

VERMONT LEGAL AID
Long Term Care Ombudsman Project

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May 27, 2016
Alfred Gobeille, Chair
Green Mountain Care Board
89 Main Street
Third floor, City Center
Montpelier, VT 05620

Re: GMCB-014015con
Proposed Purchase of Five Facilities by Genesis Healthcare and its Subsidiaries

Chair Gobeille and members of the Green Mountain Care Board,

The Long Term Ombudsman Project is participating in the above captioned CON as an interested party. The Project has a mandate under state and federal law to monitor and comment on governmental actions “that pertain to the health, safety, welfare and rights of residents, with respect to the adequacy of long term care facilities and services in the state.” 42 U.S.C. § 3058g (a)(3)(G)(i). See also 33 VSA §7503(2).

We chose to participate in this proceeding because we are concerned about the impact this sale will have on the quality of care and accessibility of nursing home services in Vermont. Once Genesis purchases the five facilities, it will control over 30% of the nursing home beds in the state. Not only will its practices and policies have a direct bearing on the lives of the more than 900 residents in its care, those same practices and procedures will also impact other Vermonter’s ability to access nursing home care.

Quality of Care

Genesis facilities in Vermont provide less certified nursing assistant (CNA) care per day than the state average. CNAs are responsible for assisting residents with their basic activities of daily living, including feeding, dressing, toileting, and bathing. Residents in Vermont Genesis facilities receive anywhere for 13 to 29 fewer minutes of CNA care per day than residents in other Vermont nursing homes. (Response to December 11, 2015 Questions, Attachment A.) Genesis maintains that they review staffing patterns taking into account measurable patient outcomes. They also monitor care results and population acuity so they can make appropriate

adjustments to the staffing pattern. (Response to December 11, 2015 Questions, #2.a). Yet, Genesis reports measureable outcomes that are worse than the state average. (Response to December 11, 2015 Questions, Attachment D.)

All four Genesis facilities report a percentage higher than the state average for residents who experience a fall with major injury. Three of four facilities are above the state average with regard to long stay residents who:

- Report a higher percentage of residents that have a catheter inserted and left in the bladder;
- Who lost too much weight; and
- Self report a higher percentage of residents that exhibit depressive symptoms.

(Response to December 11, 2015 Questions, Attachment D.) Also, three of its four Vermont facilities had annual re-hospitalization rates above the state average in 2015. (Response to December 11, 2015 Questions, #14.) It does not appear that Genesis’ process for setting staffing levels produces positive outcome measures and improves quality of care for residents.

Genesis also maintains that it monitors key outcomes of care and that “the facility-based QAPI team reviews the results monthly, evaluates trends and creates a focused action plan to improve outcomes identified as trending negatively or that are exceeding the benchmark targets.” (Response to December 11, 2015 Questions #2.b.) However, a comparison of Genesis facilities’ five star rating trend between January 1, 2014 and November 1, 2015, does not show improved outcomes. (Response to December 11, 2015 Questions, Attachment P.) In fact, the comparison indicates a downward trend. Of the 93 Genesis facilities included in the Attachment P, the number of facilities with above or much above average five star ratings decreased from 40 to 33 and the number of facilities with below average or much below average ratings increased from 32 to 34.

Summary of Data in Attachment P

Five Star Rating	1 Much below average	2 Below average	3 Average	4 Above average	5 Much above average
Number of facilities/ January 1, 2014	8	24	21	31	9
	32			40	
Number of facilities/ November 1, 2015	12	22	26	22	11
	34			33	

Genesis acknowledges it needs to address the below average quality measures in the five new facilities. (Response to December 11, 2015 Questions #2.b.) Three of the five new facilities are above the state average with regard to percent of:

- Long stay residents who lose too much weight;
- Long stay residents with a urinary tract infection; and
- Long and short stay residents who self report moderate to severe pain

Two of the five new facilities are above the state average with regard to the percent of:

- High risk long stay residents with pressure ulcers;
- Long stay residents who received an antipsychotic medication;
- Long stay resident whose need for help with ADLs has increased; and
- Long Stay resident with a Catheter inserted and left in their bladder.

(Response to December 11, 2015, Attachment B.)

Genesis maintains that it will improve the quality measures in the five facilities by transitioning them to care protocols quality improvement processes already in place in other Genesis facilities. (Response to December 11, 2015 Questions #2.b.) However, based on the information provided in Response to December 11 Questions, Attachments B, D, and P, it does not appear that the current protocols and QAPI have been successful in improving patient care, performance measure scores or Genesis facilities' five star ratings. Given Genesis' performance record, it is unclear how relying on the same protocols and the same quality improvement process that produced below average quality of care, will produce better care and better outcomes in the five new facilities.

Access to Nursing Home Services

We are concerned that extending Genesis' restrictive admission criteria to over 30% of Vermont's nursing home beds will significantly limit an individual's ability to access an appropriate nursing home placement in Vermont.

Genesis Admission Criteria lists 21 reasons why Genesis will refuse someone admission to one of its facilities. (Response to February 24, 2016 Questions, Section 5, OPS400 Admission Criteria: General) Some of these admission criteria deny access based solely on the person's physical or mental condition. Genesis acknowledges that Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability. (Response to December 11, 2015, Attachment H.)

Yet, Genesis' Admission Criteria denies admission if someone:

- Has recent or current unstable vital signs;
- Is a bariatric patient greater than 500 pounds;
- Requires continuous positive airway pressure (CPAP) or bi-level positive airway pressure (BiPAP);
- Has a psychosis rendering them unmanageable or unable to cooperate in treatment;

- Has significant behavior issues that are considered a danger to self and or others; or
- Requires traction.

All of these criteria are discriminatory because they deny admission solely because of the person's condition. Moreover, based on our experience, other facilities in Vermont, admit, accommodate and care for individuals who present with these conditions at the time of admission.

We are particularly concerned about Genesis' practice of denying access to individuals who have a psychosis or significant behavior issues. Attachment M lists the "Top Reasons for Non-admit" for each of the Vermont facilities. The top reasons listed are not situations where the facility denied admission. Instead, the person chose not to be admitted to that facility. They returned home or selected another nursing home. For each of the Vermont facilities, the top reason for denying admission is "clinical-Psych/Behavioral. (Response to December 11, 2015, Attachment M.) These individuals were denied because Genesis has a policy in place that specifically instructs their facilities not to admit someone with a "psychosis" or "significant behavior issues." (Response to February 24, 2016 Questions, Section 5, OOPS400 Admission Criteria: General, 1.13 and 1.14.)

There is no doubt that it may be challenging to provide care for these individuals, but they require nursing home level of care and often a nursing home is the most appropriate placement. We have worked with individuals who have spent months in the hospital, long after they needed acute care, simply because they cannot access a nursing home bed. Extending Genesis' restrictive admission criteria will only make finding placements for these individuals more difficult and it will place an additional burden on other facilities to try to assist these individuals.

Conclusion

We are concerned that the purchase of these five facilities does not offer a path toward better care for 30% of Vermont's nursing home residents. We are also concerned that the purchase will result in denying Vermonters' access to nursing home beds simply because they have a specific physical or mental condition.

Therefore, if the board approves Genesis' application to purchase five additional facilities, we recommend that:

1. The Board's order shall include a condition requiring the applicant to file four implementation reports at six months intervals beginning six months after it assumes ownership and operation. (We believe four reports are necessary to track the applicant's progress at remedying the below average measures at the five new facilities);
2. The implementation reports shall include, at a minimum, for each Vermont Genesis facility :
 - a. The total number of licensed nursing staff hours per resident per day for each month in the reporting period and how this compares to the state and national average;
 - b. The total number of CNA hours per resident per day for each month in the reporting

- period and how this compares to the state and national average;
 - c. Any plans for changing the staffing pattern and the basis for the change;
 - d. Survey results issued during the reporting period and plans of correction approved during the period;
 - e. The facility's Five Star Rating each month;
 - f. The percentage of residents who meet the following quality measures and how each facility compares to the state and national average for each measure; and
 - i. Long stay residents who lose too much weight;
 - ii. Long stay residents with a urinary tract infection; and
 - iii. Long and short stay residents who self report moderate to severe pain
 - iv. High risk long stay residents with pressure ulcers;
 - v. Long stay residents who received an antipsychotic medication;
 - vi. Long stay residents whose need for help with ADLs has increased; and
 - vii. Long Stay residents with a Catheter inserted and left in their bladder.
 - viii. Long stay residents Self report a higher percentage of residents that exhibit depressive symptoms.
 - g. An assessment of how effective Genesis' care protocols and its QAPI approach is to improving a facility's quality measures that are at or below the state average.
 - h. The number of individuals denied admission based on Admission Criteria 1.3, 1.7, 1.9, 1.13, 1.14, or 1.16.
3. The first implementation report shall include a plan for how the applicant will bring its Admission Criteria into compliance with Section 504 of the rehabilitation Act of 1973.

Sincerely,

Jackie Majoros
Director of the Long Term Care Ombudsman Project

cc: Kelli Rockandel