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November 30, 2016

Mr. David Gamzeh  
Managing Member  
The Gardens at Newport LLC  
The Gardens at Newport Holdings LLC

*c/o Shireen T. Hart, Esq.*  
PRIMMER PIPER EGGLESTON & CRAMER PC  
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PO Box 1489  
Burlington, VT 05401

Dear Mr. Gamzeh,

This letter is submitted in accordance with the State's Health Resource Allocation Plan Certification of Need Standards 5.2 and 5.3 which requires the Department of Disabilities, Aging and Independent Living (DAIL) to review and provide a recommendation in relation to the CON applications from nursing homes and similar entities. The Department has received the Certificate of Need application from The Gardens at Newport LLC and The Gardens at Newport Holdings LLC related to the purchase of the Newport Health Care Center, the Newport Residential Care Center and the Adult Day Services in Newport, all located in Newport, Vermont.

In completing our review, the Department consulted with the Agency of Human Services' Division of Rate Setting and internally with relevant divisions and staff. We considered both the Department's mission and our desire to advance excellence in quality of care and quality of life and to promote cultural change in our nursing facilities in addition to our work to rebalance options/choices for care across a spectrum of supports. Additionally, we considered the current stress within our network of skilled nursing facilities related to working with residents with more complex and challenging presentations and needs.

- 1. Project Summary:** The Gardens at Newport LLC and The Gardens at Newport Holdings LLC, referred to hereafter collectively as "Newport Gardens" represents six individuals with ownership interests in 37 skilled nursing facilities throughout the county, one, Barre Gardens (aka Rowan Court) currently in Vermont. Newport Gardens is interested in the purchase of Newport Health Care Center, the Newport Residential Care Center and the Adult Day Services, all in Newport VT. The purchase of the Newport Care Center and its affiliated residential care center and adult day program will maintain the continued operation and capacity of the facilities in the Newport area.

Newport Gardens intends to utilize the Priority Healthcare Group, LLC (Priority Healthcare) as the new management provider for Newport Gardens. Priority Healthcare was founded by two members of the Newport Gardens LLC, David Gamzeh and Akiva Glatzer, both experienced, skilled nursing facility administrators. Priority Healthcare will provide services to include: accounts payable, accounts receivable, billing, payroll, compliance, day to day oversight, financial reporting, marketing, business

development and purchasing and clinical and administrative support. Mr. Gamzeh and Mr. Glatzer will serve as the manager members for facility operations, working collaboratively with the TBH Nursing Home Administrator. Additionally, Mr. Shalom Lerner, LNHA will join Priority Healthcare Group LLC to assume day to day operations in Newport and to work directly with the TBH Nursing Home Administrator. The direct, daily involvement of Priority Healthcare Group staff will evolve over time but will remain the core of the supervision and support of the facility.

The intent of Newport Gardens is to maintain current services, current bed capacity and the current facility as is and into the foreseeable future. They propose minor staffing changes in the facilities dietician and, of necessity, will need to hire an Administrator and Human Resources Director to replace the retiring owners, David and Edna Silver.

The Newport Gardens group has also indicated their intent to partner with physicians and specialists and, in promoting a modern medical approach and better care model, they will be able to bring additional services on site which are not currently provided. This will include on-site psychological services and clinical programming for behavioral health, renal failure and total parenteral nutrition.

The incoming owners have indicated that they intend to utilize the existing current admissions criteria and to expand it to include acceptance of individuals with behavioral complexities and individuals requiring bariatric equipment – areas of significant need within Vermont’s overall system and areas in which the Newport Gardens group profess to have a proven track record of success.

***1. Evaluation of HRAP CON Standard 5.2: Nursing Homes or similar entities seeking to replace or increase beds shall show the beds are needed. Such showing of need shall be confirmed by the Department of Disabilities, Aging and Independent Living:***

Currently Newport Health Care Center has licensed capacity for 50 beds; there are two private rooms, all the rest are semi-private. DAIL understands that the proposed plan is to maintain the current capacity and the current configuration within the facility. Orleans County has six skilled nursing facilities and Newport Health Care Center comprises almost 19% of those total SNF beds: 50 out of the possible 262. The Newport census, when first reviewed in June of 2016, indicated that occupancy of the beds ran between 80-90%. Checking that census count again using September data indicated a decrease in occupancy from June through September, dipping into the 70<sup>th</sup> percentile and capping at 79% occupancy in September. Newport’s primary source of payment is Medicaid, at 88% of the total revenue. Of the other five nursing homes in Orleans County, four of the five are showing occupancy rates in the high 80% or mid 90%, indicating that the need for beds in the county exists and remains consistent overall.

Although the proposal itself does not address occupancy rates, it does map out an intention to accept individuals who present with more complex needs and complex profiles. That may increase the census in Newport. There is a significant need for this type of expansion within Vermont’s skilled nursing facilities network and for beds available to individuals covered through Medicaid.

***2. Evaluation of HRAP CON Standard 5.3: Nursing homes or similar entities seeking a certificate of need shall provide a written recommendation from the Department of Disabilities, Aging and Independent Living supporting the new health care project proposal:***

***a. Quality of Care:***

## Newport Health Care

Newport Health Care (NHC) currently has an overall 3-star rating on CMS compare. They receive 2 stars for Health inspections, 4 stars for Staffing and 2 stars for Quality Measures. In the past, NHC has had regulatory struggles, sometimes requiring repeated follow up surveys to obtain substantial compliance with regulatory requirements.

Their last full recertification survey was conducted in June and identified several deficiencies, but no “harm level” or immediate jeopardy citations. They required a second follow up due to failure to correct identified deficiencies at the time of the first Survey and Certification onsite follow up visit.

The full recertification survey conducted in May of 2015 also required a second onsite follow up visit.

Their last “actual harm” level citation was in May of 2014 and they corrected the issue promptly. They have not had any immediate jeopardy citations or determinations of substandard quality of care in the past 6 years.

They currently have one outstanding deficiency for which a follow up is pending.

As a whole, the facility could benefit from some modernization and sophistication of processes. The applicants have identified their intention to be onsite at the facility on a weekly basis which will offer much in the way of oversight and supervision. They have identified areas for process improvement to the facility and have cited their past success in improving the quality of care in the facilities they purchase. DAIL is optimistic that they will bring a strong quality improvement and assurance process to Newport Health Care and affect a positive change.

In reviewing the 37 facilities held by various members of the Newport Gardens collective:

- 22 are rated *1 out of 5 stars* in their CMS overall quality rating
- 6 are rated *2 out of 5 stars* in their CMS overall quality rating
- 4 are rated *3 out of 5 stars* in their CMS overall quality rating
- 5 are rated *4 out of 5 stars* in their CMS overall quality rating
- 0 are rated *5 out of 5 stars* in their CMS overall quality rating

## Newport Residential Care Center

Regarding overall quality for the Newport Residential Care Center (NRCC), they underwent their last full re-licensing survey in February 2016. The only deficiencies identified were specific to not meeting 12 hours of training requirements for staff. There were no resident care deficiencies. Their previous re-licensing survey in July 2014 was deficiency free.

### **Variance Issues in the Newport Residential Care Center**

- It is important to be aware that the NRCC has two approved variances currently in place. The first variance relates to the Residential Care Home regulation 5.11.f which states “*There shall be at least one (1) staff member on duty and in charge at all times. In homes with more than fifteen (15) residents, there shall be at least one (1) responsible staff member on duty and awake at all times.*” This variance was granted following the NRCC request based on the justification that NRCC is very small (8 beds) and a hallway of the nursing home. The variance was approved

based on the use of nursing home staff vs a dedicated NRCC staff to meet the needs of NRCC residents during certain hours with the expectation that they track hours accurately. This approved variance **would not transfer to the new owner**, which may impact the staffing needs for the Residential Care Center.

- The second variance relates to the Residential Care Home regulation 4.13(b) which *requires that the Manager of the residential care home be present in the home an average of 32 hours per week*. This variance was granted following the NRCC request based on a similar justification as the first one, related to size and the co-location of the owner and administrator on site. **This variance is specific to Mr. Silver, who was the Administrator of Newport Health Care (the Nursing Home) and would not transfer to the new owner.**

### Newport Adult Day Services

Of note, the Newport Adult Day Program is located within the nursing home. Based on the new Home and Community Based Standards (HCBS) programs issued by CMS, Adult Day Programs located within what traditionally are considered institutional settings may not meet the HCBS settings standards for location. If that were to be the case, the Adult Day Program may not be eligible for HCBS funding through Choices for Care. Vermont is currently in an assessment process to determine our current alignment with the new HCBS standards and will build a transition plan based on that alignment. At this point in time, we cannot say with any degree of certainty what the final determination will be.

#### ***b. Financial Review***

In reviewing the overall financial picture for the current owners of the Newport Center, there is a trend of declining cash on hand from 2012 to 2015. Net losses were reported in both 2013 and 2014. Expenses for the program have been fairly stable from year to year which should offer the opportunity plan with some level of surety.

The incoming Newport Gardens group will be purchasing the facility for \$1,800,000. The plan to finance this through equity contributions in the amount of \$435,000 from group members and to finance the balance, \$1,440,000 through a fixed interest loan rate. Cash advances from the applicants will be available to cover any operational shortfall in the first year of operation. The Newport Gardens group has affirmed its ability to cover operational costs as necessary.

With that, DAIL is conditionally supportive of the Barre Gardens proposal, dependent on the full application and information obtained by the Green Mountain Care Board during the CON process.

Sincerely,



Monica Caserta Hutt  
Commissioner

Cc: Camille George, Deputy Commissioner, DAIL  
Clayton Clark, Direction, Division of Licensing and Protection, DAIL  
Stuart Schurr, General Counsel, DAIL  
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