

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Application of Genesis Healthcare, Inc. )  
Purchase of Five Skilled Nursing ) GMCB-014-15con  
Facilities in Vermont )  
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**STATEMENT OF DECISION AND ORDER**

**Introduction**

Genesis Healthcare, Inc. (Genesis, or the applicant) seeks a certificate of need (CON) from the Green Mountain Care Board to purchase the real estate and operations of five skilled nursing facilities in Vermont from Revera Assisted Living, Inc. (Revera) for approximately \$39 million.

For the reasons outlined below, we approve the application.

**Procedural Background**

On October 16, 2015, Genesis filed a certificate of need (CON) application and request for expedited review with the Green Mountain Care Board to purchase the real estate and operations of five Vermont skilled nursing facilities: 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 (the five facilities).<sup>1</sup> On October 22, 2015, the Vermont Long Term Care Ombudsman (Ombudsman) filed a Notice of Intervention and on the following day, the Board denied the applicant's request for expedited review. The Board received no further requests for interested party or amicus status and no competing applications.

The Board requested additional information from the applicant on December 11, 2015, February 24, 2016, and March 25, 2016. The applicant responded to the requests on January 12, 2016, March 10, 2016, and April 15, 2016, respectively. The application was closed on April 27, 2016.

Public hearing was held before the Board on June 2, 2016. Noel Hudson, Esq. served as hearing officer by designation of the Board chair. Linda Cohen, Esq. represented the applicant. Michelle Costa, Vice President of Clinical Operations, Dick Blinn, Executive Vice President for the New England Region, Ken Cullerot, Vice President and Divisional Controller, Dr. Richard Raskin, Senior Vice President of Medical Affairs, Tom DePoy, Regional Vice President, and Judy Morton, Senior Administrator at the applicant's Rutland facility, testified on the applicant's behalf. The Ombudsman did not participate in the hearing, but submitted a letter to the Board expressing concerns about the proposed transfer based on issues relating to quality and access to care.

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<sup>1</sup> For simplification, we will refer to the individual facilities by their geographical location. For example, the Bennington Health and Rehabilitation Center, LLC is referred to as the Bennington facility.

Public comment was accepted at hearing and in writing through June 13, 2016. The Board received 13 written comments, many of which expressed concerns about the applicant's market share if the CON is approved, and about the quality of care provided at Genesis facilities. In addition, Genesis provided the Board three letters expressing gratitude from family members and BAYADA Hospice for the care provided at Genesis facilities. *See Public Comments, available at [http://gmcboard.vermont.gov/sites/gmcb/files/files/certificate-need/Public%20Comment\\_Genesis\\_Combined\\_061716.pdf](http://gmcboard.vermont.gov/sites/gmcb/files/files/certificate-need/Public%20Comment_Genesis_Combined_061716.pdf).* On June 13, 2016, Genesis submitted post-hearing documentation citing federal and state nursing home regulations and a letter outlining staff turnover rates in its Vermont facilities and in the New England region.

#### Findings of Fact

1. Genesis seeks to purchase the operations and real estate of five Vermont skilled nursing facilities located in Bennington, Berlin, Burlington, Springfield and St. Johnsbury, for approximately \$39 million.<sup>2</sup> Application (App.) at 1-24. Genesis currently operates over 500 skilled nursing facilities and assisted/senior living communities in 34 states. Transcript (TR) at 11.
2. Genesis is a publicly-traded holding company that files consolidated financial statements for all related entities, and holds approximately \$80 million in liquid or easily liquidated assets. Genesis intends to finance the purchase with a bridge loan from Welltower, Inc., a real estate investment trust, and will subsequently refinance through the U.S. Department of Housing and Urban Development (HUD) financing program. App. at 6; TR at 29, 42.
3. The proposed purchase is part of a larger agreement to purchase 24 facilities in nine states from Revera, a privately owned Canadian company that is divesting its interests in skilled nursing facilities in the United States. Genesis closed on 19 facilities in eight states on December 1, 2015. TR at 9.
4. Revera offered to sell the five Vermont facilities to Genesis as an "all or none" transfer. TR at 67. With the consent of the Vermont Department of Disabilities, Aging and Independent Living (DAIL), Genesis and Rivera have entered into a management agreement and as a result, Genesis has managed each of the facilities since December 2015.<sup>3</sup> TR at 9-10.
5. DAIL has provided Genesis with a letter conditionally supporting its purchase of the five facilities, pending CON approval, stating that "Genesis has maintained a solid track record of quality care and of partnership with the State of Vermont." DAIL Letter (Nov. 9, 2015). DAIL also supports the applicant's plan to eliminate 52 of the 579 licensed beds, spread among four of the five facilities, once the transaction is completed.<sup>4</sup> *Id.* The beds are not currently occupied and

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<sup>2</sup> To accomplish this transaction, Genesis formed five separate corporate entities to purchase the operations of the five individual facilities, and five corporations to purchase the real estate.

<sup>3</sup> Vermont law does not confer CON jurisdiction to the Board for these types of agreements because they are not transfers of ownership. *See 18 V.S.A. § 9434(a).*

<sup>4</sup> Genesis plans to eliminate 9 beds in Bennington, 26 in Berlin, 6 in Springfield, and 11 in St. Johnsbury.

the reduction will allow for the creation of single occupancy rooms. App. at 2; Responses to Questions (Responses) (Jan. 12, 2016) at 13; TR at 65, 79.

6. Genesis intends to maintain the current staffing and administration at each facility, which will be supported by its Northeast Region Management Team. App. at 2; Responses (Nov. 12, 2016) at 14-16; TR at 28. Tom DePoy, a former Genesis employee who recently served as Revera's Senior Vice President, has been rehired by Genesis to provide local leadership and to help coordinate the transition in ownership. App. at 2; TR at 18.

7. Genesis does not plan to change any of the services offered at the five facilities, which include physical, occupational and speech therapies, long term care services, respite care and hospice care services. App. at 2. Each facility is currently Medicare and Medicaid certified, and Genesis will continue to participate in both programs. Responses (Jan. 12, 2016) at 9.

8. Because Revera made significant investments in the facilities' infrastructure during its period of ownership, Genesis does not plan to make major capital investments in the facilities. Genesis has budgeted approximately \$800 per licensed bed for routine capital needs, and will make upgrades to the information technology system at each facility. Responses (March 10, 2016) at 5; App. at 25-26.

9. Genesis currently owns four skilled nursing facilities in Vermont: Bel-Aire Center in Newport, purchased in 1997; Mountain View Center in Rutland, purchased in 1995; Rutland Healthcare and Rehabilitation, purchased in 2008; and St. Albans Healthcare and Rehabilitation, purchased in 2008. App. at 31. With the transfer of the additional five facilities, Genesis will own approximately 30% of the nursing home beds and approximately 23% of all skilled nursing facilities in Vermont.

10. Although the applicant's four Vermont facilities meet survey requirements for continued Medicare participation, their CMS overall star ratings<sup>5</sup> score slightly lower on average than the ratings for other facilities owned by the applicant in the New England region<sup>6</sup>: Mountain View has an overall three-star rating, Bel-Aire has four stars, and St. Albans and Rutland have 1.7 and 2.6 stars, respectively, for the period beginning January 1, 2014 and ending November 1, 2015. Responses (March 11, 2016), Exhibit 2.

11. Genesis acknowledges that some CMS quality ratings at its Vermont facilities fall below average, but explained at hearing that the ratings do not always reflect the level of care or quality at a given facility. Genesis gave two specific examples: First, a single resident fall at Bel-Aire, a facility with only 44 beds, will more negatively impact the facility's quality rating than if

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<sup>5</sup> Created in 2008, the Centers for Medicare and Medicaid Services (CMS) ratings are intended to help consumers select and compare Medicare- and Medicaid-certified skilled nursing facilities. See Nursing Home Compare website, available at <https://www.medicare.gov/NursingHomeCompare/About/What-Is-NHC.html>; information about star rating system can be found at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/FSQRS.html>.

<sup>6</sup> Of the 97 skilled nursing facilities Genesis owned in New England as of March 10, 2016, the majority had average CMS overall star ratings of 3 or 4 stars out of a possible 5. Responses (March 10, 2016); Exhibit 2.

a single fall occurs at a larger facility, TR at 86, and second, because the Rutland facility aggressively screens for depression, it reports a higher than average incidence of residents experiencing depressive symptoms. TR at 81.

12. Of the five facilities Genesis seeks to purchase, Burlington and Berlin had overall one-star ratings as of August 2015, while St. Johnsbury, Springfield and Bennington were rated three stars. As of May 11, 2016, Burlington's overall star rating had improved from one to two stars, and St. Johnsbury, Springfield and Bennington rose from three to four. The Berlin facility's one-star rating remained unchanged. *See generally*

<https://www.medicare.gov/nursinghomecompare/search.html>.<sup>7</sup>

13. Genesis makes available its physician services staff at the Northeast regional office to provide consultation to staff at its Vermont facilities as needed. In addition, the Genesis regional medical director meets quarterly with facility medical directors. Responses (March 10, 2016) at 2; TR at 23-24.

14. Genesis requires that nursing staff at each facility report quality issues on a monthly basis to the regional office. Genesis encourages and maintains regular two-way communication between facilities and the regional office and provides its staff with periodic onsite educational programs and updates to current policies, procedures, and federal and state requirements. Responses (Jan. 12, 2016) at 4-9; TR at 22-23.

15. Genesis monitors and collects data at three levels—facility, regional, and national—which allows for benchmarking against national and regional peers. Genesis sets performance targets in clinical excellence, customer excellence, staff excellence and business excellence using internal and external standards, and each facility has a Quality Improvement Committee, led by the facility administrator, that meets at least nine times a year. App. at 40; TR at 36.

16. Pursuant to its admissions criteria, Genesis does not accept referrals of residents with health needs that exceed staff or facility capabilities. For example, Genesis will not accept a bariatric resident over 500 pounds at a facility that does not have adequate staffing to care for the resident while providing appropriate care for all other residents. Genesis does not accept persons requiring 24-hour care for breathing problems that require a ventilator, because none of its Vermont facilities have a ventilator unit. Genesis will also decline to admit a resident if a gender-appropriate bed is unavailable. Referrals that are not admitted to a Genesis facility are placed in another care location appropriate to the individual's needs. Responses (Jan. 12, 2016), Exhibit M; TR at 80-83.

17. Genesis has established practices to deinstitutionalize the nursing home environment. Facilities are organized into “neighborhoods,” each with their own neighborhood council where residents can voice concerns and make suggestions for improvements. TR at 33. The facilities are alarm- and pager-free to provide a calm and quiet environment for residents, and to allow quiet hours for sleep. App. at 36; TR at 32-33. Staff members are given consistent assignments so they can become familiar with the residents' needs and preferences. *Id.* at 32.

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<sup>7</sup> Because CMS regularly updates these ratings, the website viewed at a later date may not reflect the same star ratings cited in this discussion.

18. Genesis facilities use “decentralized dining” which allows residents to make food choices at the table, and to the extent practicable, receive their meals on demand. App. at 36; TR at 31-32. Although its per-resident food costs are lower than average, Genesis purchases many of its foods in bulk and prepares meals from scratch, using fresh foods where possible. Responses (March 10, 2016) at 6-8; TR at 31-32; 75-76.

19. Staff retention is challenging for Genesis, with turn-over rates at its Vermont facilities as high as 72% for CNAs and LNAs in 2015, as compared to a 48% regional turn-over rate. *See* Letter from Linda J. Cohen (June 13, 2016). At its Berlin facility, Genesis must use an external agency to supplement staffing needs. TR at 71-72. As a company, Genesis has advocated for wage pass-through in Connecticut, Massachusetts and Rhode Island to boost incomes for direct care nursing home workers. *Id.* at 73.

20. To assist in strengthening its workforce and retaining nursing staff, Genesis offers onsite LNA classes and encourages students to remain working at the facility following completion of the certificate program. Additionally, Genesis participates in job fairs, recruits staff from nursing schools and colleges, and assigns preceptors to new graduates of nursing and LNA programs during their work orientation period. TR at 46-47.

21. Despite the difficulties in staffing and the high turnover of LNAs, Genesis maintains that all residents are cared for appropriately and that RNs and LPNs sometimes cover the work that LNAs would typically perform. TR at 69-70.

22. Through its local employees and administrators, Genesis is actively involved with cooperative health planning, learning collaboratives, and reform initiatives. Judy Morton, the administrator at Mountain View in Rutland, serves on the Board of OneCare Vermont. TR at 18-19. Tom DePoy and Judy Morton are active in the Vermont Health Care Association. Genesis participates in Regional Clinical Performance Committees, the Vermont Blueprint for Health, and in Vermont hospital initiatives, and has participated in best-practice initiatives that include dementia care, recreation, nutrition, and the use of therapy animals in nursing facilities. *Id.* at 30, 34, 42; DAIL Letter at 3; App. at 53.

23. In Vermont, approximately 39% of Genesis residents are enrolled in hospice at the time of death, compared to approximately 60% region-wide. Genesis attributes the low percentage in Vermont to a lack of hospice availability and the failure of some physicians to make hospice referrals. Genesis has established a goal that 80% of its residents have their hospice benefit in place at the time of death. TR at 59-61.

24. To provide mental health services to its residents, Genesis utilizes local onsite psychiatrists and behavioral health providers when possible. Due to a shortage of local providers, Genesis regularly uses Mind-Care, a telehealth service which it believes has been successful. TR at 40-41; Responses (March 10, 2016) at 2-3. In response to a question at hearing, Genesis was unable to quantify the percent of services provided onsite, compared to the use of telehealth. TR at 54.

25. Because of the size of its organization, Genesis provides support to its facilities that underperform financially or qualitatively, and does not base programmatic or quality decisions on an individual facility's financial performance. TR at 67-69.

26. Genesis projects that its expenses at each facility will increase at a rate of approximately 2.0% annually from 2015 through 2018. Genesis projects that its revenues will also increase at a rate of approximately 2.0% annually for the same time period. *See App. Exhibits V.C.1-5* (financial information for each facility, with Material Assumptions).

### Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). The applicant bears the burden to demonstrate that each of the criterion set forth in 18 V.S.A. § 9437 is met. Rule 4.000, § 4.302(3). We review each of these criterion below.

### Conclusions of Law

#### I.

Under the first statutory criterion, Genesis must show that its application is consistent with the health resource allocation plan (HRAP). The HRAP, last published in 2009, identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. *See* 18 V.S.A. § 9437(1).

In satisfaction of HRAP Standard 1.6, the applicant has sufficiently explained, in its application and at hearing, that it will monitor quality indicators and data collection to allow for benchmarking against other skilled nursing facilities. *See* Standard 1.6 (applicant must collect and monitor data relating to quality and outcomes); Finding of Fact (Finding) ¶ 15. In addition, the applicant will use evidence-based clinical protocols to develop its policies and procedures, satisfying Standard 1.7 (project must be consistent with evidence-based practice).

Under Standard 3.12, an applicant must show the project will support high quality palliative and end of life care. In response to our questioning at hearing, Genesis confirmed its commitment to increase the percentage of its residents that utilize hospice care, while recognizing that its Vermont facilities have low usage compared to the company's region-wide average. Finding ¶ 23. Genesis also supports the mental health and well-being of its population in satisfaction of Standard 4.7, utilizing telehealth when onsite mental health professionals are not available, and proactively screening residents for depression so they can access needed services. Findings ¶ 24, 11. Genesis management has worked to create living environments for residents that are not unnecessarily restrictive and encourage resident choice and participation; for example, dining is decentralized, facilities are alarm- and pager-free, residents may become active in the facilities through "neighborhood" councils, and staff are given consistent assignments so they can become familiar with residents' needs and preferences. *See* Standard 5.1 (applicant must demonstrate services reflect patient values and preferences in least restrictive environment); Findings ¶¶ 17, 18.

In satisfaction of the last several HRAP standards, DAIL has provided Genesis with a letter of support and has approved the applicant's proposal to eliminate 52 beds. *See Standards 5.2 (DAIL must confirm need for beds); 5.3 (applicant must provide written letter of support from DAIL); Finding ¶ 5.* Genesis has demonstrated throughout its application that it is sufficiently capitalized and insured to care for its residents, protect itself against legal liability, and that it can meet anticipated financial and quality obligations, in satisfaction of Standards 5.4 and 5.12. Finding ¶ 2.

Having satisfied each of the standards relevant to this application, Genesis has met the first criterion.

## II.

Under the second criterion, Genesis must show that the cost of the project is reasonable, that it can sustain any financial burden likely to result from the project, that costs of care will not unduly increase, and that less expensive alternatives are not feasible or appropriate. 18 V.S.A. § 9437(2). Genesis has met this criterion.

The record shows that Genesis currently owns skilled nursing facilities in Vermont and in the region, enters this transaction as an informed purchaser, and can sustain any financial burden resulting from the project. As a large, for-profit entity, Genesis holds approximately \$80 million in liquid or readily-liquidated assets. Finding ¶ 2. Genesis has secured financing for the purchase through a bridge loan that will be refinanced through HUD, and has already closed on 19 of the 24 properties that form the large "package deal" with Revera as it exits the U.S. nursing home market. Findings ¶ 2, 3. Based on our review of the application and accompanying materials, and as verified through testimony at hearing, we find that the project is financially viable and does not cause undue increases in the cost of care for the state or for residents of Genesis facilities. We are also encouraged that Genesis confirmed on the record that it will support each of its Vermont facilities, including those that underperform financially and qualitatively, once the transaction is completed. Finding ¶ 25.

Further, Genesis has come forward to purchase these five facilities from a seller that seeks to leave the U.S. market entirely. Genesis is an experienced nursing home operator, has the financial capacity to fund the transaction, intends to maintain existing staffing and services, and currently manages each of the facilities with the approval of DAIL. Findings ¶¶ 1, 2, 4, 5. Under this set of facts, we find no less expensive alternatives are feasible or appropriate.

The applicant has satisfied the second criterion.

## III.

Under the third criterion, an applicant must show that there is a need for the project that is appropriate for the applicant to provide. 18 V.S.A. § 9437(3). Genesis has met this criterion.

Current Vermont nursing home census figures indicate that nursing home beds are needed in each of these facilities and in their respective geographical regions, although the number of

beds can be reduced consistent with the applicant's proposal to eliminate 52 unoccupied beds to create additional single occupancy rooms. *See DAIL Letter; Finding ¶ 5.* DAIL has already approved the transfer of management responsibilities of each facility to Genesis, which has achieved measurable improvement in quality ratings at four of the five facilities over a short period of time. *Finding ¶ 12.* Moreover, through its policies that include providing regional support to clinical staff at each facility and better recruiting, training and retention of nursing staff, Genesis has begun to institute changes at the five facilities that should positively affect its staff and its residents.

We therefore conclude that there is a need for this project and that it is appropriate that Genesis purchase and operate the five Vermont facilities, despite our concern with concentrating the ownership of Vermont skilled nursing homes in a single entity. Indeed, we recognize that there is a limited pool of potential buyers of these important care-giving facilities, and those with experience and financial capacity in Vermont and the Northeast region are scarce at best.

Genesis has satisfied the third criterion.

#### IV.

Under the fourth criterion, an applicant must demonstrate that the quality of health care will improve as a result of the project. 18 V.S.A. § 9437(4).<sup>8</sup> As we examine this criterion, we first underscore our collective view that the CON process, under current Vermont law, is an imprecise and inappropriate tool for determining whether quality at nursing facilities will improve with a new owner. Once a CON is issued and facility transfer occurs—a one-time, unalterable transfer of real property—the Board relinquishes any meaningful oversight over the facility and its operations, relying on other state and federal entities (DAIL and CMS) to ensure that the facility delivers appropriate high quality care to this vulnerable population. In sum, the legislature has not authorized the Board to oversee residents' care or monitor the facilities' quality once a CON issues. Instead, our authority is limited to forecasting, using the best information available to us, whether a new facility owner will meet our expectation to provide the highest quality care to nursing home residents.

For that reason, during our review we focused considerable attention on the quality of care at the four Vermont facilities the applicant currently owns, with an eye towards ensuring that any low CMS quality ratings at those facilities are not indicative of the applicant's ability to provide high quality care at the facilities it now seeks to purchase. While we recognize that CMS ratings may not fully reflect the conditions at any given facility—factors such as area demographics, for example, may affect both staffing and resident health status—they are nonetheless valid indicators of problems within a facility that should be monitored and addressed.

Based on our review, we find that there is undeniably room for improvement at the facilities Genesis currently owns in Vermont, as well as at those it will own pending CON approval. For example, it is well established that enrollment in hospice improves the quality of care for terminal patients and the quality of life for patients and their families. In Vermont,

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<sup>8</sup> This criterion may also be satisfied if the applicant can show that the project leads to greater access to care for Vermonters.

however, Genesis residents are enrolled in hospice at a significantly lower rate than in Genesis-owned facilities in other New England states. Finding ¶ 23. We do not find credible the applicant's assertion that hospice services are unavailable in Vermont, nor that the claimed lack of such services erects a barrier to improving the quality of care for the applicant's hospice-eligible residents.<sup>9</sup>

In other areas on which we expressed our concerns, however, we found the applicant's testimony credible and helpful to our understanding of its continued efforts to provide residents in its Vermont facilities with appropriate, quality care. For example, the Genesis facility in Rutland routinely screens residents for depression, which results in a higher than average reported incidence of depressive symptoms, and a low CMS quality measure. And although its admission policy precludes Genesis from admitting all applicants, Genesis provided credible testimony that it cannot accept residents with certain health conditions because it has insufficient staffing to care for the individual and all other residents, or does not have needed medical equipment to provide the resident with medically appropriate care. *See* Finding ¶ 16. We also accept as credible the applicant's testimony that prospective residents not admitted by Genesis are placed in care settings appropriate for their health status.

Based on the weight of the evidence presented and credible testimony proffered at hearing, we conclude that the applicant has met its burden to show that the quality of health care will improve at these facilities under Genesis ownership. We again note that Genesis has been managing the facilities it seeks to purchase for a short period of time and has increased the CMS overall star ratings at four of the five, *see* Finding ¶ 12, a trend that we find encouraging and one that we believe must continue. We also find that the availability of clinical and administrative support from the applicant's regional office, its policy of providing employees with educational and training opportunities, and its improved strategies to recruit, train and retain capable nursing staff will positively impact quality of care at the facility level. *See* Findings ¶ 19, 20. Similarly, the applicant's efforts to provide care to its residents in way that sheds some of the facilities' institutional character — Genesis utilizes decentralized dining, establishes resident "neighborhoods," provides a quiet, alarm-free environment, assigns nursing staff to consistent assignments to better address residents' needs—further demonstrate that it is taking positive steps to improve quality of care and resident satisfaction.

While we conclude that the applicant has satisfied the fourth criterion, we do so with the expectation that Genesis will improve the quality of care at all of its Vermont facilities, which we anticipate will be reflected in CMS ratings and quality measures.

## V.

To satisfy the fifth criterion, the applicant must show that the project will not adversely affect other services that it offers. 18 V.S.A. § 9737(5). Genesis is an experienced nursing care provider, and is seeking to acquire additional nursing facilities that are needed in their respective service areas. Genesis is not expanding services at any of the facilities, nor is it purchasing the five facilities to replace any of those which it currently owns. Accordingly, we conclude that the

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<sup>9</sup> Hospice care is available throughout Vermont. The Hospice and Palliative Care Council of Vermont's website, available at <http://www.hpccv.org/>, provides a listing of hospice and palliative care resources.

transfer of ownership of these five facilities will have no adverse effect on any services Genesis currently offers, satisfying the fifth criterion.

## VI.

The sixth criterion requires an applicant to show that the project will serve the public good. 18 V.S.A. § 9737(6). Based on our previous discussion and conclusions that the project will not unduly increase the cost of care, that there is a need for these services that is appropriate for Genesis to provide, and that the quality of care will improve as a result of the project, *see* sections II, III, and IV above, Genesis has satisfied this criterion.

## VII.

Finally, Genesis has met its burden to satisfy the two remaining criteria. Genesis has provided detailed information concerning the availability of transportation for each facility location. App. at 54-57; 18 V.S.A. § 9437(7) (applicant must consider affordable, accessible transportation services). The final criterion relates solely to the purchase of new health information technology, and is therefore not relevant to this project. 18 V.S.A. § 9437(8) (requires conformance with health information technology plan if application is for purchase of new health information technology).

### Conclusion

The legislature has ascribed the Board a narrow scope for its CON review of nursing home transfers, notwithstanding the important role of these facilities in our health care system. We are keenly aware that many of the recurring quality and financial issues that are found industry-wide will not be quickly or easily remedied. Medicaid rates may be inadequate to cover costs of care, while achieving the highest possible quality of resident care for this vulnerable population is of paramount importance. *See, e.g., Reading the Stars: Nursing Home Quality Star Ratings, Nationally and by State, available at <http://kff.org/medicare/issue-brief/reading-the-stars-nursing-home-quality-star-ratings-nationally-and-by-state/>* (as of February 2015, more than one-third of facilities have CMS overall ratings of one or two stars; in Vermont, 30% had overall one or two star ratings; 38% had one or two star ratings for CMS quality measures). We are also fully aware that our decision today, in which we approve this application, does not guarantee that quality of care will reach its highest levels at each of the applicant's facilities in the future. Based on the application and other materials provided by Genesis and its credible testimony at hearing, however, we expect and trust that Genesis will continue its work towards this goal.

Given the caveats noted in this decision, and subject to the conditions outlined in the certificate of need issued today, we approve the application.

Order

Pursuant to 18 V.S.A. § 9440(d), the Green Mountain Care Board approves the application of Genesis Healthcare, Inc., and a certificate of need shall issue, subject to the conditions set forth in that document.

**SO ORDERED.**

Dated: July 29, 2016 at Montpelier, Vermont

s/ Alfred Gobeille)  
s/ Cornelius Hogan) GREEN MOUNTAIN  
s/ Jessica Holmes) CARE BOARD  
s/ Betty Rambur) OF VERMONT  
s/ Allan Ramsay)

Filed: July 29, 2016

Attest: s/ Janet Richard  
Green Mountain Care Board, Administrative Services Coordinator