

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In the matter of:

**ST. JUDE NURSING CENTER, INC.**

**Case No. 18-54906**

**Chapter 11**

**Debtor.**

**Hon. Thomas J. Tucker**

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**MOTION FOR ENTRY OF ORDER: (A) AUTHORIZING SALE OF  
CERTAIN ASSETS OF DEBTOR TO LIVONIA SNF OPERATING, LLC;  
(B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN  
CONTRACTS; AND (C) GRANTING RELATED RELIEF**

Now comes the Debtor, St. Jude Nursing Center, Inc. (“SJN”), and hereby moves the Court, pursuant to sections 105(a), 363(b) and 365(f) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order authorizing and approving the sale of certain assets of the Debtor to Livonia SNF Operating, LLC (“Livonia SNF” or “Purchaser”) free and clear of liens, claims and interests and granting certain related relief, as well as the assumption and assignment of certain Debtor contracts to Livonia SNF. In support of the Motion, Debtor states as follows:

## JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested here are Bankruptcy Code sections 105(a), 363(b) and 365(f) and Bankruptcy Rules 2002, 6004, and 6006 and 9014.

## BACKGROUND

### A. *The Bankruptcy Cases.*

3. On November 2, 2018 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Code"). This present case is the third bankruptcy proceeding of the Debtor.

4. The initial bankruptcy case was filed February 22, 2012, Case No. 12-43956 ("2012 Case"), which resulted in the successful reorganization of the Debtor pursuant to a confirmed plan of reorganization.

5. The second bankruptcy case was filed February 18, 2016, Case No. 16-42116 ("2016 Case"). The 2016 Case contemplated the sale of substantially all of the Debtor's assets pursuant to a confirmed plan of reorganization to WMP Livonia, LLC ("WMP Livonia"), an entity owned, in part, by Roger Mali, the brother of the owner of the Debtor. The sale to WMP Livonia contemplated (as expressly set forth

in its CON Application submitted September 27, 2017, see **Exhibit 2** (the “Original Livonia CON”) the closure of the Debtor’s facility, and the subsequent total demolition and new construction of a brand new, fully modern facility on the existing site of the Debtor (the “Original Livonia Rebuild Proposal”). As set forth in the Original Livonia CON Application, the brand new, fully modern facility on the existing site (the “Original Replacement Facility”) was to be constructed under the so-called “new design” model, and would be fully compliant with all regulatory and licensing requirements. Under the Original Livonia Rebuild Proposal, the Debtor was to transfer and relocate the existing residents of the Debtor to other licensed facilities in an orderly and timely manner. Upon completion of the Original Replacement Facility, the intention was to allow any former residents of the Debtor to have admission to the Original Replacement Facility.

6. At the time of pursuing the Original Livonia Replacement Proposal in 2017, an entity related to Roger Mali, WMP Novi Operating, LLC (“WMP Novi”), was also simultaneously pursuing the rebuild and replacement of Whitehall Nursing Care Center of Novi. At the same time, WMP Novi was seeking a certificate of need (the “Whitehall CON”) for the total closure, complete demolition, and total new construction of a replacement facility at the existing location of the Whitehall Nursing Care Center of Novi location (the “Whitehall Rebuild Proposal”). On or about March 2017, the Department of Health and Human Services (“DHHS”)

approved the Whitehall CON on behalf of WMP Novi for the Whitehall Rebuild Proposal. (See **Exhibit 3**, approving similar rebuild and replace proposal for the Whitehall Novi facility involving similar parties in March 2017).

7. Despite having approved the Whitehall CON and similar on-site rebuild and replace proposals, DHHS refused to issue the Original Livonia CON for WMP Livonia. After several months of continued and extensive negotiations by WMP Livonia with DHHS, as well as the expenditure by WMP Livonia of substantial sums of money and other resources, as well as the completion of significant and thorough project development and due diligence by WMP Livonia (including, without limitation, site plan approval with the City of Livonia, completion of architectural and engineering plans and specifications, bidding the construction work, third-party reports, feasibility studies, environmental studies, surveys and other investigations, all of which relating to the existing site of Debtor) with respect to the Original Livonia Rebuild Proposal, WMP was finally compelled to withdraw and terminate the purchase agreement with the Debtor on or about January 10, 2018 on account of its inability to obtain the Original Livonia CON.

8. Despite the uninformed and/or patently erroneous allegations of various parties in this case, the failure to close and consummate the sale contemplated and approved in the 2016 Case was not the result of the actions, inactions or general incompetence or negligence of the Debtor and/or WMP Livonia. In fact, the parties

associated with WMP Livonia, including Roger Mali, have successfully acquired and implemented other non-related rebuild and replacement nursing center projects within the State of Michigan. In addition, most recently, Mission Point of Detroit, LLC, another entity related to Roger Mali, successfully constructed and replaced the former Cadillac Nursing Center (a/k/a St. Francis Nursing Center), with a fully renovated, fully-modern, first class nursing center, located in Detroit, Michigan (a case with which this Court had direct involvement), and a project with total costs of nearly \$12,000,000, with investment coming from as far as California and Utah.

9. Nevertheless, based upon the inability of WMP Livonia to acquire the Original Livonia CON for the Original Livonia Rebuild Proposal, WMP Livonia was compelled to terminate the purchase agreement with the Debtor on January 10, 2018 (See **Exhibit 4**). As a result of the termination, the Debtor, in order to satisfy its obligations under the confirmed plan and maximize value to the estate, re-engaged the unsuccessful “back-up bidder” for the assets in the 2016 Case; however, the back-up bidder’s pursuit of the Debtor’s assets was not fruitful. The back-up bidder decreased its back-up bid by nearly \$1,000,000, and made an offer for all of the Debtor’s assets for \$1,400,000. Subsequently, after making its offer and conducting further due diligence, the back-up bidder withdrew its offer and declined to move forward with a sale.

10. Thereafter, in spring 2018, the Debtor once again retained Senior Living Investment Brokerage to market the Debtor for sale either as a going concern or otherwise a whole or partial asset sale of Debtor. During this process, the Debtor received several showings of the property and entered into one letter of intent with a potential purchaser; however, after the potential purchaser conducted its due diligence on the physical plant of the Debtor, the potential purchaser terminated the letter of intent. No purchaser and no other offers for the sale of the Debtor's facility and/or any of the Debtor's assets materialized from the marketing efforts.

11. In summer 2018, the Debtor commenced negotiations with Livonia SNF Operating, LLC ("Livonia SNF") for the purchase of certain of its assets, and specifically, the rights and interests of the Debtor in its "64 skilled bed licenses" and the assignment of certain contracts (collectively, the "Sales Transaction"). Livonia SNF will be owned, in part (approximately 10% membership interest), by Roger Mali, who presently acts as the manager of Livonia SNF as it proceeds through the formation, sale and regulatory process to consummate the proposed Sale Transaction. No other insider of the Debtor has, or is contemplated to have, any interest in, employment with, or managerial control over Livonia SNF and/or its affiliates.

12. Unlike the previous Original Livonia Rebuild Proposal of WMP Livonia (where DHHS did not issue the Original Livonia CON because it then took

the position that the Debtor could not shut down its current facility while a new facility was being constructed on the same site)<sup>1</sup>, the proposal by Livonia SNF contemplates the construction of a new facility on a separate parcel of property, which is located within the same planning area as Debtor, as well as allows the Debtor to provide continuity of care for each of its residents during the construction of the replacement facility by Livonia SNF at the separate location. Accordingly, the Debtor believes the Sales Transaction as proposed by Livonia SNF has a high probability of successfully acquiring a certificate of need for the rebuild and replacement of a new facility at a different location from the Debtor and maximizes the level of care for its residents.

13. Livonia SNF has already filed its application for its certificate of need for the revised proposal to replace the facility to a different location (the “New Livonia SNF CON”) and has paid all fees associated therewith. In addition, Livonia SNF currently has the replacement location under contract for purchase, is presently going through site plan approval with the City of Livonia, and is conducting third

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<sup>1</sup> The DHHS has asserted in this case that the reason the Original WMP Livonia CON application was not approved on account of procedural defects or amendments/modifications to the Original WMP Livonia CON application after it was initially submitted. For purposes of this Motion, the Debtor does not intend to argue the basis for the denial of the CON application except as to say that it disputes the assertions of DHHS with respect to same. The Debtor attaches the entirety of the Original WMP Livonia CON application (See Exhibit 2) and points out to the court that the Original WMP Livonia CON application was prepared by the law firm of Dykema, and that the attorneys working on the Original WMP Livonia CON application have extensive experience with certificate of need applications and they had extensive dialogue with the DHHS regarding this matter and any alleged defects in the application.

party reports and investigations on the replacement site, including spending extensive money and resources toward this project.<sup>2</sup>

14. The Debtor is currently operating as debtor-in-possession pursuant to §§ 1107 and 1108 of the Code and contemplates continuing to operate as such pending the final Closing Date of the Sales Transaction.

15. In the event the Debtor ceases to operate for any reason between the date this Court enters an order approving this Motion and/or the Sales Transaction and the date Livonia SNF begins operating a newly constructed facility, the Debtor requests that it, Livonia SNF and/or the State of Michigan (whether through DHHS or LARA) be authorized to take all appropriate action to (a) close the Debtor's current facility and transfer the Debtor's 64 skilled nursing bed licenses to Livonia SNF; (b) enter into a voluntary relocation plan; (c) enter into an approved building implementation program; and (d) amend or reissue any certificate of need to Livonia SNF to hold the 64 skilled nursing bed licenses during the period of time the Debtor ceases to operate and Livonia SNF begins operating its new facility.

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<sup>2</sup> The Sale Transaction proposed by this Sale Motion contemplates the construction of a new facility on a separate parcel of land from the Debtor's current facility in order to satisfy DHHS's prior stated concerns and issues with the Original Livonia Rebuild Proposal. However, in the event and to the extent DHHS would now authorize and approve a tear down and replacement proposal similar to the Original Livonia Rebuild Proposal on the Debtor's current site, then Debtor and Livonia SNF reserve the right to amend the APA, the proposed Sale Transaction and any pending CON applications or other approval processes to provide for such a proposal.



B. *Secured Creditors.*

16. Prior to the Petition Date, the following parties, to the best of Debtor's knowledge, hold liens on, or have otherwise asserted a secured claim against, assets of the Debtor:

- a) Ability Insurance Company;
- b) Wayne County, Michigan;
- c) Slavik Enterprises, LLC;
- d) Internal Revenue Service; and
- e) Schafer & Weiner, PLLC

17. Ability Insurance Company ("Ability") has asserted it holds a validly recorded mortgage ("Ability Mortgage"), by way of various assignments, against Debtor's real property located at 34350 Ann Arbor Trail, Livonia, Michigan ("Real Property"). Ability has asserted it is owed in excess of \$3.0 million dollars with respect to the Ability Mortgage ("Ability Claim"); however, the Debtor disputes the value of the Ability Claim. The Debtor asserts the Ability Mortgage and any other asserted liens or claims extend, at the most, only to the Real Property. Ability has no secured interest in any other assets of the Debtor, other than the Real Property.

18. Wayne County, Michigan ("Wayne County") holds a first priority lien against the Real Property on account of unpaid real property taxes owed by the Debtor ("Wayne County Liens") in the approximate amount of \$422,000 ("Wayne

County Claim”). The Debtor asserts the Wayne County Liens extend only to the Real Property.

19. Slavik Enterprises, LLC (“Slavik”) asserts it holds a first priority all asset lien against the Debtor’s personal, non-real estate, assets in the approximate amount of \$552,715 (“Slavik Claim”). The Slavik Claim is also secured by a second priority mortgage against the Real Property (subject to the liens of Wayne County and Ability).

20. The Internal Revenue Service (“IRS”) holds a second priority lien solely against the Debtor’s personal, non-real estate, assets in the approximate amount of \$256,481.

21. The law firm of Schafer & Weiner, PLLC (“S&W”) has asserted it may hold a secured claim by way of an actual or participatory interest in the secured Slavik Claim in this case. The Debtor takes no position with respect to the validity of S&W’s claims for purposes of this Motion.

22. But for the parties identified above, the Debtor believes no other party in interest has or has asserted a secured claim against any property or interests of the Debtor.

C. *Retention of Senior Living Investment Brokerage as Broker.*

23. As stated previously herein, both during the 2016 Case and prior to the Petition Date in this instant bankruptcy proceeding, the Debtor engaged Senior

Living Investment Brokerage to undertake a thorough and extensive marketing of the sale of the assets of the Debtor as a going concern enterprise or otherwise as separate and distinct sales of various assets of Debtor.

24. Consequently, the Debtor believes the operations and assets of the Debtor have been fully marketed, and that there is no need to expend additional time and resources undertaking another marketing process.

*D. Time Constraints and Debtor Licensing Status*

25. The Debtor is currently operating under a Physical Plant Conditional Waiver, also known as a K-161 Waiver, issued by the Michigan Department of Licensing and Regulatory Affairs (“LARA”). The Debtor’s facility is classified as a so-called “Type V” construction facility under the regulations issued by the Centers for Medicare & Medicaid Services (“CMS”), which Type V categorization is no longer permitted under such regulations. Essentially, the Debtor has been, and is currently, “grandfathered” with respect to certain physical plant deficiencies. While the Debtor’s facility is a CMS Five-Star rated facility (as determined by CMS) supplying the highest standard of resident care, the fact is the facility’s physical plant requires significant modifications to remain compliant with CMS operating standards. Accordingly, LARA has indicated to Debtor that it will no longer continue to license the current facility in its present state to either the Debtor or a new buyer unless the “Type V” construction deficiency is cured, which would

require either this Debtor or any new buyer to totally demolish the present facility and replace it with a new compliant construction on the present site, or otherwise replace and rebuild the facility at a new location.

26. For purposes of clarity and certainty, there are no outstanding citations or compliance issues with respect to the level of quality care being provided to any of Debtor's residents, and the residents are being cared for properly. See **Exhibit 5**, Patient Care Ombudsman Report [Doc. 70] filed December 12, 2018. The issue is solely the result of the fact the physical facility is no longer compliant with applicable federal guidelines due to its age and design.

27. To the extent that Livonia SNF is granted its CON, the K-161 Waiver will be extended through April 2020 to allow for the completion of the replacement building project.

28. Accordingly, given the substantially compressed time constraints, in order to maximize the value of the Debtor's assets for the benefit of the Secured Creditors (as well as all other interested parties), the Debtor believes moving forward with a private sale to Livonia SNF and the assumption and assignment of the CMS contract is in the best interests of the estate, as well as for the continuity of care for each of its resident patients.

## RELIEF REQUESTED

29. By this Motion, Debtor seeks entry of an order, pursuant to sections 105(a), 363(b) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014, substantially in the form attached hereto as **Exhibit 1**, authorizing and approving the terms of the APA, the private sale of the Sale Assets (as defined below), and the assumption and assignment of the CMS contract of Debtor to Livonia SNF.

## BASIS FOR RELIEF

### A. *The Purchase Agreement*

30. Debtor's primary stakeholders, including at least one of its principal Secured Creditors, Slavik Enterprises, LLC, have generally favored and supported a sale of the Debtor, in whole or in part, throughout these bankruptcy cases.

31. Consistent with its obligation to maximize value for its creditors and their stakeholders, the Debtor, pre-petition, has engaged in a thorough effort to locate potential purchasers and other third parties regarding a sale.

32. To that end, the Debtor has negotiated in good faith, and at arms-length, a private sale (the "Sale") of certain of its assets, and specifically its rights and interests to 64 "skilled nursing bed licenses" owned by Debtor (the "Sale Assets"), to Livonia SNF, free and clear of all liens, claims, encumbrances and interests.

33. As a result of their negotiations, the Debtor has come to an agreement on that certain Asset Purchase and Sale Agreement (the “APA”) with Livonia SNF, which is conditioned, among other things, upon approval of this Court. The material terms<sup>3</sup> of the APA are as follows:

(a) *Purchase Price; Deposit.* The Purchase Price for the Sale Assets shall be \$975,000, payable in immediately available funds on the Closing Date<sup>4</sup>. Livonia SNF shall place a \$125,000 deposit (“Deposit”) into escrow with Debtor’s counsel not later than sixty (60) days after receipt of its requested certificate of need by Livonia SNF, which Deposit shall be applied against the Purchase Price on the Closing Date.

(b) *Sale Assets.* The Sale Assets shall consist solely of Debtor’s rights and interests to its licenses and permits used by and necessary for the operation of the skilled nursing facility, which include, but are not limited to: the certain nursing bed licenses for 64 skilled licensed beds; all provider agreements in connection with such use, including, without limitation, Medicare and Medicaid approvals, entitlements and other governmental and quasi-governmental authorizations, including, without limitation, the

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<sup>3</sup> This is a summary of the APA only. If there is any discrepancy between this summary and the actual terms of the APA, the APA shall control.

<sup>4</sup> The Closing Date under the APA is defined as the later of (i) the date Purchaser closes on its loan transaction for the Sale Assets; (ii) thirty (30) days after receipt by Purchaser of a certificate of need and any Medicare, Medicaid and third party insurance billing pin numbers transferred to or issued to Purchaser; or (iii) December 31, 2019.

Certificate of Need from the State of Michigan in connection with the skilled care nursing home facility licensed in Michigan and certified for participation in Medicare and Medicaid (or any successor programs) or as otherwise required under all local, state or federal laws.

(c) *Excluded Assets.* The Sale Assets to be purchased by Livonia SNF do not include the following assets (the “Excluded Assets”):

- (i) Cash and cash equivalents;
- (ii) Accounts Receivable;
- (iii) Personal Property of Debtor;
- (iv) Real Estate;
- (v) any Labor Agreements;
- (vi) any personal property belonging to residents of the Debtor’s facility; and
- (vii) any other tangible property as provided in the APA.

34. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan, bankruptcy courts, in applying this section, have

routinely required that the decision to sell assets outside the ordinary course of business be based upon the debtor's sound business judgment and a finding of "good faith." See, e.g., *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986) (requiring a finding of "good faith" to approve a sale under section 363(b)); *Daiichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) ("In determining whether to authorize the use, sale or lease of property under [section 363(b)], courts require the debtor to show that a sound business purpose justifies such actions.").

35. Debtor submits that more than ample business justification exists to sell the Sale Assets to the Livonia SNF pursuant to the APA because (i) there is an extremely limited market for the Sale Assets, (ii) time is of the essence with respect to the approval of the Sale Transaction, and (iii) the universe of parties with any interest in the Sale Assets have already been advised of the sale through previous extensive marketing efforts and will receive notice of this Motion and the opportunity to object to the Sale Transaction if desired. The relief sought herein is not only reasonable, but necessary, to maximize the value of the Debtor's estate for the benefit of stakeholders, to allow the Debtor to monetize the major assets of the estate, as well as to provide continuity of care to its residents.



B. *An Auction is Not Required*

36. Bankruptcy Rule 6004 sets forth the procedural parameters for asset sales outside of the ordinary course of business and provides that such sales may be by either public or private sales. Fed. R. Bankr. P. 6004(f)(1). Accordingly, a debtor may sell assets of the estate outside of the ordinary course of business without conducting a public auction thereof, or, as the case may be, soliciting a bid higher or better than that contained in a privately negotiated purchase agreement. *See In re Woodscape Ltd. P'ship*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (“There is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction.”).

37. Debtor submits that the proposed Sale Transaction is in the best interests of its estate inasmuch as the Sale Transaction represents an efficient, prudent and necessary means for the monetization of its most valuable asset. Further, Debtor asserts that conducting a formal marketing process and auction under the facts and circumstances of this chapter 11 case for this type of asset, particularly in light of the operational licensing and time constraints of the Debtor, would be severely detrimental to its creditors, as well as resident care.

38. A public auction is also unnecessary because the proposed Sales Transaction will add substantial value to Debtor’s estate, and the Debtor and its owner have concluded, in their professional opinions and after consideration of prior

marketing efforts, that that there is a high degree of certainty that the proposed Sale Transaction to Livonia SNF will provide the highest and best value for the estate within the limited time constraints afforded the Debtor. Furthermore, based upon the time constraints under K-161 Waiver, and the uncertainty as to whether DHHS would issue a certificate of need for the rebuild and replacement of the Debtor's facility at the existing site (which would be required to cure the Type V deficiency), the value and attractiveness of the Debtor's assets have diminished significantly.

C. *Sale Free and Clear of Liens, Claims and Encumbrances*

39. In accordance with section 363(f) of the Bankruptcy Code, assets may be sold "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- (i) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- (ii) the lienholder or claimholder consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (iv) such interest is in bona fide dispute; or such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

40. Satisfaction of any of the requirements enumerated therein will suffice to warrant the Debtor's sale of the Sale Assets free and clear of liens, claims, encumbrances and interests. *See, e.g., Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that section 363(f) is written in the disjunctive; therefore, a court may approve a sale "free and clear," provided that at least one of the subsections is met).

41. To the extent that any lien, claim, encumbrance or interest exists, it would fall into at least one of the five categories enumerated in section 363(f). Debtor submits that any such lien, claim, encumbrance or interest will be protected adequately by attachment to the net proceeds of the Sale Transaction with the same force, effect and priority that such lien, claim, encumbrance or interest has on the Sale Assets as of the Petition Date or as otherwise established by further Court order. In addition, Debtor believes that any entity with an interest in the Sale Assets could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. Accordingly, Debtor respectfully submits that the sale of the Sale Assets free and clear of liens, claims, encumbrances and interests satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code and should be approved.

D. *The Sale of the Assets Is Proposed In “Good Faith” Under Section 363(m) of the Bankruptcy Code and Was Not the Product of Collusion Under Section 363(n).*

42. The Debtor requests that this Court find that Livonia SNF is entitled to the protections provided by section 363(m) of the Bankruptcy Code in connection with the Sale Transaction.

43. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . .

44. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal.

45. Notwithstanding the fact that one of the minority owners in Livonia SNF is the brother of the owner of the Debtor, the APA has resulted from an arm’s-length, actively negotiated transaction, in which Livonia SNF was represented by counsel and at all times acted in good faith. Accordingly, Debtor requests that this Court make a factual determination that Livonia SNF will purchase the Sale Assets under the APA in “good faith” pursuant section 363(m) of the Bankruptcy Code. Moreover, that the Sale Transaction was not the product of collusion and Livonia

SNF or any other third party, and should therefore be protected from any ability to avoid the sale, and that Debtor hereby waives any rights it may have to avoid the sale under 363(n).

E. *Assumption and Assignment of CMS Agreement*

46. Pursuant to Section 365(f) of the Bankruptcy Code, the Debtor may assign an unexpired executory contract of the Debtor.

47. By this Motion, the Debtor seeks to assume the provider agreement it maintains with CMS and assign such agreement to Livonia SNF as of the Closing Date.

48. To the extent of any monetary defaults associated with the CMS Agreement, the Debtor shall cure monetary defaults as of the Closing Date.

49. CMS shall be provided due and proper notice of this Motion with the opportunity to object to the proposed assignment of the CMS Agreement to Livonia SNF.

F. *Waiver of Stay Order*

50. Pursuant to Bankruptcy Rule 6004(h) and 6006(d), an order authorizing the sale of property and assignment of contracts is stayed for fourteen days after the entry of the order unless the Court orders otherwise. Debtor requests that the Court order that such stay not apply with respect to the Sale Transaction.



**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In the matter of:

**ST. JUDE NURSING CENTER, INC.**

**Case No. 18-54906**

**Chapter 11**

**Debtor.**

**Hon. Thomas J. Tucker**

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**ORDER:**

**(A) AUTHORIZING SALE OF CERTAIN ASSETS OF DEBTOR TO  
LIVONIA SNF OPERATING, LLC; (B) AUTHORIZING ASSUMPTION  
AND ASSIGNMENT OF CERTAIN CONTRACTS; AND (C) GRANTING  
RELATED RELIEF**

This matter having come before the Court upon the Debtor's *Motion for Entry of Order: (A) Authorizing Sale of Certain Assets of Debtor to Livonia SNF Operating, LLC; (B) Authorizing Assumption and Assignment of Certain Contracts; and (C) Granting Related Relief* (the "Sale Motion") [Doc. \_\_\_\_] requesting pursuant to Sections 105(a), 363 and 365 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorization to sell Debtor's rights and interests in certain licenses and permits (the "Sale Assets") as well as assume and assign certain executory contracts pursuant to the Asset Purchase and Sale Agreement (the "APA") (as a whole, the "Sale Transaction"); the Court having considered the Sale Motion; the sale process having been

conducted in good faith and in all material respects in accordance with any applicable statutes, rules and procedures of the Bankruptcy Code and Bankruptcy Rules; a hearing having been held on \_\_\_\_\_, 2019 (the “Sale Hearing”) to consider approval of the Sale Motion and proposed Sale Transaction pursuant to the terms and conditions of the APA; adequate and sufficient notice of the Sale Motion and Sale Transaction having been given to the parties in interest in this case; and such parties having been afforded an opportunity to be heard at the Sale Hearing; the Court having reviewed and considered: (i) the Sale Motion; (ii) any objections to the Sale Motion; and (iii) the arguments of counsel, and the evidence proffered or adduced at the Sale Hearing; and after due deliberation thereon, and good and sufficient cause appearing therefor; and it appearing that the relief requested in the Sale Motion, insofar as it pertains to this Order, is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and the Court being otherwise fully advised in the premises.

**IT HEREBY IS FOUND AND DETERMINED THAT:**

A. This Court has jurisdiction over the Sale Motion under 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (N). Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.



B. The statutory basis for the relief sought in the Sale Motion are Sections 105(a), 363 and 365 of the Bankruptcy Code, together with Bankruptcy Rules 2002, 6004, 6006, and 9014.

C. As evidenced by the Certificates of Service on file with this Court, due, proper, timely, adequate, and sufficient notice and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, the Sale Hearing, and the Sale Transaction have been provided in accordance with Bankruptcy Code Sections 102(1), 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014, and in compliance with any other Orders of this Court, to interested persons and entities, including, but not limited to: (i) the Office of the United States Trustee; (ii) the Purchaser and its counsel; (iii) Secured Creditors and their counsel; (iv) all parties known to the Debtor who expressed in writing to Debtor an interest in purchasing all or any portion of the Assets; (v) all relevant taxing and regulatory authorities or their counsel; (vi) the Centers for Medicare and Medicaid Services, and (vii) all entities that filed a notice of appearance and request for service of papers in these cases in accordance with Bankruptcy Rule 2002. Such notice was good, sufficient, and appropriate under the circumstances and no other or further notice of the Sale Motion, the Sale Hearing, or the Sale Transaction is or shall be required.

D. As demonstrated by the testimony and other evidence, if any, proffered or adduced at the Sale Hearing, the Debtor has sufficiently marketed the Sale Assets and conducted the sale process in compliance in all material respects with any applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

E. No consents or approvals are required for Debtor to consummate the Sale Transaction other than the consent and approval of this Court and those set forth in the APA. Neither the execution of the APA nor the consummation of the Sale Transaction in accordance with its terms will constitute a violation of any provision of Debtor's organizational documents or any other instrument, law, regulation, or ordinance by which Debtor is bound.

F. Debtor is the legal and equitable owner of the Sale Assets and, upon entry of this Sale Order, Debtor shall have full authority to consummate the Sale Transaction contemplated by the APA, subject to its terms and conditions. The APA and the Sale Transaction have been duly and validly authorized by all necessary corporate action, as the case may be, of Debtor.

G. Approval of the APA and consummation of the Sale Transaction is in the best interests of Debtor, the estate, creditors, and other parties in interest. The Debtor has demonstrated good, sufficient, and sound business purpose and justification and compelling circumstances for the Sale Transaction pursuant to

Section 363(b) of the Bankruptcy Code prior to, in contemplation of, and outside of, a plan of reorganization or liquidation.

H. The Debtor, with the assistance of its professionals, diligently and in good faith marketed its assets prior to the commencement of these proceedings.

I. Under the facts and circumstances of this bankruptcy case, the procedures utilized by the Debtor for the marketing of its assets were designed to and achieved a fair and reasonable purchase price constituting the highest and best offer obtainable for the Sale Assets.

J. The Sales Transaction will preserve and maximize the value the Debtor's estate for the benefit of all constituencies.

K. The APA was negotiated, proposed, and entered into by Debtor and Purchaser without collusion, in good faith, and from arm's length bargaining position. Purchaser is owned, in minority part, by an "insider" of Debtor, as that term is defined in Bankruptcy Code Section 101. Any relevant connections or relationships between any of the Debtor, the Purchaser, and any parties have been disclosed, and the Debtor and Purchaser have not engaged in any conduct that would cause or permit the APA to be avoided under Bankruptcy Code Section 363(n).

L. Purchaser is in all respects a good faith purchaser under Section 363(m) and, as such, is entitled to all of the protections afforded thereby. Purchaer

will be acting in good faith within the meaning of Section 363(m) in consummating the Sale Transaction.

M. The consideration to be provided by Purchase pursuant to the APA: (i) is fair and reasonable; (ii) is the highest or otherwise best offer for the Sale Assets; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practical available alternative, including liquidation; and (iv) constitutes a reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

N. The APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia.

O. The transfer of the Sale Assets to the Purchaser will be a legal, valid, and effective transfer of the Sale Assets, and, except as expressly provided in the APA, will vest the Purchaser with all right, title, and interest of the Debtor to the Sale Assets free and clear of all liens ("Liens") claims, encumbrances, and interests of any kind (collectively, "Interests"), including, without limitation, the following: (i) interests that purport to give to any party or entity a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor's or the Purchaser's interest in the Sale Assets, or any similar rights; (ii) interests relating

to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtor's business prior to the Closing Date; and (iii) interests relating to liens, claims, and encumbrances on the Sale Assets or against the Debtor; provided, however, that all such Liens and Interests shall attach to the net proceeds of the Sale Transaction, in order of priority as set established by applicable law or other order of the Court.

P. The Purchaser would not have entered into the APA and would not consummate the Sale Transaction contemplated thereby, thus adversely affecting the Debtor, its estate, and its creditors, if the sale of the Sale Assets to the Purchaser were not free and clear of all Liens and Interests of any kind or nature whatsoever, or if the Purchaser would, or in the future could, be liable for any of the Liens or Interests not expressly assumed by Purchaser.

Q. Subject to the provisions of this Order, the Debtor may sell the Sale Assets free and clear of all Liens and other Interests of any kind or nature whatsoever because in each case, one or more of the standards set forth in Section 363(f)(1) through (5) of the Bankruptcy Code has been satisfied and all holders of Liens and other Interests are adequately protected by having their Liens and Interests, if any, attach to the net proceeds of the Sale Transaction attributable to the property against or in which they claim a Lien or Interests.

R. The transfer of the Sale Assets to the Purchaser is not a fraudulent transfer, and will not render the Purchaser a "successor," or subject the Purchaser to any liability whatsoever with respect to, or on account of, the operation of the Debtor's business prior to the Closing Date or by reason of such transfer under any applicable laws, whether based in whole or in part, directly or indirectly, on any theory of law or equity, including without limitation: (i) any theory of implied assumption of any liabilities; (ii) any theory of constructive consolidation or merger of the Purchaser and the Debtor; (iii) any theory that Purchaser's acquisition is a mere continuation or reincarnation of the Debtor's business; (iv) any theory that the Sale Transaction is fraudulent or lacks good faith; or (v) any other theory of antitrust, vicarious, successor, or transferee liability.

S. The Debtor has demonstrated that it is an exercise of its sound business judgment to enter into the Sale Transaction and consummate the Sale Transaction to the Purchaser in connection with the consummation of the sale.

T. The consummation of the Sale Transaction (the "Closing") pursuant to the APA will be a legal, valid, and effective transfer of the Assets to Purchaser, and vests or will vest Purchaser with all right, title, and interest in and to the Sale Assets free and clear of all Liens and Interests, unless otherwise expressly provided in the APA, in accordance with Section 363(f) of the Bankruptcy Code.

U. The APA is a valid and binding contract between Debtor and Purchaser and shall be enforceable according to its terms.

V. All of the provisions of the APA are non-severable and mutually dependent.

W. Notice of the Sale Motion for purposes of the assumption of the Debtor's CMS Agreement and assignment of same to Purchaser has been provided to CMS; no objection to the assumption and assignment has been raised, or if raised, are resolved or overruled by the provisions of this Sale Order.

**NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Sale Motion is **GRANTED** and approved in all respects.
2. Any objections to the entry of this order ("Sale Order") or the relief granted herein and requested in the Sale Motion that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are **DENIED** and **OVERRULED**.

**SALE TRANSACTION AND ANCILLARY AGREEMENTS**

3. The APA and the Sale Transactions contemplated thereby are hereby approved.
4. Pursuant to Bankruptcy Code Sections 363(b) and (f) and 365(b) and (f), Debtor is authorized, empowered and, subject to the terms of the APA and this

Sale Order, directed to: (i) execute, deliver, and perform under, consummate, and implement the APA together with all additional or ancillary instruments and documents that are requested by Purchaser that may be reasonably necessary or desirable to implement the APA; (ii) to take any and all actions as it deems necessary, appropriate, or advisable for the purpose of assigning, transferring, granting, conveying, and conferring the Sale Assets and possession of same to the Purchaser; and (iii) to take such other action as may be necessary or appropriate to perform the obligations under the APA, including without limitation, any and all actions reasonably requested by Purchaser.

5. Pursuant to Sections 105(a), 363(f), and 365(b) and (f) of the Bankruptcy Code, upon the Closing: (i) the transfer of the Sale Assets to Purchaser pursuant to the APA shall constitute a legal, valid, and effective transfer of the Sale Assets and shall vest Purchaser with all right, title, and interest in and to the Sale Assets; (ii) the Sale Assets shall be transferred to Purchaser free and clear of all Liens and Interests (unless expressly set forth in the APA) against the Sale Assets, in accordance with Section 363(f) of the Bankruptcy Code, with any such Liens or Interests to attach to the net proceeds of the Sale Transaction, in the order of their priority, with the same validity, force, and effect that they had against the Sale Assets prior to the entry of this Sale Order, subject to any rights, claims, and defenses that Debtor and all interested parties may possess with respect thereto;



and (iii) the Assumed Contracts, if any, shall be deemed assumed by Debtor and assigned to Purchaser on the Closing Date, as provided in and contemplated by the APA. Without limiting the generality of the preceding sentence, the transfer of the Sale Assets shall be free and clear of all Liens and Interests of any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbiter (public or private).

6. The Debtor is hereby authorized and directed to perform all acts, and execute and comply with the terms of such other documents, instruments, and agreements as Purchaser may reasonably require to effectuate the terms and conditions of this Sale Order or the Sale Transaction.

7. This Sale Order is and shall be effective as a determination that all Liens and Interests shall be and are, without further action by any person or entity, released with respect to the Sale Assets as of Closing.

8. Except as expressly permitted or otherwise specifically provided by the APA or this Sale Order, to the greatest extent possible consistent with the requirements of due process, and provided further that the Closing shall have occurred, all persons and entities, including but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, customers, users, warranty claimants, and trade and other creditors,

holding Liens or Interests of any kind or nature whatsoever in the Debtor or the Sale Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtor, the Sale Assets, or the transfer of the Sale Assets to the Purchaser, are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its parents, affiliates, or subsidiaries, its successors or assigns, its property, or the Sale Assets, such persons' or entities' Liens or Interests, pursuant to any legal or equitable theory whatsoever and notwithstanding any provision of Collective Bargaining Agreements including, without limitation that (a) the Purchaser is deemed to be a "successor" to the Debtor for any purpose, (b) the Purchaser is deemed to have, *de facto* or otherwise, merged with or into the Debtor; or (c) that the Purchaser is deemed to be a continuation of the Debtor.

9. Purchaser shall not be required to assume any collective bargaining agreement to which Debtor is a party ("Collective Bargaining Agreements") or be liable for any claims demands or liability of any kind or nature arising out of the Collective Bargaining Agreements including but not limited to any provision contained in the Collective Bargaining Agreements purporting to impose liability on Purchaser for not assuming the Collective Bargaining Agreement.

10. To the greatest extent allowed by applicable law, except as expressly provided in the APA, the Purchaser is not assuming nor shall it, in any way whatsoever, be or be deemed to be liable or responsible, as successor or otherwise, for any Liabilities of the Debtor, or any Liabilities in any way whatsoever relating to or arising from the Debtor's assets, business, or operations, or by virtue of the conveyance of the Sale Assets to Purchaser.

11. The CMS Agreement, and any related or ancillary agreements with respect to same, are assumed by Debtor and shall be assigned to Purchaser pursuant to Section 365(b) and (f) on the Closing Date.

### **ADDITIONAL PROVISIONS**

12. The consideration provided by Purchaser for the Sale Assets under the APA is fair and reasonable and may not be avoided under Bankruptcy Code Section 363(n).

13. The Sale Transaction has been, and is undertaken by the Debtor and the Purchaser in good faith, as that term is used in Section 363(m) of the Bankruptcy Code and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the sale of the Sale Assets to Purchaser unless such authorization is duly stayed pending such appeal. Purchaser is in all respects a good faith purchaser of the Sale Assets and is therefore entitled to all of the benefits and

protections afforded by Section 363(m) of the Bankruptcy Code. In the event of any stay, modification, reversal or vacation of this Sale Order, then notwithstanding any such stay, modification, reversal or vacation, all obligations incurred by the Debtor under this Sale Order or the APA prior to the effective date of such stay, modification, reversal or vacation will be governed in all respects by the original provisions of this Sale Order, and the Purchaser shall be entitled to the rights, privileges and benefits granted in this Sale Order with respect to all such obligations.

14. This Court retains jurisdiction to:

(a) Interpret, implement, and enforce the terms and provisions of this Sale Order and the terms of the APA, all amendments thereto, and any waivers and consents thereunder, and of each of the agreements executed in connection therewith to which Debtor is a party or that has been assigned by Debtor to Purchaser;

(b) Protect Purchaser or any of the Assumed Contracts or Sale Assets against any of the Liens or Interests, as provided herein, and to enforce the injunctions provided herein with respect to the commencement or continuation of any action seeking to impose a successor or other liability upon the Purchaser;

(c) Enter orders in aid or furtherance of the Sale Transaction;

(d) Compel delivery of all Sale Assets to the Purchaser;

(e) Adjudicate any and all remaining issues concerning Debtor's right and authority to assume and assign the Assumed Contracts and the rights and obligations of Purchaser with respect to such assignment and the existence of any default (including any cure amounts) under any such Assumed Contract;

(f) Adjudicate all issues concerning any actual or alleged Liens or Interests in and to the Sale Assets, including the extent, validity, enforceability, priority, and nature of all such actual or alleged Liens or Interests; and

(g) Except as expressly provided for herein, adjudicate any and all issues and/or disputes relating to Debtor and title or interest in the Sale Assets, the net proceeds of the Sale Transaction, the Sale Motion, and/or the APA

15. All Liens and Interests of any kind or nature whatsoever existing as to the Sale Assets prior to the Closing have been unconditionally released, discharged, and terminated as to the Sale Assets, with such Liens and Interests to attach to the net proceeds of the Sale Transaction, and that the conveyances described herein have been effected and shall be binding upon and shall govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file,

register, or otherwise record, or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Sale Assets.

16. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

17. All persons or entities that are presently, or on the Closing Date may be, in possession of some or all of the Sale Assets are hereby directed to surrender possession of the Sale Assets to the Purchaser on the Closing Date.

18. The Purchaser shall have no liability or responsibility for any liability or other obligation of the Debtor of any kind arising under or related to the Sale Assets or the Excluded Assets other than the obligations expressly set forth in the APA. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the APA, the Purchaser shall not be liable for any claims against the Debtor or any of its predecessors or affiliates, except as expressly set forth in the APA and the Purchaser shall have no successor or vicarious liabilities of any kind or character, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or any obligations of the Debtor arising prior to the Closing

Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way, relating to the operation or transfer of the Debtor's business or assets prior to the Closing Date, or obligations in any way relating to collective bargaining agreements between the Debtor and any party, or any other obligations relating to current or former employees, or retirees of the Debtor. The sale of the Sale Assets pursuant to the APA and this Sale Order shall not give rise to any claims for severance against, or trigger any other employee benefit not otherwise payable in the ordinary course by the Debtor to any employee of the Debtor whose employment is continued by the Purchaser after the Closing Date.

19. If any person or entity that has financing statements, mortgages, mechanics liens, *lis pendens*, or other documents or agreements evidencing Liens or Interests against the Sale Assets and shall not have delivered to Debtor and Purchaser prior to Closing, in proper form for filing and executed by the appropriate parties, releases of all such Liens or Interests that the person or entity has with respect to the Sale Assets, then: (i) Debtor or the Purchaser are authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sale Assets; and (ii) Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order that once filed, registered, or otherwise recorded, shall constitute

conclusive evidence of the release of all Liens or other Interests in the Sale Assets as of Closing, of any kind or nature whatsoever.

20. The terms and provisions of the APA, any ancillary agreements, and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of Debtor, Purchaser and its respective affiliates, successors and assigns, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code or conversion of this case to a case under Chapter 7, and to trustee(s) such terms and provisions shall likewise be binding. The APA and the Sale Transaction may be specifically enforced against, and shall not be subject to rejection or avoidance by, Debtor or any Chapter 7 or Chapter 11 trustee of Debtor.

21. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on Debtor or Debtor's estate.

22. The failure specifically to include any particular provisions of the APA or ancillary agreements in this Sale Order shall not diminish or impair the effectiveness of such provisions. It being the intent of the Court that the APA and the ancillary agreements be authorized and approved in their entirety.



23. To the extent of any inconsistency between the provisions of this Sale Order, the APA, and any documents executed in connection therewith, the provisions contained in the APA and any documents executed or delivered in connection therewith shall govern.

24. Nothing contained in any Chapter 11 plan confirmed in this Chapter 11 case or any order of this Court confirming such plan or any other order entered in this Chapter 11 case (or any converted Chapter 7 case) shall conflict with or derogate from the provisions of the APA or the terms of this Sale Order.

25. In the event that this Chapter 11 case is dismissed or converted to a Chapter 7 case, or a trustee is appointed (whether under Chapter 11 or 7), neither the dismissal or conversion of this case, nor the appointment of such a trustee, shall affect in any manner the rights of Purchaser under the APA or this Sale Order, or any other agreements executed by Debtor in conjunction with the Sale Transaction, and all of the rights and remedies of Purchaser under the APA, Sale Order, and all other related or ancillary agreements executed in connection with the Sale Transaction shall remain in full force and effect as if the case had not been dismissed or converted or a trustee had not been appointed.

26. The provisions of this Sale Order are non-severable and mutually dependent.

27. In the event the Debtor ceases to operate for any reason between the date of entry of this Sale Order and the date Livonia SNF begins operating a newly constructed facility, the Debtor, Livonia SNF and/or the State of Michigan (whether through DHHS or LARA) are authorized to take all appropriate action to (a) close the Debtor's current facility and transfer the Debtor's 64 skilled nursing bed licenses to Livonia SNF; (b) enter into a voluntary relocation plan; (c) enter into an approved building implementation program; and (d) amend or reissue any certificate of need to Livonia SNF to hold the 64 skilled nursing bed licenses during the period of time the Debtor ceases to operate and Livonia SNF begins operating its new facility.

28. Notwithstanding any provision in this order, incorporated documents, or any other order in the bankruptcy case to the contrary, the United States and the Debtor, in addition to the Purchaser, agrees that any claims arising under the Medicare Act are removed from the Bankruptcy Court's jurisdiction by 42 U.S.C. §§ 405(h) and 1395ii. After exhaustion of statutorily required administrative remedies pursuant to the exclusive jurisdictional provisions of the Medicare Act, which include, but are not limited to, 42 U.S.C. § 1395oo, any dispute as to the final administrative decision of the agency must be heard by the federal court designated by the Medicare Act. Accordingly, the Debtor and Purchaser agree that under the terms of this order, they cannot and shall not seek relief from this

Bankruptcy Court that is contrary to the provisions of the Medicare Act or the duly promulgated regulations thereunder.

29. With respect to the Internal Revenue Service, nothing in the order, incorporating documents, or any future order of the Court may be interpreted by any party to impact on the ability of the Internal Revenue Service to assess, collect, or otherwise determine the tax liability (whether in the form of taxes, penalties, and/or statutory interest) of any officer, employee, or other responsible party of the Debtor. Moreover, nothing in this order, incorporated documents, or any future order shall seek to predetermine any tax consequence that is contrary to the IRS's rights to duly assess, collect, or otherwise determine any tax liability.

30. This Sale Order is effective and enforceable immediately upon its entry, and any stay as to the effectiveness and enforceability of this Sale Order imposed by Bankruptcy Rules 6004(h) and 6006(d) is hereby waived.

EXHIBIT 2

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**CON Information**

<b>CON ID</b>	170028	<b>Facility Name</b>	ST JUDE NURSING CENTER	<b>Application Id</b>	14590
<b>Review Type</b>			Non Substantive		
<b>Working Title</b>			Acq and Repl 64-Bed NH by WMP Livonia, LLC		

**Submit CON**

Main Menu

Date and Time of Submission: 07/27/2017 12:05

**CON Application Status**

The electronic application has been submitted successfully. You have chosen to submit your application fee by mail. Please note this application will NOT be deemed received until the appropriate application fee and all supporting documents and paper forms are received by the Department in accordance with Administrative Rules and applicable Review Standards. Please print this page for your records and submit a copy with supporting documents and paper forms.

Print this Page

# APPLICATION FOR CERTIFICATE OF NEED

<b>CON ID</b>	170028	<b>Application</b>	14590	<b>Facility Name</b>	Mission Point Nursing & Physical Rehabilitation Center of Livonia
<b>Review</b>	NON-SUB	<b>Working Title</b>	Acq and Repl 64-Bed NH by WMP Livonia, LLC		

<p><b>AUTHORITY:</b> PA 368 of 1978, as amended</p> <p><b>COMPLETION:</b> Is voluntary, but is required to obtain a Certificate of Need. If not completed, a Certificate of Need will not be issued.</p>	<p>The Department of Community Health is an equal opportunity employer, services and programs provider.</p>
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<b>Legal Name of Applicant</b>
WMP Livonia, LLC

<b>Current Licensed Facility Name</b>	<b>County</b>
ST JUDE NURSING CENTER	WAYNE

<b>Proposed Licensed Name</b>
Mission Point Nursing & Physical Rehabilitation Center of Livonia

<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
34350 ANN ARBOR TR	LIVONIA	MI	48150

<b>Health Facility Type</b>	
Hospital	Long Term (Acute) Care Hospital
Hospital Long Term Care Unit	<b>Nursing Home</b>
Freestanding Surgical Outpatient Facility	Psychiatric Hospital
Inpatient Psychiatric Unit	Health Maintenance Organization
Other: Not a Licensed Health Facility (specify)	<b>null</b>

<del><b>Legal Owner of Building (if other than applicant)</b></del>
St. Jude Nursing Center, Inc.

<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
34350 Ann Arbor Trail	Livonia	MI	48150

<b>Legal Owner of Land (if other than applicant)</b>
St. Jude Nursing Center, Inc.

<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
34350 Ann Arbor Trail	Livonia	MI	48150

<b>Current Licensee of Facility (if other than applicant)</b>
St. Jude Nursing Center, Inc.

<b>Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
34350 Ann Arbor Trail	Livonia	MI	48150

**Certification**

A. Pursuant to MCL 333.22226, if the proposed project is located in one of the following counties, Allegan, Ionia, Kent, Lake, Mason, Mecosta, Montcalm, Muskegon, Newago, Oceana, Osceola, or Ottawa; I certify that a copy of this application with all attachments was sent to the Alliance for Health.

B. I certify that to the best of my knowledge and belief, the information and attachments submitted are true and correct. I further certify that no revisions will be made to the approved project, including bed count or provision of additional or expanded services and space, without first notifying and receiving approval from the Department of Community Health to make such revisions, and providing such information to the Department, and where applicable, to the Alliance for Health.

C. I understand that the Certificate of Need application process, decision, and subsequent operation of the proposed project (if approved) are subject to the applicable laws, rules, and CON Review Standards.

D. I understand that a signed certification form or electronic submission agreeing to comply with the CON Review Standards applicable to this project must be included in this application.

**Certification Acceptance**

PHYLLIS ADAMS

**Certificate Accepted**

Yes

**Certification Accepted Date** 07/27/2017

# CERTIFICATE OF APPOINTMENT FOR AUTHORIZED AGENT

Notice is hereby given to the Michigan Department of Community Health that

WMP Livonia, LLC

[Legal name of applicant entity]

has appointed and authorized the following person to act on behalf of the applicant entity.

<b>Agent Name</b> PHYLLIS ADAMS		<b>Title</b> MS	
<b>Name of Agent's Organization</b> Dykema Gossett PLLC			
<b>Address</b> 2723 S. State Street, Suite 400		<b>City</b> ANN ARBOR	<b>State</b> MI
		<b>ZIP Code</b> 48104	
<b>Agent's Telephone</b> 734-214-7664	<b>Extension</b>	<b>Agent's Fax Number</b> 734-214-7696	<b>Extension</b>
<b>Agent's E-Mail Address</b> pdadams@dykema.com,HZaskiewicz@dykema.com			
The above named agent is the authorized representative for Certificate of Need Number  <div style="text-align: center;"> <u>170028</u>            (Certificate of Need Number)         </div>			
The above named agent is authorized to do the following: A. submit this Certificate of Need application and make amendments thereto, B. provide the Department with all information necessary for a determination with respect to this Certificate of Need application, C. enter into agreements with the Department in connection with this Certificate of Need, and D. receive notice and service of process in matters relating to this Certificate of Need.			
This appointment will remain in effect for this application until written notice of termination is sent to the Michigan Department of Community Health that references the specific CON Application number. The termination notice must identify a new authorized agent.			
<b>Legally Authorized to Appoint Agent</b>			
<b>Name</b> H. Roger Mali		<b>Title</b> Manager	
<b>Identify those individuals who may be contacted by DCH to answer questions. Other Contact</b>			
<b>Financial Data</b>		<b>Other Data</b>	
<b>Name</b> H. Roger Mali		<b>Name</b> Hannah Zaskiewicz	
<b>Telephone</b> (248)577-2632		<b>Telephone</b> (734)214-7607	
<b>E-mail Address</b> rmali@missionpointmanagement.com		<b>E-mail Address</b> hzaskiewicz@dykema.com	

# DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST

<b>1. Legal Name of Applicant</b> WMP Livonia, LLC			
<b>Applicant d/b/a</b> Mission Point Nursing & Physical Rehab. Center of			<b>Date Legal Entity was</b> 06/15/2016
<b>Employer Identification Number (EIN)</b> 753174038		<b>Telephone Number</b> 734-261-4800	<b>Extension</b>
<b>Agent Address</b> 2723 S. State Street, Suite 400		<b>City</b> ANN ARBOR	<b>State</b> MI
		<b>ZIP Code</b> 48104	

2. Ownership / Controlling Interest:  
 Identify below all individuals/organizations (including partnerships) that have direct ownership or a controlling interest in the applicant entity. For all individuals, list both their names and addresses.  
 If any of the individuals is related to each other, the relationship must be reported under Item 6, "Remarks" section of this application. List the organization's EIN (including partnerships).  
 For corporations, list the names and addresses of the corporation's directors as well as the EIN

Individual / Organization Information			
Name	Employer Identification	Phone Number	
H. Roger Mali	Not applicable.	248-577-2632	
<b>Address</b> 721 Elmwood	<b>City</b> Troy	<b>State</b> MI	<b>ZIP Code</b> 48083
<b>Name</b> Welbrook Senior Living	<b>Employer Identification</b> 471842688	<b>Phone Number</b> 855-935-2766	
<b>Address</b> 2121 Rosecrans Avenue, Suite 3301	<b>City</b> El Segundo	<b>State</b> CA	<b>ZIP Code</b> 90245
<b>Name</b> The Slavik Company	<b>Employer Identification</b> 381469109	<b>Phone Number</b> 248-203-0011	
<b>Address</b> 32500 Telegraph Road, Suite 222	<b>City</b> Bingham Farms	<b>State</b> MI	<b>ZIP Code</b> 48025





## PROJECT TIMETABLE

Project Item	Date
1. Date Contract to be signed with an architect / engineer registered in	
2. Date schematic plans and narrative will be complete	
3. Completion date for design development plans with revised cost estimates	
4. Date for determination of methods of financing and ability to finance	
5. Date of final architectural plans and specifications	
6. Date of receipt of bids or vendor quotation(s)	
7. Date of obligation for capital expenditure (see (1) below)	01/10/2018
8. Date contracts to be let	
9. Date of initiation of construction	
10. Date equipment will be installed, if applicable	
11. Date of completion of construction (see (2) below)	
12. Date services associated with this project will begin	10/01/2019

(1) An obligation for a capital expenditure shall be deemed to have been incurred by or on behalf of an institution:

- A. When an enforceable contract is entered into by such institution or by a person representing such institution, for the construction, acquisition, lease, and/or financing of a capital asset;
- B. Upon the formal, internal commitment of funds by such institution for a force account expenditure that constitutes a capital expenditure; or
- C. In the case of donated property, the date the gift is completed in accordance with applicable Michigan laws.

(2) If major components of the proposed project will be completed and become operational prior to the overall completion of the project, indicate below the anticipated dates of completion for

Component/Department	Anticipated Completion
Change of ownership of Facility.	01/10/2018
Facility closure based on approved voluntary closure plan.	05/10/2018
Initiation of services in the replacement facility.	10/01/2019

# ACQUISITION OF A LICENSED HEALTH FACILITY

<b>CON ID</b>	170028	<b>Application</b>	14590	<b>Facility Name</b>	Mission Point Nursing & Physical Rehabilitation Center of Livonia
<b>Review</b>	NON-SUB	<b>Working Title</b>	Acq and Repl 64-Bed NH by WMP Livonia, LLC		

**1. PROJECT DESCRIPTION: Describe the proposed project including the parties to the transaction (purchaser/lessee and seller/lessor), the type of transaction involved, and how the parties to the transaction are related, either directly or indirectly. In addition, please provide a general description of the physical plant of the facility (total square footage, number of floors, etc.) and the type of CON covered clinical services offered at the site, as**

WMP Livonia, LLC (Applicant) proposes to acquire the operations of St. Jude Nursing Center (BHS No. 82-4260), an existing nursing home with sixty-four (64) licensed beds (the Facility), and to replace the licensed beds into a replacement facility to be developed by Mission Point of Livonia, LLC (Landlord) at the existing site. Operations of the Facility will be transferred to Applicant from St. Jude Nursing Center, Inc. ("Seller") pursuant to an operations transfer agreement. Applicant proposes a capital expenditure of approximately \$3,166,720 in the form of rent to be paid to Landlord through an operating lease with a proposed term of five (5) years. In a related transaction, Landlord will acquire the land and building comprising the Facility from Seller for \$2,430,000.

To implement the facility replacement component of this proposed project, Landlord proposes to demolish the existing Facility and to replace the Facility with new construction at the existing licensed site. Applicant will lease the replacement facility from Landlord upon completion. The site is not of sufficient size to allow the replacement facility to be constructed adjacent to the existing Facility. The proposed facility will have approximately 24,195 gross square feet and sixteen (16) private rooms and twenty-four (24) semi-private rooms with private bathrooms and showers in a structure with one (1) floor. The proposed replacement Facility will have full amenities and services, including an expansive rehabilitation center providing a full range of physical, occupational and speech therapy services.

At the conclusion of the project, Applicant will operate sixty-four (64) beds in the replacement nursing home and at no time will Applicant operate more than sixty-four (64) beds without obtaining prior CON approval.

**2. Does the seller or lessor have any approved CONs related to this facility that have not yet**

No **if Yes, list the CON application**

**3. Change of ownership/lease will be** 01/10/2018

**4. The book value of the** \$ 2,430,000

**5. If the project involves the addition of space through lease or purchase, indicate how many gross square feet (gsf) of space for**

**Lease** 24,195 gsf **Purchase** 0 gsf

**6. Indicate whether or not the following covered clinical services were provided during the past 12 months and will continue to be provided after the acquisition, as well as the number**

Covered Clinical Service	Currently Provided	Continue Providing	Current Number of Units, Rooms, Beds	Proposed Number of Units, Rooms, Beds
Nursing Home/HLTCU Beds	Yes	Yes	64	64

## BED REPLACEMENT/RELOCATION REPORT

<b>CON ID</b>	170028	<b>Application</b>	14590	<b>Facility Name</b>	Mission Point Nursing & Physical Rehabilitation Center of Livonia
<b>Review</b>	NON-SUB	<b>Working Title</b>	Acq and Repl 64-Bed NH by WMP Livonia, LLC		

**1. PROJECT DESCRIPTION: Describe the proposed project including its physical elements, building names, floor numbers and wings, room numbers and types, and numbers of patient**

WMP Livonia, LLC (Applicant) proposes to acquire the operations of St. Jude Nursing Center (BHS No. 82-4260), an existing nursing home with sixty-four (64) licensed beds (the Facility), and to replace the licensed beds into a replacement facility to be developed by Mission Point of Livonia, LLC (Landlord) at the existing site. Operations of the Facility will be transferred to Applicant from St. Jude Nursing Center, Inc. ("Seller") pursuant to an operations transfer agreement. Applicant proposes a capital expenditure of approximately \$3,166,720 in the form of rent to be paid to Landlord through an operating lease with a proposed term of five (5) years. In a related transaction, Landlord will acquire the land and building comprising the Facility from Seller for \$2,430,000.

To implement the facility replacement component of this proposed project, Landlord proposes to demolish the existing Facility and to replace the Facility with new construction at the existing licensed site. Applicant will lease the replacement facility from Landlord upon completion. The site is not of sufficient size to allow the replacement facility to be constructed adjacent to the existing Facility. The proposed facility will have approximately 24,195 gross square feet and sixteen (16) private rooms and twenty-four (24) semi-private rooms with private bathrooms and showers in a structure with one (1) floor. The proposed replacement Facility will have full amenities and services, including an expansive rehabilitation center providing a full range of physical, occupational and speech therapy services.

At the conclusion of the project, Applicant will operate sixty-four (64) beds in the replacement nursing home and at no time will Applicant operate more than sixty-four (64) beds without obtaining prior CON approval.

**2. Describe what currently occupies the space that the beds will be relocated to, and what will be done with those beds or services in that space?**

The space proposed to be occupied by the newly-constructed nursing home is the existing licensed site of Applicant's Facility. The existing nursing home will be demolished by Landlord to make space for the new nursing home to be constructed, as the site is not of sufficient size to allow the replacement facility to be constructed adjacent to the existing Facility. After receipt of CON approval, a closure plan for the Facility will be developed and submitted for approval by the Department of Licensing and Regulatory Affairs ("LARA"). Existing residents will be discharged from the Facility per the State-approved closure plan to other appropriate nursing homes. Applicant will obtain a Building Program Agreement with LARA to preserve the license for the Facility while the replacement facility is being constructed.

**3. Indicate the distance in miles between the existing and proposed licenced sites. Attach supporting map indicating distance between sites and their addresses. Miles between:**

0

**4. Describe the number of beds by category (Hospital, NICU, psychiatric, nursing home/HLTCU) to be moved:**

No. of Beds to be Moved	Bed Category	Existing Room Numbers	Proposed Room Numbers
2	private	A15, A16	A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A13, A14, A15, A16 (16 private)

No. of Beds to be Moved	Bed Category	Existing Room Numbers	Proposed Room Numbers
			rooms)
21	semi-private	A1, A3, A4, A5, A6, A7, A8, A9, A10, A11, A12, A14, B1, B3, B4, B5, B6, B7, B8, B9, B10	B1,B2,B3,B4,B5,B6,B7,B8,B9, B10,B11,B12,B13A,B13B ,B14,B15,B16, B17,B18A,B18B (24 semi-private rooms)
4	5-Bed Rooms	A2, A17, B2, B11	Not applicable. Zero 5-Bed Rooms.

**5. For projects involving new construction or renovation, provide the following:**

Room Type	Current Number of	Proposed Number of	Net Usable Area in Sq.
One Person	2	16	4,288
Two Persons	21	24	6,166
Three Persons	0	0	0
Four Persons	0	0	0

**6. This project involves how many gross square feet?**

New	0
Renovation	0
Lease	24,195
Purchase	0

**7. At project completion, there**                      **64**                      **total number of beds**                      **24,195**                      **total gross square feet at the entire facility.**

**8. Attach a schematic plan of the space that will house the beds to be relocated, and all support space. Show room numbers, number of beds/room, floor and wing.**

**9. Attach a floor plan of a typical room.**

## FINANCIAL COMPONENTS FOR NONSUBSTANTIVE REVIEW

<b>CON ID</b>	170028	<b>Application</b>	14590	<b>Facility Name</b>	Mission Point Nursing & Physical Rehabilitation Center of Livonia
<b>Review</b>	NON-SUB	<b>Working Title</b>	Acq and Repl 64-Bed NH by WMP Livonia, LLC		

### Project Costs

Applicant is required to provide basis for cost estimates for these components.

Type of Cost	Other Type Description	Sq. ft. for Construction & Renovation	Cost
Space Lease Cost - Term	5 years		\$ 3,166,720
<b>TOTAL:</b>			<b>\$ 3,166,720</b>

**COST PER SQUARE FOOT CALCULATIONS:**

New  /  sq. ft.  per sq.

Renovation &  /  sq. ft.  per sq.

Note: Combined Clinical & Non-Clinical Costs and Areas in calculation

### Project Funds

Project Fund Type	Other Description	Amount
Capital/Operating Lease		\$ 3,166,720
<b>TOTAL:</b>		<b>\$ 3,166,720</b>

### Loan Detail

<b>a. Lender:</b>	Not applicable.		
<b>Address :</b>			
<b>City :</b>	<b>State :</b>	MI	<b>Zip Code :</b>
<b>b. Frequency of</b>	<b>c. Projected Interest</b>	%	
<b>d. Borrow Amount :</b>	<b>h. Amortization Period :</b>	yrs	

**Lease Arrangements**

**Does this project involve any capital or operating lease(s)?**

Yes

**1. If your answer is "YES" please describe the type of lease and property (capital or**

**a. Lease Type**

**b. Property Type**      Not applicable.

**2. Term of the lease**

**3. End of term fair market**

**4. Useful Life**

**5. Annual Payment**

**6. Capitalized**

**7. Purchased price/beginning of term fair market**

**8. Stated or implicit interest rate**

%

**c. Lease Type**      Operating

**d. Property Type**      Replaced Nursing Home (24,195 GSF)

**9. Term of the lease**      5 years

**10. Annual Payment**      \$ 633,344

**11. Purchased price/beginning of term fair market**      \$ 2,430,000

**CON Review Standards for Nursing Home and Hospital Long-Term Care Unit (HLTCU) Beds**

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Not Applicable/No Response Required      Yes

**Section 1.                      Applicability**

(1) These standards are requirements for approval under Part 222 of the Code that involve a) beginning operation of a new nursing home/HLTCU, (b) replacing beds in a nursing home/HLTCU or physically relocating nursing home/HLTCU beds from one licensed site to another geographic location, (c) increasing licensed beds in a nursing home/HLTCU licensed under Part 217 and a HLTCU defined in Section 20106(6), or (d) acquiring a nursing home/HLTCU. Pursuant to the Code, a nursing home/HLTCU is a covered health facility. The Department shall use these standards in applying Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws and Section 22225(2)(c) of the Code, being Section 333.22225(2)(c) of the Michigan Compiled Laws.

(2) An increase in licensed nursing home/HLTCU beds is a change in bed capacity for purposes of Part 222 of the Code.

(3) The physical relocation of nursing home/HLTCU beds from a licensed site to another geographic location is a change in bed capacity for purposes of Part 222 of the Code.

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Not Applicable/No Response Required      Yes

**Section 2.                      Definitions**

**Sec. 2(1)**

As used in these standards:

(a) "Acquisition of an existing nursing home/HLTCU" means the issuance of a new nursing home/HLTCU license as the result of the acquisition (including purchase, lease, donation, or other comparable arrangement) of an existing licensed and operating nursing home/HLTCU and which does not involve a change in bed capacity of that health facility.

(b) "ADC adjustment factor" means the factor by which the average daily census (ADC), derived during the bed need methodology calculation set forth in Section 3(2)(d) for each planning area, is divided. For planning areas with an ADC of less than 100, the ADC adjustment factor is 0.90 and for planning areas with an ADC of 100 or more, the ADC adjustment factor is 0.95.

(c) "Applicant's cash" means the total unrestricted cash, designated funds, and restricted funds reported by the applicant as the source of funds in the application. If the project includes space lease costs, the applicant's cash includes the contribution designated for the project from the landlord.

(d) "Base year" means 1987 or the most recent year for which verifiable data collected as part of the Michigan Department of Community Health Annual Survey of Long-Term-Care Facilities or other comparable MDCH survey instrument are available.

(e) "Certificate of Need Commission" or "Commission" means the commission created pursuant to Section 22211 of the Code, being Section 333.22211 of the Michigan Compiled Laws.



(f) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being Section 333.1101 et seq. of the Michigan Compiled Laws.

(g) "Common ownership or control" means a nursing home, regardless of the state in which it is located, that is owned by, is under common control of, or has a common parent as the applicant nursing home pursuant to the definition of common ownership or control utilized by the Department of Licensing and Regulatory Affairs (LARA), Bureau of Health Care Services.

(h) "Comparative group" means the applications which have been grouped for the same type of project in the same planning area or statewide special pool group and which are being reviewed comparatively in accordance with the CON rules.

(i) "Converted space" means existing space in a health facility that is not currently licensed as part of the nursing home/HLTCU and is proposed to be licensed as nursing home or HLTCU space. An example is proposing to license home for the aged space as nursing home space.

(j) "Department" means the Michigan Department of Community Health (MDCH).

(k) "Department inventory of beds" means the current list, for each planning area maintained on a continuing basis by the Department: (i) licensed nursing home beds and (ii) nursing home beds approved by a valid CON issued under Part 222 of the Code which are not yet licensed. It does not include (a) nursing home beds approved from the statewide pool and (b) short-term nursing care program beds approved pursuant to Section 22210 of the Code, being Section 333.22210 of the Michigan Compiled Laws.

Sec. 2(1) Cont.

(l) "Existing nursing home beds" means, for a specific planning area, the total of all nursing home beds located within the planning area including: (i) licensed nursing home beds, (ii) nursing home beds approved by a valid CON issued under Part 222 of the Code which are not yet licensed, (iii) proposed nursing home beds under appeal from a final Department decision made under Part 222 or pending a hearing from a proposed decision issued under Part 222 of the Code, and (iv) proposed nursing home beds that are part of a completed application under Part 222 of the Code which is pending final Department decision. (a) Nursing home beds approved from the statewide pool are excluded; and (b) short-term nursing care program beds approved pursuant to Section 22210 of the Code, being Section 333.22210 of the Michigan Compiled Laws, are excluded.

(m) "Health service area" or "HSA" means the geographic area established for a health systems agency pursuant to former Section 1511 of the Public Health Service Act and set forth in Section 14.

(n) "Hospital long-term-care unit" or "HLTCU" means a nursing care facility, owned and operated by and as part of a hospital, that provides organized nursing care and medical treatment to seven (7) or more unrelated individuals suffering or recovering from illness, injury, or infirmity.

(o) "Licensed only facility" means a licensed nursing home that is not certified for Medicare or Medicaid.

(p) "Licensed site" means the location of the health facility authorized by license and listed on that licensee's certificate of licensure.

(q) "Medicaid" means title XIX of the social security act, chapter

531, 49 Stat. 620, 1396 to 1396g and 1396i to 1396u.

(r) "New design model" means a nursing home/HLTCU built in accordance with specified design requirements as identified in the applicable sections.

(s) "Nursing home" means a nursing care facility, including a county medical care facility, but excluding a hospital or a facility created by Act No. 152 of the Public Acts of 1885, as amended, being sections 36.1 to 36.12 of the Michigan Compiled Laws, that provides organized nursing care and medical treatment to seven (7) or more unrelated individuals suffering or recovering from illness, injury, or infirmity. This term applies to the licensee only and not the real property owner if different than the licensee.

(t) "Nursing home bed" means a bed in a health facility licensed under Part 217 of the Code or a licensed bed in a hospital long-term-care unit. The term does not include short-term nursing care program beds approved pursuant to Section 22210 of the Code being Section 333.22210 of the Michigan Compiled Laws or beds in health facilities listed in Section 22205(2) of the Code, being Section 333.22205(2) of the Michigan Compiled Laws.

(u) "Occupancy rate" means the percentage which expresses the ratio of the actual number of patient days of care provided divided by the total number of patient days. Total patient days is calculated by summing the number of licensed and/or CON approved but not yet licensed beds and multiplying these beds by the number of days that they were licensed and/or CON approved but not yet licensed. This shall include nursing home beds approved from the statewide pool. Occupancy rates shall be calculated using verifiable data from the actual number of patient days of care for 12 continuous months of data from the CON Annual Survey or other comparable MDCH survey instrument.

Sec. 2(1) Cont.2

(v) "Planning area" means the geographic boundaries of each county in Michigan with the exception of: (i) Houghton and Keweenaw counties, which are combined to form one planning area and (ii) Wayne County which is divided into three planning areas. Section 12 identifies the three planning areas in Wayne County and the specific geographic area included in each.

(w) "Planning year" means 1990 or the year in the future, at least three (3) years but no more than seven (7) years, for which nursing home bed needs are developed. The planning year shall be a year for which official population projections, from the Department of Management and Budget or U.S. Census, data are available.

(x) "Proposed licensed site" means the physical location and address (or legal description of property) of the proposed project or within 250 yards of the physical location and address (or legal description of property) and within the same planning area of the proposed project that will be authorized by license and will be listed on that licensee's certificate of licensure.

(y) "Relocation of existing nursing home/HLTCU beds" means a change in the location of existing nursing home/HLTCU beds from the licensed site to a different existing licensed site within the planning area.

(z) "Renewal of lease" means execution of a lease between the licensee and a real property owner in which the total lease costs exceed the capital expenditure threshold.

(aa) "Replacement bed" means a change in the location of the licensed nursing home/HLTCU, the replacement of a portion of the licensed beds at the same licensed site, or the replacement of

a portion of the licensed beds pursuant to the new model design. The nursing home/HLTCU beds will be in new physical plant space being developed in new construction or in newly acquired space (purchase, lease, donation, etc.) within the replacement zone.

(bb) "Replacement zone" means a proposed licensed site that is,

(i) for a rural or micropolitan statistical area county, within the same planning area as the existing licensed site.

(ii) for a county that is not a rural or micropolitan statistical area county,

(A) within the same planning area as the existing licensed site and

(B) within a three-mile radius of the existing licensed site.

(cc) "Use rate" means the number of nursing home and hospital long-term-care unit days of care per 1,000 population during a one-year period.

Sec. 2(2)

The definitions in Part 222 of the Code shall apply to these standards.

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Not Applicable/No Response Required      Yes

Section 3.

**Determination of needed nursing home bed supply**

(1)(a) The age specific use rates for the planning year shall be the actual statewide age specific nursing home use rates using data from the base year.

(b) The age cohorts for each planning area shall be: (i) age 0 - 64 years, (ii) age 65 - 74 years, (iii) age 75 - 84 years, and (iv) age 85 and older.

(c) Until the base year is changed by the Commission in accord with Section 4(3) and Section 5, the use rates for the base year for each corresponding age cohort, established in accord with subsection (1)(b), are set forth in Appendix B.

(2) The number of nursing home beds needed in a planning area shall be determined by the following formula:

(a) Determine the population for the planning year for each separate planning area in the age cohorts established in subsection (1)(b).

(b) Multiply each population age cohort by the corresponding use rate established in Appendix B.

(c) Sum the patient days resulting from the calculations performed in subsection (b). The resultant figure is the total patient days.

(d) Divide the total patient days obtained in subsection (c) by 365 (or 366 for leap years) to obtain the projected average daily census (ADC).

(e) The following shall be known as the ADC adjustment factor. (i) If the ADC determined in subsection (d) is less than 100, divide the ADC by 0.90. (ii) If the ADC determined in subsection (d) is 100 or greater, divide the ADC by 0.95.

(f) The number determined in subsection (e) represents the number of nursing home beds needed in a planning area for the planning year.

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Not Applicable/No Response Required      Yes

**Section 4.                      Bed need**

**(1) The bed need numbers shall apply to project applications subject to review under these standards, except where a specific CON standard states otherwise.**

**(2) The Department shall apply the bed need methodology in Section 3 on a biennial basis.**

**(3) The base year and the planning year that shall be utilized in applying the methodology pursuant to subsection (2) shall be set according to the most recent data available to the Department.**

**(4) The effective date of the bed need numbers shall be established by the Commission.**

**(5) New bed need numbers established by subsections (2) and (3) shall supersede previous bed need numbers and shall be posted on the state of Michigan CON web site as part of the Nursing Home/HLTCU Bed Inventory.**

**(6) Modifications made by the Commission pursuant to this section shall not require standard advisory committee action, a public hearing, or submittal of the standard to the Legislature and the Governor in order to become effective.**

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Not Applicable/No Response Required      Yes

**Section 5.                      Modification of the age specific use rates by changing the base year.**

**(1) The base year shall be modified based on data obtained from the Department and presented to the Commission. The Department shall calculate use rates for each of the age cohorts set forth in Section 3(1)(b) and biennially present the revised use rates based on 2006 information, or the most recent base year information available biennially after 2006, to the CON Commission.**

**(2) The Commission shall establish the effective date of the modifications made pursuant to subsection (1).**

**(3) Modifications made by the Commission pursuant to subsection (1) shall not require standard advisory committee action, a public hearing, or submittal of the standard to the Legislature and the Governor in order to become effective.**



times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.

- Sec. 6(1)(a)(v)            Currently listed as a special focus nursing home by the Center for Medicare and Medicaid services.
- Sec. 6(1)(a)(vi)           Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).
- Sec. 6(1)(b)                The applicant certifies that the requirements found in the Minimum Design Standards for Health Care Facilities of Michigan, referenced in Section 20145 (6) of the Public Health Code, Act 368 of 1978, as amended and are published by the Department, will be met when the architectural blueprints are submitted for review and approval by the Department.
- Sec. 6(1)(c)                A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.
- Sec. 6(1)(d)                The proposed increase, if approved, will not result in the total number of existing nursing home beds in that planning area exceeding the needed nursing home bed supply, unless one of the following is met:
- Sec. 6(1)(d)(i)            An applicant may request and be approved for up to a maximum of 20 beds if, when the total number of "existing nursing home beds" is subtracted from the bed need for the planning area, the difference is equal to or more than 1 and equal to or less than 20. This subsection is not applicable to projects seeking approval for beds from the statewide pool of beds.
- Sec. 6(1)(d)(ii)           An exception to the number of beds may be approved, if the applicant facility has experienced an average occupancy rate of 97% for three years based on the CON Annual Survey. The number of beds that may be approved in excess of the bed need for each planning area is set forth in subsection (A).
- (A) The number of beds that may be approved pursuant to this subsection shall be the number of beds necessary to reduce the occupancy rate for the planning area in which the additional beds are proposed to the ADC adjustment factor for that planning area as shown in Appendix C. The number of beds shall be calculated by (1) dividing the actual number of patient days of care provided during the most recent 12-month period for which verifiable data are available to the Department provided by all nursing home (including HLTCU) beds in the planning area, including patient days of care provided in beds approved from the statewide pool of beds and dividing that result by 365 (or 366 for leap years); (2) dividing the result of step (1) by the ADC adjustment factor for the planning area in which the beds are proposed to be added; (3) rounding the result of step (2) up to the next whole number; and (4) subtracting the total number of beds in the planning area including beds approved from the statewide pool of beds from

the result of step (3). If the number of beds necessary to reduce the planning area occupancy rate to the ADC adjustment factor for that planning area is equal to or more than 20, the number of beds that may be approved pursuant to this subsection shall be up to that number of beds. If the number of beds necessary to reduce the planning area occupancy rate to the ADC adjustment factor for that planning area is less than 20, the number of additional beds that may be approved shall be that number of beds or up to a maximum of 20 beds.

**Sec. 6(1)(d)(iii)**

An applicant may request and be approved for up to a maximum of 20 beds if the following requirements are met:

(A) The planning area in which the beds will be located shall have a population density of less than 28 individuals per square mile based on the 2010 U.S. Census figures as set forth in Appendix E.

(B) The applicant facility has experienced an average occupancy rate of 92% for the most recent two years based on the CON Annual Survey.

**Sec. 6(2)**

An applicant proposing to increase the number of nursing home beds in a planning area by beginning operation of a new nursing home/HLTCU or increasing the number of beds to an existing licensed nursing home/HLTCU pursuant to the new design model shall demonstrate the following:

**Sec. 6(2)(a)**

At the time of application, the applicant, as identified in the table, shall provide a report demonstrating that it does not meet any of the following conditions in 14%, but not more than five, of its nursing homes/HLTCUs:

**Table**

**Type of Applicant - Reporting Requirement**

**Applicant with only Michigan nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with 10 or more Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with fewer than 10 Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan and out of state nursing homes/HLTCUs under common ownership or control**

**Sec. 6(2)(a)(i)**

A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

**Sec. 6(2)(a)(ii)**

A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

- Sec. 6(2)(a)(iii)** Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.
- Sec. 6(2)(a)(iv)** A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.
- Sec. 6(2)(a)(v)** Currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.
- Sec. 6(2)(a)(vi)** Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).
- Sec. 6(2)(b)** The proposed project results in no more than 100 beds per new design model and meets the following design standards:
- Sec. 6(2)(b)(i)** For inpatient facilities that are not limited to group resident housing of 10 beds or less, the construction standards shall be those applicable to nursing homes in the document entitled Minimum Design Standards for Health Care Facilities in Michigan and incorporated by reference in Section 20145(6) of the Public Health Code, being Section 333.20145(6) of the Michigan Compiled Laws or any future versions.
- Sec. 6(2)(b)(ii)** (ii) For small resident housing units of 10 beds or less that are supported by a central support inpatient facility, the construction standards shall be those applicable to hospice residences providing an inpatient level of care, except that:
- (A) at least 100% of all resident sleeping rooms shall meet barrier free requirements;
  - (B) electronic nurse call systems shall be required in all facilities;
  - (C) handrails shall be required on both sides of patient corridors; and
  - (D) ceiling heights shall be a minimum of 7 feet 10 inches.
- Sec. 6(2)(b)(iii)** The proposed project shall comply with applicable life safety code requirements and shall be fully sprinkled and air conditioned.
- Sec. 6(2)(b)(iv)** The Department may waive construction requirements for new design model projects if authorized by law.





Mission Point of Livonia, LLC ("Landlord") at the existing site of the Facility and leased to Applicant. Because the proposed site is within the replacement zone and the same licensed site as the current Facility, Applicant is not required to demonstrate a need in the planning area.

In the acquisition component of this CON application, Applicant proposes to acquire the operations of an existing nursing home and all of its licensed beds via lease of the physical property comprising the Facility and pursuant to an operations transfer agreement. At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 7(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 7(1)(a)(i)**                      **A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE                      At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 7(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 7(1)(a)(ii)**                      **A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE                      At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 7(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 7(1)(a)(iii)**                      **Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE                      At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 7(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 7(1)(a)(iv)**                      **A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two**

**licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.**

APPL RESPONSE At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 7(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 7(1)(a)(v) Currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.**

APPL RESPONSE At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 7(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

Neither the Applicant nor the Facility is currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.

**Sec. 7(1)(a)(vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).**

APPL RESPONSE At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 7(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

St. Jude Nursing Center, Inc. ("Seller") does have a delinquent debt obligation to the State of Michigan for Quality Assurance Assessment Program (QAAP). St. Jude Nursing Center, Inc. ("Seller") does have a delinquent debt obligation to the State of Michigan for Quality Assurance Assessment Program (QAAP). However, Applicant will facilitate the execution of an escrow agreement prior to closing for Seller's payment of all QAAP payments. There are no outstanding Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

**Sec. 7(1)(b) The proposed project is either to replace the licensed nursing home/HLTCU to a new proposed licensed site or replace a portion of the licensed beds at the existing licensed site.**

APPL RESPONSE The proposed project involves replacement of sixty-four (64) beds into a replacement facility to be constructed by Landlord at the existing licensed site. No change of site is proposed in this project.

**Sec. 7(1)(c) The proposed licensed site is within the replacement zone.**

APPL RESPONSE The location to which the sixty-four (64) existing nursing home beds are being replaced is the site of the existing licensed Facility. Therefore, the proposed licensed site is within the replacement zone.

**Sec. 7(1)(d)**                    **The applicant certifies that the requirements found in the Minimum Design Standards for Health Care Facilities of Michigan, referenced in Section 20145 (6) of the Public Health Code, Act 368 of 1978, as amended and are published by the Department, will be met when the architectural blueprints are submitted for review and approval by the Department.**

APPL RESPONSE            Applicant certifies by submission of this response to CON-217 that the requirements found in the Minimum Design Standards for Health Care Facilities of Michigan, referenced in Section 20145(6) of the Public Health Code, Act 368 of 1978, as amended and are (sic) published by the Department will be met when the architectural blueprints are submitted for review and approval by the Department.

**Sec. 7(1)(e)**                    **Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.**

APPL RESPONSE            There are no previously cited state or federal code deficiencies outstanding with LARA at the Facility that have not been resolved pursuant to an approved Plan of Correction. See the attached documentation at CON-217-A as evidence that the Facility is in substantial compliance with applicable licensing and certification requirements. The documentation includes the scope and severity grids and letters confirming substantial compliance of the Facility with all federal regulatory requirements for the two most recent consecutive standard nursing home surveys for the time period posted on the CON website. These surveys were conducted on May 24, 2016 and June 5, 2015. Please also refer to the attached letter from Mr. Larry Horvath, Director, Health Facilities Division, Bureau of Community and Health Systems (BCHS), Department of Licensing and Regulatory Affairs (LARA) dated July 19, 2017, confirming substantial compliance of the Facility and no outstanding deficiencies.

**Sec. 7(2)**                        **An applicant proposing to replace a licensed nursing home/HLTCU outside the replacement zone shall demonstrate all of the following:**

**Sec. 7(2)(a)**                    **At the time of application, the applicant, as identified in the table, shall provide a report demonstrating that it does not meet any of the following conditions in 14%, but not more than five, of its nursing homes/HLTCUs:**

**Table**

**Type of Applicant - Reporting Requirement**

**Applicant with only Michigan nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with 10 or more Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with fewer than 10 Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan and out of state nursing homes/HLTCUs under common ownership or control**

- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.
- Sec. 7(2)(a)(i)** **A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**
- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.
- Sec. 7(2)(a)(ii)** **A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**
- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.
- Sec. 7(2)(a)(iii)** **Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**
- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.
- Sec. 7(2)(a)(iv)** **A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.**
- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.
- Sec. 7(2)(a)(v)** **Currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.**
- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.
- Sec. 7(2)(a)(vi)** **Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).**
- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.
- Sec. 7(2)(b)** **The total number of existing nursing home beds in that planning area is equal to or less than the needed nursing home bed supply.**
- APPL RESPONSE Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.

**Sec. 7(2)(c)**                    **The number of beds to be replaced is equal to or less than the number of currently licensed beds at the nursing home/HLTCU at which the beds proposed for replacement are currently located.**

APPL RESPONSE                Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.

**Sec. 7(2)(d)**                    **The applicant certifies that the requirements found in the Minimum Design Standards for Health Care Facilities of Michigan, referenced in Section 20145 (6) of the Public Health Code, Act 368 of 1978, as amended and are published by the Department, will be met when the architectural blueprints are submitted for review and approval by the Department.**

APPL RESPONSE                Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.

**Sec. 7(2)(e)**                    **A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.**

APPL RESPONSE                Not applicable. Applicant is not proposing to replace an existing licensed nursing home/HLTCU outside the replacement zone.

**Sec. 7(3)**                        **An applicant proposing to replace beds with a new design model shall not be required to be in compliance with the needed nursing home bed supply if all of the following requirements are met:**

**Sec. 7(3)(a)**                    **The proposed project results in no more than 100 beds per new design model and meets the following design standards:**

APPL RESPONSE                Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(a)(i)**                **For inpatient facilities that are not limited to group resident housing of 10 beds or less, the construction standards shall be those applicable to nursing homes in the document entitled Minimum Design Standards for Health Care Facilities in Michigan and incorporated by reference in Section 20145(6) of the Public Health Code, being Section 333.20145(6) of the Michigan Compiled Laws or any future versions.**

APPL RESPONSE                Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(a)(ii)**                **For small resident housing units of 10 beds or less that are supported by a central support inpatient facility, the construction standards shall be those applicable to hospice residences providing an inpatient level of care, except that:**  
**(a) at least 100% of all resident sleeping rooms shall meet barrier free requirements;**  
**(b) electronic nurse call systems shall be required in all facilities;**  
**(c) handrails shall be required on both sides of patient corridors; and**  
**(d) ceiling heights shall be a minimum of 7 feet 10 inches.**

APPL RESPONSE                Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(a)(iii)**                **The proposed project shall comply with applicable life safety code requirements and shall be fully sprinkled and air conditioned.**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(a)(iv)** **The Department may waive construction requirements for new design model projects if authorized by law.**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(b)** **The proposed project shall include at least 80% single occupancy resident rooms with an adjoining toilet room containing a sink, water closet, and bathing facility and serving no more than two residents in both the central support inpatient facility and any supported small resident housing units. If the proposed project is for replacement/renovation of an existing facility and utilizes only a portion of its currently licensed beds, the remaining rooms at the existing facility shall not exceed double occupancy.**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(c)** **The proposed project shall be within the replacement zone unless the applicant demonstrates all of the following:**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(c)(i)** **the proposed licensed site for the replacement beds is in the same planning area,**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(c)(ii)** **The applicant shall provide a signed affidavit or resolution from its governing body or authorized agent stating that the proposed licensed site will continue to provide service to the same market, and**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(c)(iii)** **The current patients of the facility/beds being replaced shall be admitted to the replacement beds when the replacement beds are licensed, to the extent that those patients desire to transfer to the replacement facility/beds.**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(d)** **An approved project may involve replacement of a portion of the beds of an existing facility at a geographic location within the replacement zone that is not physically connected to the current licensed site. If a portion of the beds are replaced at a location that is not the current licensed site, a separate license shall be issued to the facility at the new location.**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.

**Sec. 7(3)(e)** **A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.**

APPL RESPONSE Not applicable. Applicant is not proposing a new design model facility.





- Sec. 8(2)(a)(i)** A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.
- Sec. 8(2)(a)(ii)** A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.
- Sec. 8(2)(a)(iii)** Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.
- Sec. 8(2)(a)(iv)** A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.
- Sec. 8(2)(a)(v)** Currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.
- Sec. 8(2)(a)(vi)** Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).
- Sec. 8(2)(b)** The approval of the proposed new nursing home/HLTCU beds shall not result in an increase in the number of nursing home beds in the planning area.
- Sec. 8(2)(c)** A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.

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Not Applicable/No Response Required No

**Section 9. Requirements for approval to acquire an existing nursing home/HLTCU or renew the lease of an existing nursing home/HLTCU**

**Sec. 9. An applicant proposing to acquire an existing nursing home/HLTCU or renew the lease of an existing nursing home/HLTCU must meet the following as applicable:**

**Sec. 9(1)** An applicant proposing to acquire an existing nursing home/HLTCU shall not be required to be in compliance with the needed nursing home bed supply for the planning area in which the nursing home or HLTCU is located if all of the following requirements are met:

**Sec. 9(1)(a)** At the time of application, the applicant, as identified in the table, shall provide a report demonstrating that it does not meet any of the following conditions in 14%, but not more than five, of its nursing homes/HLTCUs:

**Table**

**Type of Applicant - Reporting Requirement**

**Applicant with only Michigan nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with 10 or more Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with fewer than 10 Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan and out of state nursing homes/HLTCUs under common ownership or control**

APPL RESPONSE

Applicant proposes to acquire the operating rights to all sixty-four (64) licensed beds at St. Jude Nursing Center (BHS 82-4260). Landlord proposes to immediately demolish the existing Facility and Applicant proposes to replace all sixty-four (64) of the nursing home beds into a replacement facility to be constructed by Landlord at the existing licensed site. At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 9(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 9(1)(a)(i)**

**A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE

At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 9(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 9(1)(a)(ii)**

**A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 9(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 9(1)(a)(iii) Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 9(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 9(1)(a)(iv) A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.**

APPL RESPONSE At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 9(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

**Sec. 9(1)(a)(v) Currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.**

APPL RESPONSE Neither the Applicant nor the Facility is currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.

**Sec. 9(1)(a)(vi) Delinquent debt obligation to the state of Michigan including, but not limited to, quality assurance assessment program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or civil monetary penalties (CMP).**

APPL RESPONSE At the time of application, Applicant does not operate any nursing homes in Michigan and has no nursing homes under common ownership or control. Thus, Applicant does not meet any of the conditions outlined in Section 9(1)(a)(i)-(vi) and Applicant is in compliance with this standard as evidenced by the CON-217-A certification that is attached to these responses.

St. Jude Nursing Center, Inc. ("Seller") does have a delinquent debt obligation to the State of Michigan for Quality Assurance Assessment

Program (QAAP). However, Applicant will facilitate the execution of an escrow agreement prior to closing for Seller's payment of all QAAP payments. There are no outstanding Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).

**Sec. 9(1)(b) The acquisition will not result in a change in bed capacity.**

APPL RESPONSE No change in bed capacity is proposed in this CON. At no time will Applicant operate more than sixty-four (64) licensed beds without obtaining prior CON approval.

**Sec. 9(1)(c) The licensed site does not change as a result of the acquisition.**

APPL RESPONSE The licensed site does not change as a result of the acquisition. Applicant proposes to acquire the operations of and replace all sixty-four (64) licensed beds at St. Jude Nursing Center (BHS 82-4260) into new construction to be completed by Landlord at the existing licensed site under Sections 7 and 9 of the CON Standards.

**Sec. 9(1)(d) The project is limited solely to the acquisition of a nursing home/HLTCU with a valid license.**

APPL RESPONSE Applicant proposes to acquire the operating rights to all sixty-four (64) licensed beds at St. Jude Nursing Center (BHS 82-4260) under Section 9 of the CON Standards. To implement the facility replacement component of this project proposed under Section 7 of the Standards, Landlord proposes to immediately demolish the existing Facility and Applicant proposes to replace all of the licensed beds into a replacement facility to be constructed by Landlord at the existing licensed site.

**Sec. 9(1)(e) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with the Department, and**

APPL RESPONSE There are no previously cited state or federal code deficiencies outstanding with LARA at the Facility that have not been resolved pursuant to an approved Plan of Correction. See the attached documentation at CON-217-A as evidence that the Facility is in substantial compliance with applicable licensing and certification requirements. The documentation includes the scope and severity grids and letters confirming substantial compliance of the Facility with all federal regulatory requirements for the two most recent consecutive standard nursing home surveys for the time period posted on the CON website. These surveys were conducted on May 24, 2016 and June 5, 2015. Please also refer to the attached letter from Mr. Larry Horvath, Director, Health Facilities Division, Bureau of Community and Health Systems (BCHS), Department of Licensing and Regulatory Affairs (LARA) dated July 19, 2017, confirming substantial compliance of the Facility and no outstanding deficiencies.

**Sec. 9(1)(f) The applicant shall participate in a quality improvement program, approved by the Department, for five years and provide an annual report to the Michigan State Long-Term-Care Ombudsman, Bureau of Health Care Services within LARA, and shall post the annual report in the facility if the facility being acquired has met any of conditions in subsections (a)(i), (ii), (iii), (iv), (v), or (vi).**

APPL RESPONSE

Not applicable. Applicant has not triggered any of the conditions in subsections (a)(i), (ii), (iii), (iv), (v), or (vi).

**Sec. 9(2)**

**An applicant proposing to acquire an existing nursing home/HLTCU approved pursuant to the new design model shall demonstrate the following:**

**Sec. 9(2)(a)**

**At the time of application, the applicant, as identified in the table, shall provide a report demonstrating that it does not meet any of the following conditions in 14%, but not more than five, of its nursing homes/HLTCUs:**

**Table**

**Type of Applicant - Reporting Requirement**

**Applicant with only Michigan nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with 10 or more Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan nursing homes/HLTCUs under common ownership or control**

**Applicant with fewer than 10 Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs - All Michigan and out of state nursing homes/HLTCUs under common ownership or control**

APPL RESPONSE

Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.

**Sec. 9(2)(a)(i)**

**A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE

Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.

**Sec. 9(2)(a)(ii)**

**A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE

Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.

**Sec. 9(2)(a)(iii)**

**Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

APPL RESPONSE

Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.

**Sec. 9(2)(a)(iv)**

**A number of citations at level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was**

completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.

- APPL RESPONSE Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.
- Sec. 9(2)(a)(v) Currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.**
- APPL RESPONSE Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.
- Sec. 9(2)(a)(vi) Delinquent debt obligation to the State of Michigan including, but not limited to, Quality Assurance Assessment Program (QAAP), Preadmission Screening and Annual Resident Review (PASARR) or Civil Monetary Penalties (CMP).**
- APPL RESPONSE Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.
- Sec. 9(2)(b) An applicant will continue to operate the existing nursing home/HLTCU pursuant to the new design model requirements.**
- APPL RESPONSE Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.
- Sec. 9(2)(c) The applicant shall participate in a quality improvement program, approved by the Department, for five years and provide an annual report to the Michigan State Long-Term-Care Ombudsman, Bureau of Health of Health Care Services within LARA, and shall post the annual report in the facility if the facility being acquired has met any of conditions in subsections (a)(i), (ii), (iii), (iv), (v), or (vi).**
- APPL RESPONSE Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.
- Sec. 9(2)(d) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.**
- APPL RESPONSE Not applicable. Applicant does not propose to acquire an existing nursing home/HLTCU approved pursuant to the new design model.
- Sec. 9(3) An applicant proposing to renew the lease for an existing nursing home/HLTCU shall not be required to be in compliance with the needed nursing home bed supply for the planning area in which the nursing home/HLTCU is located, if all of the following requirements are met:**
- Sec. 9(3)(a) The lease renewal will not result in a change in bed capacity.**
- APPL RESPONSE Not applicable. Applicant does not propose to renew the lease for an existing nursing home/HLTCU.
- Sec. 9(3)(b) The licensed site does not change as a result of the lease renewal.**

APPL RESPONSE Not applicable. Applicant does not propose to renew the lease for an existing nursing home/HLTCU.

**Sec. 9(3)(c)** A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Care Services within LARA. Code deficiencies include any unresolved deficiencies still outstanding with LARA.

APPL RESPONSE Not applicable. Applicant does not propose to renew the lease for an existing nursing home/HLTCU.

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Not Applicable/No Response Required Yes

**Section 10. Review standards for comparative review**

**Sec. 10(1)** Any application subject to comparative review, under Section 22229 of the Code, being Section 333.22229 of the Michigan Compiled Laws, or under these standards, shall be grouped and reviewed comparatively with other applications in accordance with the CON rules.

**Sec. 10(2)** The degree to which each application in a comparative group meets the criterion set forth in Section 22230 of the Code, being Section 333.22230 of the Michigan Compiled Laws, shall be determined based on the sum of points awarded under subsections (a) and (b).

**Sec. 10(2)(a)** A qualifying project will be awarded points as follows:  
(i) For an existing nursing home/HLTCU, the current percentage of patient days of care reimbursed by Medicaid for the most recent 12 months of operation.  
(ii) For a new nursing home/HLTCU, the proposed percentage of patient days of care to be reimbursed by Medicaid in the second 12 months of operation following project completion.

**Percentage of Medicaid Patient Days = Points Awarded**  
(calculated using total patient days for all existing and proposed beds at the facility)

50 - 69% = 4 pts for existing/3 pts for proposed  
70 - 100% = 8 pts for existing/7 pts for proposed

**Sec. 10(2)(b)** A qualifying project will be awarded 10 points if all beds in the proposed project will be dually certified for both Medicare and Medicaid services by the second 12 months of operation.

**Sec. 10(3)** A qualifying project will have 15 points deducted if the applicant has any of the following at the time the application is submitted:

**Sec. 10(3)(a)** has been a special focus nursing home/HLTCU within the last three (3) years;

**Sec. 10(3)(b)** has had more than eight (8) substandard quality of care citations; immediate harm citations, and/or immediate jeopardy citations in the three (3) most recent standard survey cycles (includes intervening abbreviated surveys, standard surveys, and

revisits);

- Sec. 10(3)(c)** has had an involuntary termination or voluntary termination at the threat of a medical assistance provider enrollment and trading partner agreement within the last three (3) years;
- Sec. 10(3)(d)** has had a state enforcement action resulting in a reduction in license capacity or a ban on admissions within the last three (3) years; or
- Sec. 10(3)(e)** has any delinquent debt obligation to the state of Michigan including, but not limited to, quality assurance assessment program (QAAP), civil monetary penalties (CMP), Medicaid level of care determination (LOCD), or preadmission screening and annual resident review (PASARR).
- Sec. 10(4)** A qualifying project will be awarded three (3) points if the applicant provides documentation that it participates or if it proposes to participate in a culture change model, which contains person centered care, ongoing staff training, and measurements of outcomes. An additional five (5) points will be awarded if the culture change model, either currently used or proposed, is a model approved by the Department.
- Sec. 10(5)** A qualifying project will be awarded points based on the proposed percentage of the "Applicant's cash" to be applied toward funding the total proposed project cost as follows:
- Table=**  
**Percentage "Applicant"s Cash" = Points Awarded**  
**Over 20% = 5 Points Awarded**  
**10 - 20% = 3 Points Awarded**  
**5 - 9% = 2 Points Awarded**
- Sec. 10(6)** A qualifying project will be awarded four (4) points if the entire existing and proposed nursing home/HLTCU is fully equipped with air conditioning. Fully equipped with air conditioning means meeting the design temperatures in table 6b of the minimum design standards for health care facilities in Michigan and capable of maintaining a temperature of 71 ȳ 81 degrees for the resident unit corridors.
- Sec. 10(7)** A qualifying project will be awarded six (6) or four (4) points based on only one of the following:  
(a) Six (6) points if the proposed project has 100% rooms with dedicated toilet room containing a sink, water closet, and bathing facility or  
(b) Four (4) points if the proposed project has 80% private rooms with dedicated toilet room containing a sink, water closet and bathing facility
- Sec. 10(8)** A qualifying project will be awarded 10 points if it results in a nursing home/HLTCU with 150 or fewer beds in total.
- Sec. 10(9)** A qualifying project will be awarded five (5) points if the proposed beds will be housed in new construction.



**Sec. 10(10)** A qualifying project will be awarded 10 points if the entire existing nursing home/HLTCU and its proposed project will have no more than double occupancy rooms at completion of the project.

**Sec. 10(11)** A qualifying project will be awarded two (2) points if the existing or proposed nursing home/HLTCU is on or readily accessible to an existing or proposed public transportation route.

**Sec. 10(12)** A qualifying project will be awarded points for technological innovation as follows:

**Table=**

**INNOVATIONS = Points Awarded**

The proposed project will have wireless nurse call/paging system including wireless devices carried by direct care staff = 1

Wireless internet with resident access to related equipment/device in entire facility = 1

An integrated electronic medical records system with point-of-service access capability (including wireless devices) for all disciplines including pharmacy, physician, nursing, and therapy services at the entire existing and proposed nursing home/HLTCU = 4

The proposed project will have a backup generator supporting all functions with an on-site or piped-in fuel supply and be capable of providing at least 48 hours of service at full load = 4

**Sec. 10(13)** A qualifying project will be awarded three (3) points if the proposed project includes bariatric rooms as follows: project using 0 - 49 beds will result in at least one (1) bariatric room or project using 50 or more beds will result in at least two (2) bariatric rooms. Bariatric room means the creation of patient room(s) included as part of the CON project, and identified on the architectural schematics, that are designed to accommodate the needs of bariatric patients weighing over 400 pounds. The bariatric patient rooms shall have a larger room and bathroom entrance width to accommodate over-sized equipment, and shall include a minimum of a bariatric bed, bariatric toilet, bariatric wheelchair, and a device to assist resident movement (such as a portable or build in lift). If an in-room shower is not included in the bariatric patient room, the main/central shower room that is located on the same floor as the bariatric patient room(s) shall include at least one (1) shower stall that has an opening width and depth that is larger than minimum MI code requirements.

**Sec. 10(14)** Submission of conflicting information in this section may result in a lower point award. If an application contains conflicting information which could result in a different point value being awarded in this section, the Department will award points based on the lower point value that could be awarded from the conflicting information. For example, if submitted information would result in 6 points being awarded, but other conflicting information would result in 12 points being awarded, then 6 points will be awarded. If the conflicting information does not affect the point value, the Department will award points accordingly. For example, if submitted information would result in 12 points being awarded and other conflicting information

would also result in 12 points being awarded, then 12 points will be awarded.

**Sec. 10(15)**

The Department shall approve those qualifying projects which, when taken together, do not exceed the need as defined in Section 22225(1) of the Code, being Section 333.22225(1) of the Michigan Compiled Laws, and which have the highest number of points when the results of subsections (2) through (12) are totaled. If two or more qualifying projects are determined to have an identical number of points, then the Department shall approve those qualifying projects which, when taken together, do not exceed the need, as defined in Section 22225(1), in the order in which the applications were received by the Department, based on the date and time stamp on the application when the application is filed.

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Not Applicable/No Response Required      No

**Section 11.**

**Project delivery requirements and terms of approval**

An applicant shall agree that, if approved, the nursing home/HLTCU services shall be delivered in compliance with the following terms of approval:

**Sec. 11(1)**

Compliance with these standards, including the requirements of Section 10. If an applicant is awarded beds pursuant to Section 10 and representations made in that section, the Department shall monitor compliance with those statements and representations and shall determine actions for non-compliance.

**Sec. 11(2)**

Compliance with the following applicable quality assurance standards:

(a) Compliance with Section 22230 of the Code shall be based on the nursing home's/HLTCU's actual Medicaid participation within the time periods specified in these standards. Compliance with Section 10(2)(a) of these standards shall be determined by comparing the nursing home's/HLTCU's actual patient days reimbursed by Medicaid, as a percentage of the total patient days, with the applicable schedule set forth in Section 10(2)(a) for which the applicant had been awarded points in the comparative review process. If any of the following occurs, an applicant shall be required to be in compliance with the range in the schedule immediately below the range for which points had been awarded in Section 10(2)(a), instead of the range of points for which points had been awarded in the comparative review in order to be found in compliance with Section 22230 of the Code: (i) the average percentage of Medicaid recipients in all nursing homes/HLTCUs in the planning area decreased by at least 10 percent between the second 12 months of operation after project completion and the most recent 12-month period for which data are available, (ii) the actual rate of increase in the Medicaid program per diem reimbursement to the applicant nursing home/HLTCU is less than the annual inflation index for nursing homes/HLTCUs as defined in any current approved Michigan State Plan submitted under Title XIX of the Social Security Act which contains an annual inflation index, or (iii) the actual percentage of the nursing home's/HLTCU's patient days reimbursed by Medicaid (calculated using total patient days for all existing and proposed nursing

home beds at the facility) exceeds the statewide average plus 10 percent of the patient days reimbursed by Medicaid for the most recent year for which data are available from the Michigan Department of Community Health [subsection (iii) is applicable only to Section 10(2)(a)]. In evaluating subsection (ii), the Department shall rely on both the annual inflation index and the actual rate increases in per diem reimbursement to the applicant nursing home/HLTCU and/or all nursing homes/HLTCUs in the HSA.

(b) For projects involving the acquisition of a nursing home/HLTCU, the applicant shall agree to maintain the nursing home's/HLTCU's level of Medicaid participation (patient days and new admissions) for the time periods specified in these standards, within the ranges set forth in Section 10(2)(a) for which the seller or other previous owner/lessee had been awarded points in a comparative review.

(c) For projects involving replacement of an existing nursing home/HLTCU, the current patients of the facility/beds being replaced shall be admitted to the replacement beds when the replacement beds are licensed, to the extent that those patients desire to transfer to the replacement facility/beds.

(d) The applicant will assure compliance with Section 20201 of the Code, being Section 333.20201 of the Michigan Compiled Laws.

APPL RESPONSE

By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this Section.

Sec. 11(3)

**Compliance with the following access to care requirements:**

(a) The applicant, to assure appropriate utilization by all segments of the Michigan population, shall:

(i) not deny services to any individual based on payor source.

(ii) maintain information by source of payment to indicate the volume of care from each payor and non-payor source provided annually.

(iii) provide services to any individual based on clinical indications of need for the services.

APPL RESPONSE

By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this Section.

Sec. 11(4)

**Compliance with the following monitoring and reporting requirements:**

(a) The applicant shall participate in a data collection network established and administered by the Department or its designee. The data may include, but is not limited to, annual budget and cost information; operating schedules; and demographic, diagnostic, morbidity, and mortality information, as well as the volume of care provided to patients from all payor sources. The applicant shall provide the required data on an individual basis for each licensed site, in a format established by the Department, and in a mutually agreed upon media. The Department may elect to verify the data through on-site review of appropriate records.

(b) The applicant shall provide the Department with timely notice of the proposed project implementation consistent with applicable statute and promulgated rules.

APPL RESPONSE

By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances

required by this Section.

**Sec. 11(5)**                    **An applicant shall agree that, if approved, and material discrepancies are later determined within the reporting of the ownership and citation history of the applicant facility and all nursing homes under common ownership and control that would have resulted in a denial of the application, shall surrender the CON. This does not preclude an applicant from reapplying with corrected information at a later date.**

APPL RESPONSE            By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this Section.

**Sec. 11(6)**                    **The agreements and assurances required by this section shall be in the form of a certification agreed to by the applicant or its authorized agent.**

APPL RESPONSE            By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this Section.

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Not Applicable/No Response Required            Yes

**Section 12.**                    **Department inventory of beds**

**Sec. 12. The Department shall maintain a listing of the Department Inventory of Beds for each planning area.**

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Not Applicable/No Response Required            Yes

**Section 13.**                    **Wayne County planning areas**

**(1) For purposes of these standards the cities and/or townships in Wayne County are assigned to the planning areas as follows:**

**Planning Area 84/Northwest Wayne: Canton Township, Dearborn, Dearborn Heights, Garden City, Inkster, Livonia, Northville (part), Northville Township, Plymouth, Plymouth Township, Redford Township, Wayne, Westland**

**Planning area 85/Southwest Wayne: Allen Park, Belleville, Brownstown Township, Ecorse, Flat Rock, Gibraltar, Grosse Ile Township, Huron Township, Lincoln Park, Melvindale, River Rouge, Riverview, Rockwood, Romulus, Southgate, Sumpter Township, Taylor, Trenton, Van Buren Township, Woodhaven, Wyandotte**

**Planning area 86/Detroit: Detroit, Grosse Pointe, Grosse Pointe Township, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Woods, Hamtramck, Harper Woods, Highland Park**



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Not Applicable/No Response Required      Yes

**Appendix B.                      Use rate per 1000 population**

The use rate per 1000 population for each age cohort, for purposes of these standards, effective August 1, 2013, and until otherwise changed by the Commission, is as follows.

- (i) age 0 - 64: 200 days of care
- (ii) age 65 - 74: 2,638 days of care
- (iii) age 75 - 84: 9,379 days of care
- (iv) age 85 +: 34,009 days of care

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Not Applicable/No Response Required      Yes

**Appendix C.                      ADC Adjustment Factor**

The ADC adjustment factor, for purposes of these standards, effective August 1, 2013, and until otherwise changed by the Commission, are as follows:

**Planning Area - ADC Adjustment Factor**

- Alcona - 0.90
- Alger - 0.90
- Allegan - 0.95
- Alpena - 0.95
- Antrim - 0.95
- Arenac - 0.90
- Baraga - 0.90
- Barry - 0.95
- Bay - 0.95
- Benzie - 0.95
- Berrien - 0.95
- Branch - 0.95
- Calhoun - 0.95
- Cass - 0.95
- Charlevoix - 0.95
- Cheboygan - 0.95
- Chippewa - 0.95
- Clare - 0.95
- Clinton - 0.95
- Crawford - 0.90
- Delta - 0.95
- Dickinson - 0.95
- Eaton - 0.95
- Emmet - 0.95
- Genesee - 0.95
- Gladwin - 0.95
- Gogebic                      - 0.95
- Gd. Traverse - 0.95
- Gratiot - 0.95
- Hillsdale - 0.95
- Houghton/Keweenaw - 0.95

Huron - 0.95  
Ingham - 0.95  
Ionia - 0.95  
Iosco - 0.95  
Iron - 0.90  
Isabella - 0.95  
Jackson - 0.95  
Kalamazoo - 0.95  
Kalkaska - 0.90  
Kent - 0.95  
Lake - 0.90  
Lapeer - 0.95  
Leelanau - 0.95  
Lenawee - 0.95  
Livingston - 0.95  
Luce - 0.90  
Mackinac - 0.90  
Macomb - 0.95  
Manistee - 0.95  
Marquette - 0.95  
Mason - 0.95  
Mecosta - 0.95  
Menominee - 0.95  
Midland - 0.95  
Missaukee - 0.90  
Monroe - 0.95  
Montcalm - 0.95  
Montmorency - 0.90  
Muskegon - 0.95  
Newaygo - 0.95  
Oakland - 0.95  
Oceana - 0.95  
Ogemaw - 0.95  
Ontonagon - 0.90  
Osceola - 0.95  
Oscoda - 0.90  
Otsego - 0.95  
Ottawa - 0.95  
Presque Isle - 0.95  
Roscommon - 0.95  
Saginaw - 0.95  
St. Clair - 0.95  
St. Joseph - 0.95  
Sanilac - 0.95  
Schoolcraft - 0.90  
Shiawassee - 0.95  
Tuscola - 0.95  
Van Buren - 0.95  
Washtenaw - 0.95  
Wexford - 0.95  
NW Wayne - 0.95  
SW Wayne - 0.95  
Detroit - 0.95

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Not Applicable/No Response Required      Yes

**Appendix D.                      Statistical area counties**

Rural Michigan counties are as follows: Alcona, Alger, Antrim, Arenac, Baraga, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Gogebic, Huron, Iosco, Iron, Lake, Luce, Mackinac, Manistee, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Tuscola

Micropolitan statistical area Michigan counties are as follows: Allegan, Alpena, Benzie, Branch, Chippewa, Delta, Dickinson, Grand Traverse, Gratiot, Hillsdale, Houghton, Ionia, Isabella, Kalkaska, Keweenaw, Leelanau, Lenawee, Marquette, Mason, Mecosta, Menominee, Missaukee, St. Joseph, Shiawassee, Wexford

Metropolitan statistical area Michigan counties are as follows: Barry, Bay, Berrien, Calhoun, Cass, Clinton Eaton, Genesee, Ingham, Jackson, Kalamazoo, Kent, Lapeer, Livingston, Macomb, Midland, Monroe, Muskegon, Montcalm, Oakland, Ottawa, Saginaw, St. Clair, Van Buren, Washtenaw, Wayne

Source:  
75 F.R., p. 37245 (June 28, 2010)  
Statistical Policy Office  
Office of Information and Regulatory Affairs  
United States Office of Management and Budget

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Not Applicable/No Response Required      Yes

**Appendix E.                      Planning Areas Population Density**

Michigan nursing home planning areas with a population density of less than 28 individuals per square mile based on 2010 U.S. Census figures.

**Planning Area - Population Density Per Square Mile**

Ontonagon - 5.11  
Schoolcraft - 6.95  
Luce - 7.16  
Baraga - 9.67  
Iron - 9.76  
Alger - 10.25  
Mackinac - 10.45  
Gogebic - 14.35  
Oscoda - 15.12  
Alcona - 15.76  
Montmorency - 17.36  
Presque Isle - 19.53  
Lake - 20.11  
Chippewa - 21.29  
Menominee - 22.86  
Houghton/Keweenaw - 24.17  
Crawford - 25.00



**Missaukee - 25.90**

**Source: Michigan Department of Management and Budget and The U.S. Bureau of the Census**

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Not Applicable/No Response Required      Yes

**Addendum for Special  
Population Gr - Section 1.**

**Addendum for special population groups --Applicability; definitions**

**Sec. 1**

**(1) This addendum supplements the CON Review Standards for Nursing Home and Hospital Long-term Care Unit Beds and shall be used for determining the need for projects established to better meet the needs of special population groups within the long-term care and nursing home populations.**

**(2) Except as provided in sections 2, 3, 4, 5, 6, 7, and 8 of this addendum, these standards supplement, and do not supersede, the requirements and terms of approval required by the CON Review Standards for Nursing Home and Hospital Long-term Care Unit Beds.**

**(3) The definitions which apply to the CON Review Standards for Nursing Home and Hospital Long-term Care Unit Beds shall apply to these standards.**

**(4) For purposes of this addendum, the following terms are defined:**

**(a) "Behavioral patient" means an individual that exhibits a history of chronic behavior management problems such as aggressive behavior that puts self or others at risk for harm, or an altered state of consciousness, including paranoia, delusions, and acute confusion.**

**(b) "Hospice" means a health care program licensed under Part 214 of the Code, being Section 333.21401 et seq.**

**(c) "Infection control program," means a program that will reduce the risk of the introduction of communicable diseases into a ventilator-dependent unit, provide an active and ongoing surveillance program to detect the presence of communicable diseases in a ventilator-dependent unit, and respond to the presence of communicable diseases within a ventilator-dependent unit so as to minimize the spread of a communicable disease.**

**(d) "Licensed hospital" means either a hospital licensed under Part 215 of the Code; or a psychiatric hospital or unit licensed pursuant to Act 258 of the Public Acts of 1974, as amended, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws.**

**(e) "Private residence", means a setting other than a licensed hospital; or a nursing home including a nursing home or part of a nursing home approved pursuant to Section 6.**

**(f) "Traumatic brain injury (TBI)/spinal cord injury (SCI) patient" means an individual with TBI or SCI that is acquired or due to a**



group pursuant to this subsection shall revert to the total statewide pool established for categories in subsection (1)(a).

(iii) The Department shall notify the Commission of the date when action to reduce the number of beds set aside for a special population group has become effective and shall identify the number of beds that reverted to the total statewide pool established for categories in subsection (1)(a).

(iv) For purposes of this subsection, "application period" means the period of time from one designated application date to the next subsequent designated application date.

(v) For purposes of this subsection, "CON activity" means one or more of the following:

(A) CON applications for beds for a special population group have been submitted to the Department for which either a proposed or final decision has not yet been issued by the Department.

(B) Administrative hearings or appeals to court of decisions issued on CON applications for beds for a special population group are pending resolution.

(C) An approved CON for beds for each special population group has expired for lack of appropriate action by an applicant to implement an approved CON.

(d) By setting aside these beds from the total statewide pool, the Commission's action applies only to applicants seeking approval of nursing home beds pursuant to sections 4, 5, 6, and 7. It does not preclude the care of these patients in units of hospitals, hospital long-term care units, nursing homes, or other health care settings in compliance with applicable statutory or certification requirements.

Sec. 3(2)

Increases in nursing home beds approved under this addendum for special population groups shall not cause planning areas currently showing an unmet bed need to have that need reduced or planning areas showing a current surplus of beds to have that surplus increased.

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Not Applicable/No Response Required      Yes

Section 4.

Requirements for approval for beds from the statewide pool for special population groups allocated to TBI/SCI patients

Sec. 4. The CON Commission determines there is a need for beds for applications designed to determine the efficiency and effectiveness of specialized programs for the care and treatment of TBI/SCI patients as compared to serving these needs in general nursing home unit(s).

Sec. 4(1)

An applicant proposing to begin operation of a new nursing home/HLTCU or add beds to an existing nursing home/HLTCU under this section shall demonstrate with credible documentation to the satisfaction of the Department each of the following:

Sec. 4(1)(a)

The beds will be operated as part of a specialized program exclusively for TBI/SCI patients. At the time an application is submitted, the applicant shall demonstrate that it operates:

(i) A continuum of outpatient treatment, rehabilitative care, and support services for TBI/SCI patients; and

(ii) A transitional living program or contracts with an organization that operates a transitional living program and

rehabilitative care for TBI/SCI patients.

**Sec. 4(1)(b)** The applicant shall submit evidence of accreditation of its existing outpatient and/or residential programs by the Commission on Accreditation of Rehabilitation Facilities (CARF) or another nationally-recognized accreditation organization for rehabilitative care and services.

**Sec. 4(1)(c)** Within 24-months of accepting its first patient, the applicant shall obtain CARF or another nationally-recognized accreditation organization for the nursing home beds proposed under this subsection.

**Sec. 4(1)(d)** A floor plan for the proposed physical plant space to house the nursing home beds allocated under this subsection that provides for:  
(i) Individual units consisting of 20 beds or less per unit, not to be more than 40 beds per facility.  
(ii) Day/dining area within, or immediately adjacent to, the unit(s), which is solely for the use of TBI/SCI patients.  
(iii) Direct access to a secure outdoor or indoor area at the facility appropriate for supervised activity.

**Sec. 4(1)(e)** The applicant proposes programs to promote a culture within the facility that is appropriate for TBI/SCI patients of various ages.

**Sec. 4(2)** Beds approved under this subsection shall not be converted to general nursing home use without a CON for nursing home and hospital long-term care unit beds under the CON review standards for nursing home and hospital long-term care unit beds and shall not be offered to individuals other than TBI/SCI patients.

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Not Applicable/No Response Required      Yes

**Section 5.** Requirements for approval for beds from the statewide pool for special population groups allocated to behavioral patients

**Sec. 5.** The CON Commission determines there is a need for beds for applications designed to determine the efficiency and effectiveness of specialized programs for the care and treatment of behavioral patients as compared to serving these needs in general nursing home unit(s).

**Sec. 5(1)** An applicant proposing to begin operation of a new nursing home/HLTCU or add beds to an existing nursing home/HLTCU under this section shall demonstrate with credible documentation to the satisfaction of the Department each of the following:

**Sec. 5(1)(a)** Individual units shall consist of 20 beds or less per unit.

**Sec. 5(1)(b)** The facility shall not be awarded more than 40 beds.

**Sec. 5(1)(c)** The proposed unit shall have direct access to a secure outdoor or indoor area for supervised activity.

- Sec. 5(1)(d)**                    **The unit shall have within the unit or immediately adjacent to it a day/dining area which is solely for the use of the behavioral patients.**
- Sec. 5(1)(e)**                    **The physical environment of the unit shall be designed to minimize noise and light reflections to promote visual and spatial orientation.**
- Sec. 5(1)(f)**                    **Staff will be specially trained in treatment of behavioral patients.**
- Sec. 5(2)**                        **Beds approved under this subsection shall not be converted to general nursing home use without a CON for nursing home and hospital long-term care unit beds under the CON Review Standards for Nursing Home and Hospital Long-term Care Unit Beds.**
- Sec. 5(3)**                        **All beds approved pursuant to this subsection shall be dually certified for Medicare and Medicaid.**

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Not Applicable/No Response Required                    Yes

- Section 6.**                        **Requirements for approval for beds from the statewide pool for special population groups allocated to hospice patients**
- Sec. 6. The CON Commission determines there is a need for beds for patients requiring both hospice and long-term nursing care services within the long-term care and nursing home populations.**
- Sec. 6(1)**                        **An applicant proposing to begin operation of a new nursing home/HLTCU or add beds to an existing nursing home/HLTCU under this section shall demonstrate, with credible documentation to the satisfaction of the Department, each of the following:**
- Sec. 6(1)(a)**                    **An applicant shall be a hospice certified by Medicare pursuant to the Code of Federal Regulations, Title 42, Chapter IV, Subpart B (Medicare programs), Part 418 and shall have been a Medicare certified hospice for at least 24 continuous months prior to the date an application is submitted to the Department.**
- Sec. 6(1)(b)**                    **An applicant shall demonstrate that, during the most recent 12-month period prior to the date an application is submitted to the Department for which verifiable data are available to the Department, at least 64% of the total number of hospice days of care provided to all of the clients of the applicant hospice were provided in a private residence.**
- Sec. 6(1)(c)**                    **An application shall propose 30 beds or less.**
- Sec. 6(1)(d)**                    **An applicant for beds from the special statewide pool of beds shall not be approved if any application for beds in that same planning area has been approved from the special statewide pool of beds allocated for hospice.**
- Sec. 6(2)**                        **All beds approved pursuant to this subsection shall be dually certified for Medicare and Medicaid.**



- Sec. 8(1)(d)** All beds approved pursuant to this subsection shall be dually certified for Medicare and Medicaid.
- Sec. 8(2)** An applicant proposing to acquire nursing home/HLTCU beds from the statewide pool for special population groups allocated to TBI/SCI shall meet the following:
- Sec. 8(2)(a)** The beds will be operated as part of a specialized program exclusively for TBI/SCI patients. At the time an application is submitted, the applicant shall demonstrate that it operates:
- (i) a continuum of outpatient treatment, rehabilitative care, and support services for TBI/SCI patients; and
  - (ii) a transitional living program or contracts with an organization that operates a transitional living program and rehabilitative care for TBI/SCI patients.
- Sec. 8(2)(b)** The applicant shall submit evidence of accreditation of its existing outpatient and/or residential programs by the Commission on Accreditation of Rehabilitation Facilities (CARF) or another nationally-recognized accreditation organization for rehabilitative care and services.
- Sec. 8(2)(c)** Within 24-months of accepting its first patient, the applicant shall obtain CARF or another nationally-recognized accreditation organization for the nursing home beds proposed under this subsection.
- Sec. 8(2)(d)** A floor plan for the proposed physical plant space to house the nursing home beds allocated under this subsection that provides for:
- (i) Individual units consisting of 20 beds or less per unit, not to be more than 40 beds per facility.
  - (ii) Day/dining area within, or immediately adjacent to, the unit(s), which is solely for the use of TBI/SCI patients.
  - (iii) Direct access to a secure outdoor or indoor area at the facility appropriate for supervised activity.
- Sec. 8(2)(e)** The applicant proposes programs to promote a culture within the facility that is appropriate for TBI/SCI patients of various ages.
- Sec. 8(3)** An applicant proposing to acquire nursing home/HLTCU beds from the statewide pool for special population groups allocated to Alzheimer's disease shall meet the following:
- Sec. 8(3)(a)** The beds are part of a specialized program for Alzheimer's disease which will admit and treat only patients which require long-term nursing care and have been appropriately classified as a patient on the Global Deterioration Scale (GDS) for age-associated cognitive decline and Alzheimer's disease as a level 4 (when accompanied by continuous nursing needs), 5, or 6.
- Sec. 8(3)(b)** The specialized program will participate in the state registry for Alzheimer's disease.
- Sec. 8(3)(c)** The specialized program shall be attached or geographically adjacent to a licensed nursing home and be no larger than 20 beds in size.

- Sec. 8(3)(d)** The proposed Alzheimer's unit shall have direct access to a secure outdoor or indoor area at the health facility, appropriate for unsupervised activity.
- Sec. 8(3)(e)** The Alzheimer's unit shall have within the unit or immediately adjacent to it a day/dining area which is solely for the use of the Alzheimer's unit patients.
- Sec. 8(3)(f)** The physical environment of the Alzheimer's unit shall be designed to minimize noise and light reflections to promote visual and spatial orientation.
- Sec. 8(3)(g)** Staff will be specially trained in Alzheimer's disease treatment.
- Sec. 8(3)(h)** All beds approved pursuant to this subsection shall be dually certified for Medicare and Medicaid.
- Sec. 8(4)** An applicant proposing to acquire nursing home/HLTCU beds from the statewide pool for special population groups allocated to behavioral patients shall meet the following:
- Sec. 8(4)(a)** Individual units shall consist of 20 beds or less per unit.
- Sec. 8(4)(b)** The facility shall not be awarded more than 40 beds.
- Sec. 8(4)(c)** The proposed unit shall have direct access to a secure outdoor or indoor area for supervised activity.
- Sec. 8(4)(d)** The unit shall have within the unit or immediately adjacent to it a day/dining area which is solely for the use of the behavioral patients.
- Sec. 8(4)(e)** The physical environment of the unit shall be designed to minimize noise and light reflections to promote visual and spatial orientation.
- Sec. 8(4)(f)** Staff will be specially trained in treatment of behavioral patients.
- Sec. 8(4)(g)** All beds approved pursuant to this subsection shall be dually certified for Medicare and Medicaid.
- Sec. 8(5)** An applicant proposing to acquire nursing home/HLTCU beds from the statewide pool for special population groups allocated to hospice shall meet the following:
- Sec. 8(5)(a)** An applicant shall be a hospice certified by Medicare pursuant to the code of Federal Regulations, Title 42, Chapter IV, Subpart B (Medicare Programs), Part 418 and shall have been a Medicare certified hospice for at least 24 continuous months prior to the date an application is submitted to the Department.
- Sec. 8(5)(b)** An applicant shall demonstrate that, during the most recent 12-month period prior to the date an application is submitted to the Department for which verifiable data are available to the Department, at least 64% of the total number of hospice days of care provided to all of the clients of the applicant hospice were



provided in a private residence.

- Sec. 8(5)(c)** All beds approved pursuant to this subsection shall be dually certified for Medicare and Medicaid.
- Sec. 8(6)** An applicant proposing to acquire nursing home/HLTCU beds from the statewide pool for special population groups allocated to ventilator-dependent patients shall meet the following:
- Sec. 8(6)(a)** An applicant proposes a program for caring for ventilator-dependent patients in licensed nursing home beds.
- sec. 8(6)(b)** An application proposes no more than 40 beds that will be licensed as nursing home beds.
- Sec. 8(6)(c)** The proposed unit will serve only ventilator-dependent patients.
- Sec. 8(6)(d)** All beds approved pursuant to this subsection shall be dually certified for Medicare and Medicaid.

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Not Applicable/No Response Required      Yes

- Section 9.** Project delivery requirements -- terms of approval for all applicants seeking approval under Section 3(1) of this addendum
- Sec. 9(1)** An applicant shall agree that if approved, the services shall be delivered in compliance with the terms of approval required by the CON Review Standards for Nursing Home and Hospital Long-term Care Unit Beds.
- Sec. 9(2)** (2) An applicant for beds from the statewide pool for special population groups allocated to religious shall agree that, if approved, the services provided by the specialized long-term care beds shall be delivered in compliance with the following term of CON approval:  
(a) The applicant shall document, at the end of the third year following initiation of beds approved an annual average occupancy rate of 95 percent or more. If this occupancy rate has not been met, the applicant shall delicense a number of beds necessary to result in a 95 percent occupancy based upon its average daily census for the third full year of operation.
- [For electronic submission, please respond to this subsection, if applicable, with the following statement, "By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this subsection."]
- Sec. 9(3)** An applicant for beds from the statewide pool for special population groups allocated to Alzheimer's disease shall agree that if approved:  
(a) The beds are part of a specialized program for Alzheimer's disease which will admit and treat only patients which require long-term nursing care and have been appropriately classified as a patient on the Global Deterioration Scale (GDS) for age-

associated cognitive decline and Alzheimer's disease as a level 4 (when accompanied by continuous nursing needs), 5, or 6.

(b) The specialized program will participate in the state registry for Alzheimer's disease.

(c) The specialized program shall be attached or geographically adjacent to a licensed nursing home and be no larger than 20 beds in size.

(d) The proposed Alzheimer's unit shall have direct access to a secure outdoor or indoor area at the health facility, appropriate for unsupervised activity.

(e) The Alzheimer's unit shall have within the unit or immediately adjacent to it a day/dining area which is solely for the use of the Alzheimer's unit patients.

(f) The physical environment of the Alzheimer's unit shall be designed to minimize noise and light reflections to promote visual and spatial orientation.

(g) Staff will be specially trained in Alzheimer's disease treatment.

[For electronic submission, please respond to this subsection, if applicable, with the following statement, "By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this subsection."]

**Sec. 9(4)**

An applicant for beds from the statewide pool for special population groups allocated to hospice shall agree that, if approved, all beds approved pursuant to that subsection shall be operated in accordance with the following CON terms of approval.

(a) An applicant shall maintain Medicare certification of the hospice program and shall establish and maintain the ability to provide, either directly or through contractual arrangements, hospice services as outlined in the Code of Federal Regulations, Title 42, Chapter IV, Subpart B, Part 418, hospice care.

(b) The proposed project shall be designed to promote a home-like atmosphere that includes accommodations for family members to have overnight stays and participate in family meals at the applicant facility.

(c) An applicant shall not refuse to admit a patient solely on the basis that he/she is HIV positive, has AIDS or has AIDS related complex.

(d) An applicant shall make accommodations to serve patients that are HIV positive, have AIDS or have AIDS related complex in nursing home beds.

(e) An applicant shall make accommodations to serve children and adolescents as well as adults in nursing home beds.

(f) Nursing home beds shall only be used to provide services to individuals suffering from a disease or condition with a terminal prognosis in accordance with Section 21417 of the Code, being Section 333.21417 of the Michigan Compiled Laws.

(g) An applicant shall agree that the nursing home beds shall not be used to serve individuals not meeting the provisions of Section 21417 of the Code, being Section 333.21417 of the Michigan Compiled Laws, unless a separate CON is requested and approved pursuant to applicable CON review standards.

(h) An applicant shall be licensed as a hospice program under Part 214 of the Code, being Section 333.21401 et seq. of the Michigan Compiled Laws.

(i) An applicant shall agree that at least 64% of the total number

of hospice days of care provided by the applicant hospice to all of its clients will be provided in a private residence.

[For electronic submission, please respond to this subsection, if applicable, with the following statement, "By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this subsection."]

**Sec. 9(5)**

An applicant for beds from the statewide pool for special population groups allocated to ventilator-dependent patients shall agree that, if approved, all beds approved pursuant to that subsection shall be operated in accordance with the following CON terms of approval.

(a) An applicant shall staff the proposed ventilator-dependent unit with employees that have been trained in the care and treatment of ventilator-dependent patients and includes at least the following:

(i) A medical director with specialized knowledge, training, and skills in the care of ventilator-dependent patients.

(ii) A program director that is a registered nurse.

(b) An applicant shall make provisions, either directly or through contractual arrangements, for at least the following services:

(i) respiratory therapy.

(ii) occupational and physical therapy.

(iii) psychological services.

(iv) family and patient teaching activities.

(c) An applicant shall establish and maintain written policies and procedures for each of the following:

(i) Patient admission criteria that describe minimum and maximum characteristics for patients appropriate for admission to the ventilator-dependent unit. At a minimum, the criteria shall address the amount of mechanical ventilatory dependency, the required medical stability, and the need for ancillary services.

(ii) The transfer of patients requiring care at other health care facilities.

(iii) Upon admission and periodically thereafter, a comprehensive needs assessment, a treatment plan, and a discharge plan that at a minimum addresses the care needs of a patient following discharge.

(iv) Patient rights and responsibilities in accordance with Sections 20201 and 20202 of the Code, being Sections 333.20201 and 333.20202 of the Michigan Compiled Laws.

(v) The type of ventilatory equipment to be used on the unit and provisions for back-up equipment.

(d) An applicant shall establish and maintain an organized infection control program that has written policies for each of the following:

(i) use of intravenous infusion apparatus, including skin preparation, monitoring skin site, and frequency of tube changes.

(ii) placement and care of urinary catheters.

(iii) care and use of thermometers.

(iv) care and use of tracheostomy devices.

(v) employee personal hygiene.

(vi) aseptic technique.

(vii) care and use of respiratory therapy and related equipment.

(viii) isolation techniques and procedures.

(e) An applicant shall establish a multi-disciplinary infection

control committee that meets on at least a monthly basis and includes the director of nursing, the ventilator-dependent unit program director, and representatives from administration, dietary, housekeeping, maintenance, and respiratory therapy. This subsection does not require a separate committee, if an applicant organization has a standing infection control committee and that committee's charge is amended to include a specific focus on the ventilator-dependent unit.

(f) The proposed ventilator-dependent unit shall have barrier-free access to an outdoor area in the immediate vicinity of the unit.

(g) An applicant shall agree that the beds will not be used to service individuals that are not ventilator-dependent unless a separate CON is requested and approved by the Department pursuant to applicable CON review standards.

(h) An applicant shall provide data to the Department that evaluates the cost efficiencies that result from providing services to ventilator-dependent patients in a hospital.

[For electronic submission, please respond to this subsection, if applicable, with the following statement, "By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this subsection."]

**Sec. 9(6)**

An applicant for beds from the statewide pool for special population groups allocated to TBI/SCI patients shall agree that if approved:

(a) An applicant shall staff the proposed unit for TBI/SCI patients with employees that have been trained in the care and treatment of such individuals and includes at least the following:

(i) A medical director with specialized knowledge, training, and skills in the care of TBI/SCI patients.

(ii) A program director that is a registered nurse.

(iii) Other professional disciplines required for a multi-disciplinary team approach to care.

(b) An applicant shall establish and maintain written policies and procedures for each of the following:

(i) Patient admission criteria that describe minimum and maximum characteristics for patients appropriate for admission to the unit for TBI/SCI patients. At a minimum, the criteria shall address the required medical stability and the need for ancillary services, including dialysis services.

(ii) The transfer of patients requiring care at other health care facilities, including a transfer agreement with one or more acute-care hospitals in the region to provide emergency medical treatment to any patient who requires such care.

(iii) Upon admission and periodically thereafter, a comprehensive needs assessment, a treatment plan, and a discharge plan that at a minimum addresses the care needs of a patient following discharge, including support services to be provided by transitional living programs or other outpatient programs or services offered as part of a continuum of care to TBI patients by the applicant.

(iv) Utilization review, which shall consider the rehabilitation necessity for the service, quality of patient care, rates of utilization and other considerations generally accepted as appropriate for review.

(v) Quality assurance and assessment program to assure that

services furnished to TBI/SCI patients meet professional recognized standards of health care for providers of such services and that such services were reasonable and medically appropriate to the clinical condition of the TBI patient receiving such services.

[For electronic submission, please respond to this subsection, if applicable, with the following statement, "By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this subsection."]

Sec. 9(7)

An applicant for beds from the statewide pool for special population groups allocated to behavioral patients shall agree that if approved:

(a) An applicant shall staff the proposed unit for behavioral patients with employees that have been trained in the care and treatment of such individuals and includes at least the following:

(i) A medical director with specialized knowledge, training, and skills in the care of behavioral patients.

(ii) A program director that is a registered nurse.

(iii) Other professional disciplines required for a multi-disciplinary team approach to care.

(b) An applicant shall establish and maintain written policies and procedures for each of the following:

(i) Patient admission criteria that describe minimum and maximum characteristics for patients appropriate for admission to the unit for behavioral patients.

(ii) The transfer of patients requiring care at other health care facilities, including a transfer agreement with one or more acute-care hospitals in the region to provide emergency medical treatment to any patient who requires such care.

(iii) Utilization review, which shall consider the rehabilitation necessity for the service, quality of patient care, rates of utilization and other considerations generally accepted as appropriate for review.

(iv) quality assurance and assessment program to assure that services furnished to behavioral patients meet professional recognized standards of health care for providers of such services and that such services were reasonable and medically appropriate to the clinical condition of the behavioral patient receiving such services.

(v) Orientation and annual education/competencies for all staff, which shall include care guidelines, specialized communication, and patient safety.

[For electronic submission, please respond to this subsection, if applicable, with the following statement, "By submission of this electronic application, I certify as the authorized agent that the applicant will abide by the agreements and assurances required by this subsection."]

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Not Applicable/No Response Required      Yes

Section 10.

Comparative reviews, effect on prior CON review standards

(1) Projects proposed under Section 4 shall be considered a distinct category and shall be subject to comparative review on a statewide basis.

**(2) Projects proposed under Section 5 shall be considered a distinct category and shall be subject to comparative review on a statewide basis.**

**(3) Projects proposed under Section 6 shall be considered a distinct category and shall be subject to comparative review on a statewide basis.**

**(4) Projects proposed under Section 7 shall be considered a distinct category and shall be subject to comparative review on a statewide basis.**

**(5) These CON review standards supercede and replace the CON Review Standards for Nursing Home and Long-term Care Unit Beds--Addendum for Special Population Groups approved by the Commission on April 30, 2008 and effective on June 20, 2008.**



STATE OF MICHIGAN  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

RICK SNYDER  
GOVERNOR

NICK LYON  
DIRECTOR

March 15, 2017

**RECEIVED**

MAR 27 2017

**PGD**

Ms. Phyllis Adams  
Dykema Gossett PLLC  
2723 South State Street, Suite 400  
Ann Arbor, MI 48104

Re: Certificate of Need for  
Whitehall Healthcare Center of Novi  
CON Application No. 16-0406  
Facility No. 63-4430  
Novi (Oakland County)

Dear Ms. Adams:

This is to inform you that the proposed project to acquire the licensed nursing home and replace the facility at current site has been reviewed and is approved with the following summary comments.

**BACKGROUND**

The applicant, WMP Novi Operating, LLC, proposes to acquire the operations of Whitehall Healthcare Center of Novi, a licensed nursing home with 82 beds. Operations of the facility will be transferred, pursuant to an Operations Transfer Agreement, from the current licensee, Whitehall of Novi HealthCare, LLC, d/b/a Whitehall Healthcare Center of Novi, to the applicant, who is the proposed operator and licensee of the facility. In a related transaction, WMP Whitehall Acquisition, LLC (Buyer Propco), will acquire the physical assets comprising the nursing home from FC Encore Whitehall (Seller Propco) via a Purchase and Sale Agreement, including the land, all fixtures, furnishings and equipment, as well as, other personal property. The purchase price to be paid by the Buyer Propco for the physical assets of the facility is \$2,673,913.

As of the effective date of the transactions, Buyer Propco will lease the acquired assets comprising the facility to WMP Novi Real Estate Holdings, LLC, which will be the landlord to the applicant and the landlord will sublease the acquired assets to the applicant (licensee). The applicant states that there is no other cost to the applicant for the proposed acquisition and replacement of the facility, other than the lease cost for the facility space.

## **PROPOSED PROJECT DESCRIPTION**

Certificate of Need (CON) Application No. 16-0406 is proposed by WMP Novi Operating, LLC, a Michigan domestic limited liability company (CID No. F0163M), located at 721 Elmwood, Troy, MI 48083. The authorized agent for this application is Phyllis Adams, Dykema Gossett PLLC, located at 2723 South State Street, Suite 400, Ann Arbor, MI 48104.

The applicant, WMP Novi Operating, LLC, proposes to acquire an existing health facility and make a change in bed capacity of a health facility. Specifically, the applicant proposes to acquire and replace the existing nursing home on-site at Whitehall Healthcare Center of Novi, located at 43455 West Ten Mile Road, Novi, MI 48375 (Oakland County). The name of the facility will be changed to Mission Point Nursing and Rehabilitation Center of Novi.

The applicant, WMP Novi Operating, LLC (licensee), will lease the space for a period of seven (7) years, from WMP Novi Real Estate Holdings, LLC (landlord). The landlord will construct the replacement nursing home building. The estimated construction cost to the landlord for construction of the replacement nursing home is \$9,899,040.

To implement the facility replacement component of this proposed project, Whitehall Healthcare Center of Novi, a licensed nursing home with 82 licensed beds, will be demolished. The applicant proposes to replace the facility into new construction to be completed by the landlord at the existing licensed site. The site is not of sufficient size to allow the replacement facility to be constructed adjacent to the existing facility. The applicant proposes to de-license 14 beds at the time the project is implemented so that at the conclusion of the project, the applicant will operate 68 beds in the proposed replacement nursing home building.

The proposed replacement facility will have approximately 50,850 gross square feet of space and house all 68 beds in 100% private rooms with private bathrooms and showers in a structure with one (1) floor. The proposed replacement facility will have full amenities and services, including an expansive rehabilitation center providing a full range of physical, occupational and speech therapy services.

The applicant states that after receipt of CON approval, a closure plan for the facility will be developed and submitted for approval to the Michigan Department of Licensing and Regulatory Affairs (MDLARA). The applicant anticipates that existing residents will be discharged from the facility per the State-approved closure plan to other appropriate nursing homes. The applicant states that a Building Program Agreement with MDLARA will be obtained to preserve the license for the facility while the replacement facility is being constructed.

Upon completion of the proposed project, the applicant will continue to operate a licensed nursing home with 68 beds (82 current beds and 14 delicensed beds) and no beds from the Pool of Beds for Special Population Groups.



**PROPOSED PROJECT DESCRIPTION**

The applicant proposes to de-license 14 beds at the time the proposed project is implemented. At no time will the applicant operate more than 68 beds at this licensed nursing home without prior CON approval.

**PROPOSED PROJECT COSTS**

Space Lease Cost – Term: 7 Years	\$ 1,850,000
Total Project Costs	<u>\$ 1,850,000</u>

**PROPOSED SOURCES OF FUNDS**

Capital/Operating Lease	\$ 1,850,000
Total Sources of Funds	<u>\$ 1,850,000</u>

**COMMENTS**

The Michigan Department of Health and Human Services has reviewed and determined that the project is in conformance with Public Act 368 of 1978, as amended, and applicable review standards. The basis for this decision is detailed under justification of approval.

**JUSTIFICATION OF APPROVAL**

1. The project is in compliance, as applicable, with Section 22225(1) and (2) of Public Act 368 of 1978, as amended.
2. The project meets the provisions and requirements for nonsubstantive review under Section 22233.
3. This application is in compliance with the CON Review Standards for Nursing Home and Hospital Long-Term Care Unit (HLTCU) Beds, effective 03/20/2015.
4. The reasons and authority for these findings are set forth in the program and financial reports.

**NOTIFICATION TO APPLICANT**

In accordance with Rule 325.9403(1), the CON issued will be valid for a period of one (1) year from the effective date of this letter. If the project is not complete within the year, an enforceable contract or force account must be in place. An extension to execute the enforceable contract or force account may be granted by the Department for just cause in accordance with Rule 325.9403(2).

As applicable, Rule 325.9103(b) requires that an enforceable contract for any covered clinical equipment specify that the installation date will be within 24 months after the effective date of the CON. Rule 325.9417 requires that the period of time allowed to begin any construction (i.e., pouring of footings) be within 24 months from the effective date of approval. The CON is valid only as long as there is compliance with the provisions of Rule 325.9401, and is not transferable.

A CON is valid for the term of the lease as stated in this approval letter, if applicable, for a health facility or covered clinical equipment. An applicant is required to file another CON to renew a lease for a health facility if the total renewal lease cost exceeds the covered capital expenditure threshold or as otherwise stated in the applicable CON review standards. For covered clinical equipment, an applicant is required to file another CON to renew a lease as required in the applicable CON review standards. In the case of an equipment lease in which the applicant purchases the equipment at the end of the lease, the CON is valid until the equipment is replaced.

If the total project costs exceed the approved amount in this CON by 15 percent of the first \$1 million and 10 percent of the excess over \$1 million, the applicant is required to seek an amendment to the approved CON in accordance with Rule 325.9415. Additionally, if the scope of the project or method and terms of financing of the project changes, an amendment or new review will be required in accordance with Rule 325.9413.

As part of this CON approval, and in accordance with applicable CON review standards, the applicant is required to obtain and maintain statistical data in order to complete and submit a MDHHS Annual Survey. The annual survey is available online at [www.michigan.gov/con](http://www.michigan.gov/con).

In addition to the rules stated in this letter, the applicant must conform and comply with all CON Administrative Rules. This CON is not to be construed as approval for any other state or federal regulatory review, licensing, or certification. The rules and contact information for other state regulatory agencies are available online at [www.michigan.gov/con](http://www.michigan.gov/con).

A Project Implementation Progress Report (PIPR) form must be completed and returned no later than 12 months from the date of the final decision letter signed by the Director. Failure to submit this report may result in the imposition of sanctions in accordance with MCL 333.22247. The form is available online at [www.michigan.gov/con](http://www.michigan.gov/con).

If this decision is marked proposed decision, it will be followed by the Director's final decision in accordance with Section 22231 of Public Act 368 of 1978, as amended.

If this is a final decision, the decision will be signed and dated by the Director or the Director's designee. The final signed decision date is the official effective date of this CON.

Ms. Phyllis Adams  
CON Application No. 16-0406  
Page 5

Thank you for your cooperation in the planning process.

Sincerely,



Nick Lyon  
Director

NL: jld

Final Decision Date: 3/20/17

cc: Abigail Burnell, CON, MDHHS  
James Scott, BCHS, MDLARA  
Joette Laseur, CON, MDHHS  
Larry Horvath, BCHS, MDLARA  
Brian Barrie, LTC Services Section, MDHHS  
John Donaldson, Cost Data Reporting & Reimbursement Section, MDHHS

**EXHIBIT 4**

*WMP LIVONIA, LLC  
721 ELMWOOD  
TROY, MICHIGAN 48083*

January 10, 2017

St. Jude Nursing Center, Inc.  
34350 Ann Arbor Trail  
Livonia, MI 48150  
Attn: Brad Mali

**SENT VIA EMAIL AND OVERNIGHT DELIVERY**

RE: The Asset Purchase and Sale Agreement dated effective as of June 13, 2016, as amended by First Amendment to Purchase and Sale Agreement, and as further amended by Second Amendment to Purchase and Sale Agreement (collectively, the “Purchase Agreement”), by and among St. Jude Nursing Center, Inc. (“Seller”) and WMP Livonia, LLC and Mission Point of Livonia, LLC (collectively, “Purchaser”)

Dear Brad,

Pursuant to Sections 4.2 and 4.3 of the Purchase Agreement (as amended), Purchaser hereby provides this notice of termination of the Purchaser Agreement. As you are aware, at this time, Purchaser has been unable to procure the necessary Certificate of Need from the Michigan Department of Health and Human Services (“DHHS”), which is a condition precedent for Purchaser to close this transaction.

As we discussed in great detail, Purchaser had proceeded with this transaction in good faith and with the understanding that Purchaser would be able to procure the requisite Certificate of Need for the acquisition and replacement of the St. Jude Nursing Care Facility (the “Livonia Facility”), which is owned by Seller. As we further discussed, an affiliated entity of Purchaser was able to procure an acquisition and replacement Certificate of Need from DHHS on March 15, 2017 with respect to the Whitehall Healthcare Center of Novi (see attached). At the time of filing the application for the Certificate of Need for the Livonia Facility, Purchaser believed in good faith that it would have no issues with receiving the requisite Certificate of Need, as this project was very similar in organizational structure, geographic location and size as the Whitehall Healthcare Center of Novi project. Unfortunately, we have been unable to obtain the required Certificate of Need at this time.

Purchaser would like to make absolutely clear that obtaining the Certificate of Need for the acquisition and replacement of the Livonia Facility is the ONLY condition preventing Purchaser from moving forward with this transaction and closing. Purchaser has located the required debt financing and procured the required equity to move forward with this project,

subject only to obtaining a definitive final Certificate of Need for the acquisition and replacement of the Livonia Facility.

As you are aware, Purchaser and its partners have expended tremendous time and resources on this project. As much as we would like to move forward, we reluctantly send this notice of termination.

Should the terms and conditions of the sale of the Livonia Facility change, please let us know immediately.

Very truly yours,

By: 

Authorized Agent for WMP Livonia, LLC and Mission Point of Livonia, LLC

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

ST. JUDE NURSING CENTER, INC.,

Debtor.

No. 18-54906-TJT

Chapter 11

Judge Thomas J. Tucker

**PATIENT CARE OMBUDSMAN'S SECOND REPORT**

Deborah L. Fish, patient care ombudsman, appointed by order dated November 8, 2018 (Docket #25); in accordance with the United States Bankruptcy Code (the "Code"), submits this second report on the status of the quality of patient care in the Chapter 11 case of St. Jude Nursing Center, Inc. (the "Debtor"). This report covers the period from November 15, 2018 to December 11, 2018 and is based, an examination of the facility, discussions with the director of nursing, certain Certified Nurse Assistants ("CNA") and a few residents, observation of lunch and an exit interview with Martha Little, the administrator of the facility.

**INTRODUCTION**

The Debtor filed a petition under Chapter 11 of the Code on November 2, 2018. The Debtor is a privately owned, licensed long-term skilled nursing facility located at 34350 Ann Arbor Trail, Livonia, Michigan 48150. It consists of 64 licensed beds, located within the Debtor owned facility. The current census is 57 residents. The payer mix is 3 Medicare, 3 private pay, 5 other insurance, and 46

Medicaid. Of the 46 Medicaid patients 16 are from the Michigan Prison System. The majority of the residents are long term. The Debtor employs nearly 84 full and part-time employees. The management level staff includes a full-time licensed Administrator, Director of Nursing, Activities Director, Dietary Director, and Admissions Officer.

The Debtor's facility offers services such as skilled nursing care, hospice care, Alzheimer's and dementia patient care, physical rehabilitation, tracheal and enteral services, wound care, and short-term respite care.

The facility is financially managed by Mission Point Management Services, LLC ("MPMS"). MPMS is a full-service healthcare and property management company with a specific focus on long-term skilled nursing care. All other day to day operations of the nursing home are managed and handled by Brad Mali and the Debtor's administrative staff.

### **INITIAL PATIENT CONTACT AND ASSESSMENT**

The Debtor's patients come from local hospitals, the State of Michigan Prison System and the surrounding community.

### **PATIENT STAFFING AND SERVICES**

The Debtor's staff consists of registered nurses, licensed practical nurses, and certified nurse assistants, food service, housekeeping, and administrative staff. The Debtor has provided its patient staffing ratio and it is within the required guidelines

as confirmed by the Director of Nursing. There have been no material changes in the staffing since my last report, however, the Debtor did add an additional CNA. The Debtor has finalized its union contract and the Debtor believes that the increase in wages will make it more competitive in hiring and will stabilize the work force. Employment stability with the staff provides for a better patient environment.

### **QUALITY OF CARE**

Post-Petition, the Debtor has maintained all of its services and is delivering similar quality care to essentially the same patient population. I observed the lunch service and many interactions between the staff and the residents.

#### **Facility**

- The facility is old, the floors were clean, and the residents' rooms were clean. There were no odors.
- There is an outdoor space available to residents which is not fenced in. Residents are supervised when outdoors. Smoking privileges are given outside four times a day.
- The dining hall also serves as the activity room.

#### **Services**

- The doctor rounds twice a week and is on call all other days and nights.
- All physical therapy, dentistry, podiatry, and transportation services is provided by outside contractors.



- Residents have access to a portable phone and a private room to conduct any calls.
- Residents have 4 or 5 daily activities available for participation. The activities are posted by the month for the residents to review.
- Residents have a shower and personal grooming schedule.

### Security

All doors are locked.

### Supplies

The Debtor reports that it has maintained its relationship with its suppliers and there have been no interruptions in service, nor any changes in medical supplies. The Debtor has contacted a new transportation company and is in the process of executing a contract. In the meantime, the Debtor used a temporary service and most recently the new company has begun the service.

## CONCLUSION

The Debtor has continued the same quality of care post-petition as it did pre-petition. Monitoring will continue.

/S/Deborah L. Fish  
\_\_\_\_\_  
Patient Care Ombudsman  
1001 Woodward Ave  
Suite 850  
Detroit, MI 48226  
(313) 961-6141  
dfish@allardfishpc.com  
P36580

Dated: December 12, 2018

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In the matter of:

**ST. JUDE NURSING CENTER, INC.**

**Case No. 18-54906**

**Chapter 11**

**Debtor.**

**Hon. Thomas J. Tucker**

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**NOTICE AND OPPORTUNITY TO RESPOND TO:  
DEBTOR'S MOTION FOR ENTRY OF ORDER: (A) AUTHORIZING  
SALE OF CERTAIN ASSETS OF DEBTOR TO LIVONIA SNF  
OPERATING, LLC; (B) AUTHORIZING ASSUMPTION AND  
ASSIGNMENT OF CERTAIN CONTRACTS; AND  
(C) GRANTING RELATED RELIEF**

The Debtor, St. Jude Nursing Center, Inc., has filed papers with the Court (the "Motion") for entry of an order authorizing (a) the sale of its rights and interests in certain personal property to Livonia SNF Operating, LLC, (b) the assumption of certain of its executory contracts and assignment of same to Livonia SNF Operating, LLC, and (c) other related relief.

The Motion proposes a private sale of the Debtor's interests in, among other things, its 64 skilled nursing bed licenses, as well as the assignment of the Debtor's Medicare and Medicaid provider agreements with the Centers for Medicare and Medicaid Services, to Livonia SNF Operating, LLC ("Purchaser") for the total sum of \$975,000 ("Purchase Price"), subject to certain conditions as set forth in the Motion. The Purchaser proposes to submit a deposit in the amount of \$125,000 against the Purchase Price in accordance with the terms and provision in the Motion.

The Motion does not propose the sale of the Debtor's real property interests or other items of tangible personal property, all of which will remain with the Debtor.

A full copy of the Motion and related documents may be obtained by contacting Debtor's counsel as identified below.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in these bankruptcy cases. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the court to grant the Motion, or if you want the court to consider your views on the Motion, **within 21 days of the date hereof if served electronically** or **within 24 days of the date hereof if served by U.S. Mail**, you or your attorney must:

1. File with the court a written response or an answer explaining your position at:<sup>1</sup>

U.S. Bankruptcy Court  
Attn. Clerk of the Court  
211 W. Fort Street  
Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

Jeffrey S. Grasl, Esq.  
31800 Northwestern Hwy., Suite 350  
Farmington Hills, MI 48334

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

**If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Application or objection and may enter an order granting the relief.**

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<sup>1</sup> Any response or answer must comply with Rules 8(b), (c) and (e) of the Federal Rules of Civil Procedure.

Dated: January 07, 2019

Respectfully Submitted,

GRASL PLC

/s/ Jeffrey S. Grasl

Jeffrey S. Grasl (P62550)

Counsel for Debtor

31800 Northwestern Hwy., Suite 350

Farmington Hills, MI 48334

Telephone: 248.385.2980

Facsimile: 248.666.1360

Email: [jeff@grasplc.com](mailto:jeff@grasplc.com)

EXHIBIT 7

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN THE MATTER OF:

**ST. JUDE NURSING CENTER, INC.,**

**Case No. 18-54906**

**Chapter 11**

**Debtor.**

**Hon. Thomas J. Tucker**

---

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 7, 2019, that he served the *Motion for Entry of Order: (A) Authorizing Sale of Certain Assets of Debtor Livonia SNF Operating, LLC; (B) Authorizing Assumption and Assignment of Certain Contracts; and (C) Granting Related Relief* ("Sale Motion") upon all CM/ECF registered parties using the Court's ECF noticing system; and

A twenty-one (21) day *Notice and Opportunity to Respond* with respect to the Sale Motion on each of the parties identified on the attached service list by first class U.S. Mail in accordance with F. R. Bankr. P. 2002, 6004, 6006 and 9014.

Dated: January 7, 2019

Respectfully Submitted,

GRASL PLC

/s/ Jeffrey S. Grasl

Jeffrey S. Grasl (P62550)

Counsel for Debtor

31800 Northwestern Hwy., Suite 350

Farmington Hills, MI 48334

T: 248.385.2980

F: 248.666.1360

Email: [jeff@graslplc.com](mailto:jeff@graslplc.com)

Label Matrix for local noticing  
0645-2  
Case 18-54906-tjt  
Eastern District of Michigan  
Detroit  
Mon Jan 7 15:00:44 EST 2019

Ability Insurance Company  
c/o Stevenson & Bullock, P.L.C.  
Attn.: Charles D. Bullock  
26100 American Drive  
Suite 500  
Southfield, MI 48034-6184

Allscripts, LLC  
24630 Network Place  
Chicago, IL 60673-1246

Birch Communications  
PO Box 105066  
Atlanta, GA 30348-5066

City of Livonia  
Treasurer's Office  
33000 Civic Center Dr.  
Livonia, MI 48154-3060

Craft Agency  
2533 Spring Arbor Rd.  
PO Box 1187  
Jackson, MI 49204-1187

Daniel's SharpSmart, Inc.  
PO Box 7697  
Carol Stream, IL 60197-7697

Deborah L. Fish  
Allard & Fish PC  
1001 Woodward Avenue  
Suite 850  
Detroit, MI 48226-1904

GFL Environmental USA, Inc.  
6200 Elmridge  
Sterling Heights, MI 48313-3706

Steven Haffner  
30300 Northwestern Hwy., #310  
Farmington Hills, MI 48334-3481

AT&T  
Attn: Legal Dept.  
208 S. Akard St.  
Dallas, TX 75202-4206

Accident Fund  
232 South Capitol Ave.  
Lansing, MI 48933-1536

Michael E. Baum  
40950 Woodward Ave.  
Suite 100  
Bloomfield Hills, MI 48304-5124

CONSUMERS ENERGY COMPANY  
Attn: Legal Dept  
One Energy Plaza  
Jackson, MI 49201-2357

Travis Comstock  
525 W. Ottawa  
3rd Floor  
Lansing, MI 48933-1067

Elliot G. Crowder  
26100 American Drive  
Suite 500  
Southfield, MI 48034-6184

Detroit Biomedical Laboratory  
23955 Freeway Park  
Farmington, MI 48335-2875

Fusion Holdings, LLC  
721 Elmwood  
Troy  
MI 48083-2867

Jeffrey S. Grasl  
31800 Northwestern Hwy.  
Suite 350  
Farmington Hills, MI 48334-1665

Ernest Hassan  
Stevenson & Bullock, P.L.C.  
26100 American Drive  
Suite 500  
Southfield, MI 48034-6184

Ability Insurance  
Office No. 1515  
S. 75th St #3735  
Omaha, NE 68103

AdvaCare  
23838 Network Place  
Chicago, IL 60673-1238

Leslie K. Berg (UST)  
211 W. Fort Street  
Suite 700  
Detroit, MI 48226-3263

Care Transport, Inc.  
4180 Packard Rd  
Ann Arbor, MI 48108-1506

Consumers Energy  
PO Box 740309  
Cincinnati, OH 45274-0309

DTE Energy  
Attn: Legal Dept.  
One Energy Plaza  
Detroit, MI 48226-1221

Deborah L. Fish  
1001 Woodward Ave.  
Suite 850  
Detroit, MI 48226-1904

GEN Power Products, Inc.  
29905 Anthony Dr.  
Wixom, MI 48393-3610

HD Supply  
3400 Cumberland Blvd SE  
Atlanta, GA 30339-4435

Kim K. Hillary  
40950 Woodward Ave.  
Ste. 100  
Bloomfield Hills, MI 48304-5124

Huron Valley Ambulance, Inc.  
1200 State Circle  
Ann Arbor, MI 48108-1691

Internal Revenue Service  
Attn: Elizabeth Pawlicki  
500 Woodward Ave., Stop 15  
Detroit, MI 48226-3416

Internal Revenue Service  
Centralized Insolvency Operation  
PO Box 7346  
Philadelphia, PA 19101-7346

Johnson Controls Fire Protection LP  
Simplex Grinnell Dept.  
CH 1032  
Palatine, IL 60055-0320

Kevin Erskine, Esq.  
U.S. Department of Justice  
211 W. Fort St., Suite 2001  
Detroit, MI 48226-3220

Richardo I. Kilpatrick  
903 N. Opdyke Rd.  
Suite C  
Auburn Hills, MI 48326-2693

Kilpatrick & Associates, P.C.  
c/o Wayne County Treasurer  
903 N. Opdyke Road, Suite C  
Auburn Hills, MI 48326-2693

Matrixcare  
10900 Hampshire Ave. S.  
Suite 100  
Minneapolis, MN 55438-2699

Medical Diagnostic Services, Inc.  
4479 Pontiac Lake Rd.  
Suite 1D  
Waterford, MI 48328-2058

Michigan Department of Health and Human Serv  
PO Box 30758  
Lansing, MI 48909-8258

Michigan Department of Treasury  
Bankruptcy Unit  
P.O. Box 30168  
Lansing, MI 48909  
5 48909-7668

One Care  
1945 Heide Dr.  
Troy, MI 48084-5313

Pete's Heating & Cooling, Inc.  
12070 Farmington Rd.  
Livonia, MI 48150-1726

John Postulka  
211 W. Fort St.  
United States Attorneys Office  
Detroit, MI 48226-3277

Reddi-Ride Transportation, Inc.  
23077 Greenfield Rd.  
Suite 146  
Southfield, MI 48075-3744

Ricoh USA, Inc.  
Attn: legal dept.  
70 Valley Stream Pkwy.  
Malvern, PA 19355-1407

Schafer & Weiner, PLLC  
40950 Woodward Ave. Suite 100  
Bloomfield Hills, MI 48304-5124

Service Care Industries, Inc.  
23040 Schoenherr Rd.  
Warren, MI 48089-2668

Slavik Enterprises LLC  
32500 Telegraph Rd.  
Suite 222  
Franklin, MI 48025-2463

St. Jude Nursing Center, Inc.  
721 Elmwood  
Troy, MI 48083-2867

State of Michigan Department of Treasury  
Office of Collections  
PO Box 30199  
Lansing, MI 48909-7699

State of Michigan Dept. Community Health  
Michigan Dept. Health & Human Services  
333 Grand Ave.  
Lansing, MI 48933-2108

State of Michigan UIA Tax Office/Collections  
Suite 12-650  
3024 W. Grand Blvd.  
Detroit, MI 48202-6024

Therapy Management, Inc.  
851 Penniman Ave.  
Plymouth, MI 48170-1621

Total Healthcare USA  
3011 W. Grand Blvd.  
Suite 1600  
Detroit, MI 48202-3000

Travis Comstock, Esq.  
Michigan Dept. Attorney General  
525 W. Ottawa St., 3rd Floor  
Lansing, MI 48933-1067

United States of America (IRS)  
United States Attorney's Office  
211 West Fort Street  
Suite 2001  
Detroit, MI 48226-3220

Wayne County Treasurer  
400 Monroe, 5th Floor  
Detroit, MI 48226-2964



The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Ability Insurance Company  
Office No. 1515  
S. 75th St. #3735  
Omaha, NE 68103

(u)Daniel M. McDermott

(d)Schafer & Weiner, PLLC  
40950 Woodward Ave.  
Suite 100  
Bloomfield Hills, MI 48304-5124

(u)Slavik Enterprises, LLC  
32500 Telegraph Road  
Suite 222  
Bingham Farms

(d)Slavik Enterprises, LLC  
32500 Telegraph Rd.  
Suite 222  
Franklin, MI 48025-2463

(u)Wayne County Treasurer

End of Label Matrix	
Mailable recipients	57
Bypassed recipients	6
Total	63