2. of this report and that Aston Health will implement its extensive list of programs at the proposed

facility. Brevard Ops also indicates skilled nursing services will include 24/7 care from licensed nurses, which was not mentioned previously. Aston Health disease specific programs for COVID-19, chronic lower respiratory diseases, Alzheimer's disease, unintentional injury, diabetes mellitus, and Parkinson's disease are cited. Brevard Ops contends that not all Brevard County skilled nursing facilities have Alzheimer's care programs or an Alzheimer's secured unit, which it argues are needed and beneficial in creating a safe and secure environment.

Regarding financial access, Brevard Ops states that it will participate in both Medicare and Medicaid programs and will seek contracts with managed care providers and commercial insurance companies and will provide a wide range of services with separate neighborhoods for various patient needs, such as short-term rehabilitation, complex care, and long-term care needs. Further, it will make every effort to remove any financial barriers that could impede access to nursing home care, working closely with hospital discharge planners and those who may make direct admissions.

Brevard Ops revisits the extent of the Subdistrict, District 7, and state utilization on the application's page 3-6. Health Care Access Criteria is addressed on the application's pages 3-7 through 3-11.

- 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? Section 408.035(3) and (10), Florida Statutes.**

Brevard Operations LLC responds that it is a new entity with no licensure history. The reviewer notes that the Aston Health affiliates listed are not Gold Seal Program nursing facilities. Aston Health's mission statement is quoted - "To personalize the wellness journey by providing skilled nursing and rehabilitation experiences that are designed around the needs of each individual, promote better quality of life, and transform ordinary expectations into extraordinary outcomes." Brevard Ops cites Aston Health's facilities with awards including Fernandina Beach Rehabilitation and Nursing Center, receiving the AHCA/NCAL National Quality Silver Award in 2022, Debarry Health and Rehabilitation Center, the Silver level award in 2023 and five facilities receiving the Bronze level award in 2023: Coastal Health and Rehabilitation Center, Coquina Center, Flagler Health and Rehabilitation Center, Highlands Lake Center, and North Port Rehabilitation and Nursing Center. Brevard Ops states that all Aston Health Florida affiliated nursing homes are Joint Commission Accredited.

Brevard Ops offers that Aston Health's culture is built on people, passion, and promise adding that its team members will embody this culture which will benefit both staff and patient quality of life and provides a detailed description under these headings, stating that they are nurtured through cultural ambassadors. Further, these “exceptionally caring, passionate people who lead by example” are recognizable by their "Culture Ambassador" pins. Brevard Ops states that it will adopt the Cultural Ambassadors Program and other Aston Health cultural programs, including:

- Monthly town hall (celebrating Aston Health's culture)
- Employee of the Month rewards (celebrating Aston Health's people)
- High Five cards (celebrating Aston Health's passion)
- The Safe Zone Party (celebrating Aston Health's promise)

Brevard Ops contends that Aston Health has established strong relationships with nursing schools and allied health profession programs at local community colleges in the Florida areas it serves. Brevard Ops offers that these relationships let students do part of their training in skilled nursing facilities where Aston Health provides consulting services where they obtain hands-on experience learning from experienced staff. The applicant states that the students who rotate through Aston Health facilities “often apply for jobs at Aston Health facilities after graduation”. Brevard Ops Operations cites affiliation agreement with—Premiere Nursing Academy, Kent State University, Keiser University, Educare Environ College of Nursing, Wellness Workdays Dietetic Internship, Daytona State College and St. Thomas University.

Specialty clinical/disease-specific programs and protocols that Aston will provide include cardiac rehabilitation, kidney failure, orthopedic rehabilitation, respiratory disease and stroke rehabilitation. Further, Aston offers two disease-specific protocols to improve quality and patient health outcomes for COPD and sepsis residents and Brevard Ops assures these will be used in its facility. Exhibit 11 includes samples of these two protocols. Treatments are stated to be in line with those provided by the Global Initiative for Chronic Lung Disease or American Medical Directors Association and that patient progress is actively managed, including ongoing evaluation and documentation of signs and symptoms and condition changes. The Sepsis Management protocol has basic guidelines for recognition and monitoring of sepsis to address resident changes of condition in a timely manner, enhance resident comfort, and prevent unnecessary hospital readmissions. Residents with a confirmed or suspected sepsis infection will be screened for sepsis using systemic inflammatory response syndrome criteria and if confirmed or suspected infection meets two or more of the criteria, the nurse will implement the Sepsis Nursing Protocol.

Aston's Quality Assurance Performance Improvement (QAPI) is detailed with the application stating it uses a uniform approach to improve processes involved in clinical treatment, quality of life, resident choice, and care transitions. Further, it will conduct random quality review of residents and findings will be reported in the Risk Management/QA Committee meetings until the committee determines substantial compliance has been met and recommends quarterly reviews. Aston's Readmission Reduction Protocols, are stated to incorporate best practices to promote positive patient outcomes and reduces hospital readmissions, utilizing checklists, enhanced communication, and care planning, and training staff to manage medical conditions that often cause readmissions. Core elements are described on the application's pages 4-6 and 4-7. Topics include transition of care goals, condition care paths, heighten education for all new staff, tracking and trending on a daily, weekly, and monthly basis, root cause analysis of readmissions, continued education, QAPI/QAA Initiatives-PDSA model utilizing nationally accepted standards focusing on reducing readmissions and medical directors' participation.

Aston Health Consultant Support is stated to include daily focus calls to facilities that are struggling to manage their hospital readmissions and providing additional support by reviewing readmissions to develop actions to address factors causing readmissions. Implemented in February 2023, Aston's Readmission Reduction Protocols have reduced its facilities rate to 12.3 percent in March 2023 and 11.3 percent in April 2023, with the national average being 15 percent. Brevard Ops argues that the application of these protocols will produce strategies for reduction of readmissions, promote better patient outcomes, and positively influence its skilled nursing facilities.

Brevard Ops describes Aston's Concierge program, Aston's Guardian Angel program, and use of Rytes, a third-party compliance program that provides a hotline for complaints and concerns as well as monthly training Rytes provides attorneys who can help with labor concerns and employment questions and has a "red envelope" procedure for visits by government agencies. Aston Health's interactive device—Touchpoint Health Care system is described as being used to accept calls from residents, families, and employees who have concerns or questions. Feedback covers diet, customer service, nursing care, therapy, activities, administration, and housekeeping/cleanliness. The applicant states that Aston Health had 7,426 Touchpoint responses with an overall rating of 4.5/5 and 95 - 97 percent positive comments in April of 2023 (negative feedback was given in only three - five percent) and Aston facilities averaged 4.3 stars on a scale of 5 stars on Google reviews.

Brevard Ops planned Electronic Medical Records use is described as using the *PointClickCare* platform to provide bedside access to the patient record for immediate response and reporting requirements. The *PointClickCare* skilled nursing core platform and its functionality is discussed in detail on the application's pages 4-9 and 4-10. Aston Health's facilities are stated to use the following *PointClickCare* services – Automated Care Messaging, Secure Messaging, Document Manager, eInteract (a set of dashboards, checklists, and automatic triggers), Electronic Medication Administration Record (eMAR), Integrated Medication Management, Lab and Imaging Lab and Imaging with Integrated Results, Marketplace (automating data transfers), Nutrition Management, General Ledger and Accounts Payable, and Accounts Receivable Resolution Service.

Brevard Ops indicates it will offer patients Aston Health's telehealth or virtual appointments through Zoom; however, it intends to eventually transition to PointClickCare's telepath services. Benefits of telehealth is stated to include:

- HD video & audio: exceptional clarity and quality for telehealth visits
- Reliability: consistent video experience, even in low-bandwidth environments
- Security & privacy helps customers enable HIPAA-compliant programs by executing a BAA and safeguarding PHI
- Medical integrations: integrates with telehealth carts, medical devices, and EHRs for seamless virtual exams
- Accessibility: live transcription, multi-pinning, and keyboard shortcuts make virtual visits accessible
- Compliance & security: multi-layer security with 256-bit AES-GCM encryption

The applicant's Quality Assurance Performance Improvement Plan and Quality Assurance and Assessment Program appear in the application's Exhibit 12. A Residents' Rights brochure provided by Florida's Long-Term Care Ombudsman Program is given to each admission and employee. Further, the facility will plan coordination with the Ombudsman to assure that all proper interactions are guided by the policies and as part of the quality assurance review, aspects of residents' rights receive evaluation, and any breach or concerns addressed in the continuous quality improvement cycle. Emergency management and hurricane preparedness is discussed with Brevard Ops confirming that the facility will have a comprehensive emergency management plan and be constructed and equipped with a generator to ensure residents have a safe, comfortable environment during times of power outages.

Resident activities are stated to be designed to promote physical, as well as mental stimulation and social interaction. Also, regular daily programs and special events are structured such that residents' interests are a priority, promoting social interaction and entertainment. Brevard Ops states that community outing and involvement are incorporated into the offerings to keep residents engaged and active and includes movies, shopping, and special events, like dinner out that provide residents with community interactions and new exposure to what the broader community offers. Brevard Ops's activities director will plan the range of activities based on the individual care plans and resident requests and its team is comprised of an experienced group of managers that have the ability to initiate quality improvement, implement timely corrective action plans, and achieve quality care. Exhibit 13 includes sample activity calendars.

Aston Health affiliated nursing homes listed in CON application #10751, Exhibit 2, had 165 substantiated complaints during the 36 months ending December 22, 2023. A substantiated complaint can encompass multiple complaint categories. See the table below.

**Brevard Operations LLC- Aston Health Affiliates
Substantiated Complaints Categories
December 22, 2020 - December 22, 2023**

Complaint Category	Number Substantiated
Administration/Personnel	30
Admission, Transfer & Discharge Rights	6
Billing/Refunds	3
Dietary Services	10
Elopement	8
Falsification of Records/Reports	1
Fraud/False Billing	1
Infection Control	6
Life Safety Code	3
Misappropriation of property	1
Other Services	1
Physical Environment	18
Quality of Care/Treatment	91
Quality of Life	3
Resident/Patient/Client Abuse	5
Resident/Patient/Client Neglect	13
Resident/Patient/Client Rights	35
Unqualified Personnel	1
Total	236

Source: Agency for Health Care Administration complaint data.

- c. What resources, including health personnel, management personnel and funds for capital and operating expenditures, are available for project accomplishment and operation? 408.035(4), 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.

Historically we have compared all applicant financial ratios regardless of type to benchmarks established from financial ratios collected from Florida acute care hospitals. While not always a perfect match to a particular CON project it is a reasonable proxy for health care related entities. The applicant provided development stage audited financial statements with cash on hand of \$250,000 and member's equity of \$250,000.

Capital Requirements and Funding:

The applicant indicates on Schedule 2 capital projects totaling \$36,462,100, which includes this project only.

The applicant indicates on Schedule 3 of its application that funding for the project will be provided by cash on hand (\$250,000) and non-related company financing (\$36,212,100). The applicant provided a letter of interest, dated 12/3/2023, from Dwight Mortgage Trust stating their interest in providing Brevard Operations, LLC with funding up to \$40,000,000 to construct the project, but this is not a letter of commitment. Given that the funding is supported by a letter of interest, we have no basis to conclude that funding will be available for this project.

Conclusion:

Funding for this project is not guaranteed.

d. What is the immediate and long-term financial feasibility of the proposal? Section 408.035(6), 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 (2020 and 2021 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 1st Quarter 2023, 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 GROUP VALUES PPD		
	Total	PPD	Highest	Median	Lowest
Net Revenues	12,826,900	403	2,478	532	356
Total Expenses	12,605,200	396	2,644	547	446
Operating Income	221,700	7	84	-52	-284
Operating Margin	1.73%		Comparative Group Values		
	Days	Percent	Highest	Median	Lowest
Occupancy	28,247	96.72%	89.4%	72.7%	45.0%
Medicaid	9,886	35.00%	39.7%	35.7%	25.00%
Medicare	15,536	55.00%	51.8%	29.4%	8.2%

Staffing:

Section 400.23(3)(b)(1), Florida Statutes, specifies a minimum certified nursing assistant staffing of 2.0 hours of direct care per resident per day, a minimum licensed nursing staffing of 1.0 hour of direct resident care per resident day, and 3.6 hours of total direct care staffing. Based on the information provided in Schedule 6, the applicant’s projected staffing meets this requirement.

The projected NRPD, CPD, and profit fall within the group range and are considered reasonable. In addition, the total cost appears to include at least the minimum amount of staffing required. Therefore, the overall profitability appears achievable.

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? Section 408.035 (5) and (7), 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 costs to remain profitable and offering higher quality and additional services to attract patients from competitors. With the revenue stream essentially fixed on a per patient basis, the available margin to increase quality and offer additional services is limited. The existing health care system's barrier to price-based competition via a fixed price payer 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.

e. Are the proposed costs and methods of construction reasonable? Do they comply with statutory and rule requirements? ss. 408.035 (8), 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 application does not explicitly recognize disaster preparedness requirements in the selection of a building site, but compliance with these requirements is implied by listing the Florida Building Code as an applicable code. Compliance with these and other requirements will be verified in subsequent submissions of the project to the Office of Plans and Construction.

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 applicable codes cited will need to be updated to reflect recent changes, but those changes will not have any effect on the schematic design submitted with this application. 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? Section 408.035(9), Florida Statutes**

Brevard Operations LLC states "Brevard Operations LLC represents a developmental stage enterprise with no operations for the purpose of applying for a certificate of need to construct and operate a community nursing home" therefore, as a new entity, has no history of providing health care services to Medicaid patients and the medically indigent.

The applicant provides Aston Health's 41 affiliates Medicaid utilization during the three most recent 12-month periods ending June 20, 23, showing Medicaid occupancy of 65.91, 62.24 and 58.91 percent. Brevard Ops' Schedule 7 indicates that Medicaid Managed Care will account for 6,404 days (35 percent) of year one and 9,886 days (35 percent) of year two patient days.

F. SUMMARY

Brevard Operations LLC (CON application #10751) proposes to establish a 90-bed community nursing home with 46 private and 22 semi-private rooms, including at least one bariatric room in Brevard County. The applicant will contract with Aston Health, a management company, which provides consulting services to 41 nursing homes in Florida.

The proposed project includes 80,639 GSF of new construction. The construction cost is \$26,207,700. The total project cost is \$36,462,100.

The applicant expects issuance of license in June 2026 and initiation of service in July of 2026.

The applicant does not propose any conditions for project approval.

Need/Access:

- The application is in response to the 90-bed FNP
- The applicant's major need justifications include:
 - Subdistrict 7-1's age 65 and older population high concentration and growth especially the Palm Bay region
 - The positive effect on the service area, increasing availability where it is most needed
 - High occupancy rates and expected high occupancy demonstrates the need for the for skilled nursing beds
 - The high percentage of discharges from a nearby acute care hospitals and the Disease-Specific programs to benefit patients
- Specific patient/resident services planned for the project are consistent with the most commonly occurring CY 2022 MDC discharges to SNFs from Brevard County hospitals

Quality of Care:

- The applicant provided a detailed description of the ability to provide quality care
- During the 36 months ending December 22, 2023, the Aston Health affiliated nursing homes had 165 substantiated complaints with 236 categories cited

Financial Feasibility/Availability of Funds:

- Funding for this project is not guaranteed
- The project appears to be financially feasible based on the projections provided by the applicant
- The project is not likely to have a material impact on competition to promote quality and cost-effectiveness

Architectural

- 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 application does not explicitly recognize disaster preparedness requirements in the selection of a building site, but compliance with these requirements is implied by listing the Florida Building Code as an applicable code.

Medicaid/Indigent Care

- The applicant provides Aston Health's Medicaid history has it has no operational history
- Medicaid Managed Care is projected to be 35.0 percent of the facility's total year one and year two annual patient days

G. RECOMMENDATION

Approve CON #10751 to establish a new 90-bed community nursing home in District 7, Subdistrict 1, Brevard County. The total project cost is \$36,462,100. The project involves 80,639 GSF of new construction and a total construction cost of \$26,207,700.

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: February 9, 2024



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Certificate of Need



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