



## **Rhode Island Department of Health**

### **Decision with Conditions**

**Applications of**

**BAYBERRY REHABILITATION & NURSING LLC D/B/A KADIMA**

**REHABILITATION & NURSING AT BAYBERRY LLC AND BAYBERRY PROPERTY  
MANAGEMENT LLC**

FOR A CHANGE IN EFFECTIVE CONTROL OF

BAYBERRY COMMONS (LTC00651),

A 110-BED SKILLED NURSING BED FACILITY LOCATED AT 181 DAVIS DRIVE, PASCOAG,  
RHODE ISLAND;

**EASTGATE REHABILITATION & NURSING LLC D/B/A KADIMA REHABILITATION &  
NURSING AT EASTGATE LLC AND EASTGATE PROPERTY MANAGEMENT LLC**

FOR A CHANGE IN EFFECTIVE CONTROL OF

EASTGATE NURSING & REHABILITATION CENTER (LTC00779),

A 68-BED SKILLED NURSING BED FACILITY LOCATED AT  
198 WATERMAN AVENUE EAST PROVIDENCE, RHODE ISLAND;

**ELMWOOD REHABILITATION & NURSING LLC D/B/A KADIMA REHABILITATION &  
NURSING AT ELMWOOD LLC AND ELMWOOD PROPERTY MANAGEMENT LLC**

FOR A CHANGE IN EFFECTIVE CONTROL OF

ELMWOOD NURSING & REHABILITATION CENTER (LTC00611),

A 70-BED SKILLED NURSING BED FACILITY LOCATED AT  
225 ELMWOOD AVENUE, PROVIDENCE RHODE ISLAND;

**SOUTH KINGSTOWN REHABILITATION & NURSING LLC D/B/A KADIMA  
REHABILITATION & NURSING AT SOUTH KINGSTOWN LLC AND SOUTH KINGSTOWN  
PROPERTY MANAGEMENT LLC**

FOR A CHANGE IN EFFECTIVE CONTROL OF  
SOUTH KINGSTOWN NURSING & REHABILITATION CENTER  
(LTC00720), A 96-BED SKILLED NURSING BED FACILITY LOCATED AT 2115 SOUTH  
COUNTY TRAIL,  
WEST KINGSTOWN, RHODE ISLAND;

**VILLAGE HOUSE REHABILITATION & NURSING LLC  
D/B/A KADIMA REHABILITATION & NURSING AT  
VILLAGE HOUSE LLC AND VILLAGE HOUSE PROPERTY MANAGEMENT LLC**

FOR A CHANGE IN EFFECTIVE CONTROL OF SOUTH KINGSTOWN NURSING &  
REHABILITATION CENTER (LTC00589), A 95-BED SKILLED NURSING BED FACILITY  
LOCATED AT  
2115 SOUTH COUNTY TRAIL, WEST KINGSTOWN,  
RHODE ISLAND; AND

**WEST SHORE REHABILITATION & NURSING LLC D/B/A KADIMA REHABILITATION & NURSING  
AT WEST SHORE LLC AND WEST SHORE PROPERTY MANAGEMENT LLC**

FOR A CHANGE IN EFFECTIVE CONTROL OF  
WEST SHORE HEALTH CENTER (LTC00719),  
A 145-BED SKILLED NURSING BED FACILITY LOCATED AT 109 WEST SHORE ROAD,  
WARWICK, RHODE ISLAND.

**Utpala Bandy, MD, MPH  
Interim Director of Health  
September 2, 2022**

## **Introduction:**

After careful and deliberate consideration, the applications as identified in the *Report of the Health Services Council on the Applications of Bayberry Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Bayberry LLC and Bayberry Property Management LLC for a Change in Effective Control of Bayberry Commons (LTC00651)*, a 110-bed skilled nursing bed facility located at 181 Davis Drive, Pascoag; *Eastgate Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Eastgate LLC and Eastgate Property Management LLC for a Change in Effective Control of Eastgate Nursing & Rehabilitation Center (LTC00779)*, a 68-bed skilled nursing bed facility located at 198 Waterman Avenue East Providence; *Elmwood Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Elmwood LLC and Elmwood Property Management LLC for a Change in Effective Control of Elmwood Nursing & Rehabilitation Center (LTC00611)*, a 70-bed skilled nursing bed facility located at 225 Elmwood Avenue; *South Kingstown Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at South Kingstown LLC and South Kingstown Property Management LLC for a Change in Effective Control of South Kingstown Nursing & Rehabilitation Center (LTC00720)*, a 96-bed skilled nursing bed facility located at 2115 South County Trail; *West Kingstown, Village House Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Village House LLC and Village House Property Management LLC for a Change in Effective Control of South Kingstown Nursing & Rehabilitation Center (LTC00589)*, a 95-bed skilled nursing bed facility located at 2115 South County Trail, West Kingstown; and *West Shore Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at West Shore LLC and West Shore Property Management LLC for a Change in Effective Control of West Shore Health Center (LTC00719)*, a 145-bed skilled nursing bed facility located at 109 West Shore Road (“HSC Report”) (attached hereto), the Rhode Island Department of Health (“RIDOH”) hereby adopts the facts contained therein, but varies from the actions of the Health Services Council (“HSC” or “Council”), and approves each application subject to the conditions as set forth in the HSC Report along with additional conditions of approval as contained within this Decision with Conditions.

In deciding to approve these applications with conditions, the RIDOH has carefully considered the entire record in light of the purpose of the Health Care Facility Licensing Act of Rhode Island (R.I. Gen. Laws 23-17-3):

*The purpose of this chapter is to provide for the development, establishment, and enforcement of standards:*

- (1) For the care and treatment of individuals in health care facilities.*
- (2) For the maintenance and operation of health care facilities which in the light of advancing knowledge, will promote appropriate access and safe and adequate treatment for individuals receiving health care facility services; and*
- (3) For the encouragement of quality improvement in all aspects of the operations of health care facilities.*

Also, carefully and deliberately considered are the four statutory review criteria found in Rhode Island Gen. Laws Section 23-17-14.3, which states:

*Except as otherwise provided in this section, a review by the health services council of an application for an initial license or a license in the case of a proposed change in the owner, operator, or lessee of any licensed health care facility may not be made subject to any criterion unless the criterion directly relates to the statutory purpose expressed in § 23-17-3. In conducting reviews of the applications, the health services council shall specifically consider:*

*(1) The character, commitment, competence, and standing in the community of the proposed owners, operators, or directors of the health care facility;*

*(2) In cases of initial licensure or of proposed change in owner, operator, or lessee, the extent to which the facility will provide or will continue to provide, without material effect on its viability at the time of initial licensure or of change of owner, operator, or lessee, safe and adequate treatment for individuals receiving the health care facility's services;*

*(3) The extent to which the facility will provide or will continue to provide safe and adequate treatment for individuals receiving the health care facility's services; and*

*(4) The extent to which the facility will provide or will continue to provide appropriate access with respect to traditionally underserved populations and in consideration of the proposed continuation or termination of health care services by the health care facility.*

Rhode Island General Laws Section 23-17-6 (b) further provides that, *[a]ny change in owner, operator, or lessee of a licensed healthcare facility... shall require prior review by the health services council and approval of the licensing agency as a condition precedent to the transfer, assignment, or issuance of a new license. Issuance of the license may be made subject to any condition; provided, that no condition may be made unless it directly relates to the statutory purpose expressed in § 23-17-3 or to the review criteria set forth in § 23-17-14.3. This shall not limit the authority of the licensing agency to require correction of conditions or defects which existed prior to the proposed change of owner, operator, or lessee and of which notice had been given to the healthcare facility by the licensing agency.*

### **Health Services Council Recommendations:**

At the August 9, 2022 meeting of the Council, a motion was made and seconded to recommend the approval of the applications of Bayberry Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Bayberry LLC and Bayberry Property Management LLC for a Change in Effective Control of Bayberry Commons (LTC00651), a 110-bed skilled nursing bed facility located at 181 Davis Drive, Pascoag; Eastgate Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Eastgate LLC and Eastgate Property Management LLC for a Change in Effective Control of Eastgate Nursing & Rehabilitation Center (LTC00779), a 68-bed skilled nursing bed facility located at 198 Waterman Avenue East Providence; Elmwood Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Elmwood LLC and Elmwood Property Management LLC for a Change in Effective Control of Elmwood Nursing & Rehabilitation Center

(LTC00611), a 70-bed skilled nursing bed facility located at 225 Elmwood Avenue; South Kingstown Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at South Kingstown LLC and South Kingstown Property Management LLC for a Change in Effective Control of South Kingstown Nursing & Rehabilitation Center (LTC00720), a 96-bed skilled nursing bed facility located at 2115 South County Trail; West Kingstown, Village House Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Village House LLC and Village House Property Management LLC for a Change in Effective Control of South Kingstown Nursing & Rehabilitation Center (LTC00589), a 95-bed skilled nursing bed facility located at 2115 South County Trail, West Kingstown; and West Shore Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at West Shore LLC and West Shore Property Management LLC for a Change in Effective Control of West Shore Health Center (LTC00719), a 145-bed skilled nursing bed facility located at 109 West Shore Road. The motion was approved by a unanimous vote with the standard conditions of approval. At the August 30, 2022 meeting of the HSC, the HSC Report was adopted by a unanimous vote of the Council.

### **Considerations:**

- (1) The character, commitment, competence, and standing in the community of the proposed owners, operators, or directors of the health care facility. (RIGL Section 23-17-14.3.)*

As noted in the HSC Report, RIDOH engaged the law firm of Holland & Knight (“H&K”) to assist the Council and RIDOH in their review of these applications. Along with assisting with an explanation of the elements of the complex transaction, RIDOH specifically requested that H&K examine the Applicants’ affiliated nursing facilities in Pennsylvania using the Center for Medicare and Medicaid Services’ (CMS) Nursing Home Five-Star Quality Rating System.<sup>1</sup>

CMS created the rating system to assist the public in comparing staffing and quality of care measures useful in selecting a nursing home.<sup>2</sup> The CMS star system is updated quarterly using information provided by state survey teams and as self-reported by nursing facilities. CMS reports an overall rating as well as specific ratings that reflect a nursing facility’s performance on: 1. Health inspection results; 2. Staffing; and 3. Quality measures. Five (5) is the maximum number of stars that may be achieved in any category. The Affordable Care Act<sup>3</sup> also requires nursing facilities to report ownership information that appears on the CMS website (e.g., legal business name; ownership type; owners; and operators).

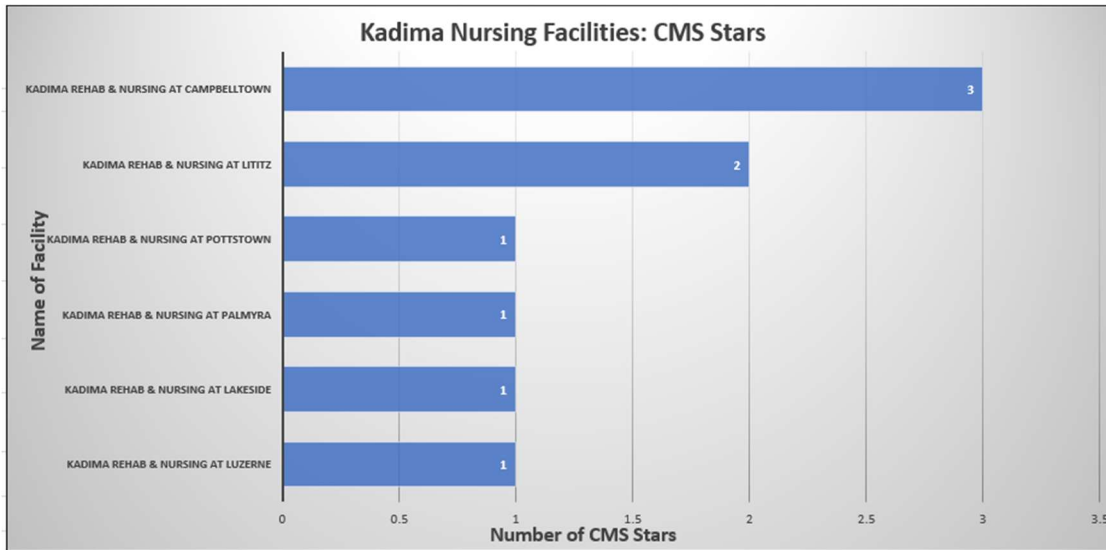
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<sup>1</sup> H&K prepared a PowerPoint that provides additional detail on the CMS rating system and Kadima’s past performance. The PowerPoint is available here for reference: [CMS Star Ratings of Pennsylvania Kadima Facilities, Prepared by Holland & Knight LLP.pptx - Google Slides](#)

<sup>2</sup> See: [Finding a Nursing Home | CMS](#)

<sup>3</sup> See: Title VI, Subtitle B of the PPACA, entitled “Nursing Home Transparency and Improvement.” The law includes two parts; Part I – Improving Transparency of Information is section 6101 – Required Disclosure of Ownership and Additional Disclosure Information.

H&K noted that the current ratings of the Applicants’ affiliated Pennsylvania nursing homes are as follows: four with one star each; one with two stars; and one with three stars (as below).



A one-star rating indicates that the nursing facility is much below average; a two-star rating - the facility is below average; a three-star rating reflects average performance; four stars indicate above average performance; and five stars reflect a facility that is “much above average.” The CMS Compare website indicates that the Applicants’ affiliates have owned these six facilities in Pennsylvania since August 2018.

H&K provided additional information regarding the Applicants’ affiliates’ record in Pennsylvania compared to its peer nursing facilities. Of the 683 nursing facilities licensed in Pennsylvania, 137 (20%) are rated with one star and 144 (21%) with five stars (see below).

Overall CMS Star Rating	Total Number of Facilities
1 Star	137
2 Stars	127
3 Stars	131
4 Stars	129
5 Stars	144
No rating	15
<b>Total Nursing Homes</b>	<b>683</b>

In Rhode Island, H&K reported that of 76 total nursing homes, 17 (22%) have a five-star rating; 10 (13%) have a four-star rating; 18 (24%) have a three-star rating; 16 (21%) have a two-star rating; and 14 (18%) nursing homes have a one-star rating.

<b>Rhode Island Nursing Homes</b>	
<b>Overall CMS Star Rating</b>	<b>Total Number of Facilities</b>
<b>1 Star</b>	<b>14</b>
<b>2 Stars</b>	<b>16</b>
<b>3 Stars</b>	<b>18</b>
<b>4 Stars</b>	<b>10</b>
<b>5 Stars</b>	<b>17</b>
<b>No rating</b>	<b>1</b>
<b>Total Nursing Homes</b>	<b>76</b>

It appears that, notwithstanding the testimony<sup>4</sup> provided by the applicant and its legal counsel at the August 9, 2022 meeting of the HSC, five-star ratings are achievable in Pennsylvania. As such, it is of serious concern that the Applicants’ affiliates are outliers in that two-thirds (67%) of its nursing homes have ratings of one star after four years of ownership and that they do not own any four or five-star nursing facilities.

According to a recent survey by the Center for Health Policy Evaluation in Long-Term Care, 24 states were identified as having value-based Medicaid incentive programs for nursing homes. Of those 24 states, six states use the CMS star ratings, in part, to determine incentive payments. These six states include: Florida, Illinois, Massachusetts, Michigan, Nebraska, and Ohio.<sup>5</sup>

According to a recent article in *McKnights Long-Term Care News*, “CMS highlighted efforts in California and Illinois, specifically, which have acted to tie state Medicaid payments to quality outcomes. CMS encouraged other states to use any federal or state data at their disposal to improve and better target oversight of facilities. It pointed out that a number of states use the CMS Nursing Home Five-Star Quality Rating System as part of their calculation of bonus payment to nursing facilities. States may also develop incentives

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<sup>4</sup> Comments included, “I think ‘draconian’ is an understatement. Specifically referring to that field office...” (Daniel Morris, Principal of the Applicants); and “...that’s field office that we’re dealing with for at least two of the buildings. One of our other buildings that is also 1 star is also a notorious difficult field office. So I think that that lends itself to the overall star rating involved.” (Tiffany Perna, LNHA, Kadima Regional Director of Operations for Pennsylvania).

<sup>5</sup> Brown, Erin, Marsida Domi, and David Gifford. “A Review of Nursing Home Medicaid Value-Based Payment Programs”, The Center for Health Policy Evaluation in Long-Term Care, February 23, 2022. Available here: [CHPE-Report-A Review of NH Medicaid VBP Programs 02.23.2022.pdf \(ahcanca.org\)](#) Accessed on August 26, 2022.





*continuation or termination of health care services by the health care facility. (RIGL Section 23-17-14.3.)*

The Applicant projects that Medicaid beneficiaries will have access to each of the nursing facilities substantially similar to the present access.

**WHEREAS**, despite the HSC's findings that the Applicants satisfied criterion one of Rhode Island Gen. Laws Section 23-17-14.3 (*[t]he character, commitment, competence, and standing in the community of the proposed owners, operators, or directors of the health care facility*), RIDOH finds the Applicants' operation of its six (6) nursing home facilities in Pennsylvania to be of concern in that the Pennsylvania facilities function at a rate far below the standards of the six (6) homes they seek to operate in Rhode Island.

THEREFORE, in light of the four criteria noted above and taken together with RIDOH's interest in ensuring that all nursing homes are operated with the highest possible degree of care and competency, it imposes the following conditions of approval with particular emphasis on condition (#13).

**Conditions of Approval:**

1. that the total project cost of **Bayberry Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Bayberry LLC** not exceed \$9,295,377.00, to be financed with a minimum equity contribution of \$1,859,075.00 (i.e., 20%) which will be funded by Daniel Morris' and Jonathan Strauss' personal funds, and debt not to exceed \$7,436,301.00, (i.e., 80%);
2. that the total project cost of **Eastgate Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Eastgate LLC** not exceed \$5,746,233.00, to be financed with a minimum equity contribution of \$1,149,247.00 (i.e., 20%) which will be funded by Daniel Morris' and Jonathan Strauss' personal funds, and debt not to exceed \$4,596,986.00 (i.e., 80%);
3. that the total project cost of **Elmwood Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Elmwood LLC** not exceed \$5,915,240.00, to be financed with a minimum equity contribution of \$1,183,048.00 (i.e., 20%) which will be funded by Daniel Morris' and Jonathan Strauss' personal funds, and debt not to exceed \$4,732,192.00 (i.e., 80%);
4. that the total project cost of **South Kingstown Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Village House LLC** not exceed \$8,112,329.00, to be financed with a minimum equity contribution of \$1,622,466.00 (i.e., 20%) which will be funded by Daniel Morris' and Jonathan Strauss' personal funds, and debt not to exceed \$6,489,863.00 (i.e., 80%);

5. that the total project cost of **Village House Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at Village House** not exceed \$8,027,825.00, to be financed with a minimum equity contribution of \$1,606,565.00 (i.e., 20%) which will be funded by Daniel Morris' and Jonathan Strauss' personal funds, and debt not to exceed \$6,422,260.00 (i.e., 80%);
6. that the total project cost of **West Shore Rehabilitation & Nursing LLC d/b/a Kadima Rehabilitation & Nursing at West Shore LLC** not exceed \$12,252,996.58, to be financed with a minimum equity contribution of \$2,450,599.32 (i.e., 20%) which will be funded by Daniel Morris' and Jonathan Strauss' personal funds, and debt not to exceed \$9,802,397.26 (i.e., 80%);
7. that the Applicants implement the projects as approved;
8. that the Applicants shall conduct national criminal background checks on their employees prior to employment;
9. that data, including but not limited to, finances, utilization and demographic resident information, be furnished to the state agency, upon request;
10. that the Applicants will provide services to all residents without discrimination including payment source and ability to pay;
11. that the Applicants will work in good faith with residents to establish an alternative payor source when another payor source is no longer available. Further that the Applicants will not withhold or discontinue care or discharge the resident while an application for an alternative payor source (such as Medicaid) is pending, and for Medicaid residents, maintain compliance with state regulation, 210-RICR-50-00-7, "Involuntary Discharge from a Long-Term Care Facility";
12. that within forty-eight hours after the closings, the Applicants provide to RIDOH sufficient closing documents to confirm that the 20% cash equity for each application, as appears in conditions of approval 1 through 6 (above), was funded by Daniel Morris' and Jonathan Strauss' personal funds, as so stated in the applications;
13. that the Kadima/Licensees shall ensure that it maintains or increases the star rating currently assessed to the nursing facilities by CMS. If the current star rating falls by more than two (2) stars at any of the six nursing facilities at any point over the next five (5) years, the Kadima/Licensees will be required to hire an independent third-party monitor, approved by RIDOH, at the Kadima/Licensees' expense. The monitor will conduct a minimum of weekly inspections of the subject nursing facility for any and all conditions required pursuant to [216-RICR-40-10-1, Licensing of Nursing Facilities]. The Kadima/Licensees shall ensure that the independent monitoring inspections are conducted and that the resulting written report is submitted to RIDOH's Center for Health Facilities Regulation immediately following each inspection. If RIDOH surveyors are required to attend to conditions revealed by the independent monitor, the Kadima/Licensee may be required to reimburse RIDOH for its costs. During this five-

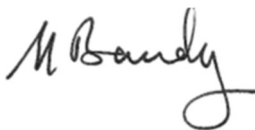
year period, any independent monitor hired as a result of the Kadima/Licensees' underperformance described in this condition will remain in place until such time as either the relevant CMS star rating is restored to its original rating and maintained as such, or by written approval of RIDOH;

Name of Nursing Facility	# CMS Stars as of August 31, 2022
Bayberry Rehabilitation and Nursing, LLC	3
Village Rehabilitation and Nursing, LLC	3
West Shore Rehabilitation and Nursing, LLC	4
Eastgate Rehabilitation and Nursing, LLC	5
Elmwood Rehabilitation and Nursing	5
South Kingstown Rehabilitation and Nursing, LLC	5

14. that within forty-eight hours after the closings, the Applicants provide the extant Articles of Organization and Operating Agreements for each of the Applicants' property management ("New Property Owner") LLCs and for each of the Applicants' operators ("New Operator") LLCs for each of the six subject nursing facilities in Rhode Island; and
15. that the Kadima/Licensees will be responsible for identifying any deficiencies currently pending against any of the six (6) nursing homes it is acquiring and is responsible for notifying RIDOH, within five (5) days, whether it intends to adopt any existing plans of correction or propose new ones. If the Kadima/Licensees opts to propose a new plan of correction, they shall not delay the implementation of corrective actions and ensure the facility attains compliance within required timeframes.

**RHODE ISLAND DEPARTMENT OF HEALTH**

BY:



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Utpala Bandy, MD, MPH  
Interim Director of Health  
Rhode Island Department of Health

9/2/2022

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Date