

# **ELEMENTS OF A COMPARTIVE REVIEW**

**STATE OF MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH  
HEALTH POLICY AND REGULATION  
ADMINISTRATION  
BUREAU OF LEGAL AND POLICY  
AFFAIRS  
HEALTH POLICY AND ACCESS DIVISION  
CON EVALUATION SECTION**

# **WELCOME**

**PRESENTER:**  
Joette Laseur  
Specialist/Reviewer  
CON Evaluation Section

# OBJECTIVES

## UNDERSTANDING THE COMPARATIVE REVIEW FOR A NURSING HOME

- What is a comparative review.
- Qualifying and non-qualifying project.
- Section 10 of the Nursing Home Standards.
- Parts of the Law and the Standards used in a comparative review.
- Writing responses to the standards for comparative review.

## WHAT IS A COMPARATIVE REVIEW?

- Applications compete for project types for which the need is limited: beds. Applications subject to Comparative review must be filed on the first working day of February, June, or October of each year.**
- Potential comparative applications must be filed by submitting a paper copy of the application.**
- At this time, electronic applications for comparative review are not used.**

## **QUALIFYING AND NON-QUALIFYING PROJECT**

- Each application in the group is determined to be a qualifying project or a non-qualifying project based on the applicant's response to the Nursing Home Standards. If the applicant does not respond to each applicable section of the Standards or the response does not meet the criteria, the application does not qualify under Section 333.22225 of the Michigan Compiled laws.

- (Section 22225 requires: " An applicant shall demonstrate the need for a proposed project by credible documentation of compliance with the applicable certificate of need review standards."). If the applicant requests more beds than are available from the bed pool, the applicant is also not a qualifying project. Only projects that qualify are then subject to comparative review under Section 10 of the Nursing Home Standards (Section 22230 requires a comparative review.)

## **NURSING HOME STANDARDS – SECTION 10**

- In Section 10 the applicants receive points based on the answers given to each Subsection. The highest number of points receives the nursing home beds until all the available beds are awarded.

- In the event two or more applications have the same number of points and not enough beds to approve both, the stamped in date/time of the application will be used to break a tie.

# BUILDING BLOCKS

## PUBLIC ACT 368 OF 1978

- Section 22225(1)
- Section 2225(2)(a)

## COVERED CAPITAL EXPENDITURE

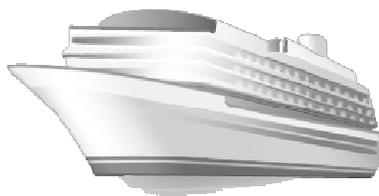
- What is it?

**“Covered capital expenditure”** means a capital expenditure of \$2,500,000.00 or more, as adjusted annually by the department under section 22221(g), by a person for a health facility for a single project, excluding the cost of non-fixed medical equipment, that includes or involves the acquisition, improvement, expansion, addition, conversion, modernization, new construction, or replacement of a clinical service area.

# EXAMPLES OF SECTION 22225(1)

- Section 22225(1)
- Section 22225(2)(a)

# PROJECT DESCRIPTION



## DO'S AND DON'TS

- Complete answers should be provided in each applicable section and subsection of the CON review Standards and Section 22225 of the Public Health Code. If a question is not applicable, please be sure to indicate "N/A".
- Make sure the question is answered. "Yes" or "no" is not an answer. It is an incomplete answer.
- Do not provide answers that I have to guess what the answer is. For example, "We agree." What did you agree to?
- Do not reference other Sections of the application as an answer.

## DO'S AND DON'TS

- Do not reference supporting documentation as the answer and expect me to discover what the correct answer is. For example, The culture change model can be found in our operating standards (pages 20 -56).
- Supporting documentation should be provided where applicable. It is referenced in the event more information is needed to clarify a response since the applicant can not be contacted in a comparative review.
- The proposed project description is accurate and corresponds with other information in responses to the standards, Section 22225, financial forms and earlier submitted LOI.

## **ATTENTION TO DETAILS**

- Examples of a proposed project description
- Examples of answers to the Public Law
- Examples of answers to Section 6 of the Nursing Home Standards to increase beds
- Examples of answers to Section 10 comparative review scoring.

- FORM 217-A**

- QUALITY MEASURES**

**QUIZ**



## **What is Comparative Review? (An overview)**

Applications compete for project types for which the need is limited: beds. Applications subject to Comparative review must be filed on the first working day of February, June, or October of each year.

Potential comparative applications must be filed by submitting a paper copy of the application. At this time electronic applications for comparative review are not used.

Within 15 days of receipt of an application, the Department reviews it for completeness and requests any necessary additional information. The applicant has 15 days to submit the requested information to the Department. Any information received after the 15 days is not included in the comparative review.

### **Qualifying and non-qualifying project.**

MCL 333.22229 requires, if there are multiple applications to meet the same need, the applications are grouped together into a compare group. In the Nursing Home Standards, this group is placed into a comparative review group as required under Section 10 of the CON Review Standards for Nursing Home and Hospital Long-Term Care Unit Beds

Each application in the group is then determined to be a qualifying project or a non-qualifying project based on the applicant's response to the Nursing Home Standards. If the applicant does not respond to each applicable section of the Standards or the response does not meet the criteria, the application does not qualify under Section 333.22225 of the Michigan Compiled laws. (Section 22225 requires: " An applicant shall demonstrate the need for a proposed project by credible documentation of compliance with the applicable certificate of need review standards."). If the applicant requests more beds than are available from the bed pool, the applicant is also not a qualifying project. Only projects that qualify are then subject to comparative review under Section 10 of the Nursing Home Standards (Section 22230 requires a comparative review.)

### **Nursing Home Standards – Section 10**

In Section 10 the applicants receive points based on the answers given to each Subsection. The highest number of points receives the nursing home beds until all the available beds are awarded.

In the event two or more applications have the same number of points and not enough beds to approve both, the stamped in date/time of the application will be used to break a tie.

## BUILDING BLOCKS

### PUBLIC ACT 368 of 1978

#### Sec. 22225 (1)

Sec. 22225. (1) In order to be approved under this part, an applicant for a certificate of need shall demonstrate to the satisfaction of the department that the proposed project **will meet an unmet need in the area proposed to be served**. An applicant shall demonstrate the need for a proposed project by credible **documentation of compliance with the applicable certificate of need review standards**. If no certificate of need review standards are applicable to the proposed project or to a portion of a proposed project that is otherwise governed by this part, the applicant shall demonstrate to the satisfaction of the department that an unmet need for the proposed project or portion of the proposed project exists by credible documentation that **the proposed project will be geographically accessible and efficiently and appropriately utilized, in light of the type of project and the existing health care system**. Whether or not there are applicable certificate of need review standards, in determining compliance with this subsection, the department shall consider approved projects that are not yet operational, proposed projects under appeal from a final decision of the department, or proposed projects that are pending final department decision.

Determine whether or not the project falls under all four review thresholds; beginning operation of a health facility at a site that is not currently licensed for that type of health facility [Section 22209(1)(a)]; making a change in bed capacity [Section 22209(1)(b)]; initiating, replacing, or expanding a covered clinical service [Section 22209(1)(c)]; and making a covered capital expenditure [Section 22209(1)(d)].

Identify the date the application was deemed submitted and which CON review standards, if any, are applicable to the review of the project.

Note, a nursing home is not a covered clinical service; however nursing home projects usually fall under Section a, b, and d.

If there are CON review standards applicable to the review of the application, state whether or not the application is in compliance with the standards. Identify the Section of the Standards being met as found in the applicability Section (Section I) of each set of Standards Example Section 22225(1) is answered by Section 1(3) of the Nursing Home Standards since this section references Sections 3,4,5,6,7,8,9, 12, 13, & 14.

Please indicate that the project will be geographically accessible to the specific population it serves.

**Sec. 2(a).**

**(2) If, and only if, the requirements of subsection (1) are met, in order for an application to be approved under this part, an applicant shall also demonstrate to the reasonable satisfaction of the department all of the following:**

**(a) With respect to the method proposed to meet the unmet need identified under subsection (1), that the applicant has considered alternatives to the proposed project and that, in light of the alternatives available for consideration, the chosen alternative is the most efficient and effective method of meeting that unmet need.**

The applicant describes information on relating to what alternatives to the project were considered and why each was rejected. The Reviewer will analyze the information to determine if the conclusions reached by the applicant relative to alternatives have been justified. (Has a need been demonstrated?)

Did the applicant explain why the alternative was rejected and the estimated cost for it, if any.

Please make sure the chosen alternative details how the chosen alternative is the most efficient and effective method of meeting the unmet need.

Please note, maintaining status quo does not tell how unmet need will be met.

## Covered Capital Expenditure Project

Public Health Code, Act 368 of 1978, Part 222

Sec. 333.22203

(2) “**Capital expenditure**” means an expenditure for a single project, including cost of construction, engineering, and equipment that under generally accepted accounting principles is not properly chargeable as an expense of operation. Capital expenditure includes a lease or comparable arrangement by or on behalf of a health facility to obtain a health facility, licensed part of a health facility, or equipment for a health facility, if the actual purchase of a health facility, licensed part of a health facility, or equipment for a health facility would have been considered a capital expenditure under this part. Capital expenditure includes the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, addition, conversion, modernization, new construction, or replacement of physical plant and equipment.

(9) “**Covered capital expenditure**” means a capital expenditure of \$2,500,000.00 or more, as adjusted annually by the department under section 22221(g), by a person for a health facility for a single project, excluding the cost of nonfixed medical equipment, that includes or involves the acquisition, improvement, expansion, addition, conversion, modernization, new construction, or replacement of a clinical service area.

The adjusted threshold for Covered Capital Expenditure effective January 1, 2009 is \$2,932,500.

## **PROJECT DESCRIPTION**

The Project Description is a concise narrative of what the project involves in terms of change in bed capacity, new construction, renovation, demolition, purchase or lease of space, and changes in equipment/services/ programs. The project description is used by licensing, Engineering staff and other regulatory agencies to determine what actually has been approved.

The project descriptions should identify the applicant, the ownership type of applicant, the authorized agent, the facility, facility address and review threshold. The project description will identify all pertinent physical elements; number of square feet of new construction, renovation, etc. If the project involves any changes in the number of beds or the physical location of beds, and sometimes includes a chart which shows existing , proposed and net changes by type of beds. If the project involves moving beds, identify the room numbers in which beds to be moved are currently housed and the new proposed location. Identify existing and proposed locations of services. Identify if the project involves a change in staff.

Forms that I reference and use in writing the project description are Letter of intent (LOI), CON 100 - (agent form), 105 - Project Summary, 300 - Project Description, 600 – Project Personnel Needs, 803 (Facility Area Report) and 1100 (Financial Forms – lease and alternatives).

## **Do's and Don'ts**

1. Complete answers should be provided in each applicable section and subsection of the CON review Standards and Section 22225 of the Public Health Code. If a question is not applicable, please be sure to indicate "N/A".
2. Make sure the question is answered. "Yes" or "no" is not an answer. It is an incomplete answer.
3. Do not provide answers that I have to guess what the answer is. For example, "We agree." What did you agree to?
4. Do not reference other Sections of the application as an answer.
5. Do not reference supporting documentation as the answer and expect me to discover what the correct answer is. For example, The culture change model can be found in our operating standards (pages 20 -56).
6. Supporting documentation should be provided were applicable. It is referenced in the event more information is needed to clarify a response since the applicant can not be contacted in a comparative review.
7. The proposed project description is accurate and corresponds with other information in responses to the standards, Section 22225, financial forms and earlier submitted LOI.

# ATTENTION TO DETAILS

## PROPOSED PROJECT DESCRIPTION

CON Application No. 00-0000 is proposed by Blooming Nursing Home, LLC, a Michigan limited liability company (CID No. D9133X), located at 1600 Pennsylvania Ave., Power, Michigan 40233. The authorized agent for this application is, Luther Whitney, CEO, Sand Point Nursing Systems located at the same address.

The applicant, Blooming Nursing Home, LL, proposes to begin operation of a health facility at a site that is not currently licensed for that type of health facility; make a change in bed capacity; and make a covered capital expenditure. Specifically, the applicant proposes to begin operation of a new 60 bed nursing home in leased space at Sand Point Nursing Home, 1600 Marsh Rd., Three Rivers, Michigan 40233. (St. Joseph County)

The 60 new beds will be located in 40,500 square feet of leased space. The space will be leased for 20 years from The Douglas Fir Company. The Douglas Fir Company will construct the new nursing home.

The proposed 60 bed nursing home will be comprised of 38 private rooms and 11 semi-private rooms. Each room will have its own bathroom and shower. The new nursing home will also house support space (i.e., resident dining, activities, therapy gym, storage, housekeeping etc.). The proposed facility will be fully sprinkled and air-conditioned. This facility will be enrolled in a culture change model with person centered care.

Upon completion of this proposed project, the applicant will operate a new 60-bed nursing home with no beds from the Special Pool of Beds. According to the applicant, the project will require 52 new FTEs.

**DISCUSSION**

Referencing the above information, please answer the following:

What does the project involve?

What is the type of ownership?

Who is the authorized agent?

What is the review threshold?

Identify all pertinent physical elements of the project.

Identify if the project has a change in staff.

**COMMENTS**

In the project description it is a good idea to reference some of the requirements found in Section 10. For example, “The proposed facility will be fully sprinkled and air conditioned.” AND “This facility will be enrolled in a culture change model with person centered care.”

**(2) If, and only if, the requirements of subsection (1) are met, in order for an application to be approved under this part, an applicant shall also demonstrate to the reasonable satisfaction of the department all of the following:**

**(a) With respect to the method proposed to meet the unmet need identified under subsection (1), that the applicant has considered alternatives to the proposed project and that, in light of the alternatives available for consideration, the chosen alternative is the most efficient and effective method of meeting that unmet need.**

In Section 22225(1), the applicant has demonstrated the need for a proposed project by credible documentation of compliance with the applicable laws and Review Standards.

To meet the unmet need identified under subsection (1), the applicant considered alternatives to the proposed project as follows:

Alternative 1: Purchase land and finance construction of a new building.

Alternative 2: Purchase and renovate an existing building.

Alternative 3: Lease a newly constructed building.

Alternative one (1) is not feasible because Applicant does not have sufficient funds for land purchase/construction. This alternative was not chosen.

Alternative two (2) is not feasible because of the high cost of renovations and because existing buildings are not configured appropriately. This alternative was not chosen.

Alternative three (3) is the best choice. Leasing avoids financing expenses. This is the chosen alternative.

The chosen option results in the least costly annual operating costs since the company is new with no history and cannot obtain a favorable interest rate from a lender. Costs for a loan for the land, building and equipment would be approximately \$2,000 per month higher than a lease payment. Over the life of a 30-year lease the savings would be \$720,000 using a lease (a savings of \$24,000 annually).

Leasing was determined to be the least costly, most efficient and most effective option.

The applicant has demonstrated an unmet need for the proposed project based on the applications compliance with all the applicable laws and the CON review standards as detailed in a subsequent section of this report. And with respect to the method proposed to meet the unmet need identified under subsection(1), the applicant has

## EXAMPLES

considered alternatives to the proposed project. In light of the alternatives available for consideration, the chosen alternative is the most efficient and effective method of meeting that unmet need

### **DISCUSSION**

What alternatives were considered?

Why was the alternative rejected?

Was the conclusion justified?

### **COMMENTS**

Please make sure you provide the chosen alternative and the alternative not chosen. Then make sure you indicate how the chosen alternative is the most efficient and effective method of meeting the unmet need.

**Section 6. Requirements for approval to increase beds in a planning area**

**Sec. 6. An applicant proposing to increase the number of nursing home beds in a planning area must meet the following as applicable:**

**(1) An applicant proposing to increase the number of nursing home beds in a planning area by beginning operation of a new nursing home/HLTCU or increasing the number of beds to an existing licensed nursing home/HLTCU shall demonstrate the following:**

**(a) At the time of application, the applicant, as identified in the table, shall provide a report demonstrating that it does not meet any of the following conditions in 14%, but not more than five, of its nursing homes/HLTCUs:**

| Type of Applicant  | Reporting Requirement  |
|--|--|
| Applicant with only Michigan nursing homes/HLTCUs  | All Michigan nursing homes/HLTCUs under common ownership or control                  |
| Applicant with 10 or more Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs    | All Michigan nursing homes/HLTCUs under common ownership or control                  |
| Applicant with fewer than 10 Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs | All Michigan and out of state nursing homes/HLTCUs under common ownership or control |

**APPL RESPONSE** This project involves an increase in beds in Planning Area 75 (PA-75)(St. Joseph). Specifically, this application proposes a new 60-bed facility by the applicant, Sand Point Nursing Home, who, has no other (zero) nursing homes or HLTCUs under common ownership or control, as defined as nursing homes or HLTCUs sharing the same corporate identification number (CID No.) issued by the Michigan Department of Labor and Economic Growth, Corporate Division, and or the same federal employer identification number (EIN). The CID No. for Sand Point Nursing Home is D9133X and the EIN of the applicant is 44-2482.

**DCH DECISION MET**

**(i) A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

**APPL RESPONSE** Not applicable. The applicant does not have any other nursing homes/HLTCUs under common ownership or control in Michigan or in other states. As

## EXAMPLES

a proposed new facility, the applicant has not ever had a state enforcement action resulting in a license revocation, reduced license capacity or receivership.

### **DCH DECISION MET**

**(ii) A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

**APPL RESPONSE** Not applicable. The applicant does not have any other nursing homes/HLTCUs under common ownership or control in Michigan or in other states. The applicant, itself, has not filed for bankruptcy within the last three years.

### **DCH DECISION MET**

**(iii) Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.**

**APPL RESPONSE** Not applicable. The applicant does not have any other nursing homes/HLTCUs under common ownership or control in Michigan or in other states. As a proposed new facility, the applicant has not ever had a termination of Medical Assistance Provider Enrollment and Trading Partner Agreement.

### **DCH DECISION MET**

**(iv) A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.**

**APPL RESPONSE** Not applicable. The applicant does not have any other nursing homes/HLTCUs under common ownership or control in Michigan or in other states. As a proposed new facility, the applicant has not had a survey for which citations could be levied.

### **DCH DECISION MET.**

**(v) Currently listed as a special focus nursing home by the Center for Medicare and Medicaid services.**

**APPL RESPONSE** Not applicable. The applicant does not have any other nursing homes/HLTCUs under common ownership or control in Michigan or in other states. As a proposed new facility, the applicant is not listed as a special focus facility by the Center for Medicare and Medicaid Services.

**DCH DECISION MET**

**(vi) Outstanding debt obligation to the State of Michigan for Quality Assurance Assessment Program (QAAP) or Civil Monetary Penalties (CMP).**

**APPL RESPONSE** Not applicable. The applicant does not have any other nursing homes/HLTCUs under common ownership or control in Michigan or in other states. As a newly proposed facility, the applicant does not have any outstanding debt obligations to the State of Michigan for Quality Assurance Assessment Program or Civil Monetary Penalties.

**DCH DECISION MET**

**(b) The applicant certifies that the requirements found in the Minimum Design Standards for Health Care Facilities of Michigan, referenced in Section 20145 (6) of the Public Health Code, Act 368 of 1978, as amended and are published by the Department, will be met when the architectural blueprints are submitted for review and approval by the Department.**

**APPL RESPONSE** The authorized agent certify that the applicant will meet the requirements found in the Minimum Design Standards for Health Care Facilities of Michigan, as amended and are published by the Department, when the architectural blueprints are submitted for review and approval by the Department.

**DCH DECISION MET.**

**(c) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Systems within the Department. Code deficiencies include any unresolved deficiencies still outstanding with the Department.**

**APPL RESPONSE** This project involves a new health facility, and therefore, has no current citations.

**DCH DECISION MET.**

## EXAMPLES

**(d) The proposed increase, if approved, will not result in the total number of existing nursing home beds in that planning area exceeding the needed nursing home bed supply set forth in Appendix B, unless one of the following is met:**

**APPL RESPONSE** According to the Bed Need estimates published online by the Department on Sept 1 2009, PA-75 (St. Joseph) has an unmet bed need of 60 beds. This project applies for those 60 beds, resulting in PA-75 having no unmet need after approval of this project.

(60 beds available – 60 beds proposed = 0 beds still needed).

Therefore, this project will not result in the total number of beds exceeding the needed nursing home bed supply for the planning area and the condition under Section 6(d)(i), Section 6(d)(ii), and Section 6(d)(iii) are not applicable.

### **DCH DECISION MET.**

**(i) An applicant may request and be approved for up to a maximum of 20 beds if, when the total number of "existing nursing home beds" is subtracted from the bed need for the planning area set forth in Appendix B, the difference is equal to or more than 1 and equal to or less than 20. This subsection is not applicable to projects seeking approval for beds from the statewide pool of beds.**

**APPL RESPONSE** Not applicable.

**DCH DECISION** NOT APPLICABLE

**(ii) An exception to the number of beds may be approved, if the applicant facility has experienced an average occupancy rate of 97% for 12 quarters based on the Department's "Staffing/Bed Utilization Ratios Report." The number of beds that may be approved in excess of the bed need for each planning area identified in Appendix B is set forth in subsection (A).**

**(A) The number of beds that may be approved pursuant to this subsection shall be the number of beds necessary to reduce the occupancy rate for the planning area in which the additional beds are proposed to the ADC adjustment factor for that planning area as shown in Appendix B. The number of beds shall be calculated by (1) dividing the actual number of patient days of care provided during the most recent 12-month period for which verifiable data are available to the Department provided by all nursing home (including HLTCU) beds in the planning area, including patient days of care provided in beds approved from the statewide pool of beds and dividing that result by 365 (or 366 for leap years); (2) dividing the result of step (1) by the ADC adjustment factor for the planning area in which the beds are proposed to be added; (3) rounding the result of step (2) up to the next whole number; and (4) subtracting the total number of beds in the planning area including beds approved from the statewide pool of beds from the result of step**

EXAMPLES

(3). If the number of beds necessary to reduce the planning area occupancy rate to the ADC adjustment factor for that planning area is equal to or more than 20, the number of beds that may be approved pursuant to this subsection shall be up to that number of beds. If the number of beds necessary to reduce the planning area occupancy rate to the ADC adjustment factor for that planning area is less than 20, the number of additional beds that may be approved shall be that number of beds or up to a maximum of 20 beds.

**APPL RESPONSE** Not applicable

**DCH DECISION** NOT APPLICABLE

(iii) An applicant may request and be approved for up to a maximum of 20 beds if the following requirements are met:

(A) The planning area in which the beds will be located shall have a population density of less than 28 individuals per square mile based on the 2000 U.S. Census figures as set forth in Appendix D.

(B) The applicant facility has experienced an average occupancy rate of 92% for the most recent 24 months based on the Department's "Staffing/Bed Utilization Ratios Report."

**APPL RESPONSE** Not applicable

**DCH DECISION** NOT APPLICABLE

(2) An applicant proposing to increase the number of nursing home beds in a planning area by beginning operation of a new nursing home/HLTCU or increasing the number of beds to an existing licensed nursing home/HLTCU pursuant to the new design model shall demonstrate the following:

(a) At the time of application, the applicant, as identified in the table, shall provide a report demonstrating that it does not meet any of the following conditions in 14%, but not more than five, of its nursing homes/HLTCUs:

| Type of Applicant  | Reporting Requirement  |
|--|--|
| Applicant with only Michigan nursing homes/HLTCUs  | All Michigan nursing homes/HLTCUs under common ownership or control                  |
| Applicant with 10 or more Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs    | All Michigan nursing homes/HLTCUs under common ownership or control                  |
| Applicant with fewer than 10 Michigan nursing homes/HLTCUs and out of state nursing homes/HLTCUs | All Michigan and out of state nursing homes/HLTCUs under common ownership or control |

## EXAMPLES

(i) A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

(ii) A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

(iii) Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

(iv) A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.

(v) Currently listed as a special focus nursing home by the Center for Medicare and Medicaid Services.

(vi) Outstanding debt obligation to the State of Michigan for Quality Assurance Assessment Program (QAAP) or Civil Monetary Penalties (CMP).

(b) The proposed project results in no more than 100 beds per new design model and meets the following design standards:

(i) For inpatient facilities that are not limited to group resident housing of 10 beds or less, the construction standards shall be those applicable to nursing homes in the document entitled Minimum Design Standards for Health Care Facilities in Michigan and incorporated by reference in Section 20145(6) of the Public Health Code, being Section 333.20145(6) of the Michigan Compiled Laws or any future versions.

(ii) For small resident housing units of 10 beds or less that are supported by a central support inpatient facility, the construction standards shall be those applicable to hospice residences providing an inpatient level of care, except that:

(A) at least 100% of all resident sleeping rooms shall meet barrier free requirements;

(B) electronic nurse call systems shall be required in all facilities;

(C) handrails shall be required on both sides of patient corridors; and

(D) ceiling heights shall be a minimum of 7 feet 10 inches.

(iii) The proposed project shall comply with applicable life safety code requirements and shall be fully sprinkled and air conditioned.

(iv) The Department may waive construction requirements for new design model projects if authorized by law.

(c) The proposed project shall include at least 80% single occupancy resident rooms with an adjoining bathroom serving no more than two residents in both the central support inpatient facility and any supported small resident housing units.

(d) The proposed increase, if approved, will not result in the total number of existing nursing home beds in that planning area exceeding the needed nursing home bed supply set forth in Appendix B, unless the following is met:

(i) An approved project involves replacement of a portion of the beds of an existing facility at a geographic location within the replacement zone that is not physically connected to the current licensed site. If a portion of the beds are replaced at a location that is not the current licensed site, a separate license shall be issued to the facility at the new location.

(e) A Plan of Correction for cited state or federal code deficiencies at the health facility, if any, has been submitted and approved by the Bureau of Health Systems within the Department. Code deficiencies include any unresolved deficiencies still outstanding with the Department.

**APPL RESPONSE** Not applicable

**DCH DECISION** NOT APPLICABLE

**SECTION EVAL** SECTION MET.

#### Section 10. Review standards for comparative review

Sec. 10. (1) Any application subject to comparative review, under Section 22229 of the Code, being Section 333.22229 of the Michigan Compiled Laws, or under these standards, shall be grouped and reviewed comparatively with other applications in accordance with the CON rules.

(2) The degree to which each application in a comparative group meets the criterion set forth in Section 22230 of the Code, being Section 333.22230 of the Michigan Compiled Laws, shall be determined based on the sum of points awarded under subsections (a), and (b).

**DCH COMMENTS** Each of the applications (00-0000, 00-0002 & 00-0001) included in Comparative Review No. 90000 will be awarded points as shown under the following subsections. Application No. 00-0003 and No. 00-0004 were not qualifying projects and will not be scored.

(a) A qualifying project will be awarded points, in accordance with the schedule set forth below:

(i) For an **existing nursing home/HLTCU**, the current percentage of the nursing home's/HLTCU's patient days of care reimbursed by Medicaid for the most recent 12 months of operation.

**Sand Point Nursing Home** (CON Application No. 00-0000)

**DCH DECISION** NOT APPLICABLE

**DCH COMMENTS** The applicant is proposing a new nursing home.

(ii) For a **new nursing home/HLTCU**, the proposed percentage of the nursing home/HLTCU's patient days of care to be reimbursed by Medicaid in the second 12 months of operation following project completion, and annually, thereafter, for at least seven years.

| Percentage of Medicaid Patient Days<br>(calculated using total patient days for all<br>existing and proposed beds at the facility) | Points<br>Awarded |
|--|-------------------|
| 0  | 0                 |
| 1 – 19   | 3                 |
| 20 – 39  | 6                 |
| 40 – 59  | 9                 |
| 60 – 100   | 12                |

**DCH COMMENTS** In evaluating compliance with Section 10(2)(a), the following two (2) variables, as provided in each of the applications will be used to calculate the percentage of total nursing home patient days to be reimbursed by Medicaid.

- a. The projected total number of Medicaid Patient Days for the Second Year of Operation – Form: CON-1114, page 3 of 5,
- b. The total number of existing and proposed beds for the facility – Form: CON-1114, page 2 of 5, item 24, Projected Second 12-Months column

The viable used in determining the number of points to be awarded under Section 10(2)(a)(ii) is the percentage of the Total Number of Medicaid Patient Days (Second Year of Operations) divided by the total number of existing and proposed beds multiplied by 365.

(Numerator is CON Form 1114 Medicaid patient days in 2 years (page 3 of 5) =  
Denominator is total number of beds (existing and Proposed) x 365 = )

**Sand Point Nursing Home** (CON Application No. 00-0000)

## EXAMPLES

**APPL RESPONSE** The proposed percentage of patient days of care to be reimbursed by Medicaid in the second 12 months of operation following project completion, and annually, thereafter, for at least seven years (calculated using total patient days for all proposed beds at the facility) will be 49% [as documented in the Affidavit of Medicaid and Medicare Participation in TAB 1300-5]. Therefore, this project should be awarded 9 points under Section 10(2)(a)(ii).

**DCH COMMENTS** In response to Section 10(2)(a)(ii), the applicant projects to have a 49% Medicaid utilization in the second year of operations and annually thereafter, Using the two(2) variables described above, the percentage for total nursing home patient days to be reimbursed by Medicaid can be calculated as follows:

Numerator is CON Form 1114 Medicaid patient days in 2 years (page 3 of 5) =15,695  
Denominator is total number of beds (88) (existing and Proposed) x 365 = 32,120  
 $15,695/32,120=.4886$  or 49%.

Projected days total 32,120 with .4886 or 49% of them to be reimbursed by Medicaid, which is consistent with the Applicant's repose to the Review Standards for the second twelve months of operation.

**DCH DECISION** 9 points awarded.

**(b) A qualifying project will be awarded points as follows:**

**(i) Nine (9) points if, 100%, six (6) points if 75%, and three (3) points if 50% of the licensed nursing home beds at the facility are Medicaid certified for the most recent 12 months for an existing nursing home/HLTCU.**

**Sand Point Nursing Home** (CON Application No. 00-0000)

Section 10(2)(b)(i) is not applicable because the project does not involve an existing nursing home/HLTCU.

**DCH DECISION** NOT APPLICABLE

**(ii) Nine (9) points if 100%, six points if 75%, and three (3) points if 50% of the proposed beds at the facility will be Medicaid certified for a new nursing home/HLTCU.**

**Sand Point Nursing Home** (CON Application No. 00-0000)

**APPL RESPONSE** Sand Point Nursing Home, intends to apply for and receive certification by Medicaid for all (100%) 60 of the proposed beds in the facility. Sand Point Nursing Home will begin the Medicaid enrollment and certification process with the intention of becoming certified within the first 6 months of operation and annually

thereafter ad finitum. For this, the applicant anticipates this project will receive 9 comparative review points.

**DCH COMMENTS** 9 points awarded.

(3) A qualifying project will be awarded points, in accordance with the schedule set forth below, based on the **most recent 12 months of participation** level in the Medicare program for an **existing nursing home/HLTCU** and the proposed participation level for a **new nursing home/HLTCU**.

| <u>Participation Level</u>   | <u>Points Awarded</u> |
|--|-----------------------|
| No Medicare certification of any physically conforming existing and proposed beds.   | 0                     |
| Medicare certification of at least one (1) bed but less than 100% of all physically conforming existing and proposed beds. | 1                     |
| Medicare certification of 100% of all physically conforming existing and proposed beds.                                    | 2                     |

**Sand Point Nursing Home** (CON Application No. 00-0000)

**APPL RESPONSE** The proposed nursing home expects to certify 100% of proposed nursing home beds (all will be physically conforming with Medicare requirements) for Medicare. Thus, the Applicants should be awarded two (2) points under this criterion.

**DCH DECISION** 2 points awarded.

(4) A qualifying project will have points deducted based on the applicant's record of compliance with applicable federal and state safety and operating standards for any nursing home/HLTCU owned and/or operated by the applicant in Michigan. Points shall be deducted in accord with the schedule set forth below if, after July 11, 1993, the records which are maintained by the Department document (a) any nonrenewal or revocation of license for cause and/or (b) nonrenewal or termination for cause of either Medicare or Medicaid certification of any Michigan nursing home/HLTCU owned and/or operated by the applicant.

| Nursing Home/HLTCU Compliance Action | Points Deducted |
|--------------------------------------|-----------------|
|--------------------------------------|-----------------|

EXAMPLES

|  |          |
|--|----------|
| <b>Nonrenewal or revocation of license</b> | <b>4</b> |
| <b>Nonrenewal or termination of:</b>       |          |
| <b>    Certification - Medicare</b>        | <b>4</b> |
| <b>    Certification - Medicaid</b>        | <b>4</b> |

**Sand Point Nursing Home** (CON Application No. 00-0000)

**APPL RESPONSE** Applicant has never had for any nursing home owned and/or operated by it in Michigan (a) a license non-renewed or revoked for cause or (b) a Medicare or Medicaid certification non-renewed or terminated for cause. Thus, no points should be deducted from the Applicant under this criterion.

**DCH DECISION** No points deducted.

**(5) A qualifying project will be awarded nine (9) points if the applicant currently provides or demonstrates that it will participate in a culture change model, which contains person centered care, ongoing staff training, and measurements of outcomes.**

**Sand Point Nursing Home** (CON Application No. 00-0000)

**APPL RESPONSE** Applicant will participate in a culture change model, which contains person centered care, ongoing staff training, and measurements of outcomes. Referenced enclosed documents.

**DCH DECISION** 9 points awarded.

**Mona Lake Nursing Home**

**APPL RESPONSE** The authorized agent certifies that the applicant will participate in a culture change model, as is the practice for all facilities commonly owned/controlled by the applicant. For this, the applicant anticipates this project will receive 9 comparative review points.

**DCH DECISION** No points awarded. The applicant did not address if the culture change model would contain person centered care, ongoing staff training, and measurements of outcomes.

**(6) A qualifying project will be awarded points based on the proposed percentage of the "Applicant's cash" to be applied toward funding the total proposed project cost in accord with the schedule set forth below:**

| <b>Percentage "Applicant's Cash"</b> | <b>Points Awarded</b> |
|--------------------------------------|-----------------------|
| <b>Over 20 percent</b>               | <b>10</b>             |

EXAMPLES

|                           |          |
|---------------------------|----------|
| <b>15.1 to 20 percent</b> | <b>8</b> |
| <b>10.1 to 15 percent</b> | <b>6</b> |
| <b>5.1 to 10 percent</b>  | <b>4</b> |
| <b>1.1 to 5 percent</b>   | <b>2</b> |
| <b>0 to 1 percent</b>     | <b>0</b> |

**Sand Point Nursing Home** (CON Application No. 00-0000)

Addressed in the finance report.

**(7) A qualifying project will be awarded six (6) points if the existing or proposed nursing home is fully equipped with sprinklers.**

**Sand Point Nursing Home** (CON Application No. 00-0000)

**APPL RESPONSE** The new nursing home will be fully equipped with sprinklers. Thus, Applicant should be awarded six (6) points under this criterion.

**DCH COMMENTS** 6 points are awarded.

**(8) A qualifying project will be awarded points based on the facility design of the existing or proposed nursing home:**

| <b>Facility Design</b>  | <b>Points Awarded</b> |
|---|-----------------------|
| <b>80% private rooms with private toilet and sink, and central showers with adjacent private changing room for the resident to dress and undress in privacy</b>     | <b>6</b>              |
| <b>80% private rooms with private toilet, sink, and shower</b>  | <b>6</b>              |
| <b>80% private rooms with private sink, shared toilet, and central showers with adjacent private changing room for the resident to dress and undress in privacy</b> | <b>3</b>              |

**Sand Point Nursing Home** (CON Application No. 00-0000)

**APPL RESPONSE** This facility design includes 83% private rooms all of which have private toilets, sinks, and showers. For this applicant anticipates this project will receive 6 comparative review points.

**DCH COMMENTS** 6 points awarded.

**QUALITY REQUIREMENTS CHART**  
Nursing Home Beds Standards

| Number of facilities under common ownership and control | Proposed change to utilizing 14% of total facilities under common ownership and control | Number of facilities that can fail Quality Measures Criteria without restrictions utilizing 14% |
|---|---|---|
| 1 through 7   | 0.14 through 0.98   | 0   |
| 8 through 14  | 1.12 through 1.96   | 1   |
| 15 through 21   | 2.10 through 2.94   | 2   |
| 22 through 28   | 3.08 through 3.92   | 3   |
| 29 through 35   | 4.06 through 4.90   | 4   |
| 36 and above  | 5.04 and above  | 5   |

Sample of Quality Requirements from Standards:

(i) A state enforcement action resulting in a license revocation, reduced license capacity, or receivership within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

(ii) A filing for bankruptcy within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

(iii) Termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control within 24 months of the date of the application.

(iv) A number of citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located. For licensed only facilities, a number of citations at two times the average of all licensed only facilities on the last two licensing surveys. However, if the facility has come under common ownership or control within 24 months of the date of the application, the first two licensing surveys as of the change of ownership date, shall be excluded.

(v) Currently listed as a special focus nursing home by the Center for Medicare and Medicaid services.

(vi) Outstanding debt obligation to the State of Michigan for Quality Assurance Assessment Program (QAAP) or Civil Monetary Penalties (CMP).

## AVERAGE NUMBER OF DEFICIENCIES FOR NURSING HOME STANDARD SURVEYS

### Scope and Severity at Level D and Above

In response to sections 6(1)(a)(iv), 6(2)(a)(iv), 7(2)(a)(iv), 8(1)(a)(iv), 8(2)(a)(iv), 9(1)(a)(iv), and 9(2)(a)(iv), applicants must use the last two Standard Surveys in response to these sections within the time period listed below. Reports outside this time period cannot be used in order to meet these requirements.

#### **Fiscal Year 2006**

|  |     |
|--|-----|
| 1 <sup>ST</sup> Quarter (October – December 2005): | 7.5 |
| 2 <sup>ND</sup> Quarter (January – March 2006):    | 7.8 |
| 3 <sup>RD</sup> Quarter (April – June 2006):       | 6.9 |
| 4 <sup>TH</sup> Quarter (July – September 2006):   | 7.7 |

#### **Fiscal Year 2007**

|  |     |
|--|-----|
| 1 <sup>ST</sup> Quarter (October – December 2006): | 7.5 |
| 2 <sup>ND</sup> Quarter (January – March 2007):    | 7.6 |
| 3 <sup>RD</sup> Quarter (April – June 2007):       | 9.0 |
| 4 <sup>TH</sup> Quarter (July – September 2007):   | 9.5 |

#### **Fiscal Year 2008**

|  |     |
|--|-----|
| 1 <sup>ST</sup> Quarter (October – December 2007): | 7.9 |
| 2 <sup>ND</sup> Quarter (January – March 2008):    | 8.3 |
| 3 <sup>rd</sup> Quarter (April – June 2008):       | 8.2 |
| 4 <sup>th</sup> Quarter (July – September 2008):   | 6.9 |

#### **Fiscal Year 2009**

|  |     |
|--|-----|
| 1 <sup>ST</sup> Quarter (October – December 2008): | 9.2 |
|--|-----|

This report will be updated when more current Quarters are made available from the Bureau of Health Systems.

Source: CMS S&C PDQ, 06/10/2009





---

---

I, as authorized agent, certify that **none** of the Applicant Facilities Under Common Ownership or Control has filed for bankruptcy within the last three years, or from the change of ownership date if a facility has come under common ownership or control of the applicant within 24 months of the date of the application.

I, as authorized agent, certify that the Applicant Facilities Under Common Ownership or Control listed below have filed for bankruptcy within the last three years, or from the change of ownership date if a facility has come under common ownership or control of applicant within 24 months of the date of the application.

| <b>Nursing Home/HLTCU Facility Name</b> |
|---|
|   |
|   |
|   |
|   |
|   |
|   |
|   |

---

---

I, as authorized agent, certify that **none** of the Applicant Facilities Under Common Ownership or Control has had termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control of applicant within 24 months of the date of the application.

I, as authorized agent, certify that the Applicant Facilities Under Common Ownership or Control listed below have had termination of a Medical Assistance Provider Enrollment and Trading Partner Agreement initiated by the Department or licensing and certification agency in another state, within the last three years, or from the change of ownership date if the facility has come under common ownership or control of applicant within 24 months of the date of the application.

| <b>Nursing Home/HLTCU Facility Name</b> |
|---|
|   |
|   |
|   |
|   |
|   |
|   |
|   |

---

---

I, as authorized agent, certify that **none** of the Applicant Facilities Under Common Ownership or Control has citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located.

**Note: As supporting documentation, please attach the Summary of Deficiencies Severity/Scope Grid for each nursing home/HLTCU under Common Ownership or Control for the last two consecutive standard surveys for the time period posted on the CON Web site with the CON Review Standards.**

I, as authorized agent, certify that the Applicant Facilities Under Common Ownership or Control listed below have had citations at Level D or above, excluding life safety code citations, on the scope and severity grid on two consecutive standard surveys that exceeds twice the statewide average, calculated from the quarter in which the standard survey was completed, in the state in which the nursing home/HLTCU is located.

| Nursing Home/HLTCU Facility Name |
|----------------------------------|
|                                  |
|                                  |
|                                  |
|                                  |
|                                  |
|                                  |
|                                  |

---

---

I, as authorized agent, certify that **none** of the Applicant Facilities Under Common Ownership or Control is currently listed as a special focus nursing home by the Centers for Medicare and Medicaid Services.

I, as authorized agent, certify that the Applicant Facilities Under Common Ownership or Control listed below are currently listed as special focus nursing homes by the Centers for Medicare and Medicaid Services.

| Nursing Home/HLTCU Facility Name |
|----------------------------------|
|                                  |
|                                  |
|                                  |
|                                  |
|                                  |
|                                  |
|                                  |

---

I, as authorized agent, certify that **none** of the Applicant Facilities under Common Ownership or Control has an outstanding debt obligation to the State of Michigan for Quality Assurance Assessment Program (QAAP) or State or Federal Civil Monetary Penalties (CMP).

I, as authorized agent, certify that the Applicant Facilities under Common Ownership or Control listed below have outstanding debt obligations to the State of Michigan for Quality Assurance Assessment Program (QAAP) or State or Federal Civil Monetary Penalties (CMP).

| <b>Nursing Home/HLTCU Facility Name</b> |
|---|
|   |
|   |
|   |
|   |
|   |
|   |
|   |

**I certify that the information contained in this Certification Report, including attachments, is true and correct.**

**I acknowledge that if, after issuing a final CON decision approving the proposed project listed on page one of this Certification Report, the Department identifies material discrepancies as to the ownership and citation history of the applicant and other nursing homes under common ownership or control (as defined above) that would have resulted in a denial of the CON application, applicant shall surrender the CON approval.**

|                               |             |
|-------------------------------|-------------|
| Signature of Authorized Agent | Date Signed |
|-------------------------------|-------------|

## EXAMPLES

### PUBLIC ACT 368 OF 1978

Sec. 22225. (1) In order to be approved under this part, an applicant for a certificate of need shall demonstrate to the satisfaction of the department that the proposed project **will meet an unmet need in the area proposed to be served**. An applicant shall demonstrate the need for a proposed project by credible **documentation of compliance with the applicable certificate of need review standards**. If no certificate of need review standards are applicable to the proposed project or to a portion of a proposed project that is otherwise governed by this part, the applicant shall demonstrate to the satisfaction of the department that an unmet need for the proposed project or portion of the proposed project exists by credible documentation that **the proposed project will be geographically accessible and efficiently and appropriately utilized, in light of the type of project and the existing health care system**. Whether or not there are applicable certificate of need review standards, in determining compliance with this subsection, the department shall consider approved projects that are not yet operational, proposed projects under appeal from a final decision of the department, or proposed projects that are pending final department decision.

The applicant has demonstrated that the proposed project will meet an unmet need in the area proposed to be served by documentation of compliance with the Certificate of Need Review Standards for Nursing Homes/HLTCU.

Specifically, this project meets the criteria specified in Section 6(1)(d)(ii) of the standards, which allows an existing nursing home to add beds if it has experienced an average occupancy rate of 97% for 12 quarters.

As shown in the utilization projections, the applicant facility has been encountering a great deal of growth as the community it serves is expanding. Because of this, the nursing home must also grow and evolve to adequately accommodate the needs of this community and all of Muskegon County and surrounding areas.

Many of the patients to use the services offered by the project are expected to come from the community and surrounding areas making this project geographically accessible to Muskegon County and the surrounding areas.

**(2) If, and only if, the requirements of subsection (1) are met, in order for an application to be approved under this part, an applicant shall also demonstrate to the reasonable satisfaction of the department all of the following:**

**(a) With respect to the method proposed to meet the unmet need identified under subsection (1), that the applicant has considered alternatives to the proposed project and that, in light of the alternatives available for consideration, the chosen alternative is the most efficient and effective method of meeting that unmet need.**

The applicant considered alternatives to the proposed project. For this project the options to meet the unmet bed need included: purchasing/leasing an existing building to set-up a nursing home, or leasing a newly constructed building.

Purchasing/leasing an existing building sound like a reasonable option; however, existing buildings may not be in compliance with the most current building codes and the applicant may need to invest significant money to make the building complaint as well as perhaps renovate to accommodate the 120-bed need prior to the start of operations. This type of project was estimated to cost approximately \$13,183,360. This alternative was not chosen.

The last option is to lease a newly-constructed nursing home. The real estate company, Michigan White Pine Company will construct the 120 bed nursing home and ensure that it is state-of-the-art and complies with the most current building codes. Sand Point Nursing Home will lease it from this real estate entity over a term of 15 years for a total of \$5,086,852. This last option appears to be the most efficient and effective way to meet the unmet bed need since the building will be a state-of-the-art facility having been newly constructed. This is the chosen alternative.

The applicant will lease a newly constructed facility and purchase fixtures, furnishings and equipment. The chosen project is estimated to cost \$5,086,852.

The applicant believes they have chosen the most efficient and effective alternative available to provide additional skilled nursing care in Muskegon County as the proposed project is approximately \$8,096,508 less expensive than the alternative considered but rejected.

The applicant has demonstrated an unmet need for the proposed project based on the application's compliance with all the applicable laws and CON Review Standards. And with respect to the method proposed to meet the unmet need identified under subsection (1), the applicant has considered alternatives to the proposed project. In light of the alternatives available for consideration, the chosen alternative is the most efficient and effective method of meeting that unmet need.

Please note, when presenting alternatives for the proposed project, give both the chosen alternative and the alternative not chosen.