

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

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Brevard Operations LLC/CON #10800

10150 Highland Manor Dr., Suite 300
Tampa, Florida 33610

Authorized representative: Tricia Thacker, Chief Executive Officer
(813) 558-5600

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.

C. PROJECT SUMMARY

Brevard Operations LLC (CON application #10800), also referenced as Brevard Operations or the applicant, proposes to add 69 community nursing home beds to the 90-bed facility approved through CON #10751 in Subdistrict 7-1 (Brevard County). The proposed addition will add 61 private rooms for short-term care wing and four semi-private (eight beds) rooms for long-term care. The applicant states it is affiliated with and will receive consulting services from Aston Health. Aston Health currently provides these services to 41 skilled nursing facilities and three assisted living facilities in Florida.

Brevard Operations indicates that the project will be licensed in December 2026 and begin service in January 2027.

The project includes 33,496 gross square feet (GSF) of new construction and a total construction cost of \$10,048,800. The total project cost is \$12,805,240, and includes land, building, equipment, project development and financing costs.

The applicant does not propose any conditions on the project.

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, Gregory Keeter, analyzed the application with consultation from Financial Analyst Ryan Fitch 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, Chapters 59C-1 and 59C-2, Florida Administrative Code.

1. Fixed Need Pool

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

In Volume 50, Number 63 of the Florida Administrative Register dated March 29, 2024, a fixed need pool (FNP) of 69 community nursing home beds was published for Subdistrict 7-1 for the January 2027 planning horizon.

As of February 9, 2024, Subdistrict 7-1 nursing homes consist of 2,819 licensed beds and there are 188 CON approved community nursing home beds pending licensure. Subdistrict 7-1 nursing homes reported 87.04 percent occupancy during the six months, and 88.22 percent occupancy during the 12 months ending December 31, 2023.

Brevard Operations' need analysis focuses on the characteristics of the population to be served, regional and demographic features that impact service, and forecast of service in relation to existing providers.

Brevard County's growing senior population is cited as the applicant indicates this growth will require increased health care services and residential facilities. Brevard Operations notes that by 2028, seniors will comprise nearly 30 percent of the county's population, which is higher than the states' 24 percent. The applicant's Table 1-1 on page 1-7, shows Brevard County's, District 7 and Florida projected population by age cohorts under 65 and age 65 and over for 2023 and 2028.

Brevard Operations provides the age 65+ five-year growth rate in Palm Bay zip codes 32905, 32907, 32908 and 32909 to show it is at 20 percent compared to Brevard County's 15.89 percent. The applicant states its Palm Bay location is in an area of Brevard County with a higher 65+ growth rate than the county overall. See the condensed table below.

Age 65 and Over Population within Palm Bay

	2023 Pop. Age 65+	2028 Pop. Age 65+	5-Year Increase 65+	5-Year Growth Rate, 65+	2023 Total Pop	2028 Total Pop	5-Year Increase Total	5-Year Growth Rate Total
Palm Bay	24,878	29,877	4,999	20.09%	126,326	135,585	9,260	7.33%
Brevard Total	160,892	186,456	25,564	15.89%	625,275	658,329	33,054	5.29%
Florida Total	4,971,932	5,772,529	800,597	16.1%	22,144,367	23,250,657	1,106,290	5.0%

Source: CON application #10800, Page 1-8, Table 1-2 from Claritas 2023 Population Estimates.

Brevard Operations notes that Brevard County's growth has led to a demand for 69 additional skilled nursing beds. As of February 9, 2024, there are 21 facilities with 2,819 existing community beds, plus 98 approved beds from CON #10759 and 90 from CON #10751, for a total of 3,007 beds. The applicant states that the bed-to-senior ratio is lower in Palm Bay compared to the overall subdistrict. The reviewer checked this using Healthfinder.com nursing home location data the applicant's Claritas data for Palm Bay and Brevard County and found there is very little difference. By 2028, the proposed second year of the project, this ratio is expected to remain a concern.

**Brevard Operations LLC
Current (2023) and Projected (2028) Bed Availability**

	Beds	3,007	3,007	*3,076
	Pop (65+)	168,024	198,832	198,832
Brevard County	Beds/1000	18	15	15
	Beds*	85,849	85,849	85,918
	Pop (65+)	4,985,405	5,787,109	5,787,109
Florida	Beds/1000	17	15	15

Note: *Projected beds assumes all CON approved beds are licensed by 2026.

Source: CON application #10800, Page 1-9, Table 1-3 from the Agency's Florida Population Estimates by Districts 2015-2030 and Florida Nursing Home Utilization by District & Subdistrict January 2023 - December 2023.

The reviewer generates the following table using the applicant's Claritas population projections and the licensed community nursing home beds in Palm Bay zip codes, Brevard County and Florida.

**Brevard Operations LLC Claritas Population Estimates
Current (2023) and Projected (2028) Bed Availability**

Palm Bay	Beds Pop (65+) Beds/1000	471 24,878 19	471 29,877 16	*540 29,877 18
Brevard County	Beds Pop (65+) Beds/1000	3,007 160,892 18	3,007 186,456 16	*3,076 186,456 16
Florida	Beds* Pop (65+) Beds/1000	85,849 4,971,932 17	85,849 5,772,529 15	85,918 5,772,529 15

Note: *Projected beds assumes all CON approved beds are licensed by 2028. There are three existing nursing homes in Palm Bay with a total of 381 licensed beds and the applicant's 90 CON approved beds.

The reviewer notes that without the project the Palm Bay zip codes average 15.76 beds per thousand compared to Brevard County's 16.13 beds per thousand population age 65+. Regardless, the need is for the subdistrict and the applicant's project responds to the subdistrict need.

Back to the applicant's discussion - According to AHCA estimates, Brevard County has 18 beds per 1,000 seniors aged 65 and older in 2023, exceeding the state average of 17 beds per thousand. By January 2028, the subdistrict's bed-to-senior ratio is projected to decline to 15 beds per 1,000 without adding new beds. Even with the addition of 69 beds, the ratio will still be at 15 beds per 1,000. This highlights the growing demand for nursing home beds due to population growth. As the elderly population increases in Brevard County, the number of available beds decreases relative to the population. The proposed addition of beds will increase the supply in an area with a high elderly population growth rate and limited bed availability.

Brevard County's nursing home bed demand is strong, as reflected in the FNP calculation. Occupancy rates have been rising since the COVID-19 pandemic. Brevard Operation LLC's table 1-4 on the application's page 1-10 compares nursing home utilization in Brevard County and Florida for the past five years. The applicant notes since the drop in utilization from the COVID-19 pandemic, Brevard County has experienced a significant rebound. Prior to the pandemic, both Brevard County and Florida had average occupancy rates of around 85 percent. However, Brevard County has not only recovered from the pandemic's impact but has also outperformed the state's average occupancy rate since then. In fact, Brevard County's occupancy rate has surpassed pre-pandemic levels, reaching 87.63 percent compared to the state's average of 81 percent for the most recent year. Furthermore, for the last quarter of 2023, Brevard County facilities reported an average occupancy rate of 88 percent, which is higher than the statewide average of 83.57 percent.

Brevard Operations provides Table 1-5 on page 1-11 of the application that shows the patient days and occupancy rates for Brevard County and Florida by quarter for the most recent 12-month period. A clear trend of increasing occupancy rates can be observed in Brevard County from quarter to quarter. Table 1-4 shows an occupancy rate of 87.63 percent in CY 2023, which is higher than District 7 and the state. This upward trend in occupancy within the Subdistrict 7-1 suggests a growing demand for skilled nursing beds in the region.

The applicant uses the Brevard County CY 2023 use rate of 5,366 days per thousand seniors to project utilization for Brevard County during CY 2028, resulting in a projected occupancy rate of 95 percent with the project and 97.2 percent without the project. Despite a steady rise in utilization over the past year, the table above maintains the current utilization rate for the subdistrict at its current level. With the addition of 69 beds to Brevard County, the subdistrict achieves an average occupancy rate of 95 percent, exceeding the 92 percent target occupancy threshold rule by the second year of the project. The applicant concludes that given the high growth and demand for skilled nursing beds, the project ensures sufficient beds are available without negatively impacting existing facilities. Brevard Operations' Table 1-9 indicates the 159-bed facility will have 30,308 patient days (52.22 percent occupancy) in year one CY 2027 and 52,352 patient days (89.96 percent occupancy) in CY 2028.

Brevard Operations summarizes its conclusions – project meets the need, Palm Bay has strong 65+ growth rate, more rehabilitation services will be needed with four hospitals within a 15-mile radius of Palm Bay, and the project will improve geographic access and help to maintain the existing subdistrict health care infrastructure. The applicant concludes it demonstrated its proposal meets the statutory criterion, need, enhances access and will not negatively impact existing facilities.

2. Agency Rule Preferences

Does the project respond to preferences stated in Agency rules? 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.

- 1. 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 patterns, patient characteristics, expected average length of stay, ancillary services, patient assessment tools, admission policies and discharge policies.**

The proposed facility provides a broad range of nursing and restorative care to manage short-term rehabilitation, long-term care, and complex medical conditions. Specialized programs and services include among others - stroke rehabilitation, cardiac rehabilitation, tracheotomy care, total parenteral nutrition, outpatient dialysis and wound care. Brevard Operations next provides a discussion of Aston Health's disease specific programs - cardiac rehabilitation, kidney failure, orthopedic rehabilitation, respiratory disease stroke rehabilitation, bariatric care, palliative care/cardinal care program.

Brevard Operations details its comprehensive approach to admissions and care planning designed to ensure each resident receives personalized care. Aston Health develops a personalized care plan for each resident, addressing their unique physical, psychosocial, and functional needs. The resident's Interdisciplinary Team (IDT) consists of an attending physician, registered nurse, nurse aide, food and nutrition services staff, and other relevant professionals as required by the resident's needs or requested by the resident. This plan is signed by the resident and/or their legal representative in collaboration with their care team.

The care planning process involves residents and their representatives, assessing their strengths and needs, and incorporating personal and cultural preferences. Residents have the right to actively participate in the planning process, including the right to refuse treatment and choose how they want to participate in the plan formulation process. This includes deciding on the timeline, individuals involved, services and items included in the plan, and revisions to the plan if needed.

Each resident's care plan includes measurable objectives and timeframes and addresses potential future discharge plans. The plan outlines all the services the resident will receive to achieve or maintain their highest possible physical, mental, and psychosocial well-being. The plan builds on the resident's strengths while identifying potential risk factors and incorporates standards of care and practice for their diagnoses.

The care plan is reviewed and updated when there are significant changes in the resident's condition, unmet desired outcomes, readmission from a hospital stay, or at least quarterly during comprehensive assessments. If areas of concern are identified during

assessments, the care team and physician will evaluate them. Revisions to the plan address the root causes of problem areas rather than just symptoms or triggers.

Brevard Operations emphasizes the importance of discharge planning, which begins with an initial assessment and evolves as the resident's condition progresses. The plan encompasses medical services, appointments, prescriptions, and interactions with various healthcare and social systems. This includes arranging for adaptive equipment, referrals to outside entities, and community services such as Meals on Wheels and transportation. The applicant highlights the role of education and teaching provided by licensed nurses to residents and their families, focusing on medication management, treatment programs, and community resources to facilitate a successful transition of care.

The applicant notes that the discharge plan may involve prescriptions for medications, outpatient therapy, and laboratory tests. A home evaluation by the therapy department is also a crucial aspect of the discharge process. Furthermore, the applicant emphasizes the importance of a discharge meeting with the resident, family, and/or caregivers to review the plan.

The guidelines for home health eligibility are outlined as follows: (1) residing within the service area; (2) being homebound according to third-party payer requirements; (3) having a safe and effective environment; (4) having an available and willing caregiver; (5) requiring a level of service that can be adequately met in the specific environment; (6) being receptive to agency services and complying with recommended treatment; and (7) being under the supervision of a licensed physician in the State of Florida.

At discharge, the case manager presents the finalized plan that has been reviewed and discussed with the resident and family. This serves as an opportunity for any remaining concerns or questions to be addressed. The plan includes a comprehensive record of the resident's care, including a discharge summary outlining prior treatment, diagnosis, rehabilitation potential, physician orders for immediate care, and other relevant information. Upon request, the case manager provides copies of the plan to the primary care physician and other health care personnel.

Brevard Operations anticipates accepting both short- and long-term patients, with a diverse range of payers, including Medicare, Medicaid, and private insurance.

The applicant provides projected utilization, average length of stay, and average daily census for the first two years, based on similar facilities in the area with comparable utilization patterns. This data is intended to demonstrate the facility's ability to effectively manage its operations and provide quality care to its residents.

**Projected Year One and Two Utilization
Project's 69 Beds and Total 159-bed Facility**

Factor	69 Beds		159 Beds	
	Year One	Year Two	Year One	Year Two
Admissions	378	760	957	1,653
Patient Days	13,153	22,720	30,308	52,352
ALOS	34.8	30	31.7	31.7
ADC	36	62	83	143

Source: CON application #10800, Page 2-19, Table 2-1

Brevard Operations states it has allocated a significant proportion of the patient days in the additional 69 beds reflect the demand for short-term rehabilitation services. Specifically, 30 percent of the patient days have been allocated to Medicare Managed Care, 25 percent to Medicare, 35 percent to Medicaid Managed Care, and 10 percent to self-pay. In contrast, the admissions and patient days for the total facility of 159 beds indicate an average length of stay of 32 days in both the first and second years, reflecting the presence of both short- and long-term care needs. The applicant states the facility will be caring for a diverse population with varying levels of acuity and complexity.

Brevard Operations refers the reviewer to its Schedule 6, which has 29.8 FTEs in the first year and 62.70 FTEs in year two and meets staffing standards. The reviewer notes that the proposed staff additions are incremental to the previously planned staffing levels for the overall project and are specifically allocated to support the expanded capacity and increased patient volume associated with the additional 69 beds.

**Brevard County Hospital Discharges to SNFs by MDC
Patients Aged 65 and over, 7/22-6/23**

Major Diagnostic Category	Cases	Percent
08 Diseases & Disorders – Musculoskeletal & Connective Tissue	1,602	23.35%
05 Diseases & Disorders of the Circulatory System	910	13.26%
04 Diseases & Disorders of the Respiratory System	863	12.58%
01 Diseases & Disorders of the Nervous System	756	11.02%
11 Diseases & Disorders of the Kidney & Urinary Tract	684	9.97%
All Others	2,047	29.82%
Total	5,605	100.0%

Source: CON application #10800, Page 2-20, Table 2-2 from the Agency's Hospital Patient Discharge Data July 1-2022 – June 30, 2023.

The applicant indicates that the top five MDCs account for 70 (70.18) percent of discharges to nursing homes among those aged 65 and over. The top five categories are stated to “have much in common with respect

to restorative and normalizing activities designed to improve functional capabilities.” Brevard Operations describes its specialized programs and therapies for MDCs 1, 4, 5, and 8, noting that the facility design includes a large therapy suite equipped for rehabilitation and occupational therapy for activities of daily living. Further, contracted personnel will deliver therapies and the applicant contends the project will benefit “from innovative technologies that allow for programming for each individual as functional improvements occur.” Brevard Operations concludes that the overall objective is to avoid hospital admission or readmission, ensure healing and promote higher functional levels to improve residents' health and quality of life.

2. Quality of Care. In assessing the applicant’s ability to provide quality of care pursuant to 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, has never had a nursing facility licensed 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.

Brevard Operations LLC 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 provision does not apply to Brevard Operations LLC.

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.

3. **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.**

Brevard Operations LLC states it will provide required data to Health Council of East Central Florida, Inc., and to the Agency for Health Care Administration as required for licensure and financial requirements.

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)(5), Florida Statutes.**

Brevard Operations states that “availability is defined as how much of a resource exists. The fixed need pool published on March 29, 2024, indicates a need for 69 community nursing home beds for Nursing Home Subdistrict 7-1, Brevard County.” Brevard Operations notes Brevard County has 21 skilled nursing facilities with a total of 2,819 beds, in addition to 98 approved community beds authorized by CON #10759, and 90 approved community beds for CON #10751, for a total 3,007 existing and approved beds. The subdistrict's CY 2023 occupancy rate of 87.63 percent is also provided.

Brevard Operations notes that Palm Bay, is “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.”

The applicant states that based on current bed capacity and the Agency's population estimates, Brevard County has 18 beds per 1,000 persons aged 65 and older in 2023, which compares to the state with 17 beds per 1,000. Brevard Operations indicates that by January 2028, which is the second year of operations of the project, and using projected population estimates for the same time, both the subdistrict and Florida will drop to 15 beds per 1,000 seniors if no beds are added. Further, the applicant states that even with the addition of the 69 beds in this project the service area will remain at 15 beds per 1,000 indicating the impact of population growth on ever-increasing demand.

Brevard Operation's addresses quality of care noting it will receive consulting services from Aston Health during both the initial startup phase and for ongoing operations. Further, Aston Health provides similar services to 41 Florida skilled nursing facilities, all of which are Joint Commission accredited. Geographic access and access to services are addressed. Brevard Operations list five acute care hospitals that are within a 30-minute drive of Palm Bay, of which all but one (Sebastian River Medical Center) is in Brevard County. The applicant also presents Figure 3-1 that shows the distribution of acute care hospitals and nursing homes in the subdistrict.

Brevard Operations addresses Rule 59C-1.030 Florida Administrative Code - Health Care Access Criteria on the application's pages 3-7 through 3-9.

- 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)(10), Florida Statutes.**

Brevard Operations states Aston Health has a proven track record of building high-quality nursing facilities and a reputation for excellence. In recognition of their commitment to quality care, two of their Florida affiliates received the American Health Care Association/National Center for Assisted Living (AHCA/NCAL) National Quality Silver Award in 2022. One Aston affiliated facility received the Silver level award and five other Aston affiliated facilities achieved the Bronze level award in 2023. The full list of Aston Health's Florida affiliates is included in Exhibit 9 of the application. As the applicant has pointed out earlier all the Florida nursing homes affiliated with Aston Health are Joint Commission accredited, as reported in a 2017 *Journal of Post-Acute and Long-Term Care Medicine* (JAMDA) article only 711 of 15,637 nursing homes held this accreditation nationally. This is relevant since the same study compared this status with inspection deficiencies and five-star ratings.

The study found that those with accreditation performed better on “each of the four indices that comprise the Five-Star Quality Rating” than those not accredited. Brevard Operations concludes that its Aston Health affiliation will ensure it will achieve Joint Commission accreditation and perform at a high level.

Aston Health has established strong relationships with several nursing schools and allied professional programs. Through these relationships it provides hands-on experience for the students of these programs. Many of which often apply to work at Aston Health facilities after graduation.

Aston Health provides disease specific programs and protocols including for cardiac, kidney failure, orthopedic, respiratory and stroke. More information on these can be found in Exhibit 10. COPD and Sepsis management protocols are also referenced.

Brevard Operations LLC provides a detailed description of its importance of a Quality Assurance Performance Improvement Plan (QAPI) and Quality Assurance and Assessment Program. The applicant contends this will ensure the facility meets the needs and expectations of patients, while maintaining good patient outcomes and person-centered care. The facility prioritizes individualized care for residents, involving them in their own care planning and addressing their unique needs. The American Health Care Association's guidelines use for assistance in measuring and assuring quality within nursing homes is also cited. Brevard Operations intends to conduct random quality reviews of residents, with findings reported in Risk Management/QA meetings until substantial compliance is met, recommending quarterly reviews. Active programs will include Hospital Readmission Reduction Protocols, Concierge and Admissions Nurse Program, Guardian Angel Program, Electronic Medical Records and Telehealth.

Aston Health Florida affiliated nursing homes had 271 substantiated complaints with 18 categories cited during the 36 months ending June 19, 2024. A substantiated complaint can encompass multiple complaint categories. See the table below.

**Brevard Operations – Aston Health Affiliates
Substantiated Complaints Categories
June 19, 2021 - June 19, 2024**

Complaint Category	Number Substantiated
Administration/Personnel	31
Admission, Transfer & Discharge Rights	10
Billing/Refunds	5
Dietary Services	12
Elopement	5
Falsification of Records/Reports	3
Fraud/False Billing	1
Infection Control	12
Life Safety Code	7
Misappropriation of property	1
Other Services	1
Physical Environment	22
Quality of Care/Treatment	114
Quality of Life	5
Resident/Patient/Client Abuse	5
Resident/Patient/Client Neglect	8
Resident/Patient/Client Rights	28
Unqualified Personnel	1
Total	271

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 accomplishments and operations? 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 \$249,956.

Capital Requirements and Funding:

The applicant indicates on Schedule 2 capital projects totaling \$49,267,340 which includes the previously approved CON #10751 for \$36,462,100. In addition, the applicant will have to fund working capital until a positive cash flow from operations can be achieved.

It should be noted that this project cannot go forward without the underlying nursing home approved in CON being constructed as well. This effectively makes the funding need for this project \$49,267,340.

The applicant indicates on Schedule 3 of its application that funding for the project will be provided by non-related company financing. The applicant provided a letter of interest, dated June 11, 2024, from Dwight Mortgage Trust stating their interest in providing Brevard Operations, LLC with funding up to \$52,000,000 to construct the project. A similar letter of interest was provided in CON #10751 and the amount of interest would cover the previously approved CON plus the current application. However, like our review in the previous CON a letter of interest is not considered a firm commitment to lend and there's funding for this project is not guaranteed.

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	23,688,800	452	642	476	400
Total Expenses	21,758,000	416	562	449	366
Operating Income	1,930,800	37	76	18	-52
Operating Margin	8.15%		Comparative Group Values		
	Days	Percent	Highest	Median	Lowest
Occupancy	52,352	90.21%	87.17%	81.28%	77.84%
Medicaid	18,323	35.00%	66.82%	53.91%	5.67%
Medicare	28,794	55.00%	44.91%	25.70%	21.02%

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, & profit falls within the group range and are considered reasonable. In addition, the total cost appears to include at least the minimum staffing required. 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(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 cost to remain profitable and offering higher quality and additional services to attract patients from competitors. Since Medicare and Medicaid are the primary payers in the nursing home industry, price-based competition is limited. With a large portion of the revenue stream essentially fixed on a per patient basis, the available margin to increase quality and offer additional services is limited. In addition, competitive forces truly do not begin to take shape until existing business’ market share is threatened. The publication of need in this area suggests that there is an unmet and untapped customer base for a new entrant to absorb. Since nursing home services are limited to available beds and the need formula suggest

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

Conclusion:

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

- f. Are the proposed costs and methods of construction reasonable? Do they comply with statutory and rule requirements? Section 408.035(8), Florida Statutes; Chapter 59A-4, Florida Administrative Code.**

The applicant has submitted all information and documentation necessary to demonstrate compliance with the architectural review criteria. The applicant did not specify the Florida Building Code or National Fire Protection Association (NFPA) construction types, but the narrative did provide sufficient information to make an informed inference. 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 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 to provide health care services to Medicaid patients and the medically indigent? Section 408.035(9), Florida Statutes.**

Brevard Operations LLC as a new entity does not have a history of providing care. The applicant provides Aston Health's Florida affiliated

nursing home Medicaid patient days and occupancy percentage during CYs 2021 – 2023. Medicaid Managed Care is projected to 35 percent of the project and the total facility's year one and year two patient days.

F. SUMMARY

Brevard Operations LLC (CON application #10800) proposes to add 69 community nursing home beds to the 90-bed facility approved through CON #10751 in Subdistrict 7-1 (Brevard County). The proposed addition will add 61 short-term care private rooms and eight beds in four long-term semi-private rooms.

The project includes 33,496 GSF of new construction. Total project cost is \$12,805,240.

Brevard Operations indicates that the project will be licensed in December 2026 and begin service in January 2027.

The applicant does not propose any conditions on the project.

Need:

- The application was filed in response to the published need.
- The applicant's major need justifications include:
 - The 65 and over Brevard County population growth, which is expected to represent nearly 30 percent of the total population by 2028.
 - Brevard County presently has 18 nursing home beds per 1,000 persons aged 65 and older, which is projected to decrease to 15 beds per 1,000 seniors without this project and maintain 15 beds per thousand with the project.

Quality of Care:

- The applicant provided a detailed description of the ability to provide quality care
- During the 36 months ending June 19, 2024, the 41 affiliated Aston Care nursing homes had 271 substantiated complaints with 18 categories cited

Financial Feasibility/Availability of Funds:

- Funding for the 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 submitted all information and documentation necessary to demonstrate compliance with the architectural review criteria
- The applicant did not specify the Florida Building Code or National Fire Protection Association (NFPA) construction types, but the narrative did provide sufficient information to make an informed inference
- 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

Medicaid/Indigent Care:

Brevard Operations LLC (a new entity) projects that the total 159 bed facility and the 69-bed project will provide 35 percent of year one and year two total annual patient days to Medicaid Managed Care patients.

G. RECOMMENDATION

Approve CON #10800 to add 69 community nursing home beds to the 90-bed facility approved through CON #10751 in District 7, Subdistrict 1, Brevard County. The total project cost is \$12,805,240. The project involves 33,496 GSF of new construction and a total construction cost of \$10,048,800.

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: August 9, 2024



James B. McLemore
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Certificate of Need



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