

**MISSISSIPPI STATE DEPARTMENT OF HEALTH
DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT
JANUARY 2013**

**CON REVIEW: NH-CO-1112-019
MEADOWBROOK HEALTH AND REHAB, LLC
COST OVERRUN TO CON NUMBER R-0802
(CONSTRUCTION OF NORTHPOINTE HEALTH & REHAB FOR
THE REPLACEMENT OF 21-BED KEMPER COUNTY NURSING
HOME AND RELOCATION OF 39 BEDS FROM POPULAR SPRINGS
NURSING AND REHABILITATION)
APPROVED CAPITAL EXPENDITURE: \$5,168,500
ADDITIONAL CAPITAL EXPENDITURE: \$1,827,595
REVISED CAPITAL EXPENDITURE: \$6,996,095
LOCATION: MERIDIAN, LAUDERDALE COUNTY, MISSISSIPPI**

STAFF ANALYSIS

I. PROJECT SUMMARY

A. Applicant Information

Meadowbrook Health and Rehab, LLC is a Mississippi limited liability company, registered and in good standing. The company's sole member and manager is Mr. Charles Bruce Kelly.

Charles Bruce Kelly presently owns and operates Popular Springs Nursing Center, LLC, a 130-bed Medicare and Medicaid certified long-term care facility in Meridian, Lauderdale County. Mr. Kelly also acquired Kemper Homeplace Nursing Home (21 Beds) in February 2006. Meadowbrook was formed on May 8, 2007, as the replacement entity for the Kemper County Nursing home.

B. Project Background

Meadowbrook Health and Rehab, LLC received Certificate of Need (CON) No. R-0802 with an effective date of February 11, 2010 and an expiration date of February 11, 2011 for the replacement and relocation of the 21-bed Kemper Homeplace Nursing Facility formerly located in DeKalb, Kemper County, Mississippi to Meridian, Lauderdale County, Mississippi. Meadowbrook Health and Rehab LLC asserts that the intent of the original project was to relocate and combine 39 existing nursing home beds now licensed to Popular Springs Nursing Center with the 21 beds from Kemper County to form a new 60-bed facility in Meridian. Both Kemper and Lauderdale counties are located in Long Term Care Planning District (LTCPD) IV. The new facility, housing both the Kemper County beds and beds located from Popular Springs Nursing Center will be known as Northpointe Health & Rehab.

Popular Springs Nursing Center, LLC, Meridian, obtained Kemper Homeplace Nursing Facility, Inc., DeKalb, effective February 2006. On March 7, 2006, the applicant requested to place 21 beds held by Kemper Homeplace Nursing Facility, Inc. in abeyance. On April 13, 2007, Popular Springs Nursing Center, LLC also requested to place 10 of its 130 nursing facility beds in abeyance.

For Kemper County Homeplace Nursing Facility, 2004 was the last period utilization data was available for the facility and it had an occupancy rate of 87.95% or 18.17 patients.

Popular Springs Nursing Center is currently licensed for 120 beds with an additional 10 beds held in abeyance. Upon completion of the relocation of beds from Popular Springs to the replacement facility, Popular Springs will consist of 69 private rooms and 11 semi-private rooms. No renovation will be required at Popular Springs to accommodate this setting.

The site for the Kemper County Facility replacement is located on Windmill Drive/ Highway 39 and it is in Lauderdale County, Meridian, Mississippi approximately 24 miles from the existing facility in Kemper County.

The replacement facility will be constructed as an all-private room, state-of-the-art facility geared to meet the rising demands of the aging population.

The applicant asserts in the original application that the ultimate goal of the project is to create a viable 60-bed replacement facility that will improve the quality of life of the residents by creating a more homelike setting. By offering private rooms to all its residents at the replacement facility and converting some of the semi-private rooms to private rooms at Popular Springs, the applicant proposes to provide additional space to improve the life of its residents. Also, by relocating 21 beds to the replacement facility and by adding, 39 beds from Popular Springs, the replacement facility will be able to realize savings within its program it could not realize with just a 21-bed facility.

Time-line of events on the original application (CON No. R-0802) are as follows:

January 15, 2009 - Meadowbrook Health and Rehab, LLC filed the original Certificate of Need application for the *Construction of Northpointe Health & Rehab for the Replacement of 21-Bed Kemper County Nursing Home and Relocation of 39 Beds From Poplar Springs to Northpointe Health Rehabilitation.*

February 17, 2009 - the Department deemed the Certificate of Need application complete.

April 3, 2009 - the Mississippi State Department of Health's staff analysis found the application to be in substantial compliance with applicable criteria and standards found in the *Plan* and the *Certificate of Need Review Manual*, and recommended approval.

April 22, 2009 - During the course of review, a hearing was requested by three opposing providers (collectively known as the “affected parties”) on the Certificate of Need application for the *Construction of Northpointe Health & Rehab for the Replacement of 21-Bed Kemper County Nursing Home and Relocation of 39 Beds From Poplar Springs to Northpointe Health Rehabilitation*.

September 22, 2009 - the Hearing began on the application and concluded on September 24, 2009.

January 11, 2010 - the hearing officer found the project not in compliance with the applicable criteria and standards and recommended that the project be disapproved.

January 19, 2010 - the Mississippi State Department of Health received the hearing officer’s report concerning the referenced project.

February 11, 2010 - the State Health Officer concurred with the staff’s recommendation and approved the project.

February 26, 2010 - the three opposing providers the “affected parties” filed a Notice of Appeal of the Final Order of the Mississippi State Department of Health to the Chancery Court of Hinds County, Mississippi and the Mississippi Supreme Court concerning the project.

Thursday, 1st day of December 2011-the Mandate, Supreme Court of Mississippi was affirmed. Appellants taxed with costs of appeal concerning the project.

Thursday, 1st day of March, 2012- a Motion for Rehearing filed by appellants is denied concerning the project.

March 8, 2012 - the Mississippi Supreme Court’s final mandate was issued for the referenced project (CON No. R-0802).

C. Project Description

Meadowbrook Health and Rehab, LLC now requests a cost overrun to its CON No. R-0802. Meadowbrook Health and Rehab, LLC asserts that the proposed cost overrun is necessary to complete the original project. The increase in cost requested in the proposed cost overrun is needed because the original application was delayed because the Department’s final order granting CON #R-0802 was appealed to both the Hinds County Chancery Court and the Mississippi Supreme Court. The Supreme Court’s final mandate for CON #R-0802 was not granted until March 8, 2012. Since the filing of the original application, the project’s architect died and his architectural firm was dissolved. Therefore, Meadowbrook had to seek another architect to design suitable plans for the original application. The reference changes of events caused the original capital expenditure for the project to increase to a cost overrun that was not a part of the original application.

According to Meadowbrook Health and Rehab, LLC the additional capital expenditure is attributed to the following changes necessary to complete the project:

1. **Site Preparation:** The cost of site work increased from \$150,000 to \$459,100 because pursuant to a subsurface investigation of the project site, it was determined that the composition of the soil was such that additional site preparation and a more reinforced foundation than originally expected will be required. The site preparation will require the excavation and removal of up to 8^{1/2} feet of the existing clay soil and the refilling of the excavated area with the appropriate compacted fill.
2. **Landscaping:** The cost of landscaping the new nursing home has increased as a matter of aesthetics to provide the nursing home residents with two beautifully landscaped outside areas. These areas will allow a tranquil setting for the residents, their families and friends. Additionally, the plans are to install an irrigation system for the entire property to protect the landscaping.
3. **New construction Cost:** The construction costs have increased from an overall estimated cost of \$3,900,000 to \$5,414,384 because of the following: (1) the costs of construction since the filing of the original CON application as evidenced by the construction contract. The applicant asserts the increase in construction is a result of the court appeals, which caused the delay in the project, (2) the increase in the cost of reinforcing the foundation because of the composition of the soil, which will require the removal of 8^{1/2} feet of the existing soil and the refilling of that excavated area with appropriately compacted fill, (3) the additional cost of excavating a minimum of one foot of the existing soil for the construction of the parking area/access drives and refilling the area with appropriate compacted soil, and (4) the increase in cost associated with the building of the nursing home in accordance with the new architectural plans. The plans provide a design for a spacious homelike environment for the residents with 60 private rooms, each with its own bathroom; comfortable and spacious activity and visitation areas; and two aesthetically pleasing outdoor areas, each with a gazebo and beautiful landscaping.
4. **Architectural Fees:** Because the architect for the original project died Meadowbrook Health Rehab, LLC had to employ a new architect for the project. The original architectural fees increased from \$250,000 to \$268,067 and the amount of \$18,067 is considered to be a modest increase by the applicant. The applicant asserts that it was able to contain this cost by selecting Smithers Merchant Builders to provide the architectural plans and to act as the contractor in accordance with the design and building concept.
5. **Contingency Reserve:** Because Meadowbrook Health Rehab, LLC entered into the construction contract with a definite contractual amount for the construction of the new nursing home, the contingency fee decreased by \$160,000. The applicant asserts that in an abundance of caution, a contingency fee in the amount of \$50,000 remains for the project.

6. **Capitalized Interest:** Since lower interest rates are now available, capitalized interest is expected to decrease and it is anticipated that the contractor will complete the project in ten months, less time than originally anticipated.
7. **Fixed and Non-fixed Equipment:** The cost of the fixed and non-fixed equipment is expected to increase as a result of inflation and the delay caused by the appeals.
8. **Accounting and CON filing Fees:** These fees are a part of the additional capital expenditure required to complete the project.

The proposed cost overrun application contains documentation addressing details concerning the need for the proposed cost overrun.

The application includes a copy of the revised cost estimate from the contractor, Smithers Merchant Builders, LP and it lists the estimated cost of the project.

According to the applicant, the total capital expenditure approved in the original CON is \$5,168,500 and the additional cost for the proposed cost overrun is \$1,827,595, resulting in a revised capital expenditure of approximately \$6,996,095. The applicant asserts that it has paid \$25,000 in CON filing fees and that the project is zero (0%) percent complete.

Staff contends that this cost overrun project does not change the scope of the original project.

The Mississippi State Department of Health, Division of Health Facilities Licensure and Certification approved the revised site plan for the proposed cost overrun project (not a part of the original project).

According to the applicant, actual construction has not begun. The final plans have been approved by the Division of Health Facilities Licensure and Certification. It is anticipated that construction will begin within the next thirty (30) days after CON approval of this cost overrun application. The applicant asserts that the project will be completed during the Fall of 2013.

II. TYPE OF REVIEW REQUIRED

The original project was reviewed under the applicable statutory requirements of Section 41-7-173, 41-7-191, subparagraphs (1)(b) and (e) and 41-7-193, of the Mississippi Code of 1972, Annotated, as amended, and duly adopted rules, procedures, plans, criteria, and standards of the Mississippi State Department of Health.

The State Health Officer reviews all projects for amendment and cost overruns in accordance with duly adopted rules, procedures, plans, criteria, and standards of the Mississippi State Department of Health.

In accordance with Section 41-7-197(2) of the Mississippi Code or 1972 Annotated, as amended, any affected person may request a public hearing on this project within 20 days of publication of this staff analysis. The opportunity to request a hearing expires on February 6, 2013.

III. CONFORMANCE WITH THE STATE HEALTH PLAN AND OTHER ADOPTED CRITERIA AND STANDARDS

A. State Health Plan

The original project was in substantial compliance with the *FY 2009 Mississippi State Health Plan*, in effect at the time the original application was submitted. This cost overrun project continues to be in substantial compliance with the *FY 2009 Mississippi State Health Plan*.

B. General Review Criteria

The original project was in substantial compliance with the *Certificate of Need Review Manual, 2008 revision*, in effect at the time of submission. This application continues to be in compliance with applicable General Review Criteria and Standards contained in the *Certificate of Need Review Manual, 2008 revision*.

IV. FINANCIAL FEASIBILITY

A. Capital Expenditure Summary

	<u>Approved Capital Expenditure</u>	<u>Revised Capital Expenditure</u>	<u>Increase (Decrease)</u>
New Construction	\$3,900,000	\$5,414,384	\$1,514,384
Renovation/Construction	0	0	0
Capital Improvements	0	0	0
Landscaping	30,000	135,000	105,000
Site Work	150,000	459,100	309,100
Fixed Equipment	150,000	200,000	50,000
Non-Fixed Equipment	205,000	250,000	45,000
Fees (Architectural, Consultant, etc.)	250,000	268,067	18,067
Contingency Reserve	210,000	50,000	(160,000)
Capitalized Interest	233,500	175,000	(58,500)
Other	*40,000	**44,544	4,544
Total	<u>\$5,168,500</u>	<u>\$6,996,095</u>	<u>\$1,827,595</u>

NOTE:

* \$40,000 (\$15,000 accounting fees+ \$25,000 filing fee)

**\$44,544 (\$15,000 accounting fee + \$29,544 filing fee)

As previously mentioned, the capital expenditure approved in the original CON was \$5,168,500 (replacement of 21-bed Kemper County Nursing Home and relocation of 39 beds from Popular Springs Nursing and Rehabilitation). The applicant asserts that the additional cost for the cost overrun proposal is \$1,827,595, resulting in a revised capital expenditure of approximately \$6,996,095. As previously mentioned, the increase in cost requested in the proposed cost overrun is because the original application was delayed because the Department's final order granting CON #R-0802 was appealed to both the Hinds County Chancery Court and the Mississippi Supreme Court. The Supreme Court's final mandate for CON #R-0802 was not granted until March 8, 2012. Since the filing of the original application, the project's architect died and his architectural firm was dissolved. Therefore, Meadowbrook had to seek another architect to design suitable plans for the original application. The reference changes of events caused the original capital expenditure for the project to increase and created a cost overrun that was not a part of the original application.

This cost overrun project does not change the scope of the original project.

B. Method of Financing

The original application was funded through a commercial loan with Trustmark National Bank, Jackson. The applicant asserts that financing for the proposed cost overrun project will be financed from a commercial loan with Trustmark National Bank. Trustmark National Bank has agreed to provide \$5,620,000 for the construction of the replacement facility and the cost of construction for the new building associated with the project is expected to exceed the amount to be financed through Trustmark National Bank by \$1,400,000. Trend Consultants, LLC, the applicant's owner and manager agrees to loan Meadowbrook all funds necessary to complete the project, even if the amount exceeds \$1,400,000 for the proposed project. The application contains a letter from Mr. Nelson E. Gibson, First Vice President of Trustmark National Bank, indicating its interest in financing the proposed project.

Effect on Operating Cost

The applicant projects the following revised cost for the first full year of operation after completion of the proposed project:

**Meadowbrook Health and Rehab, LLC
 Revised Projected Operating Statement
 For the First Full Year of Operation
 After Completion of this Project**

Revenue	Amount
Inpatient Care Revenue	\$3,478,741
Gross Patient Care Revenue	3,478,741
Charity Care	(80,100)
Positive Contractual Adjustment	526,292
Net Patient Care Revenue	<u>3,924,933</u>
Other Operating Revenue	2,500
Total Operating Revenue	<u>\$3,927,433</u>
Expenses	
Salaries	\$1,563,134
Benefits	296,995
Supplies	346,808
Services	447,983
Lease	22,068
Depreciation	239,830
Interest	213,761
Other	752,070
Total Expenses	<u>\$3,882,649</u>
Net Income (Loss)	\$ 44,784
General Assumptions:	
Inpatient Days	17,301
Charge per inpatient day	\$226.86
Cost per inpatient day	\$224.42

D. Cost to Medicare/Medicaid

The applicant states that the facility does not anticipate an increase in utilization and affirms that there should not be an effect on Medicaid patients, Medicare patients or other payors as a result of this cost overrun project. Essentially, the only change in reimbursement is the year that is anticipated as the first year of operation. Rather than 2011 being the first year of operation, as originally anticipated. It is now anticipated that the first year of operation will begin in the Fall of 2013.

V. RECOMMENDATION OF OTHER AFFECTED AGENCIES

The Division of Medicaid was provided a copy of this application for review and comment; however, as of the date of this staff analysis, the Department has not received a response.

VI. CONCLUSIONS AND RECOMMENDATION

This project continues to be in substantial compliance with the overall objectives of the *FY 2009 Mississippi State Health Plan; Certificate of Need Review Manual, Revision 2008*; and all adopted rules, procedures, and plans of the Mississippi State Department of Health in effect at the time of approval.

The Division of Health Planning and Resource Development recommends approval of the application submitted by Meadowbrook Health and Rehabilitation, LLC for a cost overrun to CON No. R-0802 (*Construction of Northpointe Health & Rehab for the Replacement of 21-Bed Kemper County Nursing Home and Relocation of 39 Beds From Poplar Springs to Northpointe Health Rehabilitation*).