

STATE AGENCY ACTION REPORT
ON APPLICATION FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION:

1. Applicant/CON Action No.:

Hillsborough Extended Care, LLC/CON #9814

120 Chipola Avenue
Deland, Florida 32720

Authorized Representative: Theodore Mack
Powell & Mack
803 North Calhoun
Tallahassee, Florida 32303
850-224-1452

2. Service District/Subdistrict

District 6/Subdistrict 1 (Hillsborough County)

B. PUBLIC HEARING:

No public hearing was requested and no support letters were included from the public or the industry. Per 408.036(2)(c), Florida Statutes, this application is subject to expedited review and is not a competitive application.

C. PROJECT SUMMARY

Hillsborough Extended Care, LLC (CON #9814) proposes to relocate 120 existing community nursing home beds from the Nursing Center at University Village in north Tampa to a new freestanding 120-bed facility to be located in the same district within 30 miles of the existing location (per 408.036(2)(c), Florida Statutes). The nursing home is currently owned by an unrelated entity, TR & SNF, Inc. TR & SNF, Inc. has submitted a signed and notarized Letter of Agreement from its president pledging to delicense 120 beds for relicensure in the new facility.

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The Nursing Center at University Village is an existing 240-bed community skilled nursing facility (SNF) in District 6, Subdistrict 1, Hillsborough County.

Hillsborough Extended Care, LLC is newly incorporated under ownership of the Woodlands/EMI network of nursing homes and long-term care facilities in Florida and Illinois.

The applicant has not yet finalized a site for the new facility, but anticipates it will be “probably within a 10-mile radius” of the existing nursing center at University Village; this limited relocation should result in few changes to the payer mix, which is currently heavily Medicaid laden¹. The applicant anticipates that this transferal will result in increased bed utilization due to the innovation of the new facility and the experience of Woodlands/EMI facilities. Section 408.036(2)(c), Florida Statutes, specifically allows for this project to be expedited if the relocation of the beds is within a 30-mile radius. The location remains undetermined and therefore cannot be stated on the face of the CON if awarded; should the CON be awarded, this requirement will be contained as part of the project description.

The applicant has predicated award of the CON upon providing 60 percent of its patient days to Medicaid recipients in the proposed 120-bed facility.

The project involves 53,155 total gross square footage (GSF) at a construction cost of \$6,400,000. The total cost of the project is \$10,390,973.

In 2001, the Florida legislature placed a moratorium on the issuance of certificates of need (CONs) for additional community nursing beds until July 1, 2006. This proposal represents a relocation, not an addition of beds within District 6, Subdistrict 1, and is therefore being reviewed.

¹ Hillsborough County reports 66.1% Medicaid patient days, the existing facility reports 60.01% and the applicant commits to being conditioned on the CON to maintain a minimum 60.0% Medicaid patient days. AHCA’s Florida Nursing Home Utilization by District and Subdistrict for January 2003 – December 2003 guide is used to confirm these percentages, as it would have been the most recent publication at the time of application. The Nursing Center at University Village is reported in this guide with 60.01% versus the applicant’s report of 60.1%, a negligible difference.

D. REVIEW PROCEDURE

The evaluation process is structured by the certificate of need review criteria found in Section 408.035, Florida Statutes and 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 (subdistrict), applications are comparatively reviewed to determine which applicant(s) best meet(s) 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(s).

As part of the fact-finding, the consultant Karen Weaver analyzed the application with consultation from the financial analyst, John Williamson, who reviewed the financial data and architect, Joel Hill, who evaluated the architectural and the schematic drawings.

E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA

The following indicate the level of conformity of the proposed project with the review criteria and application content requirements found in Sections 408.035, and 408.037, Florida Statutes; and 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? ss. Ch. 59C-1.008(2), Florida Administrative Code.

This application proposes to relocate existing licensed beds to a new facility and is therefore being reviewed under amended Section 408.036(2)(c), Florida Statutes, 2004. The applicant describes the project as a "relocation of 120 existing licensed nursing home beds to a

site located within 30 miles of the existing facility/site, with subsequent change of ownership to the applicant.” There is currently no vehicle for that type of application under existing statutes; however, there is a provision, as noted above, under amended Section 408.036(2)(c), Florida Statutes, effective July 1, 2004 for the:

“Relocation of a portion of the nursing home’s licensed beds to a facility within the same district, if the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the district does not increase.”

Although there are existing agency rules that prohibit an entity other than the licensee of an existing facility from submitting this project, there is no specific prohibition under this recently amended section of the Florida Statutes. With the 2004 statutory amendments, many agency rules are being amended to conform with these changes and preliminary draft text was developed for Rule 59C-1.004, Florida Administrative Code and published in the Florida Administrative Weekly on October 8, 2004 to begin rule development for this amended section of the statute to allow an entity other than the current licensee to propose a project under this section of the Florida Statutes.

Additionally, because these beds cannot be dually licensed at the two facilities, the changeover must be simultaneous rather than as the applicant proposes, which is after an unneeded change of ownership.

Expedited reviews may be submitted at any time and do not respond to fixed need pool publications. Refer to 3a for a discussion of need for the project.

2. Agency Rule Preferences

Does the project respond to preferences stated in agency rules? Please indicate how each applicable preference for the type of service proposed is met. Refer to Chapter 59C-1.031-.044 of the Florida Administrative Code.

The Agency rule preferences pertaining to nursing facility beds are outlined in Chapter 59C-1.036, Florida Administrative Code. Despite the applicant’s contention that agency rules preferences do not apply and although this is a non-competitive application submitted for a relocation of a portion of existing beds under a moratorium, the above referenced chapter regulates the construction of new nursing facilities despite the method by which beds are obtained.

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 policies². The applicant does not provide a detailed discussion of the services provided. In its quality assurance program discussion on page 20 of the submission, the applicant names activities, nursing, medical care, social services, dietary services, rehabilitative services, pharmacy and dental care. The applicant provides similar lists in a tri-fold color brochure for Woodland Terrace of Citrus County and the Operational Policy and Procedure Manual provided in the back of the submission. The staffing pattern is provided for years one and two for the proposed project on Schedule 6. Under sections 3b and 5c of the narrative, the applicant gives professional profiles of the president and vice president, and briefly discusses the duties of other anticipated positions. Patient characteristics are described in section E1 in terms of percent of population over 65 and from where the expected patients will be coming. Average length of stay is not discussed, for the proposed facility or the affiliated facilities. Ancillary services and patient assessment tools are not discussed. The Operational Policy and Procedure Manual provided does not address the policies associated with admissions or discharges.

In assessing the applicant's ability to provide quality of care pursuant to s. 408.035(1)(c), Florida Statutes, the agency shall evaluate the following facts and circumstances³:

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

² Chapter 59C-1.036(4)(d)

³ Chapter 59C-1.036(4)(e)

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.

The applicant maintains in section 3b that “Hillsborough Extended Care, LLC nor any of its affiliates has ever had a nursing facility license denied, revoked or suspended, or a nursing facility placed into receivership.”

As a newly formed entity, the applicant has not appeared on the Agency’s Watchlist; however, affiliated facilities have appeared on that list. Philip Esformes, Marketing Director for the applicant, and Morris Esformes, guarantor of funds and President, are both listed in agency records as associated with Harmony Health Center, which is currently on the AHCA Nursing Home Watch List and has been listed there seven times. According to the personal financial statements provided in the application, Morris Esformes has 45.00 percent ownership of Sefardik Associates, LLC. Sefardik Associates is the owner of The Nursing Center at Mercy in Miami, which has been listed on the AHCA Nursing Home Watch List three times. Philip and Morris Esformes are affiliated with Oceanside Extended Care Center, which is currently listed and has previously appeared on the Watch List nine times. The Nursing Center at Mercy and Oceanside Extended Care Center each have fines resulting from survey deficiencies in final order and are past their due dates. Please see section 3b for additional quality of care discussion.

3. Statutory Review Criteria

- a. **Is need for the project evidenced by the availability, quality of care, efficiency, accessibility and extent of utilization of existing health care facilities and health services in the applicant’s service area? ss. 408.035(1),(2),(5) and (7), Florida Statutes.**

Availability and accessibility of services could be affected by this project. The applicant expects utilization of these beds to increase to “above-average levels for this area,” which would mean an approximate 40 percent growth in utilization. Current occupancy in these beds is far below the subdistrict average at 45.85 percent; the most recently available subdistrict average is 85.79 percent, which includes zero occupancy of the 180 inactive beds at Wellington Specialty Care and Rehabilitation Center and zero utilization at Forest Park Healthcare and Rehabilitation Center’s 97 inactive beds. This presents a considerable challenge to the applicant given the expected 10-mile radius of the relocation. It is not clear that the applicant can achieve the projections presented. However, the 12-month average occupancy for the most

recent reporting period at most facilities in this subdistrict is very high at above 94 percent with two notable exceptions, Canterbury Towers and Nursing Center at University Village. As noted above, the Nursing Center's occupancy during this period was 45.85 percent. Canterbury Towers' occupancy for this same period was 60.72 percent. Occupancy during this period ranges from the high of 98.01 percent at Carrollwood Care Center to the low at the Nursing Center at University Village⁴ given above. Medicaid occupancy is discussed below.

Efficiency is discussed only to the extent that higher utilization levels equal a more efficient use of beds. The applicant forecasts a significant improvement in utilization for the beds once relocated, and Medicaid occupancy for the beds is expected to rise from the current percentage of 51 to a minimum of 60 percent. While Medicaid occupancy is over 80 percent at four facilities in the subdistrict, almost 1/3 of the facilities in this subdistrict did not achieve the 60 percent Medicaid minimum that the applicant is forecasting⁵.

It is generally agreed that 120-bed skilled nursing homes are the most efficient nursing home model. This project will create two 120-bed facilities; the first as a newly constructed 120-bed facility and the second through the delicensure of 120 of the 240 beds at the Nursing Center at University Villages.

The applicant argues that quality of care and bed utilization can be expected to improve with a newer, more modern facility, and thus highlights some innovations of the building design in this section. The existing 15-year-old facility ranks lower than average for *Quality of Care* in the AHCA Nursing Home Care Guide⁶, but the inspection report detail attributes this rating more to internal practices than to the modernity of the facility. The proposed Woodland Terrace of Hillsborough will be under the ownership of Woodlands/EMI (as previously mentioned, the Nursing Center at University Village is owned and operated by TR & SNF, Inc.) and therefore will develop internal operating procedures independent of those in practice at the existing facility. Forty-one percent to 60 percent (or *******) appears to be the lowest rating given to an EMI affiliated nursing home on *Quality of Care*.

Refer to section 3b below for a discussion of quality or care.

⁴ Florida Nursing Home Utilization by District and Subdistrict July 2003 – June 2004.

⁵ Florida Nursing Home Utilization Guide for July 2003 – June 2004

⁶ ****** (21% - 40%) rating for Quality of Care at the Nursing Center compared to an average ******* (41% - 60%) rating for nursing home facilities in this subdistrict.

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

Hillsborough Extended Care, LLC is newly incorporated and thus has no history of care.

The applicant relies on the history of care provided by its affiliates under common ownership as listed on page 17⁷ of the submission. These six sister facilities are rated no less than ******* in the AHCA Nursing Home Care guide on *Quality of Care*, and their *Overall Inspection* rates are given no less than ********. The newly opened Southpoint Terrace in Jacksonville scores ********* in every category. The applicant maintains that none of the affiliates has ever had a nursing facility license denied, revoked or suspended, or a nursing facility placed into receivership. Care delivery will be modeled upon the programs and operational methods in place at the affiliated facilities, but given the varying ratings at those affiliates, it cannot be known how Woodland Terrace of Hillsborough will fare. None of the Woodlands/EMI affiliates is Gold Seal awarded. The applicant plans to implement a quality assurance program similar to the one in place at other Woodlands/EMI facilities.

It should be noted that Philip Esformes, the Marketing Director for this proposed project, is the Officer/Director for Morphil Corporation. Morphil Corporation is listed in Agency records as owning two facilities: Interamerican Boarding Home and Family Rest Home, both of which are currently mentioned in a multiple-facility Indictment by the U.S. Department of Justice for participating in a scheme to defraud Medicare.

⁷ Woodland Terrace Extended Care Center in Deland; Woodland Terrace of Citrus County; Woodlands Care Center of Alachua County; Bradford Terrace; Southpoint Terrace; The Terrace of Daytona Beach.

The indictment alleges that three therapy companies under like ownership paid kickbacks to assisted living facilities and to patient recruiters for access to patients. Agency records show that Philip Esformes is the President of both facilities. Morphil Corporation (the owner of Interamerican Boarding Home and Family Rest Home) has recently had its license reinstated, and the Application for Reinstatement, Document #P97000065173, contains the names of Philip Esformes (the Marketing Director for this proposed project) and Morris Esformes (the guarantor of funds on this proposed project). Also mentioned in this Federal Indictment are Jene's Retirement Living, an Assisted Living Facility, and La Covadonga Retirement Living, both of which list Philip Esformes as an Officer in Department of State records. Per the compiled financial statements submitted with the CON application, Morris Esformes is a guarantor of funds for both La Covadonga and for Jene's Retirement Living.

Morris and Philip Esformes are listed in Agency records as affiliated with Fair Havens Center, which is listed with discipline pending from AHCA.

Morris and Philip Esformes are listed in agency records as affiliated with Ayintove Associates, LLC, the owner of Harmony Health Center. Morris Esformes has not listed Ayintove Associates, LLC on the compiled financial statements provided with this CON application, but has listed a 30.00 percent ownership in "Harmony Nursing Home – FL," but there is no facility by this name in Agency records. Harmony Health Center is currently on the AHCA Nursing Home Watch List, and has been listed there seven times.

Morris Esformes is a 50.00 percent owner (per the compiled personal financial statements submitted with the CON application) of Oceanside Rehabilitation Center in Miami; there is no such facility as this. There is, however, Oceanside Extended Care Center in Miami Beach and it lists a corporate affiliation⁸ with Morris and Philip Esformes in agency records. Oceanside Extended Care Center was fined \$1000 for a deficiency found in a survey performed on 10/31/2003. This fine is in final order and was not paid by its due date of 12/03/2004. The fine remains unpaid as of the writing of this report. Oceanside is currently on the AHCA Nursing Home Watch List and has been listed there nine times.

Morris Esformes is a 45.00 percent owner (per the compiled personal financial statements submitted with the CON application) of Sefardik

⁸ Morris Esformes is the President of A.D.M.E. Investment Corporation, which is partnered with A.D.M.E. Investment Partners, Ltd, which owns Oceanside Extended Care Center. A.D.M.E. Investment Partners, Ltd has no officers listed with the Department of State records other than "A.D.M.E. Investment Corporation." Agency records also indicate "Corporate Affiliation – Esformes," which is a category for ten facilities, all of which have been listed in the CON application or on this report as affiliated with Morris and/or Philip Esformes. Philip is the Vice President of A.D.M.E. Investment Corporation.

Associates, LLC. Sefardik Associates, LLC is listed in agency records as the owner of the Nursing Center at Mercy, which has a \$3500 fine imposed by final order. This fine was not paid by its due date of 12/03/2004, and it remains unpaid as of the writing of this report. Both of the above mentioned final order fines are for survey deficiencies, which should be noted for quality of care. The Nursing Center at Mercy has been listed on the AHCA Nursing Home Watch List three times. Morris Esformes is listed in public records under Manager/Member Detail for The Nursing Center at Mercy.

Section 408.831(1), Florida Statutes addresses the denial, suspension, or revocation of a license, registration, certificate, or application and indicates that in addition to any other remedies provided by law, the agency may deny each application if the applicant, licensee, registrant, or certificate holder, or, in the case of a corporation, partnership, or other business entity, if any officer, director, agent, or managing employee of that business entity or any affiliated person, partner, or shareholder having an ownership interest equal to five percent or greater in that business entity, has failed to pay all outstanding fines, liens, or overpayments assessed by final order of the agency or final order of the Centers for Medicare and Medicaid Services, not subject to further appeal, unless a repayment plan is approved by the agency.

c. What resources, including health manpower, management personnel, and funds for capital and operating expenditures are available for project accomplishment and operation?

The audited financial statements of the applicant for the period ended September 30, 2004 were reviewed to assess the financial position as of the balance sheet date and the financial strength of its operations for the period presented.

Hillsborough Extended Care, LLC is a Florida Limited Liability company formed in July 2004 for the purpose of developing and operating a nursing home. The applicant is a development stage enterprise with \$45,000 assets, \$45,000 in liabilities, zero equity and no revenues as of September 30, 2004.

The applicant also provided an unaudited personal financial statement for Morris I. Esformes dated June 30, 2004, which showed his net worth to be \$29.9 million. Mr. Esformes was contingently liable as guarantor for a total of \$88.5 million

The applicant supplied a letter of commitment from Mr. Esformes committing to fund equity for the project of \$2.1 million and working

capital of \$500,000 and a letter of commitment from US bank for funding for the facility at the lesser of 75 percent loan to value or 85 percent loan to cost.

Capital requirements:

Schedule 2 discloses \$10,438,973 in capital projects.

Available capital:

Funding for the proposed projects is coming from the proceeds of a loan for \$8.3 million and a \$2.1 million capital contribution.

Conclusion:

Funding for this project is likely.

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

Based on staffing salaries and patterns from Schedule 6, plus 21 percent for estimated cost of benefits, and an additional 10 percent for other nursing expense, nursing costs should approximate \$1,966,874 for year one and \$3,565,906 for year two. Nursing costs on Schedule 8 total \$2,069,618 for year one and \$3,556,782 for year two. The applicant's estimated nursing costs are five percent higher for year one and approximately equal for year two. (See Nursing Cost table). The difference is not material.

The applicant provides evidence of upper-level management staff already in place in section 5c of the narrative. Pages 29-32 of the application discuss the applicant's recruitment package and various benefits designed to reduce employee turnover. Tuition reimbursement, wages, employee recognition and employment progression opportunities are discussed in detail.

Nursing Cost Table

CON 9814 Hillsborough Extended Care, LLC						
NURSING EXPENSE	YEAR ONE (2007)			YEAR TWO (2008)		
	FTE's	AVERAGE ANNUAL SALARY	TOTAL SALARY	FTE's	AVERAGE ANNUAL SALARY	TOTAL SALARY
RNs	4.0	46,847	187,388	4.0	48,059	192,236
LPNs	9.0	40,155	361,395	21.0	41,194	865,074
NURSES AIDES	31.0	22,308	691,548	56.0	22,885	1,281,560
Other	1.00	58,988	58,988	1.0	60,514	60,514
Other	1.00	51,309	51,309	1.0	52,636	52,636
Other	1.00	55,770	55,770	1.0	57,213	57,213
Other	1.00	55,770	55,770	2.8	57,213	160,196
Other	1.60	24,539	39,262	1.0	27,462	27,462
Other				1.0	25,174	25,174
TOTAL SALARIES			\$1,501,430			\$2,722,065
BENEFITS @ 21%			315,300			571,634
OTHER NURSING EXP. \$ 10%			150,143			272,207
TOTAL NURSING EXPENSE			\$1,966,874			\$3,565,906
NURSING EXPENSE (SCH 8)			\$2,069,618			\$3,556,782
DIFFERENCE			\$ 102,744			\$ (9,124)
PERCENTAGE						
DIFFERENCE			5%			0%

Actual Medicaid rates for nursing homes in Hillsborough County for FY July – December 2004 were inflated by 3.4 percent per year and compared to the projected rates. Inflation adjustments were based on the New CMS Hospital Market Basket Index for the 2nd Quarter of 2004 as published in the Health Care Cost Review. The applicant estimated their Medicaid per diem rate at \$162.57 in year one and \$164.12 in year two, between the median and lowest rates of \$172 and \$139 in year one and \$177 and \$144 in year two. Medicaid is estimated to be 45.8 percent of revenue in year one and 45.7 percent in year two.

Medicare rates for the 2004 FY were calculated and compared to the projected rates. The applicant's estimate of \$409 in year one and \$414 in year two was between the median and highest rates for the 14 upper level resource utilization groups of \$352 and \$524. Achieving the projected level of Medicare revenues would require the applicant to treat only the patients requiring the highest level of care, an unlikely outcome.

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The applicant did not provide information on the case mix used to develop the revenue estimates. Medicare is estimated to be 50.6 percent of revenue in year one and year two.

The applicant estimates a profit in year two of \$710,703.

This project appears to be financially feasible at a lower profit margin.

2004 Medicare Rates

RUG-III Group	Revenue Code	Labor Component	X Wage Index	Indexed Labor Portion	+ Non Labor Portion	= Total Federal Payment at 100 %	Increase for FY 2007 1.1387	Increase for FY 2008 1.1751
RUC	9044	377.56	0.9074	342.60	117.78	460.38	524.22	540.99
RUB	9043	343.59	0.9074	311.77	107.18	418.95	477.04	492.31
RUA	9042	327.09	0.9074	296.80	102.04	398.84	454.15	468.68
RVC	9041	286.92	0.9074	260.35	89.51	349.86	398.37	411.12
RVB	9040	278.19	0.9074	252.43	86.78	339.21	386.25	398.61
RVA	9039	255.87	0.9074	232.18	79.82	312.00	355.26	366.63
RHC	9038	258.06	0.9074	234.17	80.51	314.68	358.32	369.78
RHB	9037	238.65	0.9074	216.55	74.45	291.00	331.35	341.96
RHA	9036	220.21	0.9074	199.82	68.70	268.52	305.75	315.54
RMC	9035	251.80	0.9074	228.48	78.55	307.03	349.60	360.79
RMB	9034	226.56	0.9074	205.58	70.68	276.26	314.57	324.63
RMA	9033	213.95	0.9074	194.14	66.74	260.88	297.06	306.56
RLB	9032	198.50	0.9074	180.12	61.93	242.05	275.61	284.43
RLA	9031	168.41	0.9074	152.82	52.54	205.36	233.84	241.32

RUC - RLA

Highest	524	541
Median	352	364
Average	362	373
Schedule 7	409	414

e. Will the proposed project foster competition to promote quality and cost-effectiveness?

The projected Medicare and Medicaid days as a percent of total days in year two is 95.0 percent, private pay patients account for the remaining 5.0 percent.

This project is expected to have a minimal amount of positive impact on competition to promote quality and cost-effectiveness.

The applicant makes no mention of how the proposed project would affect competition in the service area.

Due to the moratorium on the issuance of certificates of need (CONs) for additional community nursing beds in Florida, the number of beds will not change if this application is approved. Theoretically, a change in venue for the beds should not impact competition; however, given the tremendous change of circumstances (as detailed by the applicant) expected for these beds upon approval, it is probable that utilization of these 120 beds will increase, perhaps decreasing utilization at other facilities in the service area and surrounding areas. Should quality at the new facility be significantly greater than quality at the surrounding facilities, the resulting increased competition would benefit the patients seeking care in District 6; should the quality at the new facility be sub-par for this area, utilization patterns would quickly return to normal for the surrounding facilities once the new facility's initial impact drops. The same arguments might be made for cost-effectiveness.

f. Are the proposed costs and methods of construction reasonable? Do they comply with statutory and rule requirements? Please address those items found in "Architectural Criteria" (Schedule 9). ss. 408.035(8), Florida Statutes; Ch 59A-3 or 59A-4, Florida Administrative Code.

The schedule and projected costs appear to be reasonable.

Fifty-three of the patient rooms will be semi-private and 12 will be private. There are also two special purpose private rooms that are located near the nurse station. It is not clear what is special about these rooms unless it is because the rooms could eventually be Alzheimer's rooms.

All of the patient toilet rooms are handicapped-accessible and will accommodate a person in a wheelchair. The semi-private rooms in the 20-bed unit that could become an Alzheimer's wing do not appear to have showers in the toilet rooms as do all the others. There are two main bathing rooms accessible from the corridors in two of the wings and they are handicapped accessible.

The applicant seems to have provided the ancillary spaces that are required for a nursing home as well as some other spaces.

The applicable code list is essentially correct and the schedule appears to be reasonable. The design professional is well aware of the requirements for disaster preparedness in the Florida Building Code, and referred to them in the narrative. These requirements could influence the choice of the site.

The large-scale plans show that the typical patient rooms meet the size requirements. However, some of the doors to the patient rooms do not have the required clearance on the latching side. This should not be too difficult to correct by relocating the doors or shifting their positions. The Florida Building Code, Chapter 11 dealing with accessibility shows the required 18" clear on the latch side of the door.

The facility has quite a few amenities for staff and patients including enclosed courtyards and covered porches. The patient rooms are individually air-conditioned and heated and have vaulted ceilings.

It is required that schematic drawings be submitted as part of the CON application. Although the drawings for this proposal may be more advanced than required, they have been reviewed as schematics with the expectation that they will necessarily be revised and refined during the design development (Preliminary) and contract document stages. The architectural review of the application shall not be construed as an in-depth effort to determine complete compliance with all applicable codes and standards. The final responsibility for facility compliance ultimately rests with the owner.

- 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(9), Florida Statutes.**

Hillsborough Extended Care, LLC is newly incorporated and thus has no health services history. The applicant proposes to provide a minimum of 60.0 percent of total patient days at the new facility to Medicaid patients, and has agreed to be conditioned as such.

No mention is made of charity care in the narratives or on the Schedule 7.

The applicant organization and six other existing facilities in Florida (as of November, 2004) are under the ownership of Woodlands/EMI, and it is from this owner-entity and the affiliated facilities that the applicant hopes to draw expertise in servicing Medicaid patients and the medically indigent. For January 2003 – December 2003, the sister facilities had the following averaged Medicaid Occupancy Percentages⁹:

Medicaid Occupancy Owner/Affiliate Facilities By District-Subdistrict

District-Subdistrict	Facility	Jan-Dec 2003
4-4	Woodland Terrace Extended Care Center in Deland	61.58%
3-5	Woodland Terrace of Citrus County	55.31%
3-2	Woodlands Care Center of Alachua County	49.50%
3-2	Bradford Terrace	78.02%
4-4	The Terrace of Daytona Beach (The Huntington)	62.37%

Source: Florida Nursing Home Utilization by District and Subdistrict published 4/09/2004

The following were the affiliates' averaged Medicaid Occupancy percentages for the July 2003 – June 2004:

Medicaid Occupancy Owner/Affiliate Facilities By District-Subdistrict

District-Subdistrict	Facility	July 2003 - June 2004
4-4	Woodland Terrace Extended Care Center in Deland	60.64%
3-5	Woodland Terrace of Citrus County	55.77%
3-2	Woodlands Care Center of Alachua County	56.42%
3-2	Bradford Terrace	77.61%
4-4	The Terrace of Daytona Beach (The Huntington)	62.56%

Source: Florida Nursing Home Utilization by District and Subdistrict published 4/09/2004

As shown in the two tables above, the affiliates as a whole averaged over 60.0 percent Medicaid Occupancy during the time periods indicated by the AHCA Nursing Home Utilization guides.

F. SUMMARY

Hillsborough Extended Care, LLC (CON #9814) proposes to relocate 120 existing community nursing home beds from the Nursing Center at University Village in north Tampa to a new freestanding 120-bed facility to be located in the same district within 30 miles of the existing location (per 408.036(2)(c), Florida Statutes).

The existing facility is 15 years old, experienced significantly lower utilization rates than other facilities within its subdistrict during the

⁹ Southpoint Terrace was established in 2004 and is neither found in this guide nor the one published 10/08/2004.

most recent reporting period and has agreed in writing¹⁰ to transfer 120 beds to the applicant upon approval of this CON application.

Total costs for the relocation project are estimated to be \$10,390,973. The new facility, comprised of 53,155 GSF, will be located “probably within a 10-mile radius of University Village” of the existing location. Anticipated construction costs are \$6,400,000.

The applicant is requesting that the certificate of need be conditioned for a minimum of 60.0 percent of total patient days provided in the 120 skilled nursing beds shall be provided to Medicaid patients.

After weighing and balancing all relevant criteria, the following issues are presented:

Fixed Need Pool

- The proposed project is not submitted in response to the fixed need pool. The project is subject to expedited review in accordance with 408.036(2)(c), Florida Statutes, which allows relocation of a portion of a nursing home’s licensed beds to a facility within the same district, if the relocation is within a 30-mile radius of the existing facility and the total number of nursing home beds in the district does not increase.
- The applicant's justification for the relocation stems largely from the current facility’s utilization rates being low for this area. The existing facility is 15 years old and lacks modern innovations. However, it is not clear that the applicant can achieve projected utilization levels.
- The applicant does not provide explanation as to why it wouldn’t be better for the existing licensee to build a new facility for these beds, but Agency records contain a similar and denied CON application with TR & SNF, Inc. as the applicant (CON #9635).

¹⁰ See the signed and notarized letter from the President of TR & SNF, Inc., John A. McCoy, agreeing to delicense 120 beds at the Nursing Center at University Village (page 6 of the submission).

- The existing Nursing Center at University Village is a 240-bed facility. With the relocation of 120 beds, it will become a 120-bed facility. The applicant is proposing to establish a 120-bed facility. Nursing homes with 120 beds are generally considered to be the most efficient skilled nursing model.
- The proposed location of the new facility was not specifically identified, but the applicant states that it will be located within the same district and within a 30-mile radius as required by the statute. The applicant expects to serve a similar payer mix as that which is currently served by the existing facility.

Quality of Care

- The applicant has no history of providing quality of care; however, it is reasonably demonstrated that the affiliates have adequate history upon which to model policies and procedures. The EMI affiliated facilities' ratings in AHCA's Nursing Home Care Guide prove a somewhat consistent record of quality standards.
- Harmony Health Center is currently on the AHCA Nursing Home Watch List and has been listed there seven times. Harmony is owned by Ayintove Associates, LLC, which lists Philip and Morris Esformes (the Marketing Director and guarantor of funds for this project, respectively) as affiliates in agency records. The Florida Department of State, Division of Corporations lists Philip Esformes as an Officer/Registered Agent.
- Sefardik Associates is the owner of The Nursing Center at Mercy in Miami, which has been listed on the AHCA Nursing Home Watch List three times. Morris Esformes is listed in public records under Manager/Member Detail for The Nursing Center at Mercy. Morris Esformes is a 45.00 percent owner of Sefardik Associates, LLC. The Nursing Center at Mercy has an overdue fine imposed by final order for a survey deficiency, which should be considered for quality of care.
- Morris Esformes is affiliated with Oceanside Extended Care Center, which has an overdue fine imposed by final order for a survey deficiency. This should be considered for quality of care. Oceanside is currently listed on the AHCA Nursing Home Watch List and has been listed there nine times.

Cost/Financial Analysis

- The applicant's financial position appears adequate for both the short and long-term. Likely profits may not be as high as forecasted by the applicant, but the project appears to be financially feasible nonetheless.
- The applicant is a development-stage enterprise with \$45,000 assets, \$45,000 in liabilities, zero equity and no revenues as of September 30, 2004. The applicant supplied letters of financial commitment, and available capital for the proposed project will come from the proceeds of a loan for \$8.3 million and a \$2.1 million capital contribution. Funding for this project is likely.
- Morris Esformes is affiliated with Oceanside Extended Care Center, which was fined \$1000 for a deficiency found in a survey performed on 10/31/2003. This fine is in final order and was not paid by its due date of 12/03/2004. It remains unpaid as of the writing of this report.
- Morris Esformes is a 45.00 percent owner (per the compiled personal financial statements submitted with the CON application) of Sefardik Associates, LLC. Sefardik Associates, LLC is listed in agency records as the owner of the Nursing Center at Mercy, which has a \$3500 fine imposed by final order, which was not paid by its due date of 12/03/2004. It remains unpaid as of the writing of this report.
- Section 408.831(1), Florida Statutes addresses the denial, suspension, or revocation of a license, registration, certificate, or application and indicates that in addition to any other remedies provided by law, the agency may deny each application if the applicant, licensee, registrant, or certificate holder, or, in the case of a corporation, partnership, or other business entity, if any officer, director, agent, or managing employee of that business entity or any affiliated person, partner, or shareholder having an ownership interest equal to five percent or greater in that business entity, has failed to pay all outstanding fines, liens, or overpayments assessed by final order of the agency or final order of the Centers for Medicare and Medicaid Services, not subject to further appeal, unless a repayment plan is approved by the agency.

Medicaid/Indigent Charity Care Commitment

- The applicant is requesting a CON conditioned for a minimum of 60.0 percent of total patient days to be provided to Medicaid patients.

- Per the applicant, the facility will have 60 beds (of the 120) which will be dually Medicaid-Medicare certified.
- The applicant makes no mention of a charity care commitment either in the narrative or on the financial schedules, as is typical with nursing facilities.

Architectural Analysis

- The applicable code list is essentially correct and the schedule and projected costs appear to be reasonable.
- The large-scale plans show that the typical patient rooms meet the size requirements. However, some of the doors to the patient rooms do not have the required clearance on the latching side. This should not be too difficult to correct by relocating the doors or shifting their positions. The Florida Building Code, Chapter 11 dealing with accessibility shows the required 18" clear on the latch side of the door.

G. RECOMMENDATION

Deny CON #9814

AUTHORIZATION FOR AGENCY ACTION

Authorized representatives of the Agency for Health Care Administration adopted the recommendation contained herein and released the State Agency Action Report.

DATE: _____

Karen Rivera
Health Services and Facilities Consultant Supervisor
Certificate of Need

Jeffrey N. Gregg
Chief, Bureau of Health Facility Regulation