

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SELECT SPECIALTY HOSPITAL -            )  
MARION, INC.,                            )  
  )  
          Petitioner,                    )  
  )  
vs.                                        )     Case No. 04-3150CON  
  )  
AGENCY FOR HEALTH CARE                )  
ADMINISTRATION,                        )  
  )  
          Respondent.                    )  
\_\_\_\_\_                                    )

RECOMMENDED ORDER

Pursuant to notice, the case was heard by Charles A. Stampelos, a duly-designated Administrative Law Judge at the Division of Administrative Hearings on February 7 and 8, 2006, in Tallahassee, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether the Certificate of Need (CON) application No. 9757 filed by Select Specialty Hospital - Marion, Inc. (Select) for the establishment of a 44-bed free standing Long-Term Care Hospital (LTCH) in Agency for Health Care Administration (Agency or AHCA) Service District 6, in Polk County, should be approved.

PRELIMINARY STATEMENT

In 2004, Select filed CON application No. 9757 for the establishment of a 44-bed free standing LTCH in AHCA Service District 6 (District 6).<sup>1</sup> The final hearing was scheduled for January 18 through 20, 2006, but was continued. The final hearing was held on February 7 and 8, 2006.

On February 6, 2006, the parties filed a Joint Pre-Hearing Stipulation.

During the final hearing, Select called the following witnesses: Gregory H. Sassman, an expert in LTCH development; Jose Martinez-Salas, M.D., an expert in pulmonary medicine, critical care medicine, and internal medicine; Marsha Webb-Medlin, an expert in hospital administration, critical care nursing, LTCH nursing, administration, and operations; Patricia Greenberg, an expert in health care planning, financial

feasibility, and LTCH planning, feasibility, and operations; and Naushira Pandya, M.D., an expert in geriatric and internal medicine. Select Exhibits (S) numbered 1 through 13 were admitted into evidence.

The Agency called Jeffrey Gregg, the Chief of the Bureau of Health Facility Regulation of the Agency and an expert in CON review and health care planning. Agency Exhibits (AHCA) numbered 1 through 8 and 11 were admitted into evidence. (AHCA Exhibits numbered 9 and 10 were withdrawn.)

Select filed a Request for Judicial Notice to be taken of Florida Administrative Code Rules 59C-1.002 and 59C-2.100. The request was granted with the condition that the parties respond regarding the relevancy of these rules. Each party filed a response.

The Transcript (T) (Volumes 1-3) of the final hearing was filed with the Division of Administrative Hearings (DOAH) on February 20, 2006. On May 19, 2006, Select and the Agency filed proposed recommended orders and they have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### The Parties

1. AHCA. The Agency for Health Care Administration is the state agency authorized to evaluate and render final

determinations on CON applications pursuant to Section 408.034(1), Florida Statutes.<sup>2</sup>

2. Select. Select Specialty Hospital-Marion, Inc. is the applicant in this proceeding. Select is a wholly-owned subsidiary of Select Medical Corporation, which operates approximately 99 LTCHs in 27 states.

LTCH Services Generally.

3. An LTCH is defined by statute and Agency rule as "a hospital licensed under chapter 395 which meets the requirements of 42 C.F.R. s. 412.23(e) and seeks exclusion from the Medicare prospective payment system for inpatient hospital services." LTCHs are licensed as acute care hospitals, but are clearly different. In Florida, existing LTCHs can add beds without undergoing CON review.

4. Approximately 93 to 96 percent of LTCH patients are admitted from short-term acute care hospitals.

5. LTCHs are a part of the continuum of care that runs from hospitals to post-acute care facilities such as nursing homes, skilled nursing facilities (SNFs), hospital-based skilled nursing units (SNUs), and comprehensive medical rehabilitation (CMR) facilities.

6. LTCHs are designed to serve patients that would otherwise have to be maintained in a traditional acute care hospital (often in the ICU), or be moved to a traditional post-

acute care facility where the patient may not receive the level of care needed.

7. Patients with co-morbidities, complex medical conditions, severe injuries due to trauma, or frailties due to age are typically appropriate LTCH patients, particularly if the patient would otherwise remain in the ICU of a traditional acute care hospital. For such patients, an LTCH is likely the most appropriate setting from both a financial and patient-care standpoint.

8. There is a distinct population of patients who, because of the complexity or severity of their medical condition, are best served in an LTCH. However, there is an overlap between the population of patients that can be served in an LTCH and the population of patients that could also be well-served in the ICU of an acute care hospital or a traditional post acute care setting with ventilator capability.

9. SNFs, SNUs, CMR facilities, and home health care are not appropriate for the typical LTCH patient because the patient's acuity level and medical/therapeutic needs are higher than those generally treated in those settings. Unlike traditional post-acute care settings, which typically do not admit patients who still require acute care, the core patient-group served by LTCHs are patients who require considerable acute care through daily physician visits and intensive nursing care in excess of seven

hours of direct nursing care per patient day and remain at an LTCH for an average length of stay (ALOS) of 25 days or greater. (Depending on the Diagnostic Related Group (DRG) category for a particular diagnosis, generally, the ALOS for a short-term acute care hospital patient is between three and five days.)

10. It is important for an LTCH patient that the family be involved in the treatment and the continued care of the patient after the patient has been discharged to home or to another level of care on the continuum, such as an SNF/SNU or CMR.

11. Select offers four basic care programs: pulmonary, wound care, neurotrauma, and medically complex.

12. At Select facilities, patients are screened prior to admission to an LTCH to determine whether they are appropriate for admission. InterQual is a set of proprietary criteria used by Select to determine whether patients are suitable candidates for admission to an LTCH or another form of care.

#### CON Application and Preliminary Agency Action

13. Select applied for a CON to establish a 44-bed free-standing LTCH in Polk County, one county located in District 6. The facility will consist of 48,598 GSF of new construction. The total project cost is estimated at \$14,373,624.

14. The application was complete, and according to prehearing stipulations, the only reason that the application was denied and the issue in the case at hand is need. Select

has the burden of proving that there is a need for the LTCH in District 6.

15. Select agreed, as a condition for approval of its application, to provide 2.8 percent of patient days for Medicaid and charity care.

16. The Agency's review of CON application No. 9757 complied with statutory and regulatory requirements.

17. The Agency's review of CON application No. 9757 resulted in the issuance of a State Agency Action Report (SAAR) on June 10, 2004, which recommended the denial of CON application No. 9757 based on Select's failure to demonstrate a need for the proposed facility.

#### District 6 and Polk County Demographics

18. The population of District 6 as of July 2005 was 2,084,339 and is projected to increase nine percent to 2,272,017 by July 2010. This population is dispersed throughout five counties comprising District 6: Polk, Hillsborough, Hardee, Manatee, and Highlands. This includes a population of 354,327 in the age cohort 65+ (the age group eligible for Medicare) and is projected to increase by 15.94 percent by July 2010. This age group contains the patients that are mainly served by LTCHs, as more than 75 percent of admissions to an LTCH are elderly (65+).

19. The population of Polk County in July 2005 was 532,100, projected to increase by eight percent by July 2010 and 103,257 for the 65+ age cohort, projected to increase by 15.13 percent by July 2010.

20. There are two LTCHs that currently serve District 6. Both are operated by Kindred and have a combined 175 LTCH beds.<sup>3</sup>

21. According to AHCA data, Polk County residents were discharged from an LTCH in Florida 505 times in the years 2000 to 2005 (first three quarters). Of those 505 LTCH discharges, a total of 452, or 89.5 percent, were from a Kindred facility<sup>4</sup> in Hillsborough County. AHCA 3.<sup>5</sup> However, this data does not indicate which hospital or other facility the patient may have been referred from, which may be significant. For example, the patients could have been discharged from hospitals or other facilities other than a Polk County hospital/facility. Notwithstanding, this data shows that from year 2002 to 2005, Polk County residents have accessed the LTCHs in Hillsborough County. Also, aside from an upward, unexplained spike in 2002, the utilization numbers are relatively flat.

22. Kindred Hospital - Bay Area - Tampa (Kindred Bay Area) operates 73 licensed LTCH beds and is located one county west of Polk County, in Hillsborough County. It is located approximately one (1) hour away from Winter Haven, which is Select's proposed site in the central area of Polk County.



23. From July 2004 through June 2005, the total occupancy of Kindred Bay Area was at 62.20 percent. From July 2002 to June 2003, the total occupancy for this facility was 67.15 percent.

24. Kindred Hospital - Central Tampa (Kindred Central Tampa) is also located in Hillsborough County, approximately one (1) hour away from Winter Haven.<sup>6</sup>

25. From July 2004 through June 2005, the total occupancy of Kindred Central Tampa was 67.37 percent. From July 2002 thru June 2003, the total occupancy for this facility was 77.03 percent.

26. Select's sister facility, Select-Orlando, approved for 40 LTCH beds, is located in AHCA Service District 7 in Orange County, which is northeast of Polk County. (Select Specialty Hospital - Orlando is also located in District 7, operating 35 licensed LTCH beds with occupancy for the year ending June 2005 of 75.83 percent.)

27. In the years 2003-2005 (2003 was the first year the facility was operational), Polk County residents were discharged from the Select-Orlando facility 38 times. This is approximately 7.5 percent of the total Polk County patients discharged.

28. In 2005, only one Polk County resident was discharged from a facility other than the two Kindred facilities or the Select Orlando facility.

29. For July 2004 to June 2005, the occupancy for all LTCHs in the State of Florida was 66.91 percent and 65.21 percent for District 6. From July 2002 to June 2003, the occupancy for all LTCHs in the State of Florida was 73.23 percent and 72.91 percent for District 6. There has been a decline in utilization of LTCHs on a statewide and district-wide (District 6) basis.

30. Select presented letters of support for the LTCH facility in Polk County, including letters from local hospital administration and physicians. See, e.g., S 2, Volume I, Tab 2 at 38-43 and Tab 4; S 2, Volume II, Tabs 7 and 8.

Select's Analysis of Need

31. The Agency has not adopted a need methodology for LTCH services. There is no published fixed need pool for LTCHs.

32. Select examined population estimates for Polk County and surrounding areas; the number of acute care hospital beds in the area; the number of LTCH beds in the area; discharge data from area acute care hospitals; the types of patients treated at acute care hospitals; the lengths of stays of the patients treated at those hospitals; and input from local hospital personnel and physicians.

33. Select started its analysis of need on a district-wide basis, but ultimately defined its primary service area as Polk County. T 131-134, 156-157. (Select defined its primary service areas as an area within a 20 mile radius.)

34. Select used four methods to establish the need for the LTCH in Polk County:

- a. Extended length of stay analysis
- b. GMLOS (Geometric Mean Length of Stay) + 15 days analysis
- c. Long-stay short-term acute care versus LTCH penetration analysis
- d. UB-92 patient discharge analysis (Polk County)

35. An extended length of stay analysis involves analyzing discharges by DRG from Polk County hospitals to arrive at the top DRGs experienced by these hospitals. This analysis will exclude lengths of stays under 25 days, patients under the age of 14, substance abuse diagnosis, obstetric diagnosis, newborn diagnosis, psychiatric diagnosis, and rehabilitation diagnosis. The total amount of discharges is multiplied by the anticipated length of stay for an LTCH patient (the analysis can be done statewide or using a national average) and then divided by 365 to arrive at an average daily census of patients.

36. Select analyzed Polk County discharges that matched the criteria above and came up with 644 patients, which was

multiplied by 40.6 (Florida average LTCH stay at time of application) in one calculation and 33 (national average LTCH stay at time of application) in a second calculation, before dividing by 365 in both to arrive at an average daily census (ADC).

37. Using 40.6 as the average length of stay (ALOS), there is an ADC of 72. With an average occupancy of 72 percent, there is a need for 96 beds in Polk County.

38. Using 33 as the ALOS, there is an ADC of 58 and a need for 77 beds in Polk County at 75 percent occupancy.

39. Select LTCHs have a 28-day ALOS, which yields an average daily census of 49.4 with a bed need for 66 beds in Polk County at 75 percent occupancy.

40. The GMLOS + 15 analysis involves looking at geometric mean lengths of stays for individual DRGs that begin at eight (8) days, excluding obstetrics, psychological, substance abuse, and rehab patients, and then calculating how many of these patients stayed 15 days past their GMLOS for the particular DRG. The number of patients is then multiplied by the ALOS for Florida and the nation and a bed need is determined.<sup>7</sup>

41. Using this analysis and data for the 12 months ending September, 2003, Select contends that there were 823 patients who would have exceeded their GMLOS by 15 days. Using 40.6 as the Florida average LTCH stay, results in an ADC of 92.

Operating at 75 percent occupancy yields a need for 122 beds. Using 33 days as the national average LTCH stay, results in an ADC of 74. Operating at 75 percent occupancy, yields a net need for 99 beds in Polk County. (Using calendar year 2004 data and the same ALOS of 33 days and occupancy of 75 percent, yields a net need in Polk County for 130 beds. Select's GMLOS + 15 analysis also yields a positive net bed need for Polk County exceeding the 44-beds requested, using an ALOS of 30 and 28 and either 2003 or 2004 data.) S 6 at pages 8-10; T 149-151.

42. Select also used the GMLOS + 15 methodology to predict need for additional LTCH beds on a county-wide basis (for the five counties within District 6) and a district-wide basis. Using 2003 data and 33 days as the average LTCH stay, there is a projected net need for 305 beds district-wide operating at 75 percent occupancy. (A net need for additional LTCH beds is also shown when either 2003 or 2004 data is used with ALOSs of 30 and 28.) S 6 at 8-10.

43. When applied to Hillsborough County, using different patient days and GMLOS + 15 case numbers, but the same occupancy percentages, the GMLOS + 15 methodology reflects a net LTCH bed need for Hillsborough County. For example, using 2003 and 2004 data, a 28 ALOS, and a 75 percent occupancy level, the methodology yields a net bed need of 99 beds in Hillsborough County. Id. A net bed need also is calculated for

Hillsborough County when an adjustment is made to the data for severity. S 6 at 11-13. (Select's "most conservative position", using a "capture rate analysis of severity adjusted matters," yields a negative bed need for Hillsborough County and a much lower district-wide net bed need than the other GMLOS + 15 analyses described herein. Select suggests that this analysis understates need. S 6 at 14.)

44. Notwithstanding the overall favorable bed need analysis discussed above, as noted herein, the occupancy levels at the Kindred facilities in Hillsborough County have been declining in recent years and are below the 75 percent occupancy level. Absent persuasive evidence that residents of Hillsborough County are being deprived of access to LTCH services, it appears that Select's net bed need projections for Hillsborough County and District 6 are overstated. Select did not prove (by use of its GMLOS + 15 analysis or otherwise) that there is a need for additional LTCH beds in District 6.

45. GMLOS + 7 was also discussed by Select, but is too aggressive for purposes of LTCH planning.

46. The third method of comparing patients in Polk County who had a long stay (24+ days) in a Short Term Acute Care (STAC) facility versus those who went to an LTCH does not produce an actual bed need number, but instead provides evidence of a need for an LTCH in a particular area. Select contends that the

application of this method shows that there is a lack of access to the other facilities in District 6 and there is a need for an LTCH facility in Polk County.

47. An analysis of UB-92 patient discharge data involves pulling the uniform billing records for each patient and looking at the severity adjustment of the long stay patients. The information is available on the AHCA database. (According to Mr. Gregg, UB-92 data "would be one of the best sources that one could use to define severity and eliminate some patients from this length of stay group." T 382.) The DRG alone will not take into account co-morbidities, but the UB-92 will. The analysis of UB-92 data does not compute a specific bed need, but may show that the existence of need.

48. Both parties contend that using the GMLOS + 15 method is the most accurate.

49. Using the GMLOS + 15 method quoted above, Select determined that there was a need for a 44-bed LTCH facility in Polk County and District 6.

#### Issues Regarding Need Analysis

50. There are some problems with the GMLOS + 15 method for determining need. One problem is the inflated length of stay of 40.6 days used in the application. Other problems include the assumption of 100 percent capture of eligible patients and the assumption that any patient who stays 15 days over their GMLOS

would be eligible for LTCH services, which is not necessarily true.

51. There have been numerous recent approvals for LTCHs in the State of Florida, and some of these new facilities will impact the capacity numbers of the already existing facilities.<sup>8</sup>

52. Proper patient identification is a concern of the Agency with regard to overlap with other suitable services. The Agency contends that using the UB-92 forms is a more accurate way of determining which patients are most suitable for LTCH services.

53. LTCH patients cost Medicare more than patients in other settings.

54. The Medicare Payment Advisory Commission (MedPAC) was established to advise Congress on issues that affect the Medicare program. The Agency introduced into evidence Chapter 5 of the June 2004 MedPAC report into evidence, which concentrated on "Defining long-term care hospitals". AHCA 5; see also AHCA 6 and 7.

55. The Agency has been concerned with the identification of patients who are in need of LTCH services as compared with patients who would be better suited in a post-acute care setting, such as a SNU/SNF or CMR facility.

56. The June 2004 MedPAC report stated in part that LTCH services are for a small number of medically complex patients



and that acute hospitals and SNFs are the principal alternatives to an LTCH. The report also contends that LTCH supply is a strong predictor of their use. In other words, according to Mr. Gregg, LTCHs "are a supplier-induced demand." T 317.

#### Travel Patterns and Family/Physician Involvement

57. Patient, family, and physician preferences have always been a part of health care planning. They affect both availability and accessibility.

58. Families and other care givers play a critical role regarding the delivery of care to LTCH patients. The elderly are a special population with special needs. They commonly have to manage multiple problems, including financial difficulties, drug management, transportation logistics, and sometimes fragile mental and physical conditions. Older patients, as care givers, also have a more difficult time driving, especially over longer distances. Medical experts have opined that having an LTCH over one hour away from the patient population in Polk County (the Winter Haven area) is not geographically accessible for the elderly needing LTCH services in Polk County.

59. Further, while primary care physicians may choose to travel to an LTCH to continue to serve their patients, in reality, this does not generally occur when the LTCH is a fair distance from their usual practice area.

60. Select believes the travel patterns from Polk County to Hillsborough County, where the two LTCHs in District 6 are located, show that there is a need for one in the Winter Haven area of Polk County. Although the travel patterns and the travel time to the current facilities may make it inconvenient for the patient or the families, the benefits of LTCH care greatly outweigh this inconvenience.

Need on a Subdistrict vs. District Level

61. The Agency reviews the need for additional LTCHs on a district-wide basis. S 12 at 52-54.

62. The fact that there are existing facilities already in District 6 that are being underutilized is a counterargument for "need" in District 6.

63. Select conducted the majority of its needs analysis on a subdistrict level. If a CON application for an LTCH could be reviewed and approved on a subdistrict level, here using Polk County alone, Select would be able to satisfy the need requirement, based, in part, on the number of acute care beds in Polk County, the lack of any LTCH beds in Polk County, travel and accessibility-related issues, population trends, and the county-wide health care provider support for the facility.

CONCLUSIONS OF LAW

64. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this

proceeding pursuant to Sections 120.568, 120.57(1), and 408.039(5), Florida Statutes

65. Select has the burden of proving by a preponderance of the evidence that CON application No. 9757 should be approved. Boca Raton Artificial Kidney Center, Inc. v. Department of Health & Rehabilitative Services, 475 So. 2d 260 (Fla. 1st DCA 1985); § 120.57(1)(j), Fla. Stat.

66. The award of a CON must be based on a balanced consideration of all applicable and statutory rule criteria. Balsam v. Department of Health & Rehabilitative Services, 486 So. 2d 1341 (Fla. 1st DCA 1986). "[T]he appropriate weight to be given to each individual criterion is not fixed, but rather must vary on a case-by-case basis, depending upon the facts of each case." Collier Medical Center, Inc. v. Department of Health & Rehabilitative Services, 462 So. 2d 83, 84 (Fla. 1st DCA 1985).

67. The parties stipulated that the main issue to be resolved in this proceeding is whether there is a need for Select's 44-bed LTCH project. See § 408.035(1), (2), and (5), Fla. Stat. Other issues include whether Select's project will foster competition that promoted quality and cost-effectiveness and consideration of Select's (and its parent) past and proposed provision of health care services to Medicaid patients and the medically indigent. See § 408.035(7) and (9), Fla. Stat.<sup>9</sup>

68. AHCA has reviewed the need for LTCH CON applications on a district-wide basis. See, e.g., Select Specialty Hospital - Marion, Inc. v. State of Florida, Agency for Health Care Administration, Case No. 04-0444CON (DOAH October 31, 2005; AHCA December 21, 2005). AHCA 11.

69. A "'District' means a health service planning district composed of the following counties: . . . District 6.- Hillsborough, Manatee, Polk, Hardee, and Highlands Counties." § 408.032(5), Fla. Stat. A "'Long-term care hospital means a hospital licensed under chapter 395 which meets the requirements of 42 C.F.R. s. 412.23(e) and seeks exclusion from the acute care Medicare prospective payment system for inpatient hospital services." § 408.032(13), Fla. Stat.

70. A CON application is reviewed in context with several statutory criteria including "[t]he need for the health care facilities and health services being proposed" and "[t]he availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant." § 408.035(1) and (2), Fla. Stat.

71. In general, health care projects, which are subject to CON review, are reviewed on a district-wide as opposed to subdistrict-wide basis, unless otherwise indicated by statute or rule.

72. "'Subdistricts' mean a subdivision of a district designated by the local health council as established under Rules 59C-2.100 and 59C-2.200, F.A.C." Fla. Admin. Code R. 59C-1.002(38).

73. "Acute care subdistricts are proposed by Local Health Councils and utilized by the agency in conjunction with the methodology for determining need for acute care beds. A full description of the need methodology appears in Rule 59C-1.038, Florida Administrative Code." Fla. Admin. Code R. 59C-2.100(1). (Rule 59C-1.038 was repealed in 2005.) Polk County is defined as "[s]ubdistrict 6-2," an acute care subdistrict. Fla. Admin. Code R. 59C-2.100(3)(f)2. However, an "'[a]cute care bed' means a patient accommodation or space licensed by the agency pursuant to Chapter 395, Part I, F.S., and regulated under Rule 59C-1.038, F.A.C. Acute care beds exclude . . . beds in long term care hospitals licensed pursuant to Chapter 395, Part I, F.S." Fla. Admin. Code R. 59C-1.002(1)(emphasis added).

74. Pursuant to Florida Administrative Code Rule 59C-1.008(2)(e)2.a.-d., Select has the burden to prove need through a needs assessment that includes, at a minimum, the following topics:

- a. Population, demographics and dynamics;
- b. Availability, utilization, and quality of like services in the district, subdistrict, or both;

c. Medical treatment trends; and

d. Market conditions.

75. As noted, the need for an additional LTCH is assessed by examining, in part, the availability, utilization, and quality of like services in the district, subdistrict, or both. However, there is only one definition of "subdistricts" and Polk County is, by Agency rule, an acute care subdistrict, not an LTCH subdistrict. As a result, LTCHs are evaluated on a district-wide basis and not on a subdistrict-wide basis.

76. The excess availability of beds in District 6 at the two Kindred LTCH facilities demonstrates a lack of need for a new LTCH in District 6.

77. A "geographical barrier" that consists of inconvenient traffic patterns or a travel time of one (1) hour is not a sufficient barrier to access.

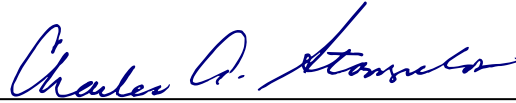
78. Select has not met its burden of proof in this case because it did not show that there is a need in District 6 for an additional LTCH facility. On balance, Select's CON application should be denied.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Agency issue a final order denying Select Specialty Hospital - Marion, Inc.'s CON application No. 9757.

DONE AND ENTERED this 11th day of July, 2006, in Tallahassee, Leon County, Florida.



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CHARLES A. STAMPELOS  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of July, 2006.

ENDNOTES

<sup>1/</sup> Select's CON application was comparatively reviewed by the Agency with a co-batched applications filed by SemperCare Hospital of Lakeland, Inc. and BayCare Long Term Acute Care, Inc. All of the CON applications were initially denied by the Agency in its State Agency Action Report (SAAR) issued June 11, 2004. SemperCare filed a petition challenging its denial, but subsequently voluntarily dismissed its petition on or about January 4, 2006.

<sup>2/</sup> All citations are to the 2005 version of the Florida Statutes unless otherwise indicated.

<sup>3/</sup> In District 6, relevant here, as of December 16, 2005, there are 23 acute care hospital facilities and 5,756 beds; four general hospital facilities with 131 comprehensive rehabilitation beds; and two hospital facilities with skilled nursing units with 30 beds. In Polk County, there are six

short-term acute care hospitals, with Lakeland Regional Medical Center and Winter Haven Hospital designated as tertiary care hospitals. There are approximately 1,569 acute care beds in Polk County as of January 1005.

<sup>4/</sup> There is testimony that it has been somewhat difficult to place patients at a Kindred facility, either because the facility was full or it had a quota of dialysis or Medicaid patients and could not accept any more patients at the time. See, e.g., S 9 at 17, 23, 26-27.

<sup>5/</sup> This data is patient origin information by county of the patient's residence. Ms. Greenberg disagrees with this data and suggests that less than ten percent of the people in need of LTCH services in Polk County actually went to an LTCH in Hillsborough County. T 134-135, 198, 201. (Select's CON application stated: "Less than 10 percent of Polk County residents are admitted to [LTCHs] anywhere in the State, evidencing a clear need and that existing facilities are not accessible." S 2, Volume I at 29.)

<sup>6/</sup> The Agency uses a two-hour travel time standard within the service district (here District 6) for LTCHs. The drive times to an existing LTCH in Hillsborough or Orange counties could be less depending on where the Polk County resident resides.

<sup>7/</sup> Select examined the patient population that was admitted to Polk County hospitals because a large percentage of Select's LTCH admissions are likely to come from Polk County hospitals. Ms. Greenberg assumed 100 percent. T 163.

<sup>8/</sup> The Agency has recently approved 14 facilities, either initially, or after recommended orders. Two of these facilities, located in Pinellas and Pasco counties, are expected to take some of the patient referrals away from the Kindred facilities in Hillsborough County.

<sup>9/</sup> Select's national experience and proposed percentages for Medicaid and charity care exceed the statewide and nationwide averages. T 186-188. Select's project will enhance access for LTCH services for residents of Polk County, and particularly those residents residing in the Winter Haven area, but not necessarily improve access for residents of District 6. Select's project will enhance competition in the Polk County area for the provision of LTCH services. However, it was not proven that the project would improve cost-effectiveness or



quality in District 6, although it would be more cost-effective for individual residents of Polk County needing LTCH services.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.