

June 13, 2016

Green Mountain Care Board  
c/o Donna Jerry  
Senior Health Policy Analyst  
Green Mountain Care Board  
89 Main St., City Center  
Montpelier, VT 05620

**Re: Docket No. GMCB-014-15con, Proposed Purchase by Genesis Healthcare, Inc. and its Subsidiaries of Bennington Health and Rehabilitation Center, LLC, Berlin Health and Rehabilitation Center, LLC, Burlington Health and Rehabilitation Center, LLC, Springfield Health and Rehabilitation Center, LLC and St. Johnsbury Health and Rehabilitation Center, LLC**

Dear Ms. Jerry:

We write to provide the Board with some information about the extensive federal and state survey and oversight process governing skilled nursing facilities participating in Medicare and Medicaid. We believe this information is helpful to the Board in consideration of this application and explains some of the materials in the record. Enclosed with this letter is a binder containing the materials that are referenced.

Medicaid and Medicare only pay skilled nursing facilities if they are found in compliance with the requirements of 42 C.F.R. Part 482, Subpart B, Requirements for Long Term Care facilities. See *CMS.gov, Certification and Compliance, Nursing Homes (attached as Exhibit A)*. The CFR sets forth detailed requirements for:

- Resident rights;
- Admission, transfer and discharge rights;
- Resident behavior and facility practices;
- Quality of life;
- Resident assessment;
- Quality of care;
- Nursing services;
- Dietary services;
- Physician services;
- Specialized rehabilitative services;
- Dental services;
- Pharmacy services;
- Infection control;
- Physical environment; and
- Administration.

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*See 42 C.F.R. Part 483 (attached as Exhibit B).* Notably this is a different process than the CMS 5 Star Quality rating process that is intended for the public to have a basis to compare skilled nursing facilities and depends on quality measures reported by the skilled nursing facilities themselves.

To certify this compliance, skilled nursing facilities are subject to unannounced surveys conducted in Vermont by the Department of Disabilities, Aging and Independent Living, according to an elaborate survey manual and guidance. These surveys include an annual Life Safety and Standard Survey, and may also include complaint surveys conducted in response to information received by the regulators. The Survey and Enforcement Process is contained in the CMS *State Operations Manual*, which prescribes how to survey, how to rate the severity of any survey findings, how to require and use plans of correction to ensure that findings are corrected, how to impose remedies for findings and the rights of skilled nursing facilities to challenge citations. *See State Operations Manual, Chapter 7, Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities (Exhibit C attached).* In addition to this manual, there is a more detailed *State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities (attached as Exhibit D).* This 733 page surveyor guidance breaks the requirements for each CFR provision down into specific requirements. For each requirement the *Guidance* describes the intent of the CFR, gives interpretive guidance for the surveyors, sets survey procedures and probes, cross references related requirements and provides support in the literature.

An example of the comprehensive and detailed nature of a survey, and required plan of correction can be found in the Applicant's materials at Exhibit II.B.8. This is the April 23, 2014 certification survey for Berlin Health and Rehab (operated by Revera at the time of survey) and the accepted Plan of Correction. The cover letter describes the most serious findings of deficient practices that are then detailed on the CMS Form 2567 that details the underlying facts for each finding. The facility must submit a Plan of Correction for each finding that includes identifying residents actually affected and who could be affected by the deficient practice, systemic changes to correct the deficient practice, and how to monitor the correction. On page 14 of the survey there is a citation of F315, 483.25(d) No Catheter, Prevent UTI, Restore Bladder, with SS=D. That means that the surveyor applied the guidance in *Appendix PP* for tag F315 and found a deficient practice. The surveyor then evaluated the scope and severity (SS) of that practice, finding as to severity that there was no actual harm to the resident, but potential for more than minimal harm (range from no actual harm with potential for minimal negative impact to immediate jeopardy to health and safety) and as to scope that it was an isolated event (as opposed to a pattern or widespread). The facility then received the CMS 2567 with the supporting narrative from the surveyor and submitted in the right column of the form a plan of correction that included evaluating the residents, educating the nursing staff and random follow up audits supervised by the Quality Assurance Committee. That Plan of Correction is reviewed by the surveyor who can accept, or require additional steps be taken before accepting the Plan. The skilled nursing facility is then monitored by the survey agency for implementing the Plan of Correction.

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Given this comprehensive, detailed process for evaluating the many dimensions of care and practices at skilled nursing facilities and how facilities will correct deficiencies, with oversight from federal and state regulators, Genesis asserts that should the Board determine to grant a CON, it should not include conditions that could overlap the established regulatory scheme. In essence, the facilities are already taking regulated actions that meet the concerns raised at the hearing. Overlapping could create a ripple effect from inconsistent requirements, making it difficult for operators and staff.

Thank you for your consideration.

Respectfully,

DINSE, KNAPP & McANDREW, P.C.



Linda J. Cohen

cc: Jacqueline Majoros  
William Root  
Enclosures