

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

**A. PROJECT IDENTIFICATION**

1. Applicant/CON Action Number

**Delray Group, LLC**  
**d/b/a Lake View Care Center at Delray/CON #10231**  
10800 Biscayne Boulevard, Suite 600  
Miami, Florida 33161-7499

Authorized Representative: Mr. Abraham Shaulson  
(305) 864-9191

2. Service District/Subdistrict

District 9, Subdistrict 9-4 (Palm Beach County)

**B. PUBLIC HEARING**

No public hearing was held regarding the proposed project and no letters of support were submitted.

**C. PROJECT SUMMARY**

**Delray Group, LLC d/b/a Lake View Care Center at Delray (CON application #10231)**, is an existing 120-bed nursing home in Delray, Florida with an exemption (#E140013) to replace the existing nursing home and relocate it to 6595 Morikami Park Road, Delray Beach. The applicant seeks to transfer CON #10176 and modify it to be an addition of 60 beds to the 120-bed replacement facility, Lake View Care Center at Delray. CON #10176 was originally approved on February 15, 2013 to SF Palm Beach, LLC to establish a 60-bed community nursing home through the delicensure of 60 beds from Edward J. Healey Rehabilitation and Nursing Center. The result of the transfer will create a 180-bed community nursing home.

The applicant states that the project involves 30,600 total gross square feet (GSF) of new construction with a construction cost of \$0. Delray Group, LLC indicates there are no construction costs because it will lease the facility from a related entity. The total cost of the project is \$121,300. Total project costs include equipment, project development and start-up costs. This project was accepted as an expedited review because it is the transfer of an existing CON. However, Delray Group, LLC's construction and total project costs as stated in this application would not be accepted in a competitive batch review.

Delray Group, LLC indicates that it does not wish to accept any conditions. The reviewer notes that SF Palm Beach, LLC, the current CON holder for CON #10176, did not accept any conditions.

#### **D. REVIEW PROCEDURE**

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

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

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

As part of the fact-finding, the consultant Marisol Fitch analyzed the application in its entirety with consultation from the financial analyst Derron Hillman, who evaluated the financial data and Said Baniahmad 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 sections 408.035, and 408.037, Florida Statutes, and applicable rules of the State of Florida, Chapters 59C-1 and 59C-2, Florida Administrative Code.

**1. Fixed Need Pool**

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

The applicant states that transfer CON applications are subject to expedited review and that the fixed need pool does not apply. The number of licensed and approved nursing home beds in Subdistrict 9-4 will remain unchanged as a result of the proposed transfer.

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

Delray Group states it will construct the replacement facility (pursuant to E#140013) for Lake View Care Center at Delray with an additional 60 beds, through the proposed transfer. The applicant indicates that this will allow the beds to be placed in a new physical plant with features and amenities to improve function and quality. Delray Group maintains that placing the 60 beds into service at a new facility already planned within Subdistrict 9-4 is the best use of existing health care resources.

The applicant cites several health planning benefits associated with the transfer, including:

- Maintains the current supply of licensed and approved community nursing home beds in Palm Beach County
- Reallocates approved beds within the county to combine them with a highly occupied 120-bed facility
- The 60 approved beds will be added to a 120-bed replacement facility, resulting in better economies of scale for a 180-bed facility
- Promotes culture change for improved quality and resident satisfaction

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- Enhances access and availability to residents of Delray Beach
- Locates community beds in a Zip Code that is in a high growth area of the county with a large elderly concentration
- Produces no adverse impact on area nursing homes.

Delray Group states that while the facility will serve the entire subdistrict of Palm Beach County, the primary service area is expected to be within a 10-mile radius of 6595 Morikami Park Road, Delray Beach, Florida 33446. The applicant provides a map with the proposed location and the existing nursing home facilities in the area. The reviewer notes that according to a proximity search done on FloridaHealthFinder.gov on August 14, 2014, there are 24 licensed nursing homes in a 10-mile radius of the proposed replacement facility location. Delray Group notes that in a densely populated area, such as Delray Beach, facilities are located more closely together than in suburban or rural areas.

The applicant provides current and projected population estimates for Palm Beach County, noting that the 75 and older cohort represents 11.5 percent of the county's population. Delray Group states that this age cohort is most likely to utilize skilled nursing care and that these estimates support the preservation of the bed supply within Subdistrict 9-4. The applicant indicates that these estimates show the 65 and older population growing at twice the rate of the total population and that the demand for nursing home beds will increase proportionately. Delray Group contends that while the growth rate for Palm Beach County is somewhat lower than the statewide average—Palm Beach County still has a higher percentage of persons over the age of 65 and 75 than the state as a whole. See the tables below.

<b>Current and Project Population Estimates for Palm Beach County and Florida January 2014 and 2019 Total Population, 65+ and 75+</b>					
<b>Area</b>	<b>January 1, 2014</b>				
	<b>Total</b>	<b>65+</b>	<b>Percent 65+</b>	<b>75+</b>	<b>Percent 75+</b>
Palm Beach County	1,356,997	300,763	22.2%	156,260	11.5%
Florida	19,430,458	3,548,756	18.3%	1,619,920	8.3%
<b>Area</b>	<b>January 1, 2019</b>				
	<b>Total</b>	<b>65+</b>	<b>Percent 65+</b>	<b>75+</b>	<b>Percent 75+</b>
Palm Beach County	1,443,819	339,780	23.5%	168,057	11.6%
Florida	20,800,262	4,153,269	20.0%	1,823,405	8.8%

Source: CON application #10231, page 1-7.

<b>Five-Year Growth Rates for Palm Beach County and Florida January 2014—January 2019 Total Population, 65+ and 75+</b>			
<b>Area</b>	<b>Total</b>	<b>65+</b>	<b>75+</b>
Palm Beach County	6.4%	12.8%	7.5%
Florida	7.0%	17.0%	12.6%

Source: CON application #10231, page 1-7.

Delray Group notes that there are 6,020 licensed community nursing home beds in 53 facilities in Palm Beach County (Subdistrict 9-4) and 177 CON approved but yet to be licensed community nursing home beds. The applicant notes that this results in a supply of 20.0 beds per 1,000 elderly aged 65 years and older, below the statewide average for nursing home beds per 1,000 population of 22.6 beds. Delray Group states that Palm Beach County has a higher proportion of individuals over age 65, 22.2 percent, than the state as a whole, 18.3 percent.

The applicant provides a targeted analysis using Zip Code level population estimates, providing the number of community nursing home beds in relation to the elderly population age 65 and over within a five and 10-mile radii of the proposed location. Delray Group maintains that the data shows that the effect of the bed addition to the new location will be overtaken by population growth in the elderly age cohorts. See the table below.

<b>Available Nursing Home Beds with Respect to Age 65+ Population Calendar Year 2013 and 2018</b>					
<b>2013</b>					
<b>Planning Area</b>	<b># Beds</b>	<b>Total Population</b>	<b>Population 65+</b>	<b>% of Population Age 65+</b>	<b>Beds per 1,000 Age 65+</b>
5-Mile Radius	839	165,921	66,319	40.0%	12.7
10-Mile Radius	2,427	595,695	173,317	29.1%	14.0
Subdistrict 9-4	6,020	1,353,652	304,802	22.5%	19.8
District 9	8,590	1,969,071	454,734	23.1%	18.9
Florida	80,074	19,356,053	3,544,045	18.3%	22.6
<b>2018</b>					
5-Mile Radius	839	169,400	72,075	42.5%	11.6
10-Mile Radius	2,487	618,249	190,097	30.7%	13.1
Subdistrict 9-4	6,080	1,414,824	339,591	24.0%	17.9
District 9	8,650	2,055,506	508,495	24.7%	17.0
Florida	80,134	20,322,385	4,093,840	20.1%	19.6

Source: CON application #10231, page 1-9.

Delray Group states that the population estimates above confirm that the beds are being placed into service in an area of the county where they are needed the most, with fewer beds and a higher concentration of residents over the age of 65—maximizing availability.

The applicant acknowledges that the current facility received an overall two-star designation (out of five stars possible) within District 9 for the January 2012 through June 2014 rating time period for the Agency's Nursing Home Inspection Ratings. The reviewer notes that the Lake View Care Center at Delray received two stars (out of a possible five) in all three inspection categories—Quality of Care, Quality of Life and Administration. Delray Group contends that despite the two-star overall rating, the applicant received five stars on four of the five inspections components (Nutrition & Hydration, Restraints & Abuse, Pressure Ulcers and Dignity). The reviewer notes that the fifth inspection component, Decline, the applicant received a one-star rating. The applicant asserts that complaints and deficiencies are addressed and corrected as quickly as possible.

Delray Group notes that many of the cited inspection tags involve physical plant deficiencies that will be remedied with the construction of the new replacement facility. The applicant asserts that the new facility will provide adequate space for resident activities as recent survey have found space inadequate for resident's activities and that systems require updating. The reviewer notes that the current facility has been on the Nursing Home Watch List since September 26, 2013 when it met the criteria for a conditional status. As of August 26, 2014, the facility has had 334 conditional days due to deficiency tag N0201<sup>1</sup> and the conditional status is being challenged by the facility.

The applicant maintains that elderly residents are the primary users of skilled nursing beds and that Zip Codes having a higher median age would be more likely to access skilled nursing facilities. Delray Group provides Zip Code analysis and notes that Zip Code 33484 (current Zip Code) has a median age of 71.5 and the proposed Zip Code, 33446, has a median age of 70.1. The applicant notes that these two Zip Codes have the highest median age for all Zip Codes comprising a 10-mile radius for the proposed project location for both year 2013 and 2018. Delray Group contends that the proposed location clearly positions the facility within the area having the largest concentration of seniors within Subdistrict 9-4, Palm Beach County.

Delray Group indicates that the proposed location will remain close to Delray Medical Center and within range of four other hospitals in order to maintain access to hospital services and provide an important

<sup>1</sup> According to FloridaHealthFinder.gov deficiency definition, tag N0201 is defined as: 400.022 (1) (l) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the Agency.

component in the continuum of care. The applicant asserts that project will ensure discharge planners have access to skilled nursing beds for patients being discharged for rehabilitation following an acute care episode and provides hospital discharge data for the facilities located near the proposed location. See the table below.

<b>Hospital Discharges to Skilled Nursing Facilities Within a 10-Mile Radius of the Proposed Location for CON #10231 Calendar Year 2013</b>			
<b>Hospitals within a 10-Mile Radius</b>	<b>Total Discharges</b>	<b>Discharges to Skilled Nursing Facilities</b>	<b>Percent</b>
Bethesda Hospital West	2,457	422	17.2%
Bethesda Memorial Hospital	17,826	1,458	8.2%
Boca Raton Community Hospital	17,964	2,910	16.2%
Delray Medical Center	17,968	3,264	18.2%
West Boca Medical Center	11,913	1,155	9.7%
Subtotal	68,128	9,209	13.5%
All Palm Beach County Hospitals	191,093	21,292	11.1%
All Florida Hospitals	2,673,008	253,501	9.5%

Source: CON application #10231, page 1-14.

The applicant states that policies will be in force that will allow the new facility to accept a wide range of payers but clinical criteria must be met first before a consideration of payer. Delray Group indicates that most skilled nursing facility residents have third party coverage and that Medicare/Medicaid programs provide the majority of reimbursed care. The applicant states that Lake View Center at Delray is an existing nursing home facility with both Medicare and Medicaid certification that had a Medicaid occupancy rate of 39.01 percent in 2013.<sup>2</sup> Delray Group notes that within a 10-mile radius of the proposed replacement facility there was an overall Medicaid occupancy rate of 49.84 percent during CY 2013 and within a five-mile radius there was an average Medicaid occupancy rate of 48.39 percent. The reviewer notes that SF Palm Beach, the transferor of CON #10176, forecasted an average Medicaid rate of 45 percent for year one and year two (calendar year 2016 and 2017) in the original application for CON #10176.

The applicant maintains that Palm Beach County has a lower percentage of persons below the poverty level (14 percent) than for the state (15.6 percent), with Delray Beach having a slightly higher poverty level (14.7 percent). Delray Group asserts that Palm Beach demographics suggest that Medicaid occupancy rates may be lower than the states—due to higher income levels and smaller percentages of individuals living below the poverty level.

<sup>2</sup> The 'Florida Nursing Home Utilization by District & Subdistrict January 2013 – December 2013' indicates the 120-bed Lake View Center at Delray had 90.10 percent total and 39.01 percent Medicaid occupancy in CY 2013.

Delray Group states that the overall occupancy rate for District 9 in CY 2013 was 84.83 percent and that Subdistrict 9-4 experienced an overall occupancy rate of 84.06 percent. The statewide average was 87.19 percent for 2013. The CON reviewer confirms the applicant's stated utilization. The applicant maintains that the subdistrict has steadily experienced small increases over the last three years. See the table below.

<b>Subdistrict 9-4 Nursing Home Occupancy Rate by Calendar Year</b>	
<b>Calendar Year</b>	<b>Occupancy Rate</b>
2011	83.63%
2012	83.84%
2013	84.06%

Source: CON application #10231, page 1-16.

The applicant notes that the occupancy rate for the 23 facilities within a 10-mile radius of the applicant's proposed project was 82.36 percent in calendar year 2013. Delray Group indicates that the occupancy rate for facilities within a 10-mile radius is lower than the subdistrict average due to Willowbrooke Court at St. Andrews Estates reporting an occupancy rate of 35.76 percent for its 79 beds<sup>3</sup>. The applicant contends that if you recalculated the occupancy rate, assuming 49 beds were occupied at Willowbrooke<sup>4</sup>, the result would be less than one percentage point lower than the overall subdistrict rate—83.37 percent compared to Subdistrict 9-4's 84.06 percent occupancy rate for 2013.

Delray Group states that seven facilities are located with a five-mile radius of the new replacement facility—five of these (including the applicant's current facility) experienced a 90 percent of higher occupancy rate in 2013. The applicant maintains that higher occupancy rates indicate highly utilized facilities within the surrounding area of the proposed replacement facility where the 60 beds will be implemented. Delray Group concludes that the proposed project will provide the best use of available resources to accommodate demand within Subdistrict 9-4.

<sup>3</sup> The reviewer notes that Willowbrook Court at St. Andrews Estates occupancy rate was used to calculate Subdistrict 9-4's overall occupancy rate.

<sup>4</sup> The applicant states that beds were taken out of service at St. Andrews Estates for renovations.

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

Delray Group states that they acquired the current 120-facility, Lake View Care Center at Delray in 2001. The applicant indicates that the facility is managed by Millennium Management, LLC, an experienced owner, manager and operator of more than 50 skilled nursing facilities in four states, including Florida. The reviewer notes that Agency records show Carestrong, LLC and Brightsnfcare, LLC as management groups for this facility<sup>5</sup>. Delray Group states that high quality of care is evident as their facilities average 5 and 6.2 tags compared to state and national average of 7 and 9 tags, for the last two years. The applicant asserts that Millennium's experience and expertise will assure the proposed project will be implemented on time, within budget and result in a new expanded replacement facility of high quality.

The applicant maintains that with the implementation of the proposed project, existing facility deficiencies will be remedied and that the facility design includes the following features:

- Half of all resident rooms will be private
- Semi-private rooms have wall separation, with each bed having a window view to maximize privacy
- Therapy suite with a therapy gym, space equipped for physical therapy, occupation therapy for activities of daily living and speech therapy
- Multiple dining rooms—one for each resident neighborhood, providing options from central dining
- Activity areas and living rooms within each resident wing
- Patio and screened porch provided as part of each 30-bed resident neighborhood
- Beauty/barber shop
- Individual air conditioning and heating controls for resident comfort
- Wireless nurse call systems
- WiFi
- Individual flat panel TVs.

<sup>5</sup> Mr. Eli Strohli is listed in Agency records as a controlling interest in both Carestrong, LLC and Brightsnfcare, LLC and the applicant states that Mr. Strohli is listed as a Manager with Millennium and as an owner and President of multiple skilled nursing facilities in Florida on page 3-2 of CON application #10231.

The applicant acknowledges that the current facility received an overall two-star designation in the latest Nursing Home Inspection Ratings published in the Agency's Nursing Home Guide. Delray Groups contends that despite the two-star overall rating, the applicant received five stars on four of the five inspections components (Nutrition & Hydration, Restraints & Abuse, Pressure Ulcers and Dignity). The reviewer notes that the fifth inspection component, Decline, the applicant received a one-star rating. The applicant states that this is likely attributable to the population served by the facility as it provides a wide range of services that handle a variety of complex medical conditions. Delray Group asserts that complaints and deficiencies are addressed and corrected as quickly as possible.

Delray Group notes that many of the cited inspection tags involve physical plant deficiencies that will be remedied with the construction of the new replacement facility. The applicant asserts that the new facility will provide adequate space for resident activities. Delray Group maintains that the proposed facility will keep activity, dining and nursing services close to resident rooms to encourage residents to become more engaged and active in their environment and care. The reviewer notes that the current facility has been on the Nursing Home Watch List since September 26, 2013 when it met the criteria for a conditional status. As of August 26, 2014, the facility has had 334 conditional days due to deficiency tag N0201 and the conditional status is being challenged by the facility. The applicant does not comment on its Watch List status except to say that it has been added, deficiencies have been corrected and steps have been implemented to ensure continued quality. Lake View Care Center at Delray has been on conditional status for 335 days and is still actively on conditional status as of August 27, 2014.

The applicant indicates that its new nursing home administrator, Ms. Gina Anderson, has over 20 years of skilled nursing facility administration experience and previously administered at Oasis Health and Rehabilitation Center—a five-star facility<sup>6</sup>. Delray Group maintains that leadership and management support is critical to effective, lasting improvement efforts. The applicant states that management is responsible for creating the performance expectations that embrace a philosophy to continually improve products and services to everyone who conducts business with Lake View Care Center.

<sup>6</sup> Facility's five-star rating was confirmed by the reviewer on August 27, 2014 at <http://www.floridahealthfinder.gov/CompareCare/CompareFacilities.aspx>.

Delray Group states that it is dedicated to meeting the health care needs of each resident and seeks to provide care in a setting that celebrates the individual dignity and value of all who reside and work at the center in a safe and supportive environment. The applicant states that it operates a Risk Management and Quality Assurance Program designed to support a high-quality, safe and secure environment to ensure the facility is in full compliance with all local, state and federal regulatory requirements. Delray Group details this program within the application on pages 2-4 through 2-6.

The applicant notes that the proposed facility will continue to participate in both the Medicare and Medicaid programs to promote access. Delray Group states that it will provide a broad range of nursing and restorative care to manage both short-term rehabilitation and long-term care. These services will include:

- Physical therapy
- Occupational therapy
- Speech therapy
- Orthopedic rehabilitation
- Neurological rehabilitation
- Pulmonary rehabilitation
- Medical management
- Hospice Care
- Wound Care.

Delray Group states that it will also have other services and amenities that provide support, comfort and security. The applicant maintains that it has and will continue to have policies in place as required during the normal course of business, including care planning, admission and discharge procedures.

Agency licensure records indicate that the applicant had one substantiated complaint in the category of “physical environment” during the three years ending August 18, 2014.

The applicant notes that management of the proposed facility will be provided by Millennium Management, with Mr. Eli Strohli detailed in the resources portion as a Manager at Millennium as well as an owner and President of multiple skilled nursing facilities in Florida. Mr. Strohli has a controlling interest in Lake View Care Center at Delray as well as controlling interest in Carestrong, LLC and Brightsnfcare, LLC two

management companies utilized by Lake View Care Center at Delray. In addition, Mr. Strohli has a controlling interest in nine other nursing homes in Florida. The reviewer notes that none of these facilities are on the Nursing Home Watch List nor are they Gold Seal facilities. Agency licensure records indicate that these nine<sup>7</sup> facilities had 13 substantiated complaints during the three years ending August 18, 2014. A single complaint can encompass multiple complaint categories. The substantiated complaint categories are listed below:

<b>Nursing Homes with an Eli Strohli Controlling Interest Substantiated Complaint Categories for the Past 36 Months</b>	
<b>Complaint Category</b>	<b>Number Substantiated</b>
Quality of Care/Treatment	4
Admission/Transfer/Discharge Rights	2
Resident/Patient/Client Rights	1
Physical Environment	1
Administration/Personnel	1
Resident/Patient/Client Abuse	1
Infection Control	1
Unqualified Personnel	1
Misappropriation of property	1

Source: Agency for Healthcare Administration Complaint Records.

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

The financial impact of the project will include the project cost of \$131,300 plus routine capitalization of \$52,300 and incremental year two operating costs of \$5,329,000.

The audited financial statements of Delray Group, LLC for the period ending December 31, 2013 and 2012 were analyzed for the purpose of evaluating the applicant's ability to provide operational funding necessary to implement the project.

<sup>7</sup> These facilities are: Braden River Rehabilitation Center, Coral Gables Nursing and Rehabilitation, Hialeah Nursing and Rehabilitation Center, Lanier Manor, Menorah House, Oasis Health and Rehabilitation Center, Royal Care of Avon Park, Watercrest Care Center and West Broward Rehabilitation and Healthcare Center.

**Short-Term Position:**

The applicant's current ratio of 0.7 is well below average and indicates current assets are approximately 0.7 times current liabilities, a weak position. The ratio of cash flows to current liabilities of -0.3 is well below average, a weak position. The working capital (current assets less current liabilities) of -\$377,539 is a weak position. Overall, the applicant has a weak short-term position (see Table 1).

**Long-Term Position:**

The ratio of long-term debt to net assets of 0.0 indicates that the applicant has no long-term debt, a good position. The ratio of cash flow to assets of -25.5 percent is below average, a weak position. The most recent year had -\$1.2 million of revenue in excess of expenses, which resulted in a total margin of -8.8 percent. Overall, the applicant has a weak long-term position (see Table 1).

**Capital Requirements:**

The applicant indicates on Schedule 2 capital projects totaling \$183,600 which includes this project and routine capitalization.

**Available Capital:**

The applicant indicates on Schedule 3 of its application that funding for the project will be provided by the applicant with ongoing operations. The audited financial statements show negative working capital, negative cash flow from operations and a net loss for the most recent year. This indicates that the applicant may have difficulty funding this CON.

The land and construction costs for this project will be the responsibility of 6595, LLC, a third-party landlord according to the CON application. 6595, LLC's registered agent is Millennium Management whose President is Abraham Shaulson and Eli Strohli is a Manager at Millennium Management. Mr. Shaulson is also the authorized representative of both the Delray Group (transferee) of the CON for the 60-bed addition and the authorized representative of SF Palm Beach, LLC (transferor). The applicant identifies Millennium Management as under agreement for management of the current facility and for the proposed facility, and list

Mr. Shaulson and Mr. Strohli as part of the management personnel. Given the above, 6595, LLC may not be an unrelated third party.

The applicant has entered into a long-term lease agreement with 6595, LLC, according to a letter from Mr. Abraham Shaulson to Mr. Strohli dated July 30, 2014. The applicant provided a letter from Regions Bank indicating an interest in providing capital to 6595, LLC. However, this letter does not guarantee funding for the project.

<b>TABLE 1</b>		
<b>CON application #10231 - Delray Group, LLC</b>		
<b>Applicant</b>	<b>12/31/13</b>	<b>12/31/12</b>
Current Assets	\$1,132,429	\$2,588,833
Cash and Current Investment	\$292,532	\$738,470
Total Assets	\$1,734,580	\$3,239,340
Current Liabilities	\$1,509,968	\$1,960,516
Total Liabilities	\$1,509,968	\$1,960,516
Net Assets	\$224,612	\$1,278,824
Total Revenues	\$13,067,113	\$13,680,162
Interest Expense	\$0	\$0
Excess of Revenues Over Expenses	(\$1,154,212)	(\$1,404,080)
Cash Flow from Operations	(\$441,611)	(\$1,209,415)
Working Capital	(\$377,539)	\$628,317
<b>FINANCIAL RATIOS</b>		
	<b>12/31/13</b>	<b>12/31/12</b>
Current Ratio (CA/CL)	0.7	1.3
Cash Flow to Current Liabilities (CFO/CL)	-0.3	-0.6
Long-Term Debt to Net Assets (TL-CL/NA)	0.0	0.0
Times Interest Earned (NPO+Int/Int)	0.0	0.0
Net Assets to Total Assets (NA/TA)	12.9%	39.5%
Total Margin (ER/TR)	-8.8%	-10.3%
Return on Assets (ER/TA)	-66.5%	-43.3%
Operating Cash Flow to Assets (CFO/TA)	-25.5%	-37.3%

### **Conclusion:**

Funding for this project and the entire capital budget is in question.

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

A comparison of the applicant's estimates to the control group values provides for an objective evaluation of financial feasibility, (the likelihood that the services can be provided under the parameters and conditions contained in Schedules 7 and 8), and efficiency, (the degree of economies achievable through the skill and management of the applicant). In general, projections that approximate the median are the most desirable, and balance the opposing forces of feasibility and efficiency. In other words, as estimates approach the highest in the group, it is more likely that the project is feasible, because fewer economies must be realized to achieve the desired outcome. Conversely, as estimates approach the lowest in the group, it is less likely that the project is feasible, because a much higher level of economies must be realized to achieve the desired outcome. These relationships hold true for a constant intensity of service through the relevant range of outcomes. As these relationships go beyond the relevant range of outcomes, revenues and expenses may, either go beyond what the market will tolerate, or may decrease to levels where activities are no longer sustainable.

Comparative data were derived from skilled nursing facilities that submitted Medicaid cost reports in fiscal year 2012 and 2013. We selected 51 skilled nursing facilities with similar Medicaid utilization. Per Diem rates are projected to increase by an average of 2.9 percent per year. The price adjustment factor used was based on the new CMS Market Basket Price Index as published in the 1st Quarter 2014, Health Care Cost Review.

Projected net revenue per patient day (NRPD) of \$331 in year one and \$342 in year two is between the control group lowest and median values of \$282 and \$399 in year one and \$290 and \$411 in year two. With net revenues between the lowest and median values in the control group, the facility is expected to consume health care resources in proportion to the services provided (see Tables 2 and 3). Projected revenues appear to be reasonable.

Anticipated costs per patient day (CPD) of \$324 in year one and \$322 in year two are between the control group lowest and median values of \$259 and \$387 in year one and \$267 and \$398 in year two. With costs between the lowest and median values in the control group, projected costs are considered feasible (see Tables 2 and 3). The applicant is projecting a decrease in CPD between years one and year two of approximately 0.8 percent. Overall, costs appear to be reasonable.

Section 400.23(3)(a)(1), Florida Statutes, specifies a minimum certified nursing assistant staffing of 2.5 hours of direct care per resident per day and a minimum licensed nursing staffing of 1.0 hour of direct resident care per resident day. Based on the information provided in Schedule 6, the applicant's projected licensed nursing staffing and direct care exceeds the minimum level required in years one and two. Furthermore, the applicant's certified nursing assistant staffing exceeds the minimum required by Statute in both years. See table below.

<b>Lake View Care Center at Delray (CON application #10231) Minimum Staffing Requirements</b>			
<b>FTE Nurses/Aides</b>	<b>Minimum Requirement</b>	<b>CY 2017</b>	<b>CY 2018</b>
Nurses	1.0 hours of direct care per resident	1.59	2.39
Aides	2.5 hours of direct care per resident	2.90	2.70

Source: CON application #10231, Schedules 5 and 6A.

The year two operating profit for the skilled nursing facility of \$1,228,000 computes to an operating margin per patient day of \$21 which is between the control group median and highest values of \$11 and \$112. Overall profitability appears achievable.

**Conclusion:**

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

**TABLE 2**

**CON application #10231**

**SELECT FY 2012/2013**

**COST REPORT DATA**

	CY 2017 YEAR 1	YEAR 1 ACTIVITY <u>PER PAT. DAY</u>	VALUES ADJUSTED FOR INFLATION		
	<u>ACTIVITY</u>		<u>Highest</u>	<u>Median</u>	<u>Lowest</u>
ROUTINE SERVICES	16,393,000	351	567	336	240
ANCILLARY SERVICES	8,446,000	181	466	161	-135
OTHER OPERATING REVENUE	0	0	570	1	-22
<b>GROSS REVENUE</b>	<b>24,839,000</b>	<b>531</b>	<b>1,085</b>	<b>484</b>	<b>237</b>

DEDUCTIONS FROM REVENUE

**NET REVENUES**

9,344,000	200	0	0	0
<b>15,495,000</b>	<b>331</b>	<b>978</b>	<b>399</b>	<b>282</b>

**EXPENSES**

ADMINISTRATIVE	2,902,000	62	273	104	40
ANCILLARY	1,574,000	34			
PATIENT CARE	7,782,000	166	218	148	115
PROPERTY	2,581,000	55	306	28	2
OTHERS	321,000	7			
<b>TOTAL EXPENSES</b>	<b>15,160,000</b>	<b>324</b>	<b>1,081</b>	<b>387</b>	<b>259</b>

OPERATING INCOME

335,000

7

112

11

-89

2.2%

PATIENT DAYS

46,748

VALUES NOT ADJUSTED

TOTAL BED DAYS AVAILABLE

65,700

FOR INFLATION

TOTAL NUMBER OF BEDS

180

Highest Median Lowest

PERCENT OCCUPANCY

71.15%

99.0% 91.6% 68.5%

PAYER TYPE

PATIENT DAYS

% TOTAL

SELF PAY

4,675

10.0%

MEDICAID

16,999

36.4%

41.2%

37.4%

31.4%

MEDICARE

17,849

38.2%

62.1%

38.7%

4.9%

INSURANCE

0

0.0%

HMO/PPO

0

0.0%

OTHER

7,225

15.5%

TOTAL

46,748

100.0%

**TABLE 3**

**CON application #10231**

**SELECT FY 2012/2013**

**COST REPORT DATA**

	CY 2018 YEAR 2 <u>ACTIVITY</u>	YEAR 2 ACTIVITY <u>PER PAT. DAY</u>	VALUES ADJUSTED FOR INFLATION		
			<u>Highest</u>	<u>Median</u>	<u>Lowest</u>
ROUTINE SERVICES	21,491,000	362	584	346	247
ANCILLARY SERVICES	11,044,000	186	480	165	-139
OTHER OPERATING REVENUE	0	0	587	1	-23
<b>GROSS REVENUE</b>	<b>32,535,000</b>	<b>548</b>	<b>1,117</b>	<b>498</b>	<b>243</b>
DEDUCTIONS FROM REVENUE	12,214,000	206	0	0	0
<b>NET REVENUES</b>	<b>20,321,000</b>	<b>342</b>	<b>1,006</b>	<b>411</b>	<b>290</b>
<b>EXPENSES</b>					
ADMINISTRATIVE	3,778,000	64	281	107	41
ANCILLARY	2,058,000	35			
PATIENT CARE	10,170,000	171	225	152	118
PROPERTY	2,667,000	45	315	29	2
OTHERS	420,000	7			
<b>TOTAL EXPENSES</b>	<b>19,093,000</b>	<b>322</b>	<b>1,113</b>	<b>398</b>	<b>267</b>
OPERATING INCOME	1,228,000	21	112	11	-89
		6.0%			
PATIENT DAYS	59,334		VALUES NOT ADJUSTED		
TOTAL BED DAYS AVAILABLE	65,700		FOR INFLATION		
TOTAL NUMBER OF BEDS	180		<u>Highest</u>	<u>Median</u>	<u>Lowest</u>
PERCENT OCCUPANCY	90.31%		99.0%	91.6%	68.5%
PAYER TYPE	<u>PATIENT DAYS</u>	<u>% TOTAL</u>			
SELF PAY	5,933	10.0%			
MEDICAID	21,576	36.4%	41.2%	37.4%	31.4%
MEDICARE	22,655	38.2%	62.1%	38.7%	4.9%
INSURANCE	0	0.0%			
HMO/PPO	0	0.0%			
OTHER	9,170	15.5%			
TOTAL	59,334	100.0%			

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

Competition to promote quality and cost effectiveness is driven primarily by the best combination of high quality and fair price. Competition forces health care facilities to increase quality and reduce charges/costs in order to remain viable in the market. In this case the applicant is transferring previously approved CON beds from one location to another. Therefore, this project will not result in new beds to the service area and will not have a material impact on competition.

**Conclusion:**

This project is not likely to have a material impact on competition between skilled nursing facilities.

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

The applicant proposes to build a replacement facility, transferring an additional 60 beds (authorized by CON #10176) to a proposed 120-bed replacement nursing home for Lake View Care Center at Delray Beach, in Palm Beach County. The facility will be a freestanding three-story, 180-bed, 104,800-square foot, skilled nursing facility. The 60 beds associated with the transfer will be located on the third floor. According to the code data in architectural plans, the construction type is listed as FBC Type IA and NFPA Type I (332). Both construction types are suitable for the proposed facility. The applicant's architectural narrative indicates the building will be fully sprinklered with quick response sprinklers (QRS). The narrative also indicates that the site is above the category 3 storm surge and 100-year flood elevations.

The facility will consist of a three-story structure with multiple patios and screened porches. Each floor has 20 private rooms and 20 semi-private rooms for total of 60 beds. Therefore, the total facility will have 60 private and 60 semi-private rooms. All resident rooms contain shower/toilet rooms and appear to be designed to meet accessibility standards. The new resident rooms exceed the minimum area requirements of Florida Building Code.

The kitchen and administrative offices are located on the first floor and a 3,000 square foot therapy gymnasium and personal care are located on the second floor. Each floor has two separate living areas with a

screened porch and patio, living room, library, activity area, and a spa room for assisted bathing. All other required support areas have been provided and are centrally located. The nursing stations are located at the center point of all wings so that the nursing staff has constant visual control of the corridors.

According to the architectural plans and narrative, the entire building will comply with all new codes and standards, including all exterior units and the emergency generator system. The proposed facility is divided into smoke compartments as required by the applicable codes.

The project is well designed and should meet or exceed code requirements. The estimated project completion forecast appears to be reasonable. There is no construction costs associated with this project.

*The plans submitted with this application were schematic in detail with the expectation that they will necessarily be revised and refined during the Design Development (Preliminary) and Contract Document Stages. The architectural review of the 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 owner.*

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

The applicant states that it has a history of serving Medicaid residents in its existing 120-bed facility. Delray Group states that for 2013 it provided 15,395 days of care for Medicaid residents (39.01 percent Medicaid occupancy rate). The applicant maintains that due to the affluence of residents within Palm Beach County and the Delray Beach area where the project is located, Medicaid recipients represent a smaller percentage of patients. Delray Group provides a five-year historical utilization for Lake View Care Center at Delray, Subdistrict 9-4 and District 9. See the table below.

<b>Historical Medicaid Utilization for Lake View Care Center at Delray Subdistrict 9-4 and District 9</b>					
<b>Resident Days</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Lake View Care Center at Delray	42,259	41,964	41,433	40,418	39,465
Subdistrict 9-4	1,849,670	1,870,272	1,849,678	1,871,094	1,852,435
District 9	2,669,323	2,695,389	2,675,326	2,696,479	2,665,161
<b>Occupancy</b>					
Lake View Care Center at Delray	96.48%	95.81%	94.60%	92.03%	90.10%
Subdistrict 9-4	83.82%	84.75%	83.63%	83.84%	84.06%
District 9	84.88%	85.71%	84.94%	85.00%	84.83%
<b>Medicaid Days</b>					
Lake View Care Center at Delray	19,367	19,775	17,126	18,433	15,395
Subdistrict 9-4	1,071,103	1,083,603	1,091,427	1,087,124	1,076,225
District 9	1,595,714	1,614,758	1,623,081	1,624,445	1,604,028
<b>Medicaid Occupancy</b>					
Lake View Care Center at Delray	45.83%	47.12%	41.33%	45.63%	39.01%
Subdistrict 9-4	57.91%	57.94%	59.01%	58.10%	58.10%
District 9	59.78%	59.91%	60.67%	60.24%	60.19%

Source: CON application #10231, page 7-1 from 'Florida Nursing Home Utilization by District & Subdistrict' January – December published April 2010 – 2014 for the appropriate years.

Delray Group indicates that the proposed transfer of 60 beds from CON #10176 to the replacement facility will ensure continued access to Medicaid once the new facility is opened. The applicant provided projections for the 60 beds subject to this application and the total 180-bed facility. See the table below.

<b>Lake View Care Center at Delray (CON application #10231) Forecasted Admissions and Patient Days Additional 60 Beds Subject to Transfer</b>				
<b>Payer</b>	<b>Year 1: CY 2017</b>		<b>Year 2: CY 2018</b>	
	<b>Admissions</b>	<b>Patient Days</b>	<b>Admissions</b>	<b>Patient Days</b>
Self-Pay	3	1,009	6	1,881
Medicaid	10	3,669	19	6,839
Medicare	138	3,853	257	7,181
Other	45	1,560	84	2,097
<b>Total</b>	<b>196</b>	<b>10,091</b>	<b>366</b>	<b>18,808</b>
<b>Total 180-Bed Facility</b>				
Self-Pay	14	4,675	17	5,933
Medicaid	45	16,999	57	21,576
Medicare	638	17,849	810	22,655
Other	207	7,225	262	9,170
<b>Total</b>	<b>904</b>	<b>46,748</b>	<b>1,146</b>	<b>59,334</b>

Source: CON application #10231, page 7-2.

As shown above, Delray Group projects Medicaid will be 36.36 percent of the 60-bed project's patient days during both years one and two. The applicant notes that CON #10176 originally projected Medicaid days within the same range as those for Lake View Care Center. The reviewer has provided the original projections from SF Palm Beach, LLC's original application for CON #10176. See the table below.

<b>Forecasted Medicaid Patient Days</b> <b>For SF Palm Beach, LLC First Two Years of Operations</b> <b>Year One: 2016</b> <b>Year Two: 2017</b>			
<b>Medicaid Patient Days</b>	<b>Percent of Total Patient Days</b>	<b>Medicaid Patient Days</b>	<b>Percent of Total Patient Days</b>
5,511	45.1%	8,870	45.0%

Source: State Action Agency Report for CON #10176, page 24.

Delray Group indicates that the proposed facility will continue to provide Medicaid at historical levels on a going forward basis. The applicant contends that given the demographics and high incomes throughout the county, sufficient Medicaid certified beds exist to continue serving the current level.

## F. SUMMARY

**Delray Group, LLC d/b/a Lake View Care Center at Delray (CON application #10231)** is an existing 120-bed nursing home in Delray, Florida with an exemption (#E140013) to replace the existing nursing home and relocate it to 6595 Morikami Park Road, Delray Beach. The applicant seeks to transfer CON #10176 and modify it to be an addition of 60 beds to its replacement facility to create a 180-bed community nursing home.

The applicant states that the project involves 30,600 total GSF of new construction with a construction cost of \$0. The total cost of the project is \$121,300. Total project costs include equipment, project development and start-up costs. The failure to include the actual project and construction costs would not be acceptable in a batch review. However, as this is a transfer of an existing CON, the project was accepted for expedited review.

Delray Group, LLC indicates that it does not wish to accept any conditions. The reviewer notes that SF Palm Beach, LLC, the current CON holder for CON #10176, also did not accept any conditions.

## Quality of Care

The applicant indicates that the facility is managed by Millennium Management, LLC, an experienced owner, manager and operator. Delray Group asserts that Millennium's experience and expertise will assure the proposed project will be implemented on time, within budget and result in a new expanded replacement facility of high quality.

The applicant acknowledges that the current facility received an overall two-star designation in the latest Nursing Home Inspection Ratings and states these are likely attributable to physical plant conditions. Delray Group asserts that complaints and deficiencies are addressed and corrected as quickly as possible and that many will be remedied with the construction of a new replacement facility. The current facility has been on the Nursing Home Watch List since September 26, 2013 when it met the criteria for a conditional status.

Agency licensure records indicate that Lake View Care Center at Delray had one substantiated complaint in the category of “physical environment” during the three years ending August 18, 2014. Mr. Strohli has a controlling interest in Lake View Care Center at Delray and nine other nursing homes in Florida. Agency licensure records indicate that these nine facilities had 13 substantiated complaints during the three years ending August 18, 2014.

### **Cost/Financial Analysis**

The audited financial statements show negative working capital, negative cash flow from operations and a net loss for the most recent year. This indicates that the applicant may have difficulty funding this CON. Funding for this project and the entire capital budget is in question.

This project appears to be financially feasible based on the projections provided by the applicant. This project is not likely to have a material impact on competition between skilled nursing facilities.

### **Architectural Analysis**

The facility will be a freestanding three-story, 180-bed, 104,800-square foot, skilled nursing facility. The 60 beds associated with the transfer will be located on the third floor. Construction types are suitable for the proposed facility.

The applicant indicates that the building will be fully sprinklered and the site is above the category 3 storm surge and 100-year flood elevations. The new resident rooms exceed the minimum area requirements of Florida Building Code.

The project is well designed and should meet or exceed code requirements. The estimated project completion forecast appears to be reasonable. The applicant did not provide the construction costs associated with this project.

**Medicaid/Indigent Care Commitment**

The applicant states that it has a history of serving Medicaid residents in its existing 120-bed facility. Lake View Care Center at Delray provided 15,395 days (39.01 percent of the facility's total days) to Medicaid residents in CY 2013. The applicant maintains that due to the affluence of residents within Palm Beach County and the Delray Beach area where the project is located, Medicaid recipients represent a smaller percentage of patients.

The applicant notes that CON #10176 originally projected Medicaid days within the same range as those for Lake View Care Center. Delray Group indicates that the proposed facility will continue to provide Medicaid at historical levels on a going forward basis.

Schedule 7A indicates that Medicaid and Medicaid HMO residents will account for 36.36 (3,669 total days) percent of the 60-bed project's patient days in year one and 36.36 (6,839 total days) percent in year two.

**G. RECOMMENDATION**

Deny CON #10231.

**AUTHORIZATION FOR AGENCY ACTION**

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

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

\_\_\_\_\_  
James B. McLemore  
**Health Services and Facilities Consultant Supervisor**  
**Certificate of Need**