

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number

Mercy Center OPCO, LLC/CON #10665

2901 Sterling Road, Suite 200
Fort Lauderdale, Florida 33312-6503

Authorized Representative: Mr. Jacob Bengio
(954) 300-3878, Ext. 102

2. Service District/Subdistrict

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

B. PUBLIC HEARING

A public hearing was not held or requested on the proposed project and there were no letters of support.

C. PROJECT SUMMARY

Mercy Center OPCO, LLC (CON application #10665), also referenced as Mercy Center, Mercy or the applicant, is the owner/licensee of the 120-bed inactive community nursing home The Nursing Center at Mercy (3671 S. Miami Avenue, Miami, Florida 33133). The applicant proposes to replace The Nursing Center at Mercy at a site approximately six miles away (7040 SW 61st Avenue, Miami, Florida 33413), all within District 11, Subdistrict 11-1 (Miami-Dade County).¹

Upon approval of CON application #10665, Mercy intends to request a CON exemption pursuant to s. 408.036(3)(e), Florida Statutes, to add 30 beds, resulting in a facility of 150 beds to accommodate future demand.

¹ The existing and proposed sites are approximately 5.36 miles apart according to Agency's @ <https://www.floridahealthfinder.gov> website.

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Mercy Center states it is affiliated with Ventura Services Florida (VSF) – a clinical and administrative services consulting company. All OPCO/VSF affiliated skilled nursing facilities (SNFs) are located in Miami-Dade County and were acquired during 2019. The reviewer confirms that Mercy Center and the five facilities below have an OPCO LLC entity as the controlling interest.²

- Golden Glades Nursing and Rehabilitation Center
- Harmony Health Center
- Miami Springs Nursing and Rehabilitation Center
- North Dade Nursing and Rehabilitation Center
- South Dade Nursing and Rehabilitation Center.

The proposed project includes 111,606 gross square feet (GSF) of new construction. The construction cost is \$21,933,333. The total project cost is \$36,289,100. The total project cost includes land, building, equipment, project development, financing and start-up costs.

Mercy Center expects issuance of license in December 2023 and initiation of service in January 2024.

Mercy Center OPCO, LLC agrees to condition award of the CON on Schedule C of the application to the following condition:

- **A minimum of 50% of total annual patient days in the 120 beds will be Medicaid Managed Care.**

Mercy Center OPCO, LLC understands that the Agency may impose one or more conditions based upon statements made within this proposal. The applicant will accept any condition or conditions that the Agency may impose. Furthermore, the applicant understands that should a condition or conditions be imposed, that an annual report to the Agency must be submitted addressing the provisions of **Rule 59C-1.013, Monitoring Procedures, Florida Administrative Code**, with respect to compliance with conditions. Failure to comply with conditions may result in fines as set out in **Rule 59C-1.021, Florida Administrative Code**

The project’s GSF, total project costs and cost per bed estimate are provided in the table below.

Total GSF and Project Costs of CON application #10665

Applicant	CON app.	Project	GSF	Project Costs	Cost per Bed
Mercy Center OPCO, LLC	10665	120 beds	111,606	\$36,289,100	\$302,409

Source: CON application #10665 Schedules 1 and 9.

² Source: <https://www.floridahealthfinder.gov>

Should the proposed project be approved, the applicant's conditions would be reported in the annual condition compliance report, as required by Rule 59C-1.013(3), Florida Administrative Code. The Agency would not impose conditions on already mandated reporting requirements. Additionally, pursuant to section 408.040(1)(b), Florida Statutes, effective July 1, 2012, the Agency may not impose sanctions related to patient day utilization by patients eligible for care under Title XIX of the Social Security Act for nursing homes. Therefore, the Agency will not set a Medicaid patient day condition in the issuance of a CON.

Issuance of a CON is required prior to licensure of certain health care facilities and services. The review of a CON application and ultimate approval or denial of a proposed project is based upon the applicable statutory criteria in the Health Facility and Services Development Act sections 408.031-408.045, Florida Statutes and applicable rule criteria within Chapters 59C-1 and 59C-2, Florida Administrative Code. An approved CON does not guarantee licensure of the proposed project. Meeting the applicable licensure requirements and licensure of the proposed project is the sole responsibility of the applicant.

D. REVIEW PROCEDURE

The evaluation process is structured by the certificate of need review criteria found in Section 408.035, Florida Statutes; and applicable rules of the State of Florida, Chapters 59C-1 and 59C-2, Florida Administrative Code. 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 evaluating the responses and data 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 meets the review criteria.

Rule 59C-1.010(3)(b), Florida Administrative Code, prohibits any amendments once an application has been deemed complete. The burden of proof to entitlement of a certificate rests with the applicant. As such, the applicant is responsible for the representations in the application. This is attested to as part of the application in the Certification of the Applicant.

As part of the fact-finding, the consultant, Steve Love, analyzed the application in its entirety with consultation from financial analyst Eric West of the Bureau of Central Services, who evaluated the financial data, and Scott Waltz of the Office of Plans and Construction, who reviewed the application for conformance with the architectural criteria.

E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA

The following indicate the level of conformity of the proposed project with the criteria and application content requirements found in Florida Statutes, sections 408.035 and 408.037; applicable rules of the State of Florida, Chapter 59C-1 and 59C-2, 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 submitted CON application #10665 as an expedited review, which may be submitted at any time and is not in response to a fixed need pool publication. The number of licensed and approved nursing home beds in Subdistrict 11-1 (Miami-Dade County) will remain unchanged as a result of the proposed facility replacement/relocation project, taking place within 30 miles of the existing facility located in Subdistrict 11-1.

Mercy maintains that this project is sought in light of the impending expiration of the inactive license of The Nursing Center at Mercy (CON application #10665, Tab 10-Additional Information, Exhibit 1). The reviewer notes that the license expiration date is January 20, 2022.

The applicant states responding to need pursuant to Rule 59C-1.008(2)(e)2, Florida Administrative Code. The reviewer notes that Rule 59C-1.008(2)(e), Florida Administrative Code is applicable to comparative review for applications submitted during batching cycles, within applicable fixed need pool publication(s). Since CON application #10665 is submitted as an expedited project, Rule 59C-1.008(2)(e), Florida Administrative Code does not apply. However, the applicant submits a need assessment within the context of the following characteristics which are briefly described:

- Population demographics and dynamics
- Availability, utilization and quality of services in the subdistrict
- Medical treatment trends
- Market conditions

Mercy Center states the use of the Agency’s *Florida Population Estimates and Projections by AHCA District 2015-2030*, published September 2020, to contend that as of July 1, 2020, Miami-Dade County had an age 65+ population of 479,589 residents and that this is the largest number of seniors residing in any Florida county. The reviewer confirms that this is correct. Mercy Center further states that per the same source, by 2025, Miami-Dade County will have 559,010 age 65+ residents and that this will account for 18.4 percent of Miami-Dade County’s total population. Again, stating use of the same source, Mercy Center provides a table to account for population, by age cohorts, from July 2020 to July 2025, for Miami-Dade County and for Florida overall. The reviewer partially reproduces the applicant’s table, but only the five-year increases and the five-year growth rates.

**July 2020 to July 2025 (Five-Year) Population Increases and Growth Rates
by Age Cohorts
Miami-Dade County and Florida**

Area	Five Year Increase			Five Year Growth Rate		
	0-64	65+	Total	0-64	65+	Total
Miami-Dade	92,287	79,421	171,708	3.9%	16.6%	6.0%
Florida	780,558	780,750	1,561,308	4.5%	17.6%	7.2%

Source: CON application #10665, page 1-2, Table 1-1 (partially reproduced)

Reflected from the entirety of the above table (which was only partially reproduced above), Mercy Center maintains that:

- Currently, seniors represent 16.7 percent of the total population in Miami-Dade County (479,589/2,864,600=16.74 percent)
- By 2025, seniors will represent 18.4 percent of the total population of Miami-Dade County (559,010/3,036,308=18.41 percent)

Mercy Center asserts that the increase in seniors indicates future need for residential and health care services for that population.

CON application #10665, page 1-3, Figure 1-1 shows the projected elderly population age 65+ by ZIP Code for 2025 and page 1-4, Figure 1-2 shows the five-year increase for the elderly population in Miami-Dade County. The applicant’s Figures 1 and 2 both show:

- A green dot for the existing facility
- A red dot for the proposed site

- A light blue dot for the proposed Florida International Medical Center (under development in the Doral area)
- Blue dots to show availability to skilled nursing care.

The applicant emphasizes that the site for the proposed project is west/southwest of the existing site in an area that is still centrally located but toward a part of the county where there are fewer nursing homes. The proposed location appears to be between the City of Coral Gables and the Kendall/Pinecrest area.

Mercy Center uses Claritas' 2020 population data to provide a three-page table showing 2020 to 2025 age 0-64 residents, age 65+ residents and total population totals/data by ZIP Code for Miami-Dade County (CON application #10665, Tab 10-Additional Information, Exhibit 2).

CON application #10665, page 1-5, Figure 1-3 shows an aerial view of the proposed replacement site. Page 1-6, Figure 1-4 shows the distance between the existing facility and the proposed replacement/relocation site (6.1 miles). The reviewer notes that Figure 1-4 does not indicate a source but shows a total nine-minute driving time between the existing facility and the proposed replacement/relocation site.

Mercy Center next uses the Agency's *Florida Nursing Home Bed Need Projections by District and Subdistrict*, published April 2, 2021, to conclude a total of 8,281 licensed community beds in Miami-Dade County and a total of 82,537 licensed community beds statewide. The reviewer confirms that based on these licensed community bed totals and the July 2020 age 65+ population estimates for Miami-Dade County and for Florida overall (briefly described earlier), the service areas referenced below have the following community beds per thousand elderly residents:

- For Miami-Dade County
 - 17 community nursing home beds per 1,000 seniors
✓ $[8,281 / (479,589 / 1,000)] = 16.58$ beds
- For Florida overall
 - 19 community nursing home beds per 1,000 seniors
✓ $[82,537 / (4,439,923 / 1,000)] = 18.59$ beds

Mercy Center stresses that the Agency's applicable *Florida Nursing Home Bed Need Projections by District and Subdistrict* publications, for CYs 2015 - 2020 (a six-year period), show Miami-Dade's community nursing home bed occupancy rates exceeded statewide occupancy rates. Total occupancy rates in Miami-Dade County were around 90 percent for each year, with a slight decline in 2020 due to COVID-19. The applicant asserts that the persistent high use of nursing home beds in Miami-Dade County reflects the necessity of retaining the beds in the subdistrict.

The applicant explains that the project promotes quality through a new physical plant built to today’s standards. The project will have all private rooms compared to the facility’s existing 60 semi-private rooms. Mercy points out that the proposed project configuration maximizes independence and privacy, facilitating resident centered care. Further, the proposed physical plant design promotes best practices and that private rooms allow facilities to control infection when isolation is required. Further, larger resident rooms provide more space for medical equipment and mobility devices. Electronics and apps are being used more frequently and the applicant discusses telehealth/telemedicine in the newer configuration. Mercy Center comments that some nursing home projects in the Miami-Dade County area, including this project, seek to replace beds in older facilities in favor of new physical plant designs.

The applicant states an expectation that the replacement facility will have similar referral patterns and will primarily serve the same residential communities within the planning area. Mercy Center estimates a total of 488 admits and 22,488 patient days (in year one/ CY 2024) and a total of 777 admits and 38,997 patient days (in year two/CY 2025). The applicant indicates a fill-up period during the first year, is consistent with fill-up rates of recent nursing home openings in South Florida and Miami-Dade County. ADC is the average daily census and ALOS is average length of stay (with a constant 50.2 ALOS for each of the first two years). See the table below.

**Project Utilization for the Replacement Facility of 120 Beds
First Two Years of Operation**

Factor	Year One (CY 2024)	Year Two (CY 2025)
Admissions	448	777
Patient Days	22,488	38,997
ALOS	50.2	50.2
ADC	61	107
Occupancy Rate	51.20%	89.03%

Source: CON application #10665, page 1-10, Table 1-5 and page 2-8, Table 2-1

The reviewer notes that the year one and year two admits and patient day estimated totals shown in the above table are consistent with CON application #10665’s Schedule 7 for CY 2024 and CY 2025, respectively.

2. Agency Rule Preferences

Please indicate how each applicable preference for the type of service proposed is met. Chapter 59C-1.036, Florida Administrative Code.

Chapter 59C-1.036 of the Florida Administrative Code does not contain preferences relative to community nursing home beds nor does the Agency publish specific preferences for these facilities. However, the rule does contain standards the Agency utilizes in assessing an applicant's ability to provide quality care to the residents.

- a. Proposed Services. Applicants proposing the establishment of Medicare-certified nursing facility beds to be licensed under Chapter 400, Florida Statutes, shall provide a detailed description of the services to be provided, staffing pattern, patient characteristics, expected average length of stay, ancillary services, patient assessment tools, admission policies and discharge policies.**

Mercy Center maintains that the proposed replacement facility will continue to participate in both the Medicare and Medicaid Programs to promote access to both short-term rehabilitation and long-term care, as well as complex medical conditions. Mercy Center provides a brief narrative regarding the provision of (but not limited to) the following services (pages 2-3 and 2-4 of the application):

- Physical therapy
- Occupational therapy
- Speech therapy
- Orthopedic rehabilitation
- Neurological rehabilitation
- Pulmonary rehabilitation
- Medical management
- Memory care
- Palliative care
- Hospice care
- Wound care

The applicant bullets 16 other services and amenities that it indicates provide support, comfort and security. The Nursing Center at Mercy – special programs and services provided include:³

- 24-hour onsite RN coverage

³ Source: <https://www.floridahealthfinder.gov>

- HIV care
- Hospice care
- Pet therapy
- Tracheotomy

Mercy Center notes that its administrative service company, Ventura Services Florida, has policies and procedures in place and in use at affiliate facilities that will serve the new facility, including admissions, care planning and discharge procedures (briefly described on pages 2-5 through 2-8 of the application).

Regarding admissions, Mercy points out that a multidisciplinary team evaluates the needs of each resident. Further, decisions to transfer are based on consultation with the Care Team, as well as with the resident and his/her family and physician. Mercy Center states that each resident receives an Admission Packet which details the agreement between the facility representative and the resident, his/her legal representative or other responsible party. The applicant bullets 20 separate admission forms as part of the Admission Packet on page 2-5 of the application.

Regarding care planning, Mercy comments that developing a resident care plan is the single most important task undertaken for that resident. The applicant further comments that the care plan affects every aspect of his/her life in the facility, as well as the perception of the quality of life. Mercy bullets 11 staff members responsible for the development and/or implementation of the resident's care plan on the application's page 2-6.

Mercy Center states that ongoing monitoring through the Quality Assurance and Performance Improvement (QAPI) process provides feedback to enhance care toward improvement and recovery and to avoid hospital readmissions. Further, information addressed during the initial evaluation by the admitting nurse includes but is not limited to:

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

Regarding discharge, Mercy indicates that admission must recognize the potential of each resident for discharge and explains that this approach makes placement into a nursing home a last resort, as the facility environment does reduce the independence of individuals. Mercy Center emphasizes that an initial length of stay will be estimated, particularly for Medicare beneficiaries, after which date the expectation will be for discharge. The applicant notes that discharge plans begin with the initial assessment. Seven medically related social service or home-based services seven additional factors specific to home health guidelines for eligibility are bulleted on the application's page 2-7.

Mercy indicates that discharge plans involve an interdisciplinary team approach: dietary, all therapies, nursing, family, patient, caregiver and third-party payer sources to provide the best care after the patient is discharged from the facility. The interdisciplinary discharge plan/aftercare plan is discussed with all relevant parties, along with a written plan, is provided to all relevant parties, including the attending physician.

The reviewer notes the following stated Ventura Services Florida sample policies and procedures/assessment tools that the new facility will utilize to carry out its mission (CON application #10665, Tab 10-Additional Information, Exhibit 3):

- Admission (one page)
- Baseline Care Plans (one page)
- Transfer & Discharge (two pages)
- Resident Rights (five pages)
- Admission/Readmission Evaluation – V 2 (34 pages)

Mercy Center states having performed a data review to determine the level of need for specific services nursing home residents require, assessing hospital discharges to nursing homes in Miami-Dade County residents age 65+, based on the Agency's Hospital Patient Discharge Data, 1st quarter 2019 – 2nd quarter 2020 (which includes acute care, comprehensive medical rehabilitation and long-term care hospitals). The applicant identifies discharge totals within a total of 24 separate major diagnostic categories (MDCs), first for CY 2019 and then for the first two quarters of 2020 (January – June 2020). The latter six-month period is indicated due to temporary changes in discharge patterns because of the COVID-19 pandemic. Mercy comments that in CY 2019, four MDCs accounted for 60 percent of Miami-Dade residents age 65+ discharges to SNFs and the applicant briefly describes these four MDCs (pages 2-11 and 2-12 of the application) and notes that the

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four most frequently occurring MDCs accounted for 60 percent of the stated discharges in CY 2019. The reviewer partially reproduces the applicant’s MDC discharge table, reproducing the four most frequently occurring MDCs and generates a “*Remaining 20 MDCs*” for all the other MDCs. See the table below.

**Miami-Dade Hospital Discharges to SNFs by MDC
Miami-Dade Residents Age 65+
CY 2019 and First Two Quarters 2020**

MDC	CY 2019		JAN-JUN 2020	
	Cases	Percent	Cases	Percent
08 Diseases and Disorders of the Musculoskeletal System & Conn Tissue	4,103	22.4%	1,282	17.9%
05 Diseases and Disorders of the Circulatory System	2,546	13.9%	964	13.5%
04 Diseases and Disorders of the Respiratory System	2,173	11.9%	1,274	17.8%
18 Infectious and Parasitic Diseases, Systemic and Unspecified Sites	2,169	11.8%	950	13.3%
<i>Remaining 20 MDCs</i>	7,330	40.0%	2,695	37.5%
Grand Total	18,321	100%	7,165	100%

Source: CON application #10665, page 2-10, Table 2-2 (partially reproduced)

Mercy Center emphasizes that with COVID-19 vaccinations under way, discharge patterns are expected to achieve normal, pre-pandemic levels well in advance of the expected opening date for the proposed facility (expected to occur in January 2024). Further, Mercy already has a variety of specialized programs and continues to innovate in order to best meet residents’ needs.

Schedule 6 illustrates that FTEs for year one (CY 2024) total 104.8 and total 142.1 for year two (CY 2025). The reviewer notes that the total FTE counts remain constant from year one to year two regarding the staff pattern headings of administration, physicians (contracted), social services, housekeeping, laundry and plant maintenance, but increase under the staffing pattern headings of nursing, ancillary and dietary. See the table below.

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**Mercy Center OPCO, LLC – CON Application #10665
Projected Year One (CY 2024) & Year Two Staffing (CY 2025)**

Staffing Pattern	Year One	Year Two
Administration		
Administrator	1.0	1.0
Director of Nursing	1.0	1.0
Admissions Director	1.0	1.0
Bookkeeper	1.0	1.0
Secretary	2.5	2.5
Medical Records Clerk	1.0	1.0
Other: Human Resources	1.0	1.0
Other: Central Support Staffing Coord	1.0	1.0
Other: MDS/Inservice Coord	3.0	3.0
Other: Assistant DON	1.0	1.0
Physicians		
Medical Director (contracted)	0.0	0.0
Nursing		
RNs	11.5	19.9
LPNs	0.0	0.0
Nurses' Aides	32.2	55.8
Ancillary		
Physical Therapist	1.9	3.3
Speech Therapist	0.5	0.9
Occupational Therapist	2.0	3.5
Other: Therapy Program Manager	1.1	1.1
Dietary		
Dietary Supervisor	1.0	1.0
Cooks	4.2	4.2
Dietary Aides	9.8	11.8
Social Services		
Social Service Director	1.9	1.9
Activity Director	0.9	0.9
Activities Assistant	2.0	2.0
Other: Driver	1.0	1.0
Housekeeping		
Housekeeping Supervision	1.0	1.0
Housekeepers	12.0	12.0
Laundry		
Laundry Supervisor	0.0	0.0
Laundry Aides	2.5	2.5
Plant Maintenance		
Maintenance Supervisor	0.8	0.8
Maintenance Assistance	2.0	2.0
Security	3.0	3.0
Total	104.8	142.1

Source: CON application #10665, Schedule 6

CON application #10665's notes to Schedule 6 indicate that its staffing estimates are based on the experience of management in operating a comparable facility and is consistent with the required licensure staffing standards. These notes indicate that the costs and staffing for contractual services including specialty therapies,

non-corporate legal and accounting services, consulting medical director, medical records consultant and consultant pharmacist are based on existing contracts with providers of these services at a facility management by an affiliated company.

c. Quality of Care. In assessing the applicant's ability to provide quality of care pursuant to s. 408.035 (3), Florida Statutes, the Agency shall evaluate the following facts and circumstances:

- 1. Whether the applicant has had a Chapter 400, Florida Statutes, nursing facility license denied, revoked or suspended within the 36 months prior to the current application.**

The applicant has not had a Chapter 400, Florida Statutes, nursing home license denied, revoked or suspended within the 36 months prior to the application.

- 2. Whether the applicant has had a nursing facility placed into receivership at any time during the period of ownership, management or leasing of a nursing facility in the 36 months prior to the current application?**

Mercy has not had a nursing home placed into receivership within the past 36 months.

- 3. The extent to which the conditions identified within subparagraphs 1 and 2 threatened or resulted in direct significant harm to the health, safety or welfare of the nursing facility residents.**

This does not apply as there are no conditions identified in subparagraphs 1 and 2.

- 4. The extent to which the conditions identified within subparagraph 3 were corrected within the time frames allowed by the appropriate state agency in each respective state and in a manner satisfactory to the Agency.**

This does not apply.

5. **Rule 59C-1.036 (4) (f) Harmful Conditions. The Agency shall question the ability of the applicant to provide quality of care within any nursing facility when the conditions identified in the subparagraph (e) 1 and (e) 2 result in the direct, significant harm to the health, safety or welfare of a nursing facility resident, and were not corrected within the time frames allowed by the appropriate state agency in each respective state and in a manner satisfactory with the Agency.**

No conditions are identified above thus, this does not apply.

- d. **Rule 59C-1.036 (5) Utilization Reports. Within 45 days after the end of each calendar quarter, facilities with nursing facility beds licensed under Chapter 400, Florida Statutes shall report to the Agency, or its designee, the total number of patient days, which occurred in each month of the quarter, and the number of such days that were Medicaid patient days.**

Mercy Center OPCO, LLC states that it will provide the required data to the Health Council of South Florida, as well as to the Agency for Health Care Administration. The applicant further states that the data will include the above-cited utilization reports as well as required licensure and financial requirements attendant to operating a licensed nursing facility.

3. Statutory Review Criteria

- a. **Is need for the project evidenced by the availability, quality of care, accessibility and extent of utilization of existing health care facilities and health services in the applicant's service area? Section 408.035 (1), (2) and (5), Florida Statutes.**

As of February 19, 2021, Subdistrict 11-1 had 53 Chapter 400 community nursing home facilities, with 8,281 licensed and 680 approved community nursing home beds. Subdistrict 11-1 community nursing homes reported 81.96 percent total occupancy during CY 2020. Mercy Center maintains that availability often refers to how much of a service exists, such as how many beds or facilities are in the market.

The reviewer notes that District 11 had the highest (81.65 percent) community nursing home bed occupancy rate during CY 2020. The statewide total occupancy was 77.54 percent.

Mercy Center reiterates that Miami-Dade County has 17 community beds per 1,000 persons age 65+ in the county, compared to 19 community beds per 1,000 persons age 65+ statewide. Further, that by 2025, if all approved community beds are licensed, in both Subdistrict 11-1 and statewide, the beds per 1,000 residents age 65+ will be at 16, for both Subdistrict 11-1 and statewide. Projected beds assume 680 approved beds in Subdistrict 11-1 and 2,973 approved beds for Florida become licensed by January 2025, to estimate 16 community beds per 1,000 age 65+ residents for Miami-Dade County and for Florida overall. See the table below.

Current (2020) and Projected (2025) Community Nursing Home Beds and Beds per 1,000 Residents Age 65+ Subdistrict 11-1 and Florida

Area	Before the Project			(Year Two) After the Project		
	Licensed Commun. Beds	2020 Population 65+	Beds Per 1,000	Projected Beds	2025 Population 65+	Beds Per 1,000
Subdistrict 11-1	8,281	479,589	17	8,961	559,010	16
Florida	82,549	4,439,923	19	85,522	5,220,673	16

Source: CON application #10665, page 3-2, Table 3-1, from the *Florida Population Estimates and Projections by AHCA District 2015-2030* issued September 2020 and *Florida Nursing Home Bed Need Projections by District and Subdistrict* publication issued April 2, 2021.

Mercy emphasizes that the project assures continued availability as demand increases in proportion to population growth and that should if the project is approved and the exemption approved for 30 additional beds at the proposed site, the resulting beds per 1,000 elderly for the planning area would remain at 16 due to the minimal increase overall.

Mercy Center states that using the same two sources indicated for the above table, the applicant estimates that by 2025 (page 3-3, Table 3-2 of the application):

- Using 2020 Rates
 - Patient Days Total
 - 2,895,436
 - Days per 1,000 Total
 - 5,180
 - Average Facility Occupancy
 - 88.5 percent

- Using 2019 Rates
 - Patient Days Total
 - 3,287,842
 - Days per 1,000 Total
 - 5,882

- Average Facility Occupancy
 - 100.5 percent

The applicant explains that the higher estimates using 2019 rates is due to pre-pandemic conditions and that these same conditions will return as pandemic conditions abate.

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

Mercy Center maintains that access is defined as how potential users obtain a service or gain admittance or entry to a facility providing the service. Further, components of access include geographic impediments, distance, time to travel and eligibility criteria such as financial costs and methods of reimbursement for third parties. Mercy contends that the project improves access by preserving existing licensed beds in a new facility developed with accessibility in mind.

CON application #1065, page 3-5, Figure 3-1 provides a map of the project site, the acute care hospitals and nursing homes within a five-mile radius. On page 3-4 of the application, Mercy lists the seven acute care hospitals and five nursing homes within a five-mile radius of 7040 SW 61st Ave., Miami, Florida 33142 (the project's proposed location). The reviewer confirms these are all within a five-mile radius of the project's proposed location.

Regarding service access, Mercy reiterates the hospital discharge data discussed in item E.1.a. of this report (the four most frequently occurring discharges based on MDCs) and explains that those patients would benefit from the proposed project's programs, including orthopedic rehabilitation, cardiac rehabilitation and respiratory care and a sufficient number of private rooms assures safe isolation measures when necessary.

Regarding financial access, Mercy states that it will make every effort to remove any financial barriers that could impede access to nursing home care, working closely with hospital discharge planners and those who may make direct admissions. Further, there are multiple insurers offering Medicare Advantage plans within the Subdistrict, including: Aetna Better Health, Florida Community Care, Humana Medical Plan, Molina Healthcare, Prestige, Simply Healthcare, Staywell, Sunshine Health and United Healthcare. Mercy Center OPCO, LLC plans to accept a variety of these plans to maximize access to care.

Regarding the extend of utilization, Mercy Center reiterates that from each of the Agency's applicable *Florida Nursing Home Bed Need Projections by District and Subdistrict* publications, for CYs 2015 through

2020 (a six-year period), Miami-Dade community bed occupancy rates exceeded the occupancy rates for each respective year (2015-2020), with total occupancy rates in Miami-Dade County hovering around 90 percent for each year, with a slight decline in 2020 due to COVID-19.

Mercy Center OPCO, LLC discusses the Health Care Access Criteria (pages 3-8 through 3-10 of the application).

- b. Does the applicant have a history of providing quality of care? Has the applicant demonstrated the ability to provide quality of care? Is the applicant a Gold Seal Program nursing facility that is proposing to add beds to an existing nursing home? Section 408.035(3) and (10), Florida Statutes.**

As stated previously, the applicant entity did not operate the facility, nor has it operated other facilities and therefore has no operating history for Agency review. However, Mercy states it has an experienced team and will contract with Ventura Services Florida.

Mercy Center comments that the importance of continuity of care and staff training and development provide the basis for tracking progress and developing ongoing monitoring of the care within each nursing home. Further, management's philosophy encourages continuous quality improvement (CQI) through the institution of uniform standards and guidelines, the creation of quality improvement goals, and the recognition and use of evidence-based clinical pathways to achieve desired patient outcomes.

The applicant bullets the 12 steps in the Centers for Medicare and Medicaid Services (CMS) *QAPI at a Glance* (CON application #10665, page 4-2) and maintains that these 12 steps establish a foundation for QAPI in nursing homes. Mercy states it stays up to date on all state and federal requirements for QAPI.

In addition to a QAPI program, the applicant includes a Quality Assurance and Assessment Program (QAAP), which the applicant states assures that the facility meets or exceeds the needs, expectations and requirements of the patients while maintaining good patient outcomes and exceptional person-centered care where the residents are involved in their own care and their needs are addressed individually. Further, Mercy Center identifies a Risk Management/Quality Assurance Committee (RM/QAC), which will meet monthly. Also, plans of correction for areas that are in need of improvement will be developed. Mercy Center explains that the goal is to prevent failure of those core processes that could cause substandard quality of care and place the facility in danger of regulatory non-compliance.

Mercy Center describes its QAPI guiding principals on page 4-3 of the application. The applicant contends that the QAPI committee meets at least quarterly to ensure that training, resources and time is provided to those individuals participating on Performance Improvement Projects (PIPs). Further, each PIP subcommittee will use Root Cause Analysis (RCA) to improve existing processes, with the facility utilizing the “Five Whys” as its RCA method to identify the root cause of the problem so that appropriate approaches can be planned.

The reviewer notes the following stated quality assurance sample policies/procedures/forms/worksheets that the new facility will utilize to carry out its mission (CON application #10665, Tab 10-Additional Information, Exhibit 4):

- QAPI Plan & Process
- PIP Worksheet
- Facility Self-Assessment
- Monthly Risk Management/Quality Assurance Committee Report
- Reporting Accidents and Incidents

Mercy Center asserts that it will employ an electronic medical record (EMR) platform, providing bedside access to the patient record for immediate response and reporting requirements. The applicant asserts that two immediate benefits occur with EMR – one is the provision of statistical data on all aspects of care and those of its contractors and the other is the integration of pharmacy information to manage that important component of care. CON application #10665 asserts that EMR and its use improve the facility’s capability to obtain and maintain quality standards and timely meet requirements of state licensure and federal certification.

Mercy Center offers a narrative explanation/description of the following activities and initiatives (pages 4-4 and 4-5 of the application):

- Resident Rights, Privacy and Advisory Committee
- Emergency Management and Hurricane Preparedness
- Activities and Resident Council

The applicant does not identify a source but indicates that VSF’s five affiliated SNFs (in aggregate) in Miami-Dade County had an average occupancy rate of 92.73 percent (in 2019) and 80.13 percent (in 2020), per CON application #10665, page 4-6, Table 4-1. The applicant contends that high occupancy rates are often an indicator of quality.

Mercy Center contends that when acquiring facilities, particularly older facilities that may have life safety issues due to aging physical plants and equipment, it takes time to improve quality deficiencies. Ratings are issued on a performance measure (star basis), with SNFs being issued stars ranging from one to five stars. The star ratings are as follows:

- ★★★★★ Means that for this measure this facility ranked better than 81% to 100% of the facilities in its region. That is, five stars means that the facility ranked in the top 20% of facilities in its region.
- ★★★★ Means that for this measure this facility ranked better than 61% to 80% of the facilities in its region.
- ★★★ Means that for this measure this facility ranked better than 41% to 60% of the facilities in its region.
- ★★ Means that for this measure this facility ranked better than 21% to 40% of the facilities in its region.
- ★ Means that for this measure this facility ranked better than 0% to 20% of the facilities in its region. That is, a single star means that the facility ranked in the bottom 20% 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.

**VSF Affiliated SNF Agency-Issued
Nursing Home Guide Inspection Ratings
January 2019 – June 2021
Last Updated August 2021**

VSF Affiliated SNF	Overall Inspection Star Rating
Golden Glades Nursing and Rehabilitation Center	**
Harmony Health Center	*
Miami Springs Nursing and Rehabilitation Center	*
North Dade Nursing and Rehabilitation Center	NR
South Dade Nursing and Rehabilitation Center	NR

Source: <https://www.floridahealthfinder.gov/index.html>

The reviewer notes that Miami Springs Nursing and Rehabilitation Center is on the Agency Watch List. The Watch List identifies nursing homes that are operating under bankruptcy protection or met the criteria for a conditional status during the past 30 months. Mercy provides copies of Medicare.gov Nursing Home Compare ratings for VSF’s Harmony Health Center and Miami Springs Nursing and Rehabilitation Center (CON application #10665, Tab 10-Additional Information, Exhibit 5). However, on August 17, 2021, the reviewer perused the CMS’s Medicare.gov website in order to take into consideration Medicare’s Nursing Home Compare rating for the five VSF-affiliated SNFs in Miami-Dade County. According to CMS’s Medicare.gov website, overall quality ratings are issued the following ratings (on a one-to-five star scale):

- ★★★★★ Much Above Average
- ★★★★ Above Average
- ★★★ Average
- ★★ Below Average
- ★ Much Below Average
- Not Available** Newly certified nursing homes with less than 12-15 months of data available or the nursing opened less than six months ago, and there were no data to submit or claims for this measure.

**VSF Affiliated SNF Nursing Home Compare Ratings from CMS
as of August 17, 2021**

VSF Affiliated SNF	Overall Nursing Home Compare Star Rating
Golden Glades Nursing and Rehabilitation Center	Not Available
Harmony Health Center	***
Miami Springs Nursing and Rehabilitation Center	**
North Dade Nursing and Rehabilitation Center	Not Available
South Dade Nursing and Rehabilitation Center	Not Available

Source: <https://www.medicare.gov/care-compare/?guidedSearch=NursingHome>

Mercy discusses complaint and Agency-issued deficiencies among the VSF affiliated SNFs (pages 4-6 and 4-7 of the application) and emphasizes that regarding Miami Springs Nursing and Rehabilitation Center’s multiple class I deficiencies, corrective action plans were timely implemented and had a deficiency free monitoring survey on July 20, 2020. As indicated in item C of this report, all of the VSF affiliated Miami-Dade SNFs were acquired by an OPCO, LLC entity in 2019. From the 2019 date of acquisition through August 16, 2021, in aggregate, the facilities had a total of seven substantiated complaints, which are summarized in the table below. A single complaint can encompass multiple complaint categories.

**VSF and OPCO, LLC Affiliated SNFs
Upon Acquisition in 2019 through August 16, 2021
Substantiated Complaint History**

Complaint Category	Number Substantiated
Infection Control	5
Dietary Services	1
Elopement	1
Falsification of Records/Report	1
Quality of Care/Treatment	1

Source: Agency for Health Care Administration Complaint Records

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

The purpose of our analysis for this section is to determine if the applicant has access to the funds necessary to fund this and all capital projects. Our review includes an analysis of the short and long-term position of the applicant, parent, or other related parties who will fund the project. The analysis of the short and long-term position is intended to provide some level of objective assurance on the likelihood that funding will be available. The stronger the short-term position, the more likely cash on hand or cash flows could be used to fund the project. The stronger the long-term position, the more likely that debt financing could be achieved if necessary to fund the project. We also calculate working capital (current assets less current liabilities) a measure of excess liquidity that could be used to fund capital projects. The applicant provided an audit for a development stage company, showing minimal assets, liabilities, and equity.

Capital Requirements and Funding:

Schedule 2 indicates capital projects totaling \$39,289,100. These projects consist of this CON (\$36,289,100) and license rights.

The applicant provided a development stage audit showing \$250,000 in cash on hand, \$1,915,043 in total assets, \$67,898 in total liabilities and \$1,847,145 in members' equity.

The applicant indicated on Schedule 3 that the project will be funded through cash on hand and non-related company financing. Two letters of interest were provided; however, a letter of interest is not a commitment to lend and if the applicant were not approved for the loan, it would have to seek financing elsewhere to fund the project.

Conclusion:

Funding for the project is likely, but not guaranteed.

d. What is the immediate and long-term financial feasibility of the proposal? Section 408.035 (6), Florida Statutes

The immediate and long-term financial feasibility of the project is tied to expected profitability. The purpose of our analysis for this section is to evaluate the reasonableness of the applicant's profitability projections and, ultimately, whether profitability is achievable for this project. Our analysis includes an evaluation of net revenue per patient day (NRPD), cost per patient day (CPD), nurse staffing ratios, and profitability. We compared the NRPD, CPD, and profitability to actual operating results from skilled nursing facilities as reported on Medicaid cost reports (2017 and 2018 cost report years). For our comparison group, we selected skilled nursing facilities with similar Medicaid utilizations to the utilization projected by the applicant on a per patient day basis (PPD).

Comparison group data was adjusted for inflation to match the second year projection (inflation factor was based on the New CMS Market Basket Price Index as published in the 4th Quarter 2020, Health Care Cost Review).

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

	Projections Per Applicant		Comparative Facilities		
	Total	PPD	Highest	Median	Lowest
Net Revenues	\$ 16,212,407.00	\$ 415.73	\$ 470.73	\$ 402.73	\$ 334.14
Total Expenses	\$ 15,818,045.00	\$ 405.62	\$ 511.85	\$ 400.13	\$ 327.44
Operating Income	\$ 394,362.00	\$ 10.11	\$ 57.49	\$ 2.46	\$ (63.30)
Margin	2%				
Occupancy	89%		97%	90%	66%
Medicaid	50%		60%	52%	42%
Medicare	30%		44%	24%	5%

Staffing:

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

Conclusion:

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

e. Will the proposed project foster competition to promote quality and cost-effectiveness? Section 408.035 (5) and (7), Florida Statutes

Strictly, from a financial perspective, the type of competition that would result in increased efficiencies, service, and quality is limited in health care. Cost-effectiveness through competition is typically achieved via a combination of competitive pricing that forces more efficient cost to remain profitable and offering higher quality and additional services to attract patients from competitors. Since Medicare and Medicaid are the primary payers in the nursing home industry, price based competition is limited. With a large portion of the revenue stream essentially fixed on a per patient basis, the available margin to increase quality and offer additional services is limited.

Conclusion:

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

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

The applicant has submitted all information and documentation necessary to demonstrate compliance with the architectural review criteria. The 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 applicant indicates that the design will comply with all applicable codes and standards, but a list of applicable codes and standards could not be found in the schematic drawings as described in the functional narrative. Additionally, the application does not identify the proposed type of construction or indicate that the site will comply with disaster preparedness requirements for a nursing home.

The plans submitted with this application were schematic in detail with the expectation that they will be necessarily revised and refined prior to being submitted for full plan review. The architectural review of this application shall not be construed as an in-depth effort to determine complete compliance with all applicable codes and standards. The final responsibility for facility compliance ultimately rests with the applicant owner. Approval from the Agency for Health Care Administration's Office of Plans and Construction is required before the commencement of any construction.

g. Does the applicant have a history of and propose the provision of health services to Medicaid patients and the medically indigent? Does the applicant propose to provide health services to Medicaid patients and the medically indigent? Section 408.035(9), Florida Statutes

Mercy Center OPCO, LLC explains that VSF oversees five other SNFs, all located in Miami--Dade County (previously listed in item C of this report) and that all five of these facilities have a history of participating in Medicaid, providing skilled nursing services to the Medicaid population. Mercy Center OPCO, LLC uses the Agency's applicable *Florida Nursing Home Bed Need Projections by District and Subdistrict* publications, for

CYs 2019 and CY 2020 (a two-year period), to indicate that, in aggregate, in 2019, the five facilities reported 308,322 Medicaid patient days (84.65 percent Medicaid occupancy) and in 2020, reported 254,814 Medicaid patient days (83.26 percent Medicaid occupancy). The reviewer notes that these patient day totals and percentages are shown on CON application #10665, page 9-1, Table 9-1.

The applicant provides similar tables (CON application #10665, page 3-7, Table 3-3 and page 9-2, Table 9-2) to indicate that from CY 2015 to CY 2019 (as The Nursing Center at Mercy became inactive in 2019), the facility steadily increased its total Medicaid occupancy from 22.2 percent (CY 2015) to 75.8 percent (CY 2019).

Mercy Center notes that Florida operates a Statewide Medicaid Managed Care (SMMC) long-term care program and states plans to contract with SMMC providers. The reviewer notes that the seven SMMC providers are also Medicare Advantage Plan providers (see item E.3.a. of this report).

The applicant's Schedule 7 shows an expectation of 22,488 total annual patient days in year one (CY 2024) and of 38,997 total annual patient days in year two (CY 2025). Year one and year two Medicaid HMO patient day percentages are 50.44 percent and 50.45 percent, respectively. Mercy also cites its proposed Medicaid condition, which as stated earlier will not be imposed as a condition to CON approval.

F. SUMMARY

Mercy Center OPCO, LLC (CON application #10665) proposes to replace and relocate the existing 120-bed inactive community nursing home - The Nursing Center at Mercy - at a site approximately six miles from the current facility, in District 11, Subdistrict 11-1 (Miami-Dade County).

Upon approval of CON application #10665, Mercy intends to request a CON exemption to add 30 beds, resulting in a facility of 150 beds to accommodate future demand.

Mercy states it will contract with Ventura Services Florida—a clinical and administrative services consulting company.

The proposed project includes 111,606 GSF of new construction. The construction cost is \$21,933,333. The total project cost is \$36,289,100.

CON application #10665's Schedule C includes a Medicaid patient day condition, which will not be included as a condition to project approval.

Need

- The application was submitted as an expedited review, which may be submitted at any time and is not in response to a fixed need pool publication
- The number of licensed and approved nursing home beds in Subdistrict 11-1 (Miami-Dade County) will remain unchanged as a result of the proposed project
- The project is sought in light of the impending expiration of the inactive license of The Nursing Center at Mercy (the inactive license expiration date is January 20, 2022)
- The proposal:
 - Is a new physical plant that will replace an aging facility
 - Is toward the west/southwest of the subdistrict, an area with fewer SNFs than the rest of Miami-Dade County
 - Will have similar referral patterns and will primarily serve the same residential communities within the planning area
- From 2015-2020, annual total occupancy rates in Miami-Dade County averaged around 90 percent (with a slight decline in 2020 due to COVID-19)
 - Persistent high use of nursing home beds in Miami-Dade County reflects the necessity of retaining the beds in the subdistrict
- In 2020, for the age 65+ population, per 1,000 seniors:
 - In Miami-Dade County there are:
 - 17 community nursing home beds
 - In Florida overall there are:
 - 19 community nursing home beds
- By 2025 (year two of the project) population estimates of the age 65+ population and presuming that all approved community nursing home bed projects are licensed (in Miami-Dade County and statewide), per 1,000 seniors:
 - In Miami-Dade County and in Florida overall there will be:
 - 16 community nursing home beds
- Specific patient/resident services planned for the proposed project are consistent with the four most commonly occurring MDC discharges from Miami-Dade County hospitals to SNFs (CY 2019 and the first two quarters in 2020) to address:
 - Orthopedic and cardiac rehabilitation
 - Respiratory care
 - Private bedrooms to better accommodate/assure safe isolation measures when necessary

- There are seven acute care hospitals within a five-mile radius of the proposed replacement project location
- The applicant projects 51.20 percent occupancy in year one (CY 2024) and 89.03 percent in year two (CY 2025)
- Mercy Center's major need justification surrounds two primary contentions – the replacement facility location at 7040 SW 61st Avenue, Miami, Florida 33413 and the new facility will have all private patient rooms.

Quality of Care

- The applicant provided a detailed description of the ability to provide quality care.
- The applicant emphasizes that older facilities may have life safety issues due to aging physical plants and equipment and it takes time to improve quality deficiencies.
- From the 2019 date of acquisition – through August 16, 2021, the five VSF/OPCO, LLC affiliated facilities had a total of seven substantiated complaints.

Financial Feasibility/Availability of Funds

- Funding for the project is likely, but not guaranteed
- Based on the information provided in Schedule 6, the applicant meets nurse staffing requirements in both year one and year two
- 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 priced-based competition to promote quality and cost-effectiveness

Architectural

- The applicant has submitted all information and documentation necessary to demonstrate compliance with the architectural review criteria
- The cost estimate for the proposed project provided in Schedule 9, Table A and the project completion forecast provided in Schedule 10 appear to be reasonable
- A review of the architectural plans, narratives and other supporting documents did not reveal any deficiencies that are likely to have a significant impact on either construction costs or the proposed completion schedule
- A list of applicable codes and standards could not be found in the schematic drawings as described in the functional narrative
- The applicant does not identify the proposed type of construction or indicate that the site will comply with disaster preparedness requirements for a nursing home.

Medicaid/Charity Care

- VSF/OPCO, LLC Affiliated SNFs provided 308,322 Medicaid patient days (84.65 percent Medicaid occupancy) in CY 2019 and 254,814 (86.26 percent) Medicaid patient days in CY 2020.
- Mercy Center projects Medicaid HMO total annual patient days at 50.44 percent in year one (CY 2024) and 50.45 percent (CY 2025)

G. RECOMMENDATION

Approve CON #10665 to replace the inactive 120-bed community nursing home The Nursing Center of Mercy to another location within a 30-mile radius of the existing facility in District 11, Subdistrict 11-1 (Miami-Dade County). The project includes 111,606 GSF of new construction. The construction cost is \$21,933,333. Total project cost is \$36,289,100.

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
Operations and Management Consultant Manager
Certificate of Need