

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

**A. PROJECT IDENTIFICATION**

1. Applicant/CON Action Number

**Blue Heron Health and Rehabilitation, LLC/CON #10492**  
1800 North Wabash Ave., Suite 300  
Marion, Indiana 46952

Authorized Representative: Ryan Ott  
(765) 664-5400

2. Service District/Subdistrict

District 5, Subdistrict 5-1 (Pasco County)

**B. PUBLIC HEARING**

A public hearing was not held regarding the proposed project and no letters of support were submitted.

**C. PROJECT SUMMARY**

**Blue Heron Health and Rehabilitation, LLC (CON application #10492)** also referenced as Blue Heron or the applicant is a newly-formed entity which seeks to transfer CON application #10403 from Pasco SNF Operations, LLC, which establishes a 64-bed community nursing home in District 5, Subdistrict 5-1, Pasco County. The controlling interest of the applicant, Tender Loving Care (TLC) Management, Inc., currently operates Astoria Health and Rehabilitation Center in District 6, Subdistrict 6-5, Polk County. Mr. Ryan Ott is also the authorized representative for Pasco SNF Operations, LLC.

CON #10403 was issued to Pasco SNF Operations, LLC on March 18, 2016 to establish a 64-bed community nursing home in District 5, Subdistrict 5-1. CON #10403 was conditioned as follows:

- Locating the planned facility in ZIP Code 34639 or 33543 within Pasco County where there are currently no nursing homes accessible to the community

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- Providing Medicaid managed care at 50 percent of total resident days of care
- Implementing the Abaquis system to support the facility's Quality Assurance and Performance Improvement (QAPI) process
- Providing all private rooms within the 64-bed facility

The project involves 51,392 gross square feet (GSF) consisting of \$7,455,888 in new construction costs. The total project costs for the transfer CON is \$13,314,285. The total project cost includes land cost, building cost, equipment cost, project development costs, financing costs and startup costs.

The applicant includes a signed and notarized affidavit in Schedule 12-Trn/Affidavit by the Transferor, dated June 30, 2017 to transfer CON #10403 to another entity who will be an applicant for approval of the transfer, Blue Heron Health and Rehabilitation, LLC.

The applicant includes the following Schedule C conditions:

Blue Heron Health and Rehabilitation, LLC becomes the transferee to receive CON #10403 from Pasco SNF Operations, LLC. With the transfer, Blue Heron assumes the development of the project as the underlying CON describes. The following conditions appertain to the certificate of need; however, Blue Heron alters the first reflecting the purchase of 9.77 acres within the Seven Oaks Community Development District.

- Locating the planned facility in ZIP Code 34639 or 33543 within Pasco County where there are currently no nursing homes accessible to the community

**Change:** The proposal shows the site for the nursing home in Zip Code 33544, one of three Zip Codes that define Wesley Chapel within Pasco County. Two Zip Codes define Wesley Chapel—33543 and 33545. The narrative within this proposal establishes the benefits that the parcel provides and discusses access for residents with the nursing home's location in a Development of Regional Impact (DRI), Seven Oaks Community Development District. A purchase and sales agreement exists for the 9.77-acre parcel with the address of: 29701 Stockton Drive, Wesley Chapel, Florida 33544.

- Providing Medicaid managed care at 50 percent of total resident days of care

**No Change:** The forecast remains unchanged, with Blue Heron maintaining 50 percent of total resident days to Medicaid Managed Care Plans

- Implementing the Abaquis system to support the facility’s Quality Assurance and Performance Improvement (QAPI) process  
**No Change:** The Abaquis system exists as the preferred method for implementing and maintaining an ongoing quality assurance program within long-term care facilities. Blue Heron adopts the program and the narrative reflects its use
- Providing all private rooms within the 64-bed facility  
**No Change:** The plans remain unchanged from the underlying CON

The applicant expects issuance of licensure in November 2019 and initiation of service in January 2020.

<b>Total GSF and Project Cost of CON application #10492</b>				
<b>Applicant</b>	<b>Number of Beds</b>	<b>GSF</b>	<b>Costs \$</b>	<b>Cost Per Bed</b>
Blue Heron Health and Rehabilitation, LLC	64	51,392	\$13,314,285	\$208,036

Source: Schedule 1 and 9, CON application #10492

**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 Bianca Eugene analyzed the application in its entirety with consultation from the financial analyst, Butch Broussard, Bureau of Central Services, who evaluated the financial data and Scott Waltz of the Office of Plans and Construction, for conformance with the architectural criteria.

**E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA**

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

**1. Fixed Need Pool**

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

The applicant has submitted the application to transfer CON application #10403 for expedited review and not in response to the fixed need pool which will be published on September 29, 2017. The number of licensed and approved nursing home beds in Nursing Home Subdistrict 5-1 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.**

The applicant describes the intended area of the proposed transfer project to establish a 64-bed community nursing home located in Subdistrict 5-1, Pasco County. The applicant states that the purpose of the transfer is to allow the project to continue development within the Seven Oaks Community Development District. Blue Heron notes that Seven Oaks Community Development District is an independent special purpose unit of local government under the authority of Chapter 190, Florida Statutes. Currently, Seven Oaks District encompasses 2.75 miles and houses over 3,500 residents located within the Wesley Chapel area of Pasco County, Zip Code 33544. A description of Seven Oaks Community Development District is provided on pages 1-1 and 1-2 of CON application #10492. An aerial photo of the Wesley Chapel area,

comprised of Zip Codes 33543, 33544, and 33545 is included on page 1-2 of CON application #10492<sup>1</sup> with the 9.77 acre parcel for the nursing home highlighted on the photo. The applicant maintains that the addition of the nursing home will add a desired amenity to Seven Oaks Community Development District and enhance appeal of the area to retirees.

***Availability*** <sup>2</sup>

Blue Heron defines availability as “how much of a resource exists”. The applicant describes the existing service availability of Pasco County which consists of 1,938 community beds and 115,043 elders aged 65+ (July 2016)<sup>3</sup> with the projected bed to population rate within Pasco County projected at 16.85 beds per 1,000 elders, lower than the statewide bed to population ratio 20.09 community beds per 1,000 elders. The applicant describes the CY 2016 occupancy rate for Pasco County as high at 90.52 percent and includes a map of the distribution of nursing homes within Pasco County on page 1-3 of CON application #10492. Blue Heron anticipates that the proposed project will improve the availability of beds to persons residing in central Pasco County as the current inventory of nursing homes are not centrally located within Pasco County. The applicant notes that the existing inventory of nursing homes are mainly located on the east and west sides of the county.

***Quality of Care***

With respect to quality, the applicant states that TLC, Inc., operates facilities in Indiana and one facility in Florida, Astoria Health and Rehabilitation Center in Polk County (District 6, Subdistrict 6-5), currently licensed with 120 community nursing home beds. The applicant notes that Astoria Health and Rehabilitation Center received four out of a possible five overall quality stars with respect to overall operations based on Nursing Home Inspection Ratings, included below:

<sup>1</sup> The reviewer notes that in the Schedule C conditions, the applicant states that the Wesley Chapel area consists of two zip codes 33543 and 33545

<sup>2</sup> Italicized subheadings appear as presented in CON application #10492

<sup>3</sup> The reviewer notes that the population source for these projections is not identified, the bed to population ratio using February 2015 Population Projections is 17.82 beds per 1,000 elderly in Pasco County

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Facility / City	Region	Inspection				Inspection Components				
		Overall Inspection	Quality of Care	Quality of Life	Administration	Nutrition & Hydration	Restraints & Abuse	Pressure Ulcers	Decline	Dignity
ASTORIA HEALTH AND REHABILITATION CENTER WINTER HAVEN	Region 6 Tampa	★★★★	★★★	★★★★★	★★★★	★★★★★	★★★★★	★★★★★	★★★★★	★★★★

Source: FloridaHealthFinder, Nursing Home Inspection Ratings, Rating Time Period: October 2014 – March 2017, Last Updated May 2017

The reviewer notes that the current rating period available on FloridaHealthFinder.gov is for October 2014- March 2017. Via FloridaHealthFinder.gov, nursing home inspection ratings are defined as:

- ★★★★★ Means that for this measure this facility ranked better than 81 percent to 100 percent of the facilities in its region. That is, five stars means that the facility ranked in the top 20 percent of facilities in its region.
- ★★★★ Means that for this measure this facility ranked better than 61 percent to 80 percent of the facilities in its region.
- ★★★ Means that for this measure this facility ranked better than 41 percent to 60 percent of the facilities in its region.
- ★★ Means that for this measure this facility ranked better than 21 percent to 40 percent of the facilities in its region.
- ★ Means that for this measure this facility ranked better than 0 percent to 20 percent of the facilities in its region. That is, a single star means that the facility ranked in the bottom 20 percent of facilities in its region.
- NR Means that a rank is not available for this facility. This is typically because the facility just recently opened.

The applicant states that the rating system recognizes the role of direct care staff and the retention of staff in success and quality. Blue Heron references findings of studies which determine that pain, urinary tract infections and pressure ulcers occur with high turnover of certified nursing assistants (CON application #10492, Page 1-4). The applicant maintains that all affiliates focus on employees and residents. Blue Heron indicates that the proposed project will benefit from the sponsorship of TLC, Inc., in the implementation of policies and procedures that contribute to high quality care in operations and service provision.

**Access**

The applicant defines access as consisting of geographic access, eligibility for the service, payers for the service and use of the service. Within Pasco County, the applicant states that the high nursing home occupancy (90.52 percent) reflects consistent demand for care and underscores the importance of increasing the bed supply of nursing home beds within the area. Blue Heron indicates that geographic access within Pasco County is important given the dispersion of the 16 community nursing homes, which are not proximate to the site of the proposed project which resides in the south-central part of Pasco County.

The applicant provides a chart depicting the CY 2016 population of adults aged 65+ within a 19.8-mile radius and 9.85-mile radius of Pasco County by Zip Code. This chart is reproduced below:

<b>Distribution of Elderly in Proximity to Proposed Site and Surrounding Nursing Homes by Zip Code</b>		
	<b>19.8 Mile Radius</b>	<b>9.85 Mile Radius</b>
<b>Zip Code</b>	<b>2016 Age 65+</b>	<b>2016 Age 65+</b>
<b>33523</b>	3,187	
<b>33525</b>	4,471	
<b>33540</b>	2,985	
<b>33541</b>	9,726	9,726
<b>33542</b>	8,028	
<b>33543</b>	3,516	3,516
<b>33544</b>	2,831	2,831
<b>33545</b>	1,444	1,444
<b>33559</b>	1,877	1,877
<b>33576</b>	2,029	
<b>34610</b>	2,376	2,029
<b>34637</b>	1,482	1,482
<b>34638</b>	2,225	
<b>34639</b>	3,585	3,585
<b>34654</b>	5,194	
<b>34655</b>	11,564	
<b>34669</b>	2,959	
<b>Total</b>	<b>69,479</b>	<b>26,490</b>

Source: CON application #10492, Page 1-5

The applicant includes a map with the site of the 64-bed community nursing home identified and describes the number of adults aged 65+ within a 9.85-mile radius and 19.8-mile radius of the site based on

geographic accessibility to the nearest nursing homes east and west of the proposed transfer project’s site. East of the proposed site, the applicant notes that 26,490 (23.0 percent) adults aged 65+, reside within a 9.85-mile radius of community nursing homes. West of the applicant’s proposed site, the applicant notes that 69,479 (60.0 percent) adults aged 65+ reside within a 19.8-mile radius of a community nursing home. A map depicting the dispersion of nursing homes and the radial distance of the proposed site from nursing homes east and west of the proposed site is included on page 1-6 of CON application #10492.

Based on an estimated elderly population of 7,791 within the three Zip Code area of Wesley Chapel and 5,581 nursing home resident days per 1,000 elders, the applicant projects that a demand of 43,482 annual resident days exists within the three Zip Code area of Wesley Chapel. Blue Heron anticipates that the proposed project will capture 23,360 bed days or 54 percent of the demand from elderly residents who reside within the area. The applicant projects that the five-year demand (with the 5,581 resident per 1,000 elderly) will increase to 56,036 resident days by 2021—with the applicant proposing to capture 42 percent of the demand for nursing care within Wesley Chapel thereby demonstrating need for the proposed project.

The applicant also states that the proposed project will ensure access to care through participating in Medicare and Medicaid, accepting private pay sources to promote financial access and targeting hospital discharges to nursing homes. Blue Heron provides a table demonstrating CY 2016 hospital discharges of elders who reside in Pasco County to nursing homes by payer, which is included below:

<b>Elderly Pasco County Residents Aged 65 Years of Age and Older and Payer at Time of Hospital Discharge to Nursing Homes, CY 2016 (N = 76,642)</b>						
<b>Discharge Status to Nursing Homes</b>	<b>65+ Pasco</b>	<b>Medicaid Managed Care</b>	<b>Medicare</b>	<b>Medicare Managed Care</b>	<b>Subtotal</b>	<b>Percent of Total</b>
03-DC to Medicare SNF	8,005	178	4,495	2,820	7,493	93.5%
64-DC to Medicaid SNF, no Medicare	7	2	3	1	6	0.1%
<b>Total</b>	<b>8,012</b>	<b>180</b>	<b>4,498</b>	<b>2,821</b>	<b>7,499</b>	<b>93.6%</b>
<b>Discharge Status to Nursing Homes</b>	<b>65+ Pasco</b>	<b>Commercial Health Insurance</b>	<b>Commercial Liability Coverage</b>	<b>Subtotal</b>	<b>Percent of Total</b>	
03-DC to Medicare SNF	8,005	275	15	290	<b>3.6%</b>	
64-DC to Medicaid SNF, no Medicare	7	0	0	0	<b>0.0%</b>	
<b>Total</b>	<b>8,012</b>	<b>275</b>	<b>15</b>	<b>290</b>	<b>3.6%</b>	

Source: CON application #10492, Page 1-7, Data from AHCA Hospital Inpatient Data File for CY 2016



The applicant states that 76,642 Pasco County elders account for all hospital charges and that the 8,012 discharges status to nursing homes comprise 10.4 percent of discharges requiring nursing home post-acute care. Blue Heron notes that Medicare and Medicaid account for 93.6 percent of payers and include managed care plans available from both. Commercial plans account for 3.6 percent of admissions.

The applicant also provides a table depicting the distribution of elderly admitted to nursing homes by Major Diagnostic Categories (MDCs) which is reproduced below:

<b>Elderly Pasco County Residents Aged 65+ and the Major Diagnostic Category (MDC) at Time of Hospital Discharge to Nursing Homes, CY 2016</b>		
<b>MDC</b>	<b>Cases</b>	<b>Percent</b>
08 Diseases & Disorders of the Musculoskeletal System & Conn. Tissue	1,959	24.5%
05 Diseases & Disorders of the Circulatory System	1,199	15.0%
04 Diseases & Disorders of the Respiratory System	879	11.0%
01 Diseases & Disorders of the Nervous System	805	10.0%
11 Diseases & Disorders of the Kidney & Urinary Tract	774	9.7%
18 Infectious & Parasitic Diseases, Systemic or Unspecified Sites	618	7.7%
06 Diseases & Disorders of the Digestive System	610	7.6%
<b>Subtotal</b>	<b>6,844</b>	<b>85.4%</b>
All other MDCs	1,168	14.6%
<b>Total</b>	<b>8,012</b>	<b>100.0%</b>

Source: CON application #10492, Page 1-8, Data from AHCA Hospital Inpatient Data File for CY 2016

Blue Heron maintains that nursing homes provide a wide array of medical and nursing services that residents require upon discharge and that the proposed facility will target medically intensive services that Medicare reimburses. The applicant indicates that for some patients Medicaid and private pay sources will become the payer in long-term care cases. The applicant maintains that the proposed project addresses the needs and requirements of elderly residents in Pasco County and maintains medical and nursing services that address the requirements of all payers, in particular the majority of cases reimbursed by Medicare and Medicaid programs.

***Extent of Utilization***

In description of the extent of utilization within the service area, the applicant notes that the occupancy for nursing homes within Pasco County exceeded 90 percent in CY 2016 and provides a table depicting the CY 2016 occupancy in Pasco County which is reproduced below.

Nursing Home Utilization In Pasco County, CY 2016						
Facility	Beds	Bed Days	Patient Days	Occupancy	Medicaid Days	Medicaid Occupancy
Madison Pointe Rehabilitation & Health Ctr.	119	43,554	44,225	101.54%	19,910	45.02%
Orchard Ridge	120	43,920	42,356	96.44%	25,270	59.66%
Consulate Health Care of New Port Richey	120	43,920	42,236	96.17%	24,441	57.87%
Consulate Health Care of Bayonet Point	120	43,920	41,625	94.77%	21,880	52.56%
Trinity Regional Rehab Center	120	43,920	41,608	94.74%	21,483	51.63%
Heritage Park Health & Rehabilitation Ctr	120	43,920	41,576	94.66%	28,960	69.66%
Zephyr Haven Health & Rehab Center, Inc.	120	43,920	41,187	93.78%	29,543	71.73%
Zephyrhills Health & Rehab Center, Inc.	103	37,698	34,707	92.07%	20,474	58.99%
Royal Oak Nursing Center	120	43,920	40,000	91.07%	27,012	67.53%
Bear Creek Nursing Center	120	43,920	39,789	90.59%	18,803	47.26%
Windsor Woods Rehab & Healthcare Ctr.	103	37,698	33,918	89.97%	21,106	62.23%
<b>Solaris Healthcare Bayonet Point</b>	<b>180</b>	<b>65,880</b>	<b>59,003</b>	<b>89.56%</b>	<b>31,438</b>	<b>53.28%</b>
Life Care Center of New Port Richey	113	41,358	36,161	87.43%	11,123	30.76%
Heartland of Zephyrhills	120	43,920	36,927	84.08%	24,060	65.16%
Heather Hill Healthcare Center	120	43,920	34,301	78.10%	25,629	74.72%
Southern Pines Healthcare Center	120	43,920	32,458	73.90%	20,940	64.51%
<b>Subdistrict 5-1 Total</b>	<b>1,938</b>	<b>709,308</b>	<b>642,077</b>	<b>90.52%</b>	<b>372,072</b>	<b>57.95%</b>

Source: CON application #10492, Page 1-9

Note that Solaris Healthcare Bayonet Point, appearing in red type above, represents an acquisition of Bayonet Point Health and Rehabilitation Center

The applicant explains that ten of sixteen nursing homes exceed an annual occupancy rate of 90 percent and maintains that the level of utilization within the service district underscores demand for services within Pasco County. Blue Heron maintains that the proposed project will improve availability and access to nursing home services and expresses a commitment to implementing the proposed project.

The applicant provides additional responses to the project’s conformity with health access criteria pursuant to Rule 59C-1.030(2), Florida Administrative Code, on pages 1-10 through 1-15 of CON application #10492.

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

The applicant indicates that the Patient Protection Affordable Care Act possesses directives that promote quality in the provision of health care services through mobilizing best practices in nursing home Quality Assurance Performance Improvement (QAPI). The applicant additionally indicates that national directives foster consistency and uniformity through the application of standards that apply to all nursing homes participating in the Medicare and Medicaid programs. The applicant

outlines the twelve steps of quality assurance and performance improvement evaluation in nursing homes as outlined by CMS which is reproduced below:

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

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

The applicant identifies different awards that employees and affiliates receive for recognition which include:

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

The applicant states that six affiliate facilities are listed as five-star facilities in *U.S. News & World Report’s Best Nursing Homes* list. The applicant reiterates that Astoria Health and Rehabilitation Center, an affiliate facility located in Florida, received a four-star rating while scoring a five-star rating on five of eight factors. The reviewer notes that

Astoria Health and Rehabilitation Center received a CMS five-star overall quality rating of three out five stars according to the Medicare and Nursing Home Compare Care website, <https://www.medicare.gov/nursinghomecompare/search.html>, as of July 26, 2017.

In addition to these measures, the applicant expresses an intent to use Abaqis Providigm, an online system which is used to assure conformity with standards and allows for evaluation of operations for quality and effectiveness throughout the delivery of care. The applicant expresses an intent to use Abaqis Providigm, a Quality Indicator Survey tool used to provide data in combination with resident interviews, observations and recorded reviews—all of which are used to identify opportunities for improvement. The applicant additionally notes that an emphasis on resident-centered feedback about choices available and facility practices centers on areas of satisfaction and dissatisfaction. The applicant indicates that Abaqis allows for daily assessment and real-time analyses at the facility level. The applicant states that Abaqis allows for issues to be identified in order for managers to direct resources to areas requiring improvement and changes for the benefit of residents.

Blue Heron notes that in 2014, an affiliate facility, Astoria Health and Rehabilitation Center, received Providigm Quality Assurance and Performance Improvement (QAPI) Accreditation which identifies the facility's performance in QAPI activities that assess residents' quality of life. Factors evaluated for quality include: how staff address residents' concerns about pain, respectful treatment, their preservation of privacy, choices, treatment, sufficient staffing levels, resident weight loss, occurrence of infections, services that occur following acute injury/illness and preventing hospital readmissions.

Blue Heron identifies the following major standards for quarterly assessment for the Providigm QAPI Accreditation Program, during a 12-month period which is included below:

- Comprehensive – Nursing home staff complete and enter into the Abaqis web-based program a sufficient number of assessments. The assessments consist of the admission record review, census record review, family interview, resident interview, resident observation and staff interview
- Continuous – The ongoing activities that address the variables that define quality reported for two alternating quarters
- Coverage – Assessment occurs of residents' admission records and census records in sufficient numbers without repetition of records
- Corrective – Areas undergoing improvement appear in the system as Stage 2 activities, showing active analysis toward correction

A facility administrator, medical director or physician, director of nursing and a designated QAPI coordinator form a team for QAPI. Other facility employees join the QAPI Team as needed. A medical director and pharmacy consultant attend QAPI meetings at least quarterly. Team members will adapt the Abaqis system and team members will complete observations, assessments, and interviews at least three times a year.

The applicant indicates that annually at least one of the following elements will undergo monitoring:

- Quality of life
- Nursing and medical practice
- Management of the environment of care
- Leadership

The applicant states that the QAPI team will review quality measure scores monthly to identify any measure that falls outside the threshold, make use of early detection and investigate to prevent continued failing and correction to minimize further decline.

Blue Heron states that residents' rights form an important aspect to the environment of care and ensure each resident with protections, rights and recourse. The applicant states that a publication from Florida's Long-Term Care Ombudsman Program is made available to residents upon admission and employees upon in-service orientation training. The applicant summarizes residential rights that appear in the publication on pages 2-5 through 2-6 of CON application #10492. The applicant indicates that the Resident Council and Family Council will provide Blue Heron with directives to engage with residents and their families on matters of importance to them and monthly meetings will follow bylaws that provide for the election of officers and duties of responsibilities. The applicant indicates that meetings will be documented during sessions and agendas will be provided for follow-up.

Blue Heron additionally identifies daily resident activities which are implemented to provide engaging and meaningful experiences that enhance the lives of residents and provide socialization, enjoyment, education and stimulation—including physical and mental exercises.

The applicant maintains that the objectives of the daily activities are as follows:

- To provide a planned range of meaningful, purposeful activities that reflect the residents' interests, skills and enjoyments
- To promote adaptation and restoration of functions

- To continue the fostering of individual interests and pursuits for enjoyment, for creativity, for mastery and for purpose
- To maximize the expression of individualism, through groups and family involvement, spiritual development and independence

The applicant states that activities are planned and published in newsletters and posters in order to notify families and residents when activities occur. An activity director participates with residents during an admission review and assessment process to identify each person’s interests which are incorporated into the patient’s plan of care. A list of activities is provided on page 2-7 of CON application #10492.

The controlling interest for Blue Heron Health and Rehabilitation, LLC currently operates Astoria Health and Rehabilitation Center in District 6 (Polk County). The substantiated complaint history for Astoria Health and Rehabilitation Center for the three-year period ending on July 25, 2017 is included below:

<b>Astoria Health and Rehabilitation Center, Three-Year Substantiated Complaint History: July 25, 2014 – July 25, 2017</b>	
<b>Complaint Category</b>	<b>Number Substantiated</b>
Quality of Care/Treatment	4
Resident/Patient/Client Rights	1
Dietary Services	1
Infection Control	1
Resident/Patient/Client Assessment	1
<b>Total</b>	<b>8</b>

Source: Florida Agency for Healthcare Administration Complaint Records, July 25, 2014 – July 25, 2017. Note that a single complaint can encompass multiple substantiated complaint categories.

Within the three-year period between July 25, 2014 and July 25, 2017 (the most recent data available) the affiliate facility, Astoria Health and Rehabilitation Center had eight substantiated complaints.

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

**Analysis:**

The purpose of our analysis for this section is to determine if the applicant has access to the funds necessary to fund this and all capital projects. Our review includes an analysis of the short and long-term position of the applicant, parent, or other related parties who will fund the project. The applicant is a development stage company, meaning there is no operational data to be analyzed for the purposes of this review. The applicant indicated that funding will be provided by a third-party source.

The applicant is a start-up company with no revenues and \$250,000 in cash and total assets and \$249,000 in total liabilities.

**Capital Requirements and Funding:**

The applicant indicates on Schedule 2 capital projects totaling \$13,325,901 which includes this project alone. The applicant also indicates on Schedule 3 of its application that funding for the project will be provided by 75.0 percent debt financing with 25.0 percent funding from the related controlling interest of the applicant.

The applicant provided a letter of interest from Regions Healthcare Banking indicating an interest to fund up to 75 percent of necessary construction and operating costs of the project. Staff notes that a letter of interest does not constitute a firm commitment to lend.

In addition, Regions Bank also provided a letter indicating that with regard to Blue Heron Health and Rehabilitation LLC principals, "... I assure you that the entity has what is shown in the certificate of need application and principles maintain over ten million (\$10,000,000) on deposit in our bank..." (Staff assumes "the entity" refers to Blue Heron, and "principles" refers to Blue Heron's related controlling interests discussed above.)

The applicant did not provide a letter of financial commitment or audited financial statements from its controlling interests, or any other proof of funding.

Last, the applicant indicated on Schedule 3 that it has \$3,331,475 cash on hand; however, the applicant did not provide any documentation to support that claim.

**Conclusion:**

Funding for this project is in question.

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

**Analysis:**

The immediate and long-term financial feasibility of the project is tied to expected profitability. The purpose of our analysis for this section is to evaluate the reasonableness of the applicant's profitability projections and, ultimately, whether profitability is achievable for this project. Our analysis includes an evaluation of net revenue per patient day (NRPD), cost per patient day (CPD), nurse staffing ratios, and profitability. We

compared the NRPD, CPD and profitability to actual operating results from skilled nursing facilities as reported on Medicaid cost reports (2014, 2015 and 2016 cost report years). For our comparison group, we selected skilled nursing facilities with similar Medicaid utilizations to the utilization projected by the applicant on a per patient day basis (PPD). Comparison group data was adjusted for inflation to match the second year projection (inflation factor was based on the New CMS Market Basket Price Index as published in the 3rd Quarter 2016, 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	7,793,967	407	2,109	458	294
Total Expenses	7,080,285	370	1,891	442	279
Operating Income	713,682	37	173	9	-123
Operating Margin	9.16%		<b>Comparative Group Values</b>		
	Days	Percent	Highest	Median	Lowest
Occupancy	19,155	82.00%	96.45%	89.28%	59.51%
Medicaid	9,578	50.00%	49.90%	40.68%	30.09%
Medicare	7,087	37.00%	54.70%	32.63%	5.39%

**Staffing:**

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

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

**Conclusion:**

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



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

**Analysis:**

Strictly from a financial perspective, the type of competition that would result in increased efficiencies, service, and quality is limited in health care. Cost-effectiveness through competition is typically achieved via a combination of competitive pricing that forces more efficient costs 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. Since nursing home services are limited to available beds and the total number of beds in the service area will remain unchanged, the impact on market share is foreseen as limited. However, through the construction of a new facility and increase in the number of private rooms available, the project may have an impact on the quality of service offered in the service area, but the existing health care system's barriers to price based competition via fixed price payers limits any significant gains in cost effectiveness that would be generated.

**Conclusion:**

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

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

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

The plans submitted with this application were schematic in detail with the expectation that they will be necessarily revised and refined prior to being submitted for full plan review. The architectural review of this

application shall not be construed as an in-depth effort to determine complete compliance with all applicable codes and standards. The final responsibility for facility compliance ultimately rests with the applicant. Approval from the Agency for Health Care Administration’s Office of Plans and Construction is required before the commencement of any construction involving a hospital, nursing home, or intermediate care facility for the developmentally disabled.

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

The reviewer provides a five-year history of Medicaid patient days and occupancy for the county, district and state in the table below.

<b>Medicaid Patient Days &amp; Medicaid Occupancy In Pasco County, District 5 and Florida</b>					
<b>Medicaid Patients Days</b>					
<b>Facility/Area</b>	<b>CY 2012</b>	<b>CY 2013</b>	<b>CY 2014</b>	<b>CY 2015</b>	<b>CY 2016</b>
Pasco County	386,345	378,460	375,276	379,542	372,072
District 5	2,026,303	1,989,445	2,071,441	2,055,464	2,003,784
Florida	15,733,318	15,700,197	15,932,613	15,959,939	16,144,618
<b>Medicaid Occupancy</b>					
<b>Facility/Area</b>	<b>CY 2012</b>	<b>CY 2013</b>	<b>CY 2014</b>	<b>CY 2015</b>	<b>CY 2016</b>
Pasco County	60.41%	58.98%	58.32%	58.76%	57.95%
District 5	64.44%	63.25%	63.80%	63.64%	63.89%
Florida	61.85%	61.66%	62.17%	62.18%	63.13%

Source: Florida Nursing Home Bed Need Projection by District and Subdistrict, January – December (2012 – 2016)

The reviewer provides the following table utilizing Medicaid occupancy data provided by the applicant for Astoria Health and Rehabilitation Center for CY 2014 through CY 2016. See the table below.

<b>Astoria Health and Rehabilitation Center Florida Medicaid Occupancy CY 2014 through CY 2016</b>			
<b>Year</b>	<b>Medicaid Patient Days</b>	<b>Total Patient Days</b>	<b>Medicaid Occupancy</b>
2014	18,900	41,648	45.38%
2015	19,089	41,063	46.49%
2016	19,464	40,520	48.04%
<b>Total</b>	<b>57,453</b>	<b>123,231</b>	46.62%

Source: Florida Nursing Home Bed Need Projection by District and Subdistrict, January – December (2014 – 2016)

As a newly formed entity the applicant does not have a history of providing care to Medicaid patients. Blue Heron states that Medicaid enrollment reflects state-mandated managed care plans for residents of long-term care facilities. The applicant states that this change shifts all recipients into managed care plans with those plans bearing the financial risk for reimbursing nursing homes. The applicant states that managed

care in long-term care settings results in some residents being moved from nursing homes to community options and higher acuity patients being placed into nursing care and more care needs. The applicant states that nursing homes will add services and resources to address patient medical needs and implement the plan of care within CON #10403. The applicant provides the following table reflecting the forecasted resident days by payer for the first two years of operations of the proposed project with the inclusion of the average daily census of patients for the first two years of operations. See table below.

<b>Projected Payer Mix: Blue Heron Health and Rehabilitation, LLC</b>			
<b>Payer</b>	<b>Year One</b>	<b>Year Two</b>	<b>Percent of Days</b>
<b>Self-Pay</b>	450	766	4.0%
<b>Medicaid HMO</b>	5,622	9,578	50.0%
<b>Medicare</b>	2,136	3,639	19.0%
<b>Medicare HMO</b>	2,024	3,448	18.0%
<b>Commercial</b>	899	1,532	8.0%
<b>Other</b>	113	192	1.0%
<b>Total</b>	<b>11,244</b>	<b>19,155</b>	<b>100.0%</b>
<b>Average Daily Census</b>	<b>Year One</b>	<b>Year Two</b>	
<b>Self-Pay</b>	1	2	
<b>Medicaid HMO</b>	15	26	
<b>Medicare</b>	6	10	
<b>Medicare HMO</b>	6	9	
<b>Commercial</b>	2	4	
<b>Other</b>	0	1	
<b>Total</b>	<b>31</b>	<b>52</b>	
<b>Occupancy Rate</b>	<b>48.4%</b>	<b>81%</b>	

Source: CON application #10492, Page 7-1, Scheduled 7. Years One and Two correspond to years ending on December 31, 2020 and December 31, 2021. Italicized values reflect an incorrect sum and corresponding percentage.

The proposed transfer project is conditioned upon the provision of 50 percent of total resident days of care to Medicaid Managed Care.

The applicant’s Schedule 7 projects that Medicaid HMO will account for 50.0 percent of patient days in years one and two and self-pay will account for 4.0 percent of patient days in years one and two, total annual patient days.

**F. SUMMARY**

**Blue Heron Health and Rehabilitation, LLC (CON application #10492)** also referenced as Blue Heron or the applicant is a newly-formed entity which seeks to transfer CON application #10403 from Pasco SNF Operations, LLC, which establishes a 64-bed community nursing home in Subdistrict 5-1, Pasco County. The controlling interest of the applicant, TLC Management, Inc., currently operates Astoria Health and Rehabilitation Center in Subdistrict 6-5, Polk County.

The project involves 51,392 GSF consisting of \$7,455,888 in new construction costs. The total project costs for the transfer CON is \$13,314,285. The total project cost includes land cost, building cost, equipment cost, project development costs, financing costs and startup costs.

The applicant includes four Schedule C conditions.

The applicant expects issuance of licensure in November 2019 and initiation of service in January 2020.

**Need**

The applicant has submitted the application to transfer CON application #10403 for expedited review and not in response to the fixed need pool which will be published on September 29, 2017. The number of licensed and approved nursing home beds in Nursing Home Subdistrict 5-1 will remain unchanged as a result of the proposed transfer.

The applicants states that the purpose of the transfer is to allow the project to continue development within the Seven Oaks Community Development District. Currently, Seven Oaks District is an independent special purpose unit of local government under the authority of Chapter 190, Florida Statutes--Seven Oaks Community Development District encompasses 2.75 miles and houses over 3,500 residents located within the Wesley Chapel area of Pasco County, Zip Code 33544.

Blue Heron anticipates that the proposed project will improve the availability of beds to persons residing in central Pasco County as the current inventory of nursing homes are not centrally located within Pasco County. The applicant notes that the existing inventory of nursing homes are mainly located on the east and west sides of the county.

Blue Heron indicates that geographic access within Pasco County is important given the dispersion of the 16 community nursing homes, which are not proximate to the site of the proposed project which resides in the south-central part of Pasco County.

Blue Heron anticipates that the proposed project will capture 23,360 bed days or 54 percent of the demand from elderly residents who reside within the area. The applicant projects that the five-year demand (5,581 resident days per 1,000 elderly) will increase to 56,036 resident days by 2021—with the applicant proposing to capture 42 percent of the demand for nursing care within Wesley Chapel thereby demonstrating need for the proposed project.

Given that the occupancy for nursing homes within Pasco County exceeded 90 percent in CY 2016, Blue Heron maintains that the proposed project will improve availability and access to nursing home services and expresses a commitment to implementing the proposed project.

### **Quality of Care**

The applicant states that the Patient Protection Affordable Care Act provides directives that promote quality in the provision of health care services through mobilizing best practices in nursing home Quality Assurance Performance Improvement (QAPI). The applicant intends to implement the twelve steps of quality assurance and performance improvement evaluation in nursing homes as outlined by CMS for the proposed transfer project.

The applicant expresses an intent to use Abaqis Providigm, an online system which will be used to assure conformity with standards and allows for evaluation of operations for quality and effectiveness throughout the delivery of care. The applicant indicates that Abaqis allows for daily assessment and real-time analyses at the facility level.

Blue Heron states that comprehensive, continuous, coverage, and corrective standards will be used as quarterly assessment standards for the Providigm QAPI Accreditation Program, annually. Team members will adapt the Abaqis system and team members will complete observations, assessments, and interviews at least three times a year; quality of life, nursing and medical practice, management of the environment of care, and leadership will be monitored annually.

The controlling interest for Blue Heron Health and Rehabilitation, LLC Tender Loving Care Management, Inc. currently operates Astoria Health and Rehabilitation Center in District 6 (Polk County).

Within the three-year period between July 25, 2014 and July 25, 2017 (the most recent data available) the affiliate facility, Astoria Health and Rehabilitation Center had eight substantiated complaints.

**Cost/Financial Analysis:**

Funding for this project 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 to promote quality and cost-effectiveness.

**Architectural Analysis**

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

**Medicaid/Indigent Care Commitment**

The proposed transfer project is conditioned upon the provision of 50 percent of total resident days of care to Medicaid Managed Care. The applicant's Schedule 7 reflects a forecast in which Medicaid HMO accounts for 50.0 percent of patient days in years one and two and self-pay will account for 4.0 percent of patient days in years one and two, total annual patient days.

**G. RECOMMENDATION**

Approve CON #10492 to transfer CON application #10403 from Pasco SNF Operations, LLC, to establish a 64-bed community nursing home in Subdistrict 5-1, Pasco County. The total project cost is \$13,314,285. The project involves 51,392 GSF and a construction cost of \$7,455,888.

**CONDITIONS:**

- Locating the planned facility at a 9.77-acre parcel with the address of: 29701 Stockton Drive, Wesley Chapel, Florida 33544.
- Providing Medicaid managed care at 50 percent of total resident days of care
- Implementing the Abaqis system to support the facility's Quality Assurance and Performance Improvement (QAPI) process
- Providing all private rooms within the 64-bed facility

**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: \_\_\_\_\_

\_\_\_\_\_  
Marisol Fitch  
**Health Administration Services Manager**  
**Certificate of Need**