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March 12, 2024

VIA EMAIL (Donna.Jerry@vermont.gov)

Donna Jerry
Senior Health Policy Analyst
Green Mountain Care Board
144 State St
Montpelier, VT 05633-3601

**Re: Request for Waiver of Certification of Need Jurisdiction
Birchwood Terrace, Change in the Number of Licensed Beds**

Dear Ms. Jerry:

This firm represents Birchwood Operations LLC d/b/a Birchwood Terrace Rehab & Healthcare (“Birchwood”), a 144-bed skilled nursing facility located in Burlington, Vermont. We submit this request for a jurisdictional determination as to Birchwood relicensing sixteen (16) beds (the “Project”).

Prior to Birchwood’s ownership of the skilled nursing facility, the previous owner had delicensed the number of beds at Birchwood from 160 to 144. Upon information and belief, this took place in 2012 for the purpose of rendering certain Birchwood beds private beds, meaning single occupancy rooms. Enclosed with this letter is a letter from the Department of Disabilities, Aging, and Independent Living Interim Commissioner Megan Tierney-Ward supporting the Project’s proposed increase in beds from 144 to 160 at Birchwood.

Under current ownership, which dates back to 2018, Birchwood’s investigation surveys have resulted in no deficiencies, and its overall star rating has increased from three stars to four stars.

Birchwood has averaged an almost 100% occupancy rate over the past year on its long term care units. The only time their long term care beds have not been at 100% occupancy has been due to resident flow – meaning the time between a patient vacating a bed and filling the bed with someone from the waiting list. Currently, there are more than fifty (50) individuals on the Birchwood waiting list – these are in addition to those awaiting placement in area hospitals.

Given the urgent need in Vermont to open more beds for post-acute care, in particular for patient discharge flow from the University of Vermont Medical Center (“UVMCC”), Birchwood is seeking the flexibility to operate up to sixteen (16) of its private rooms as semi-private rooms, with never more than two (2) residents assigned to any room. This would be a flexible arrangement, where Birchwood could have the ability to use these rooms as semi-private, as needed to accommodate individuals currently unable to otherwise discharge from acute level of care. There would be other times when the rooms would be used as single occupancy rooms to the maximum extent feasible.

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The need for additional skilled nursing facility beds has been widely accepted as the cause for many of Vermont's hospitals struggling to discharge individuals in order to free up their beds for patients requiring acute care. UVMHC has been very open about its struggles to find appropriate step-down care for patients ready to discharge from acute care. Please see the letter from Christine Werneke, President and COO of the UVMHC Health Network – Home Health and Hospice, and Stephen Leffler, MD, President and COO of UVMHC, submitted herewith attesting to the inability to place dozens of patients at a time to a post-acute setting.

Many Vermont skilled nursing facilities have empty beds and floors that they cannot fill with residents from their waiting lists because the facilities lack the staff to maintain an acceptable staffing level. At Birchwood, however, all long term care beds are in use. Their staffing ratios are within an acceptable range and could potentially be adequate for the sixteen additional beds. That said, Birchwood does not anticipate problems bringing on any additional staff needed for the additional beds, given their healthy staffing ratio at present and shown ability to hire and retain staff.

Given that Birchwood is returning to the same number of beds for which it was once licensed, it is Birchwood's position that no Certificate of Need is required. The action of the previous owner/operator to delicense was a voluntary action by the previous owner to render all rooms private, which is unquestionably the preference whenever possible. As Interim Commissioner Tierney-Ward states in the enclosed letter, Birchwood would be bringing back beds the previous owner took offline.

As already stated, there may be a need for additional staffing, which is within Birchwood's demonstrated means to arrange, but beyond that and the cost of new beds and furnishings, which are not anticipated to cost more than \$30,000 in total (\$20,000 for furnishings and \$10,000 for electrical work), there will be no capital costs associated with this Project.

In the event the Board asserts jurisdiction over this Project, because there is currently a significant health system-wide need for additional nursing facility beds, and because Birchwood already has a waitlist for these beds, Birchwood respectfully requests leave to file an emergency certificate of need as the circumstances creating the need for the proposed Project are due to circumstances beyond the control of the applicant. The need to create more beds and free up area hospital beds requires action in less time than normally required for CON review. Please see the letter from UVMHC and the Health Network submitted herewith.

Finally, in the event the Board asserts jurisdiction and denies Birchwood leave to file an emergency certificate of need application, Birchwood seeks an emergency certificate of need for this Project that supports the State's ability to manage the COVID-19 public health emergency; namely, to help remedy the backlog in discharges from area hospitals. In support of this request, Birchwood provides the following, pursuant to Certificate of Need Bulletin 002:

1) The name of the Applicant and the name, mailing address, email address, and telephone number(s) of the individual that will serve as the Applicant's point of contact.

Applicant: Birchwood Operations, LLC

Applicant's point of contact:

Shireen T. Hart
PRIMMER PIPER EGGLESTON & CRAMER PC
30 Main St., Suite 500
P.O. Box 1489
Burlington, VT 05402-1489
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2) A description of the Project that specifies:

- a. the need that the Project will meet and why it is appropriate that the Applicant meet that need, such as:**
- i. how the Project will support or enhance the State's ability to manage the COVID-19 public health emergency;**
 - ii. how the Project will support the public's access to services for evaluation or treatment of COVID-19; or**
 - iii. how the Project meets any other emergency need related to the COVID-19 public health emergency.**

As discussed above, the Project will provide additional beds to assist area hospitals in discharging patients who are awaiting discharge from acute level of care. This not only frees up hospital beds for individuals awaiting hospital admission, but also provides more suitable care to those individuals awaiting skilled nursing facility beds. As Interim Commissioner Tierney-Ward stated in the enclosed letter,

"During the COVID-19 pandemic, many Vermonters paused preventative health care due to life-saving infection control recommendations. This, together with our quickly aging population and workforce challenges, has led to a much higher volume of people entering hospitals for care and subsequently needing post-acute care in a skilled nursing facility. Birchwood's request will assist with this growing need."

- b. how the Project will interact with other ongoing or planned efforts to manage the COVID-19 public health emergency, if applicable;**

The Project will assist the healthcare system in general by providing additional beds for patient flow.

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c. the estimated cost of the Project and funding source, if known;

The Projected cost is minimal. There will be the need for sixteen (16) beds and associated furnishings and associated electrical work, which is estimated at \$30,000.00, and the possibility of hiring additional staff.

d. the start date and expected completion date of the Project and the resources needed to complete Project, if known; and

The start date would be immediately upon approval of this request, with completion to follow upon delivery of the beds and furnishings.

e. the expected or potential use of the equipment, space, beds, etc. following the public health emergency, if known.

Birchwood anticipates using these beds for the foreseeable future given the access issues currently occurring in Vermont.

3) An attestation that the Project is intended to respond to and enhance the management of the COVID-19 public health emergency.

Please see the enclosed letters and the attestation from Isaac Rubin.

We would be happy to provide additional information and/or meet with you and your team to discuss this request.

Thank you, in advance.

Sincerely,

Shireen T. Hart

Enc.

Attestation

I, Isaac Rubin, attest that the proposed Project described above is intended by Birchwood to respond to and enhance the management of the COVID-19 public health emergency in that we hope to be able to accommodate more long-term care residents, thereby opening up acute care beds at local hospitals.

/s/ Isaac Rubin

Birchwood Operations, LLC