



State of New Jersey
DEPARTMENT OF HEALTH

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Commissioner

December 23, 2021

VIA ELECTRONIC & FIRST-CLASS MAIL

Shlomo Freundlich
Gray Capital, LLC
1608 Route 88, Suite 301
Brick, New Jersey 08724

Re: Bergen Rehabilitation & Healthcare Center
Relocation of 180 LTC beds
CN ER# 2020-6194-02
Total Project Cost: \$ 20,000,000
Expiration Date: December 23, 2026

Dear Mr. Freundlich:

Please be advised that the Department of Health (Department) is approving the application of Bergen Rehabilitation & Healthcare Center, a wholly owned subsidiary of Community Healthcare and Rehabilitation, LLC, submitted on November 1, 2018, for the relocation of a long-term care (LTC) facility and LTC beds acquired by Gray Capital, LLC. This newly constructed 180 bed LTC facility will be named Bergen Rehabilitation & Healthcare Center (BRHC) and will be located at 100 Summit Avenue in the Borough of Montvale, Bergen County. This application is being approved at the total project cost as noted above.

The Department acknowledged the ownership of 180 LTC beds by Gray Capital, LLC from Jersey City NHL, LLC in correspondence dated November 18, 2019. The 180 LTC beds were formerly licensed at Majestic Rehabilitation and Nursing Center Inc. (Hudson County). The rights to the LTC license also originated from the former Majestic Rehabilitation and Nursing Center Inc. located in Jersey City, Hudson County. After a recent transfer of ownership approved by the Department in correspondence dated November 18, 2019, Gray Capital, LLC is now the owner of the rights to a license and 180 LTC beds. Gray Capital, LLC, the applicant and prospective licensed operator, confirmed that 180 LTC beds would be implemented at this proposed facility. The source of these LTC beds, Hudson County, is contiguous with Bergen County, thereby comprising the same planning region.

N.J.S.A. 26:2H-8 provides for the issuance of a certificate of need only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health care services in the region or statewide, and will contribute to the orderly development of adequate and effective health care

services. In making such determinations, the Department must take into consideration: a) the availability of facilities or services which may serve as alternatives or substitutes; b) the need for special equipment and services in the area; c) the possible economies and improvement in services to be anticipated from the operation of joint central services; d) the adequacy of financial resources and sources of present and future revenues; e) the availability of sufficient manpower in the several professional disciplines; and f) such other factors as may be established by regulation.

As to the aforementioned specifics of this application, the Department notes that in identifying those services that are subject to expedited review, services have been chosen that would have a minimal impact on the health care system as a whole and, therefore, for which a statistical bed need methodology would not be necessary. The services in this application are subject to expedited review pursuant to N.J.A.C. 8:33-5.1(a)(11) and N.J.A.C. 8:33-5.1(a)(12) for the relocation of beds and a facility within the same planning region, therefore, a need assessment is not required. The Department believes that the criterion regarding the availability of facilities or services which may serve as alternatives or substitutes is not applicable since the services in this application will have a minimal impact on the health care system as a whole. The need for sufficient special equipment and services in the area does not apply as this application is for general LTC beds. No economies of scale or service improvements from the operation of joint central services have been identified. The Department believes that this project can be economically accomplished and maintained, as the applicant projects a positive net income by the end of the first year of operation. It is also noted that while professional staff will be required to accommodate the establishment of this LTC facility, the Department is confident that there is sufficient professional staff available in the area to meet those staffing needs.

The Department has taken into consideration the applicable regulations for the services subject to expedited review (i.e., N.J.A.C. 8:33-5.3 and 8:33H-1.16), and finds that Gray Capital, LLC, the proposed licensed operator, has provided an appropriate project description. The project description includes information as to the total project cost, operating costs and revenues, services affected, equipment involved, source of funds, utilization statistics, and justification for the proposed project (N.J.A.C. 8:33-5.3(a)(1)); assurance that all residents of the area, particularly the medically underserved, will have access to services (N.J.A.C. 8:33-5.3(a)(2)); and documentation that it will meet appropriate licensing and construction standards (N.J.A.C. 8:33-5.3(a)(3)(i)). In addition, Gray Capital, LLC has demonstrated a track record of substantial compliance with the Department's licensing standards (N.J.A.C. 8:33-5.3(a)(3)(ii)).

Pursuant to the criteria set forth in N.J.A.C. 8:33-5.3(a)(2), Department staff have determined that there will not be an adverse impact on the ability of either the general population currently being served or the medically underserved in accessing residential LTC services in Hudson County as a result of the relocation of 180 LTC beds to Bergen County as part of the overall component of LTC beds for the proposed facility. The proposed facility's beds were originally from Hudson County, a contiguous county in the same planning region as Bergen County. According to Department figures, there are currently 2473 licensed LTC beds in Hudson County. The reduction of 180 LTC beds from Hudson County will decrease its supply by less than 8 percent. The relocation of these 180 LTC beds to Bergen County, which currently has 5157 licensed LTC beds, will increase its supply by about 3.5 percent.

According to N.J. Department of Labor and Workforce Development projections, Hudson County currently has 81,620 persons aged 65 and over, which is estimated to increase 7 percent, to 87,080 persons over the next three years. Bergen County currently has 173,400 persons aged 65 and over, which is estimated to increase 8 percent, to 187,800 persons over the next three years. Thus, given the small reduction of beds in Hudson County, and the relocation of beds to Bergen County, the Department is satisfied that there will be no adverse effect on access to LTC beds for residents of Hudson County, and that the additional 180 LTC beds at Gray Capital, LLC will benefit the population of Bergen County.

Please be advised that this approval is limited to the proposal as presented and reviewed. The application, related correspondence, and any completeness questions and responses are incorporated and made a part of this approval. An additional review by the Department may be necessary if there is any change in scope, as defined at N.J.A.C. 8:33-3.9. However, a change in cost of an approved certificate of need is exempt from certificate of need review subject to the following:

1. The applicant shall file a signed certification as to the final total project cost expended for the project at the time of the application for licensure for the beds/services with the Department's Certificate of Need and Healthcare Facility Licensure Program.
2. Where the actual total project cost exceeds the certificate of need approved total project cost and is greater than \$1,000,000, the applicant shall remit the additional certificate of need application fee due to the Certificate of Need and Healthcare Facility Licensure Program. The required additional fee shall be 0.25 percent of the total project cost in excess of the certificate of need approved total project cost.
3. The Department will not issue a license for beds/services until the additional fee is remitted in full.

Furthermore, pursuant to N.J.A.C. 8:33H-1.15(a), this approval to relocate LTC beds to BRHC will be subject to the utilization requirements for Medicaid-eligible residents and former psychiatric patients, or a higher standard if one was imposed on a previous certificate of need approval for any of the beds being relocated to this new facility.

The Department, in approving this application, has relied solely on the facts and information presented. The Department offers no opinion as to whether the proposed ownership or business organization is in compliance with the Codey Act, Board of Medical Examiners' administrative rules, the federal anti-referral (Stark) and federal anti-kickback laws. The Department has not undertaken an independent investigation of such information. If material facts have not been disclosed or have been misrepresented as part of this application, the Department may take appropriate administrative regulatory action to rescind the approval or refer the matter to the Office of the Attorney General.

Any approval granted by this Department relates to certificate of need and/or licensing requirements only and does not imply acceptance by a reimbursing entity. This letter is not intended as an approval of any arrangement affecting reimbursement or any remuneration involving claims for health care services.

This approval is not intended to preempt in any way the authority of any municipality to regulate land use within its borders and shall not be used by the applicant to represent that the Department has made any findings or determination relative to the use of any specific property.

Please be advised that services may not commence until a license has been issued by the Certificate of Need and Healthcare Facility Licensure Program to operate this facility. A survey by Department staff will be required prior to commencing services.

The Department looks forward to working with the applicant to provide high quality of care to the LTC residents. If you have any questions concerning this Certificate of Need approval, please do not hesitate to contact Luisa Alexopoulos, Program Manager at luisa.alexopoulos@doh.nj.gov.

Sincerely,

Robin C. Ford

Robin C. Ford, MS
Deputy Commissioner
Health Systems

cc: David Kostinas, David G. Kostinas & Associates (electronic mail)
Chaya Rokowsky, Gray Capital, LLC (electronic mail)
Cynthia Dunn, DOH (electronic copy)
Luisa Alexopoulos, DOH (electronic copy)
Gary Spiewak, DOH (electronic copy)
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