

Memorandum to the Commissioner

Applicant: Advocate Healthcare of East Boston, LLC
111 Orient Avenue
East Boston, MA 02128

Project Number: DoN 19120215-CL

Date of Application: December 31, 2019

Introduction

This memorandum presents, for Commissioner review and action, the Determination of Need (DoN) Program's recommendation regarding a request by Advocate Healthcare of East Boston, LLC (Advocate) f/n/a Don Orione Nursing Home, for approval of renovations to restore its 190-bed long term care facility, located at 111 Orient Ave., East Boston. The capital expenditure for the project is \$10,087,722. The Applicant is a Massachusetts limited liability company (LLC) formed for the acquisition of the facility in November 1, 2019. The facility has been managed by a related company, Advocate Healthcare Management, LLC since 2015.

This Application is presented as a Conservation Project, which means "Construction that consists solely of a project(s) that would Sustain or Restore a Health Care Facility or service for its designated purpose, and to its original functionality, without Modernization, Addition, or Expansion." Pursuant to 105 CMR 100.210(B)(2), Factors 1, 2, and 5 do not apply to Conservation Projects. Therefore, Staff reviewed this proposal in the context of Factors 3- Compliance, 4- Financial Feasibility, and 6- Community Health initiatives. Pursuant to 105 CMR 100.630, this Application has been delegated by the Department for review and Final Action by the Commissioner.

Background

The Applicant's facility was constructed in 1952 as part of the Ministry of the Sons of Divine Providence, with additional square footage added in 1956 and in 1965. For thirty years, few repairs or replacements to its infrastructure, design and systems have been done, and as a result, much of it is beyond its useful life and requires frequent repairs and/or replacement¹. The Applicant reports that new management has resulted in a steady improvement in operations, impacting both financial performance and in the delivery of quality of care. This improvement is shown in the resident days' data which has grown on average 6% per year over the last four years.² To verify the assertions of quality improvements, Staff reviewed the Department of Public Health's Nursing Home Survey Performance Tool and found that there were no outstanding complaints and that it ranked higher than the average nursing home in MA.³ On the Centers for Medicare and Medical Service's Nursing Home Compare, it received 4 out of 5 stars based on the quality of care provided and staffing.

Conservation Projects are not subject to analysis under Factor 1 of the DoN regulation, which looks at the needs of the Patient Panel. However, for context, the Applicant looked at the facility's service

¹ The Applicant states that delays in making infrastructure changes were due to the fact that its former owner The Order of the Sons of Divine Providence, was unable to find qualified management for the Facility until 2015.

² From 37,253 days in 2015 to >47,191 days in 2019 (data based on 8/19 YTD days.)

³ "This nursing facility met 127 out of the 132 key requirements in all five categories in its last three surveys. "The number of deficiencies not met as a result of complaint investigations is: 0." The facility's score is 127 after adjustment for scope and severity. 79% of all facilities had a score of 127 or lower. The statewide average facility score is 120." <https://eohhs.ehs.state.ma.us/nursehome/FacilityOvarall.aspx?Facility=0479>

area where residents lived, payor mix and census data. The average resident's age is 73, with 55% being male. Overall, the 2018 payer mix shows that 84% of patient days are paid by Medicaid, 9% by Medicare, 4% by HMO/Other, and 3% by private payers. The majority of the residents come from E. Boston, Winthrop, Boston, Chelsea and Revere. The Applicant noted that the region has higher incidence of asthma, hypertension, and those reporting difficulty with independent living than the statewide averages.⁴

The Proposed Project

Through the Proposed Project, the Applicant aims to restore much of the aging infrastructure of the facility to provide an improved environment for patients and staff and enable the Facility to continue with its mission into the future.

The Applicant states that the building is nearly 70 years old and, because of its age, needs to bring much of its infrastructure and systems, as described below, and two of the nursing units into compliance with current healthcare building standards and restore it to its designated purpose and original functionality.

The Applicant identified what it describes as the best means of sustaining and restoring the facility given constraints of the lot, facility, and financial resources and conducted a facility-wide assessment to identify all systems that are past their useful life and/or outdated with respect to current building standards and requirements. Due to financial constraints, it determined that the entire facility could not be renovated at once, but that a "targeted approach would result in material benefit for the Facility." The Applicant asserts that such an approach to ameliorate key systems and infrastructure problems will improve residents' overall quality of life.

With this Proposed Project, some renovations will be facility and system-wide and benefit all of the facility's residents; these include replacing the following "critical systems" that are beyond their useful lives:

- the boiler (which is over 60 years old)
- electrical panels
- fire alarm system
- emergency generator; and
- the majority of the windows.

In addition, in order to provide treatment areas that meet current health care industry practices and ensure resident privacy and confidentiality, the Applicant proposes combining, relocating, and expanding the therapy areas for all residents in the garden level, so as to integrate speech and occupational therapy with PT,

Other more localized renovations will be **only on the first floor in the two nursing units** and therefore will primarily benefit those residents. These include:

- Removal of community bathrooms;
- Plumbing replacement, including new toilets, sinks, showers and tubs;
- Addition of new systems, including:
 - HVAC

⁴ From Exhibit 1 of Advocate's DoN Application.

- Fire protection
- Lighting systems
- Nurse call systems
- Renovations that include
 - asbestos remediation
 - new casework, handrails, flooring
- Removal of cinderblock walls;
- Expansion common nursing space/nursing stations;
- Renovations of the resident common area; and
- Replacement of furniture and fixtures

Of particular import is related to compliance is the change in room configurations throughout three wings of the facility, namely:

- Elimination of all 4 bed-rooms to bring into compliance with CMS. Currently there are 44 beds in such rooms;
- Reduction of three bed rooms to further comply with CMS. Currently there are 90 beds in such rooms and this project will reduce that number by 21; and
- Creation of 8 additional single bed rooms.

Staff notes that these improvements are aligned with CMS rules and Massachusetts’ standards for long-term care facilities. State regulations, which adopt the CMS standards, state that “in the event of new construction or reconstruction, as defined by CMS, of a building or nursing care unit, each of the affected resident bedrooms may not contain more than two beds.” The architectural plans, including the proposed configuration of rooms following implementation of this Proposed Project will be reviewed for compliance by Plan Review and CMS.

Staff finds that the Applicant has presented sufficient information affirming that the proposed construction fits within the definitions in the DoN Regulation of Sustain and/or Restore; that this proposed Conservation Project is necessary to maintain the original functionality of the facility, and does not add any new beds, services or capacity; and that because of these improvements described herein, patient comfort is likely to be improved and the facility will be more efficient.

Factor 3

The Applicant has certified that it is in compliance and in good standing with federal, state, and local laws and regulations, including, but not limited to M.G.L. c. 30, §§ 61 through 62H and the applicable regulations thereunder, and in compliance with all previously issued notices of Determination of Need and the terms and conditions attached therein.

Factor 4

Under factor 4, the Applicant must demonstrate that it has sufficient funds available for capital and operating costs necessary to support the Proposed Project without negative effects or consequences to the existing patient panel. Documentation sufficient to make such finding must be supported by an analysis conducted by an independent CPA. The Applicant submitted a report performed by Clifton, Larson, Allen (CPA Report).

In order to assess the reasonableness of assumptions used, and the feasibility of the projections for the proposed project, the CPA Report reflects a review and analysis of Advocate's audited financial statements, current financial position, and industry metrics. Additionally, the CPA reviewed the 2019-2024 financial projections and supporting documentation, including underlying assumptions prepared by management, and determined they were reasonable.

The CPA reports that projected revenue is based on historical operations with adjustments having been made to account for anticipated changes to commercial and governmental reimbursement rates. Projected occupancy rates and payer-mix remain consistent with historical performance. Based on the foregoing, the CPA's opinion is that the growth projections for Advocate reflect a reasonable estimation of future revenues.

The CPA also reviewed the Applicant's projected operating expenses and states that those projections are based on historical annual line-items; it notes one decrease in administrative payroll due to organizational staffing changes. Overall, the majority of expenses are projected to increase 2% annually, except for health insurance, which is projected to increase at 5% per year based on historical growth rates. Since the Applicant expects patient volume at Advocate to remain steady, operating expenses are expected to increase proportionally with inflation. After review of these categories of expenses, the CPA's opinion is that the projections of the Applicant are reasonable.

The CPA also reviewed capital expenditures and cash flow to determine whether the Applicant will likely have sufficient funds to service the debt and to reinvest in the facility in order to maintain the renovations associated with this Proposed Project. According to the documents reviewed by the CPA, the Applicant will refinance existing debt with the Project via a HUD insured debt mechanism,⁵ and these two factors combined, will result in a cumulative small reduction⁶ in net operating income as a percentage of cumulative revenue. As a result of the foregoing, the CPA determined that "the projections are reasonable and feasible, and not likely to have a negative impact on the patient panel or result in a liquidation of assets."

⁵ which will be amortized over 35 years

⁶ from 7.9% to 7.5%

Analysis of Factor 4

As a result of information provided by the Applicant, staff finds the Applicant has reasonably met the standards of Factor 4.

Factor 6

The Community Health Initiative (CHI) component of the DoN regulation requires Long-Term Care Facilities doing a Conservation project to contribute 1% of the total value of the project, to a CHI Healthy Aging Fund. Payment may be made in full at the time of project approval or in two equal installments with the first payment due at the time of receipt of a duly-approved Notice of Determination of Need (or upon receipt of a payment letter from DPH), and the second, on the first anniversary of the Notice. The Applicant has chosen the option to pay in two equal installments. Any deviation to this payment schedule will require program approval. For this proposed Conservation Project, the CHI contribution will be \$100,877.22. Based on the Applicant's compliance with the above requirement, the Applicant meets the terms of Factor 6.

Findings

Based upon a review of the materials submitted, the Department finds that the Proposed Project at Advocate Healthcare of East Boston, LLC, 111 Orient Avenue, East Boston, complies with the requirements of a Conservation Project and has met applicable DoN factors 3, 4, and 6 as required in the regulation 105 CMR 100.715B(2). As a result, this Application for \$10,087,722 in capital expenditures for a Conservation Project at Advocate Healthcare of East Boston, LLC is approved, subject to all Standard Conditions as provided in the Regulations. All standard conditions apply except 100.310(A)(10).