

# Polsinelli

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January 23, 2009

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PLANNING BOARD

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Mr. Jeffrey S. Mark  
Executive Secretary  
Illinois Department of Public Health  
Health Facilities Planning Board  
525 West Jefferson Street, 2nd Floor  
Springfield, Illinois 62761

**Re: Comments to Project No.08-086 Springfield Nursing and Rehabilitation  
Center**

Dear Mr. Mark:

We represent Heritage Enterprises, Inc. ("Heritage"), a skilled nursing provider with thirty-four facilities in Illinois. In that capacity, we are submitting comments in opposition to OJCC, LLC and OJCC Realty, LLC's (collectively, the "Applicants") application for permit to construct and establish a seventy-five bed skilled nursing facility located at 3089 Old Jacksonville Road, Springfield, Illinois 62704 (the "Project").

Currently, there is a need for seventy-six general long-term care beds in the Sangamon Planning Area. It is important to note that the Applicant's application is one of at least three applications that will be before the Illinois Health Facilities Planning Board (the "Board") this year. In addition to the Applicant's application, Lutheran Senior Services filed an application for the construction and establishment of a 62-bed skilled nursing facility on October 10, 2008 and Timberlake Healthcare & Rehabilitation Center, LLC filed a letter of intent to file an application for permit for the construction and establishment of a 76-bed skilled nursing facility on August 20, 2008. Based upon the latest inventory of long-term care services, need only exists for one of these three proposed facilities.

Moreover, it is important to note that at present none of these facilities will address the current shortage of Medicaid-certified beds, which is of critical importance due to the closure of Ashford Court Care Center f/k/a Sangamon Care Center ("Ashford Court") in May 2008. The Applicants' skilled nursing facility will not include any Medicaid-certified beds; Lutheran Senior

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Services proposes to include only six Medicaid-certified beds, which will likely be reserved for residents of its continuing care retirement community ("CCRC"); and Timberlake Healthcare & Rehabilitation Center, LLC has not addressed this issue. Moreover, approval of one or all of these applications could foreclose the opportunity of other providers to establish much needed Medicaid-certified beds in the planning area in the future. Accordingly, Heritage respectfully requests the Board deny the Applicants' application for permit.

**DISCUSSION**

The Applicants are not in compliance with all of the criteria for the construction and establishment of a 75-bed skilled nursing facility. As discussed in more detail below, the Applicants have failed to provide the Board with the following: (1) identification of all of the required applicants for permit; (2) documentation that a maldistribution of services will not occur as a result of the Project; (3) background information pertaining to the Applicants' relationship to Ashford Court; (4) evidence showing that the use of other area facilities is not feasible; (5) need for the project; (6) reasonableness of the Project's size; and (7) documentation that the Project will improve access to general long-term care beds to residents in the Sangamon Planning Area. Additionally, the Applicants failed to address the current Medicaid bed need in the target area. Accordingly, Heritage respectfully requests the Board carefully consider its comments in opposition to the Applicants' application for permit.

**Section I, Part B**

**Applicant Identification**

Ill. Admin. Code § 1130.220(a) provides that the following persons must be applicants for permit: (1) the person who will hold or who holds the license for the facility; (2) the person who has final control of the person who holds or who will hold the license for the facility; (3) any related person who will be financially responsible for guaranteeing or making payments on any debt related to the project; and (4) any other person who actively will be involved in the operation or provision of care and who controls the use of equipment or other capital assets that are components of the project. The Applicants on the application for permit include OJCC, LLC, the person who will hold the license for the facility, and OJCC Realty, LLC, the site owner. See App. pgs. 1-3.

As set forth above, the person who has final control of the person who holds or who will hold the license for the facility must be an applicant for permit. According to the Illinois Secretary of State's LLC File Detail Report, OJCC, LLC and OJCC Realty, LLC are member-managed Illinois limited liability companies. Benjamin M. Klein ("Klein"), Brian Levinson ("Levinson"), and Mark Shapiro ("Shapiro") are the three member-managers of OJCC, LLC and OJCC Realty, LLC. See Attachment 1 attached hereto. These individuals have final control over OJCC, LLC, the person who will hold the license for Springfield Nursing & Rehabilitation Center (the "Facility"). Based upon Ill. Admin. Code § 1130.220(a)(2), Klein, Levinson, and Shapiro must be applicants for permit. As stated above, only OJCC, LLC and OJCC Realty, LLC are listed as the applicants for permit.

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Additionally, Ill. Admin. Code § 1130.220(a)(3) requires any related person who will be financially responsible for guaranteeing or making payments on any debt related to the project to be an applicant for permit. According to its own calculations, the Applicants fail to satisfy all of the financial viability criteria. Specifically, the consolidated entity fails to meet the cushion ratio for the first three years after project completion (2011-2013), OJCC, LLC fails to meet the days of cash on hand in 2012, and OJCC Realty fails to meet any of the viability ratio standards with the exception of days of cash on hand in 2011. See App. pgs. 211-216. When an applicant is not in compliance with all of the viability ratios, it must document that another person or organization will assume legal responsibility to meet the debt obligations should the applicant default. While Klein, Levinson, and Shapiro did not provide documentation that they would assume legal responsibility for the Applicants' debts, they provided letters from their accountants stating that each had "sufficient finances to fund the working capital and equity required for the project." See App. pgs. 219-221. As set stated above, Klein, Levinson, and Shapiro are member-managers of OJCC, LLC and OJCC Realty, LLC. As related parties guaranteeing the debt of the Applicants, Klein, Levinson, and Shapiro must be applicants for permit.

Ill. Admin. Code § 1130.220(a)(3) requires the licensee, the person with final control of the licensee, a related party guaranteeing the debt for the project, and any person who is actively involved in operations or providing care and has control over the equipment or capital assets that are components of the project to be applicants for permit. The Applicants included only the licensee and site owner as applicants and failed to include the persons with final control over the licensee and the persons guaranteeing the debt. Accordingly, this criterion is not met.

### **Section III, Part A**

#### **Criterion 1110.230(a), Location**

3. Ill. Admin Code § 1110.230(a)(2) requires an applicant who proposes to establish a new health care facility to document that the location selected for the proposed project will not create a maldistribution of beds and services. Maldistribution is typified by such factors as: (1) ratio of beds to population within 30 minutes normal travel time of the proposed facility, which exceeds one and one half times the State average; (2) an average utilization rate for the last 12 months for the facilities providing the proposed services within 30 minutes normal travel time of the proposed project which is below the Board's target occupancy rate (90% for additional nursing care beds); or (3) lack of sufficient population concentration in an area to support the proposed project.

The Applicants' calculation of the ratio of population to beds is 168:1 for the target area and 123:1 for the State. Adjusting the State ratio by a factor of 1.5, the adjusted State ratio is 82:1. Although the population to bed ratio in the target area is less than the one and a half times the State average, this is not dispositive that a maldistribution of general long-term care beds does not exist in the target area. Based upon the latest Inventory of Long-Term Care Services,

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there is currently an excess of 2,909 general long-term care beds in the State.<sup>1</sup> Accordingly, the fact that the population to bed ratio in the planning area is lower than the State average is not indicative of a proper distribution of general long-term care beds in the target area.

While the population to bed ratio may indicate that a maldistribution of services does not exist in the planning area, it is important to note that the Project will be located on the west side of Springfield within five miles of five existing facilities accounting for 51.7% of the licensed beds in the target area. Moreover, if the Board approves all three projects that come before it this year, there will be 733 general long-term care beds within a five-mile radius of the Project, accounting for 53.7% of the licensed bed capacity in the target area. As set forth in the table below, the average occupancy rate for the five existing facilities located within 5 miles of the Project is 79.7%, which is below the Board's target occupancy. Furthermore, assuming a 90% occupancy rate, there are currently 66 beds available, nearly the full bed complement proposed by the Applicants. Accordingly, while there may not be a maldistribution of general long-term care beds in the target area, a disproportionate number of general long-term care beds currently exists on the west side of Springfield.

Facility	Distance	Licensed Beds	2007 Patient Days	2007 Occupancy	2007 Available Beds
Springfield Nursing & Rehabilitation Center (proposed)	0	75	N/A	N/A	N/A
Lewis Memorial Christian Village	1.35	155	54,046	95.5%	0
Illinois Presbyterian Home	1.56	15	2,574	47.0%	5
Oak Terrace Care Center	1.99	78	16,740	58.8%	24
Regency Nursing Care Residence	2.05	95	25,834	74.5%	14
Concordia Village (proposed)	2.44	64	N/A	N/A	N/A
Capitol Care Center	4.76	251	73,548	80.3%	23
Heritage Manor - Springfield	5.33	178	59,443	91.5%	0
St. John's Hospital	5.77	78	10,093	35.5%	42
Springfield Terrace	6.67	65	16,307	68.7%	13
St. Joseph's Home for Aged	8.59	65	22,159	93.4%	0
Villa Health Care East	10.11	99	35,410	98.0%	0
Timberlake Healthcare & Rehabilitation (proposed)	11.55	76	N/A	N/A	N/A
Auburn Nursing & Rehabilitation Center	14.65	70	20,391	79.8%	7
<b>Total (excluding Ashford Court)</b>		<b>1,364</b>	<b>336,545</b>	<b>80.2%</b>	<b>128</b>
<b>Total (Facilities within 5 Miles of Project)</b>		<b>733</b>	<b>172,742</b>	<b>79.7%</b>	<b>66</b>

Source: Illinois Department of Public Health, 2007 Long-Term Care Facility Profiles available at <http://www.idph.state.il.us/about/hfpb/pdf/LTC%20facilities%202007%2010-23-2008.pdf> (last visited Dec. 19, 2008).

<sup>1</sup> ILL. HEALTH FACILITIES PLANNING, BD., ILL. DEP'T OF PUB. HEALTH, INVENTORY OF HEALTH CARE FACILITIES AND SERVICES AND NEED DETERMINATIONS, LONG-TERM CARE FACILITY UPDATES (Nov. 24, 2008) available at <http://www.idph.state.il.us/about/hfpb/pdf/LTC%20Update%2011-24-2008.pdf> (last visited Dec. 19, 2008).

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A second indication of a maldistribution of beds occurs when the average utilization rate for the last twelve months for facilities providing the proposed services within 30 minutes travel time under normal driving conditions of the proposed project is below the Board's target occupancy rate. The Board's target occupancy for additional nursing care beds is 90%. As set forth in the table below, the 2007 target area occupancy rate was 76.8%. Excluding Ashford Court, the occupancy rate increases to 80.2%, which is still below the Board's target occupancy rate. Accordingly, a maldistribution of nursing beds may exist in the target area.

**Table 2**

**Target Area Occupancy Rates**

Facility	Licensed Beds	2007 Patient Days	2007 Occupancy	2006 Patient Days	2006 Occupancy
Ashford Court Care Center <i>l/k/a</i> Sangamon Care Center	170	33,112	53.4%	45,784	73.8%
Auburn Nursing & Rehabilitation Center	70	20,391	79.8%	22,627	88.6%
Capitol Care Center	251	73,548	80.3%	70,051	76.5%
Heritage Manor - Springfield	178	59,443	91.5%	57,942	89.2%
Illinois Presbyterian Home	15	2,574	47.0%	1,895	34.6%
Lewis Memorial Christian Village	155	54,046	95.5%	53,210	94.1%
Oak Terrace Care Center	78	16,740	58.8%	16,664	58.5%
Regency Nursing Care Residence	95	25,834	74.5%	26,050	75.1%
Springfield Terrace	65	16,307	68.7%	15,004	63.2%
St. John's Hospital	78	10,093	35.5%	8,422	29.6%
St. Joseph's Home for Aged	65	22,159	93.4%	21,499	90.6%
Villa Health Care East	99	35,410	98.0%	34,895	96.6%
<b>Total</b>	<b>1,319</b>	<b>369,657</b>	<b>76.8%</b>	<b>374,043</b>	<b>77.7%</b>
<b>Total (excluding Ashford Court Care Center)</b>	<b>1,149</b>	<b>336,545</b>	<b>80.2%</b>	<b>330,265</b>	<b>78.3%</b>

Source: Illinois Department of Public Health, 2007 Long-Term Care Facility Profiles available at <http://www.idph.state.il.us/about/hf/bp/pdf/LTC%20facilities%202007%2010-23-2008.pdf> (last visited Dec. 19, 2008).

The Applicants contend that a maldistribution of services would not occur as a result of the Project. Specifically, the Applicants note that based upon the 2006 Long-Term Care Facility Questionnaire three facilities were above 90% occupancy, two facilities had 89% occupancy, and the remainder account for 9 percent of total bed capacity. While five of twelve facilities were at or near the 90% occupancy target in 2006, these occupancy rates did not hold true for 2007. Based upon the 2007 Long-Term Care Facilities Questionnaire four facilities were above the 90% target occupancy rate and no other facilities were near 90%. Finally, as set forth above, the target area occupancy rate was 76.8%, significantly below the Board's target occupancy rate.

Additionally, there is no basis for the Applicants' contention that the remaining facilities in the target area constitute only 9 percent of the total bed capacity. Based upon licensed bed capacity, the five facilities at or near 90% occupancy in 2006 accounted for 49.3% of the total licensed beds while the remaining facilities, excluding Ashford Court, accounted for 50.7% of the licensed beds. Even if the calculation is based upon beds set up as opposed to licensed beds, the five facilities with the highest occupancy rates constitute 53% of the total bed capacity in the planning area. Finally, taking into account patient days, the five facilities with the highest

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occupancy rates in 2006 accounted for 57.9% of total patient days while the remaining facilities accounted for 42.1% of total patient days. Accordingly, the Applicants' statement that the remaining facilities accounted for 9 percent of the bed capacity in the planning area should be discredited.

Facility	Licensed Beds	Staffed Beds	2006 Patient Days	2006 Licensed Bed Occupancy
Villa Health Care East	99	99	34,895	96.6%
Lewis Memorial Christian Village	155	155	53,210	94.1%
St. Joseph's Home for Aged	65	65	21,499	90.6%
Heritage Manor - Springfield	178	176	57,942	89.2%
Auburn Nursing & Rehabilitation Center	70	67	22,627	88.6%
<b>Subtotal - Five Highest Occupancy</b>	<b>567</b>	<b>562</b>	<b>190,173</b>	<b>91.9%</b>
<b>Percentage of Total</b>	<b>49.3%</b>	<b>53.0%</b>	<b>57.9%</b>	
Capitol Care Center	251	225	70,051	76.5%
Regency Nursing Care Residence	95	95	26,050	75.1%
Springfield Terrace	65	65	15,004	63.2%
Oak Terrace Care Center	78	62	16,664	58.5%
Illinois Presbyterian Home	15	15	1,895	34.6%
St. John's Hospital	78	37	8,422	29.6%
<b>Subtotal - Remaining Facilities in Target Area</b>	<b>582</b>	<b>499</b>	<b>138,086</b>	<b>65.0%</b>
<b>Percentage of Total</b>	<b>50.7%</b>	<b>47.0%</b>	<b>42.1%</b>	
<b>Total</b>	<b>1,149</b>	<b>1,061</b>	<b>328,259</b>	<b>78.3%</b>

Source: Illinois Department of Public Health, 2006 Long-Term Care Facility Profiles available at <http://www.idph.state.il.us/about/hfcb/pdf/LTC%20Individual%20Profiles%202006.pdf> (last visited Jan. 7, 2009).

Based upon analysis of the Applicants' responses to the maldistribution criteria, the Applicants have not demonstrated that a maldistribution of general long-term care beds does not exist or will not occur as a result of the Project.

**Section III, Part B**  
**Criterion 1110.230(b), Background of the Applicant**

This criterion requires the applicant to provide proof of current licensing and, if applicable, certification and accreditation of all health care facilities owned and operated by the applicant. The Applicants note that their principles (Klein, Levinson and Shapiro) operate licensed facilities in Illinois and Missouri. As a result, the Applicants believe they have the experience and are fit, willing, and able to operate the Facility. See App. pg. 80.

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The Applicants list several facilities located in Illinois and Missouri owned and operated by the principles; however, they fail to include Ashford Court. See App. pg. 82. As discussed more fully in Section I, Part B, Klein, Levinson and Shapiro are required applicants on the application. According to the Illinois Secretary of State's LLC File Detail Report, Klein and Levinson are the member-managers of Sangamon Care Center, LLC ("Sangamon"). See Attachment 2 attached hereto. Sangamon operated Ashford Court f/k/a Sangamon Care Center. Accordingly, the Applicants must include Ashford Court as a facility owned or operated by the principles.

As you are aware, on April 28, 2008, Ashford Court notified its residents and their families of its decision to voluntarily close. Pursuant to Section 3-423 of the Nursing Home Care Act, "[a]ny owner of a facility licensed under [the Nursing Home Care] Act shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than 10% of the residents." Such notice must be provided to the Illinois Department of Public Health ("IDPH"), the resident, the resident's representative, and a member of the resident's family, if practicable. Ashford Court provided residents with thirty days notice of its intent to voluntarily close and failed to notify IDPH of its closure. Accordingly, IDPH fined Ashford Court \$35,500 for failing to provide the required 90 days notice prior to voluntary closure.<sup>2</sup>

Additionally, Ashford Court is currently out of compliance with Illinois Health Facilities Planning Act (the "Act") requirements for discontinuation of a skilled nursing facility. Specifically, the Act exempts facilities licensed under the Nursing Home Care Act from the Board's requirements regarding discontinuation; however, the Act requires such facilities to: (1) comply with Section 3-423 of the Nursing Home Care Act and (2) provide the Board with 30-days' written notice of its intent to close.<sup>3</sup> As set forth above, Section 3-423 of the Nursing Home Care Act requires the owner of a licensed facility to provide 90 days notice prior to voluntarily closing all or part of a facility. Ashford Court provided its residents with 30 days notice of the closure and failed to inform the Board of its intent to close. Accordingly, Ashford Court violated the Act and is subject to sanctions.

Based upon the failure of Ashford Court to comply with the Nursing Home Care Act or the Illinois Health Facilities Planning Act's requirements for discontinuation of a skilled nursing facility, the Applicants have not established that they are fit, willing and able to operate the Facility.

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<sup>2</sup> Ill. Dep't Pub. Health, Quarterly Reports of Nursing Home Violators July - September 2008 available at [http://www.idph.state.il.us/about/nursing\\_homes\\_violations08/quarterly\\_report\\_3-08.htm](http://www.idph.state.il.us/about/nursing_homes_violations08/quarterly_report_3-08.htm) (last visited Jan. 9, 2009).

<sup>3</sup> 20 Ill. Comp. Stat. 3960/14.1(b)(5).

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**Section III, Part C**  
**Alternatives to the Proposed Project**

2. This criterion requires an applicant to discuss why the alternative of using other area facilities or resources to meet the needs identified in the project is not feasible. The Applicants state that the alternative of using other area facilities is not feasible for two reasons: (1) the projected growth of the elderly population could create a substantial need for additional long-term care beds that could easily fill all existing and proposed beds; and (2) average utilization for area nursing facilities is 93.5%. See App. 111-112.

The Applicants indicate that use of existing facilities is not feasible because the projected growth of the elderly population could create a substantial demand for long-term care beds that could overwhelm the current and proposed supply. It is important to note that based upon the current Inventory of Long-Term Care Services, there is currently a need for 76 general long-term care beds. The need calculation is based upon a ten-year population projection. As a result, the projected growth the Applicants refer to is already factored in the need calculation.

Moreover and as discussed throughout this letter, there is currently a shortage of Medicaid-certified beds in the target area. Due to the projected growth of the elderly population, need for Medicaid-certified beds will only intensify in the coming years, resulting in a critical shortage of Medicaid-certified beds in the target area. Based upon the Applicants' application, the Project will not address the shortage of Medicaid beds. Furthermore, the growth of the elderly population will likely have only a marginal impact on private pay facilities like the one proposed by the Applicants. The Applicants have failed to quantify the impact of the projected growth of the private pay population on area facilities or demonstrate why other private pay facilities in the area could not accommodate this growth. Therefore, the Applicants' rationale is flawed.

Additionally, the Applicants contend that the average occupancy rate for nursing facilities in the target area is 93.5%. The Applicants' calculation of the target area occupancy is based on the 2006 Long-Term Care Facility Questionnaire data. The calculation is flawed in several respects: (1) it assumes the target area patient days remained constant from 2006 to 2007; (2) it presumes all residents of Ashford Court transferred to other facilities in the target area; and (3) it assumes the patient days for Ashford Court remained constant from 2006 to 2007. Based upon the 2007 Long-Term Care Facility Questionnaire, these assumptions were incorrect. Accordingly, the Applicants' calculated occupancy rate is overstated.

As set forth above, the Applicants' target area occupancy rate is based on the 2006 Long-Term Care Facility Questionnaire. The calculation assumes patient days remained constant from 2006 to 2007; however, patient days decreased by 6,057 from 2006 to 2007. Accordingly, the Applicants' occupancy rate calculation is overstated by at least 1.5%.

The Applicants also assume all of the residents of Ashford Court transferred to other facilities in the target area. As a result, the Applicants exclude the Ashford Court long-term care

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beds from its occupancy rate calculation, but not the patient days. Ashford Court predominantly served Medicaid beneficiaries. As set forth in more detail below, the target area lacks the required number of Medicaid beds to accommodate all of Ashford Court's Medicaid residents. It is unlikely every Medicaid resident was transferred to a facility within the target area. Accordingly, inclusion of all of Ashford Court's 2006 patient days in the occupancy calculation overstates the target area occupancy rate.

Although the actual number of residents who were transferred to facilities outside of the target area is unavailable, the IDPH Statement of Violations and Plan of Correction and articles published in The State Journal-Register support the presumption that many Ashford Court residents were relocated to facilities outside of the target area. The surveyor's findings in the Statement of Violations and Plan of Correction describe that at least one resident and family member was concerned about placement in another city and that they had been approached by facilities in other cities.<sup>4</sup> Moreover, an article in the June 29, 2008 edition of The State Journal-Register confirms that not all residents were accepted by nursing homes in Springfield and some residents were relocated to facilities as far away as Decatur and Lincoln.<sup>5</sup>

The Statement of Violations and Plan of Correction indicates that Ashford Court had 71 residents when it announced the closure of the facility on April 28, 2008.<sup>6</sup> Assuming the allocation of residents by payment source remained constant from December 31, 2007 to April 28, 2008, the estimated population by payment source would have been as follows: one Medicare, 62 Medicaid and 8 private pay residents.<sup>7</sup> Accordingly, the closure of Ashford Court in May 2008 would likely require sixty-three Medicare/Medicaid beds in the target area to accommodate the Medicare and Medicaid residents.

Based on the number of Medicaid staffed beds available in the target area, only 30 Ashford Court Medicaid residents could readily be accommodated by other area facilities. Given the sudden closure of Ashford Court, it is unlikely other area facilities could have increased their Medicaid staffed bed capacity to accommodate Ashford Court's Medicaid residents. See Table 6. Assuming all private pay residents were transferred to facilities within the target area, the target area could only accommodate 38 residents. The remaining 33 residents were likely transferred to skilled nursing facilities outside of the target area.

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<sup>4</sup> Ill. Dep't Pub. Health, Statement of Violations and Plan of Correction, Complaint #s 0842031, 0842042 (Apr. 30, 2008) available at [http://www.idph.state.il.us/about/nursing\\_homes\\_violations08/3rd\\_Quarter/Sangamon%20CC%204%2030%2008.pdf](http://www.idph.state.il.us/about/nursing_homes_violations08/3rd_Quarter/Sangamon%20CC%204%2030%2008.pdf) (last visited Dec. 29, 2008).

<sup>5</sup> Dean Olsen, *State May Fine Ashford Court*, STATE JOURNAL-REGISTER, Jun. 29, 2008 available at <http://www.sjr.com/archive/x1713651815/State-may-fine-Ashford-Court> (last visited Jan. 6, 2009).

<sup>6</sup> Ill. Dep't Pub. Health, *supra* note 4 at 2.

<sup>7</sup> Private pay includes both private insurance and self-pay residents.

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Table 4				
Medicaid Staffed Bed Availability <sup>8</sup>				
	Staffed Beds	Staffed Medicaid Beds	Staffed Medicaid Beds in Use	Available Medicaid Beds
Auburn Nursing & Rehab Center	65	65	62	3
Capitol Care Center	223	223	215	8
Heritage Manor – Springfield	174	174	165	9
Illinois Presbyterian Home	13	0	0	0
Lewis Memorial Christian Village	155	149	144	5
Oak Terrace Care Center	62	0	0	0
Regency Nursing Care Residence	95	0	0	0
St. Joseph's Home of Springfield	65	0	0	0
Villa Health Care East	99	99	94	5
<b>Total</b>	<b>951</b>	<b>710</b>	<b>680</b>	<b>30</b>

Source: Illinois Department of Public Health, 2007 Long-Term Care Facility Profiles available at <http://www.idph.state.il.us/about/hfph/pdf/LTC%20facilities%202007%2010-23-2008.pdf> (last visited Dec. 19, 2008).

Adjusting the 2007 Long-Term Care Facility Questionnaire data to reflect the closure of Ashford Court, the occupancy rate for the target area is 83.6%, which is below the Board's target occupancy rate. Assuming an 83.6% occupancy rate, the target area has an excess of 188 beds, approximately 2.5 times the bed complement proposed for the Project. Accordingly, sufficient capacity exists in the target area to accommodate the beds proposed in the Project.

Table 5			
Adjusted Target Area Occupancy Rate			
	Licensed Beds	Patient Days	Occupancy Rate
Total	1,319	369,657	76.8%
Less: Ashford Court <sup>9</sup>	(170)	(19,242)	
<b>Adjusted Total</b>	<b>1,149</b>	<b>350,415</b>	<b>83.6%</b>

Source: Illinois Department of Public Health, Long-Term Care Facility Profiles available at [http://www.idph.state.il.us/about/hfph/hfphinvent\\_data.htm](http://www.idph.state.il.us/about/hfph/hfphinvent_data.htm) (last visited Dec. 19, 2008).

Assuming all of Ashford Court's residents transferred to facilities within the target area, the occupancy rate still falls below the Board's 90% occupancy rate. Based upon the April 30, 2008 complaint survey, Ashford Court had 71 residents (41.8% occupancy). Assuming the 2007 occupancy rate for the target area remained constant from 2007 through April 2008, the occupancy rate for the target area would be 86.4%. Based upon an 86.4% occupancy rate, an excess of 156 general long-term care beds exists in the target area, more than double the bed complement for the proposed Project

<sup>8</sup> Springfield Terrace and St. Johns' Hospital were excluded from the Medicaid/Medicare bed availability calculation.

<sup>9</sup> Ashford Court residents that likely transferred outside of the target area (33,112 patient days – (38 residents relocated within the target area x 365 days) = 33,112 patient days – 13,870 patient days = 19,242 patient days)

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<b>Table 6</b>			
<b>Adjusted Target Area Occupancy Rate</b>			
	<b>Licensed Beds</b>	<b>Patient Days</b>	<b>Occupancy Rate</b>
Total (excluding Ashford Court)	1,149	336,545	80.2%
Add: Ashford Court <sup>10</sup>	0	25,915	
<b>Adjusted Total</b>	<b>1,149</b>	<b>362,460</b>	<b>86.4%</b>

Source: Illinois Department of Public Health, Long-Term Care Facility Profiles available at [http://www.idph.state.il.us/about/hfpb/hfpbinvent\\_data.htm](http://www.idph.state.il.us/about/hfpb/hfpbinvent_data.htm) (last visited Dec. 19, 2008).

Finally, the Applicants fail to address why the use of their existing facility, Capitol Care Center, is infeasible. Based upon the 2007 Long-Term Care Facility Questionnaire data, Capitol Care Center's occupancy rate was 80.3%, which amounts to approximately 201 beds. Capitol Care is licensed for 251 general long-term care beds. As a result, 50 general long-term care beds, or two-thirds of the Project's bed complement, are available for use within the Applicants' own facility. Moreover, Capitol Care Center has 27 unstaffed beds, which is a further indication of the excess capacity at Capitol Care Center.

The Applicants contend that due to projected growth and an occupancy rate above the Board's target occupancy rate, it is infeasible to use other facilities. Ironically, the Applicants share common ownership with the licensee of Ashford Court, who is responsible for the increased occupancy rate in the target area. Moreover, the Applicants failed to demonstrate that the target area occupancy rate, even with the closure of Ashford Court, was above the Board's target and why the use of other area facilities, including Capitol Care Center, is infeasible. Accordingly, this criterion is not met.

### **Section III, Part D**

#### **Criterion 1110.230(d), Need for the Project**

This criterion states the project must be needed. The Applicants indicate that the Project addresses an identified need of 76 general long-term care beds based on the Board's latest inventory. See App. pg. 137. While the latest bed inventory data available from IDPH shows a shortage of 76 general long-term care beds in the target area, it does not address the shortage by payor. As set forth in the table below, allocating the 2015 Planned Patient Days by payor source, there is a calculated need for 13 Medicare beds, 36 Medicaid beds and 27 private pay beds. The Project proposes the construction and establishment of a 75-bed skilled nursing home; however it will include no Medicare or Medicaid beds. See App. pg. 9. Accordingly, the Project does not address the need for Medicare and Medicaid beds in the target area.

<sup>10</sup> Patient days based upon April 28, 2008 occupancy (71 residents x 365 days = 25,915 patient days)

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Table 7					
Bed Need by Payor Source					
	2015 Planned Patient Days	Planned Average Daily Census	Planned Bed Need	Existing Beds <sup>11</sup>	Excess/ (Need)
Medicare	75,202	206.0	229	216	(13)
Medicaid	220,280	603.5	670	634	(36)
Private Pay	162,891	446.3	496	469	(27)
<b>Total</b>	<b>458,373</b>	<b>1,255.8</b>	<b>1,395</b>	<b>1,319</b>	<b>(76)</b>

Source: Illinois Health Facilities Planning Board, Illinois Department of Public Health, Inventory of Health Care Facilities and Services and Need Determinations 2008 available at <http://www.idph.state.il.us/about/hfpb/pdf/2008%20LTC%20Inventory%20revised.pdf> (last visited Jan. 7, 2009).

Notwithstanding the fact that there is no need for a 75-bed private pay skilled nursing facility in the target area, it is important to note that in addition to the Applicants' proposed long term care facility, two other skilled nursing facilities have been proposed for the Sangamon Planning Area. Specifically, Lutheran Senior Services is proposing to establish a 64-bed skilled nursing facility and Timberlake Healthcare & Rehabilitation Center, LLC is proposing to establish a 76-bed skilled nursing facility. Collectively, the three proposed skilled nursing facilities seek to establish 215 general long-term care beds in the Sangamon Planning Area. As set forth above, need only exists for 76 general long-term care beds. Accordingly, need only exists for one of these proposed facilities.

Need only exists for one of the proposed skilled nursing facilities presently before the Board. Moreover and as discussed more fully above, there is currently a shortage of available Medicaid-certified beds in the target area. The Applicants' propose to construct and establish a 75-bed general long-term care facility; however the Project will not include any Medicaid beds. See App. pg. 9. Accordingly, the Applicants failed to address a critical need in the target area.

As previously stated, none of the proposed projects address the current Medicaid bed shortage in the target area. Given the limited need for general long-term care beds in the target area (76 beds), approval of one or all of these projects potentially forecloses the opportunity for other skilled nursing providers to address the Medicaid bed shortage. If the Board approves this Project, a need of one bed will remain. Accordingly, it may be difficult for future applicants to obtain Board approval to construct and establish a general long-term care facility to address the Medicaid bed need.

As additional support for the need for the Project, the Applicants refer to population projections from a State demographic study and a letter of support from St. John's Hospital indicating that over 180 residents annually leave the Sangamon Planning Area for nursing services. See App. pg. 137. It is important to note that the need calculation is based upon 2015 population projections. As a result, any projected growth is already factored into the need calculation.

<sup>11</sup> Existing bed calculation based on current occupancy by payor source.

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Additionally, the letter of support from St. John's Hospital is not persuasive support for the need for the Project. The letter indicates that 15-20 Sangamon County residents per month are discharged to out-of-county facilities. See App. pg. 180. While there is no contention that residents are not being discharged to facilities outside of the target area, it is possible that such residents are not accepted by facilities within the target area due to their payor status and not due to a shortage of beds. As set forth throughout this letter, there is currently a shortage of Medicaid-certified beds. Therefore, many of the aforementioned discharged residents may be Medicaid patients who cannot find facilities within the target area willing to accept them. Assuming this is true, the Applicants have failed to address how the Project will alleviate this problem.

Ironically, throughout their application the Applicants cite to the closure of Ashford Court as a basis for need for the Project, e.g., need for additional 170 general nursing care beds above the Board calculated need and target area occupancy rate above 90%. However, the Applicants fail to acknowledge that they share common ownership with the licensee of Ashford Court. Moreover, it should not go unnoticed that Ashford Court served predominantly Medicaid beneficiaries, and as a result of the closure of the facility, many of these residents were relocated to facilities as far away Decatur and Lincoln. Additionally, it is important to note that the Applicants seek to construct and establish a 75-bed skilled nursing facility that will serve private pay residents. See App. pg. 9. Therefore, the Project will not alleviate the current shortage of Medicaid-certified beds created by Ashford Court.

**Section III, Part E**  
**Criterion 1110.230(3), Size of Project**

This criterion provides that a proposed project cannot exceed the State norms for project size unless the additional square footage can be justified by one of the following:

1. Additional space is required due to the scope of services provided;
2. The existing facility places impediments on the architectural design of the proposed facility;
3. Excess square footage results from the conversion of excess bed space; or
4. Historical demand for private rooms has generated a need for conversion of multiple bedrooms to private usage.<sup>12</sup>

The State norm is 414 gross square feet per bed (GSF/Bed). The Applicants propose 54,375 gross square feet (GSF) or 765 GSF/Bed for the Project. The Project exceeds the State norm by 23,325 GSF or 311 GSF/Bed. While the Applicants have accounted for most of the

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<sup>12</sup> 77 Ill. Admin. Code § 1110.230(e)(1).

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excess space, they have not indicated why the scope of services provided dictates the use of such space. Accordingly, this criterion is not met.

The Applicants also point to recently approved certificate of need applications for long-term care facilities to demonstrate the reasonableness of the proposed project. See App. pgs 161-62. As the Applicants' note, the average gross square footage of these previously approved projects is 527 GSF/Bed. The Applicants' propose 725 GSF/Bed, which is 37.6% above the average of previously approved projects. The Applicants' GSF/Bed does not appear reasonable compared to the average GSF/Bed of previously approved projects,

Moreover, it is important to note that of the previously approved projects listed by the Applicants, only four exceeded the proposed GSF/Bed of the Applicants' project. Additionally, these four facilities are much smaller, ½ or ⅓ the size of the Applicants' proposed facility, and two facilities, The Clare at Water Tower and Admiral at the Lake, are located in high-rise CCRC developments. As a result, certain life safety code and other building requirements that apply to high-rise buildings could account for the increased square footage. Therefore, comparing the Applicants' project to these facilities may not be applicable in determining the reasonableness of the gross square footage.

## **Section VI, Part A**

### **Criterion 1110.320(b), Allocation of Additional Beds**

This criterion requires an Applicant proposing to establish a new category of service to document that access to the proposed service will be improved. The documentation shall consist of at least one of the following:

1. The proposed service is not available within the planning area;
2. Existing facilities have restrictive admission policies resulting in access limitations;
3. Existing service providers are experiencing occupancy levels in excess of the category of service target levels; or
4. The travel time to existing service providers is excessive (exceeds 45 minutes) for area residents to be served by the project.

The Applicants fail to document that the Project will improve access to skilled nursing care. First, skilled nursing care is available within the target area. Based upon the latest data

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available from the Board, eleven licensed skilled nursing facilities<sup>13</sup> exist within the Planning Area.<sup>14</sup> Accordingly, this criterion is not met.

Although the Applicants acknowledge skilled nursing care is available in the target area and that several facilities are operating below the State's target occupancy rate of 90%, they point to the closure of Ashford Court to support their position that the average occupancy rate is 89.2%. See App. pg. 182. This occupancy rate is based upon the 2006 Long-Term Care Facility Questionnaire data and assumes all residents of Ashford Court transferred to other facilities in the target area. As discussed in greater detail in Section III, Part C, the target area occupancy rate decreased from 2006 to 2007. Moreover, the target area lacked sufficient Medicaid-certified beds to accommodate all of Ashford Court's Medicaid residents. Taking these factors into account, the revised target area occupancy rate is 83.6%, which is below the Board's target occupancy rate.

Second, while the Applicants provide evidence that restrictive admission policies at other target area facilities limit access, they do not demonstrate how the Project will improve access for area residents. The Applicants note that Illinois Presbyterian Home, Oak Terrace Care Center, and St. Joseph's Home for the Aged are intermediate care facilities and not Medicare or Medicaid certified. Additionally, Regency Nursing Care Residence is not certified for Medicaid and certified for only one Medicare bed. Because these facilities are not Medicare or Medicaid certified, the Applicants note that they are not available or accessible to the Medicare/Medicaid population in the target area. See App. pgs. 183-86. The Applicants also note that Springfield Terrace is licensed as an intermediate care facility and only admits mentally ill patients. Although Springfield Terrace is Medicaid certified, the Applicants indicate that it is not available or accessible to the general geriatric population. Finally, the Applicants refer to the closure of Ashford Court as creating further access problems. Ironically, the Applicants share common ownership with the licensee of Ashford Court, and it is important to note that they ignore the access restrictions at their proposed facility. Based on the Applicants own application, the Project will include no Medicare or Medicaid beds. See App. pg. 9. Accordingly, the Applicants failed show how they will improve access to the Medicare and Medicaid population in the target area.

The Applicants contend that because they have documented access restrictions at other area facilities they have met this criterion. While they have documented access restrictions, the Applicants have not established how the Project will improve access to nursing services for area residents. Accordingly, this criterion is not met.

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<sup>13</sup> Excludes Ashford Court.

<sup>14</sup> DIV. OF HEALTH SYS. DEV., OFFICE OF POLICY, PLANNING AND STATISTICS, ILL. DEP'T OF PUB. HEALTH, 2007 ANNUAL LONG-TERM CARE FACILITY QUESTIONNAIRE (2008) available at <http://www.idph.state.il.us/about/hfcb/pdf/LTC%20facilities%202007%2010-23-2008.pdf> (last visited Oct. 28, 2008).

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The Applicants failed to meet the first two criteria or to address the two remaining criteria in Section VI, Part A. Accordingly, this criterion is not met.

**Section XXV**  
**Financial Feasibility**

Ill. Admin. Code § 1120.130(a) requires all applicants to provide either the most recent bond rating that is less than two years old from Fitch's, Moody's, or Standard and Poor's rating agencies that documents a rating of "A" or better or provide the most recent three years' audited financial statements that include the following:

1. Balance sheet;
2. Income statement;
3. Change in fund balance; and
4. Change in financial position.

Moreover, each applicant that does not provide proof of an "A" or better bond rating must document compliance with the viability ratio standards established by the Board for the most recent three years for which audited financial statements are available and the first full fiscal year after project completion.<sup>15</sup> As set forth in Section I, Part B, Klein, Levinson and Shapiro are required applicants on the application. Accordingly, Klein, Levinson and Shapiro must each submit financial statements and comply with the Board's viability standards.

As set forth throughout this letter, the Applicants have failed to meet all of the criteria for permit approval. Additionally, given the current Medicaid bed shortage in the target area, the Applicants' have not demonstrated how the Project will improve access for Medicaid residents. More importantly, approval of this Project could ultimately foreclose opportunities for other skilled nursing providers to establish skilled nursing facilities that will address the current Medicaid bed need. Therefore, we respectfully request the Board deny the Applicants' application for permit.

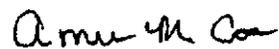
Thank you for your time and consideration of our comments in opposition to the Project. If you have any questions or need clarification on any of our comments, please feel free to contact me at 312-873-3606 or [acooper@polsinelli.com](mailto:acooper@polsinelli.com).

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<sup>15</sup> Ill. Admin. Code § 1120.210(a).

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Sincerely,



Anne M. Cooper

Attachments

cc: Michael Constantino, HFPB