

**Caldwell Memorial Hospital Comments Regarding  
Blue Ridge HealthCare CON Project ID No. E-11501-18**

Blue Ridge HealthCare Hospitals, Inc. (“BRHC”) has filed a Certificate of Need (CON) application with the North Carolina Department of Health and Human Services to develop 113,000 square feet of new building space for reconfiguration of existing non-surgical outpatient services on the campus of CHS Blue Ridge-Valdese. The BRHC application fails to conform to CON review criteria. Some of the major deficiencies include:

- BRHC’s proposal involves a huge expansion on the Valdese campus which would certainly increase healthcare costs at a time when the hospital’s outpatient utilization is declining.
- BRHC uses the buzzword “right-sizing” repeatedly throughout its application, which is misleading because the facility plans and the CON narrative indicate no reduction in square footage at the existing Valdese hospital campus.
- BRHC fails to provide credible utilization projections because actual utilization for outpatient services shows significant decreases for both its Valdese and Morganton campuses.
- The proposed project represents unnecessary duplication of healthcare services because the proposed 8-bed “clinical decision unit” for observation of Emergency Department patients is duplicative of the existing unoccupied licensed acute care beds at the Valdese campus.
- The proposed project contemplates replacing existing diagnostic equipment without providing sufficient information demonstrating the need for doing so.
- Expense projections are not reliable due to the erroneous assumption that the proposed vacated spaces at the Valdese campus will not require electrical, water, and sewer services and continued facility maintenance, especially given that BRHC proposes to continue offering surgical services in the existing facility.
- Capital costs are unreliable because no expenses are budgeted to repair the walls, floors and ceilings (as required by NC Building Code and NFPA requirements) in the existing hospital departments where equipment is proposed to be removed.
- BRHC has changed the CON application form to omit specific information requested by the Agency regarding access to services for charity care and Tricare patients.
- The project application fails to conform to Policy GEN-3 because the proposal does not address the water conservation standards.

In accordance with N.C. GEN. STAT. § 131E-185(a1)(1), Caldwell Memorial Hospital provides comments and documentation regarding how the BRHC application does not conform to multiple CON criteria as follows:

**Criterion 1** *“The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.”*

**POLICY GEN-4: ENERGY EFFICIENCY AND SUSTAINABILITY FOR HEALTH SERVICE FACILITIES** states:

*“Any person proposing a capital expenditure greater than \$2 million to develop, replace, renovate, or add to a health service facility pursuant to G.S. 131E-178 shall include in its certificate of need application a written statement describing the project’s plan to assure improved energy efficiency and water conservation.*

*“In approving a certificate of need proposing an expenditure greater than \$5 million to develop, replace, renovate, or add to a health service facility pursuant to G.S. 131E-178, Certificate of Need shall impose a condition requiring the applicant to develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN 4.”*

The BRHC application does not conform to Criterion 1 and Policy GEN-3 because the written statement on pages 28 and 29 does not adequately address the water conservation standards that are planned for the proposed new construction. The application makes no mention of any renovations to the existing building that will impact the plumbing systems. Therefore, the bullet point on page 29, which reads “Upgrade any impacted plumbing fixtures to increase efficiency and lifecycle benefits,”

is not accurate. There is no commitment by BRHC to develop and implement an *Energy Efficiency and Sustainability Plan* for the proposed new building that conforms to or exceeds the water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.

**Criterion 3** *“The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.”*

While BRHC claims that it needs to “right-size” the Valdese campus for outpatient services, the application proposes to add 113,000 square feet in a new building plus maintain the existing 180,000 square foot hospital facility. In reality, the project involves a 63 percent increase in total square feet for the licensed hospital space. This \$85,733,900 expansion project involves no reduction in the total facility square footage or licensed bed capacity that will remain at the Valdese campus. The existing 180,000 square foot facility must be maintained with continued expenses for utilities, water and sewer because the applicant plans to develop a portion of the existing building for the Blue Ridge Ambulatory Surgery Center project that is under appeal. It is not possible to continue offering surgical services in the existing facility without incurring the expenses associated with these critical services.

The application erroneously projects future growth in utilization when in fact BRHC’s Valdese campus has experienced a decline. Historical utilization data included in the applicant’s 2017 and 2018 License Renewal Applications document the actual decrease in utilization at the Valdese campus as seen in the following table.

CHS Blue Ridge Valdese	2017 LRA	2018 LRA	Change	% Change
	2015-16	2016-2017		
Emergency Dept. Visits	20,363	19,541	-822	-4.04%
Outpatient Visits	52,514	51,072	-1442	-2.75%

The applicant fails to explain why the Valdese outpatient utilization shows this decline, but it is likely due to the elimination of inpatient hospital services at this campus.

Over the past several years, emergency department patients and outpatients from Burke County have increasingly chosen to travel to hospitals in neighboring counties. For example, emergency department visits of Burke County patients that chose to utilize Caldwell Memorial Hospital have increased from 676 patients in 2016 to 882 patients in 2017 for a 30.4 percent increase.

For the most recent two-year period, the Emergency Department and MRI utilization at the combined campuses for BRHC have decreased at an alarming rate as seen in the following table.

<b>CHS Blue Ridge Patient Origin (Morgaton and Valdese Combined)</b>	2017 LRA	2018 LRA	Change	% Change
	2015-16	2016-2017		
Emergency Dept. Visits				
Burke Patients	41,054	36,107	-4,947	-12.05%
Caldwell Patients	11,420	10,669	-751	-6.58%
Total Blue Ridge ED	61,527	54,797	-6,730	-10.94%
MRI Patients				
Burke Patients	2,792	2,480	-312	-11.17%
Caldwell Patients	769	646	-123	-15.99%
Total Blue Ridge MRI	4,163	3,701	-462	-11.10%

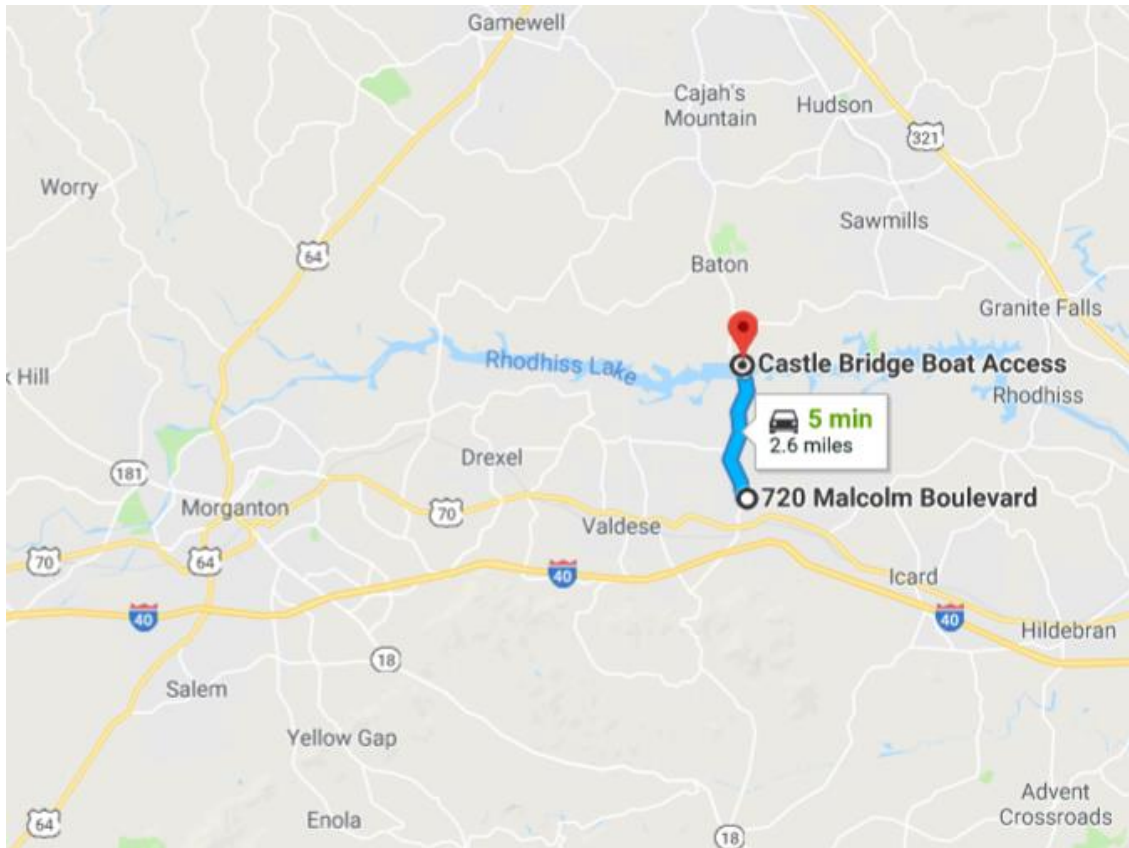
The BRHC project application does not explain why this overall decline has occurred.

The most recent years' utilization of the outpatient services that are included in BRHC's Form C shows a bleak downward pattern for the clear majority of services, which is depicted in the following chart (with services suffering a decrease in utilization highlighted in yellow).

Form C Data	1/1/2015	1/1/2016	1/1/2017	Two Year	
	12/31/2015	12/31/2016	12/31/2017	Change	% Change
Laboratory	75,719	67,316	61,047	-14,672	-19.38%
Physical Therapy	9,173	8,762	8,784	-389	-4.24%
Speech Therapy	176	167	153	-23	-13.07%
Occupational Therapy	959	776	872	-87	-9.07%
Respiratory Therapy	10,642	13,105	14,772	4,130	38.81%
CT Scanner Scans	2,562	3,590	3,711	1,149	44.85%
MRI Scanner	1,183	1,163	1,098	-85	-7.19%
Fixed X-Ray	13,332	12,785	13,155	-177	-1.33%
Mammography	2,166	2,063	2,099	-67	-3.09%
Ultrasound	3,188	3,274	3,064	-124	-3.89%
Nuclear Medicine	1,058	1,072	429	-629	-59.45%
Bone Density	345	293	544	199	57.68%
Linear Accelerator Procedures	6,504	5,916	5,423	-1,081	-16.62%
Infusion Therapy	4,811	5,033	5,064	253	5.26%
Emergency Department	20,738	20,086	19,400	-1,338	-6.45%

In spite of the modest population growth that has occurred in recent years, the eleven healthcare services highlighted above, including Emergency Department visits, show significant decreases. Yet the application does not explain the need the population has for an \$86 million hospital expansion for existing services. There is no detailed discussion of overcrowded conditions in the Emergency Department, backlogs of patients, or treatment delays due to facility constraints. Given the decreases for the eleven healthcare services and the divergent growth of Respiratory Therapy, CT Scan, Bone Density and Infusion, the changes in utilization at BRHC's Valdese campus are clearly not related to population growth. Instead, it seems that the population and physicians choose to go elsewhere for most outpatient healthcare services.

The applicant's utilization projections for 2018 and 2019 fail to anticipate the severe impact of the closure of Castle Bridge that will block traffic on Malcolm Boulevard approximately 2.6 miles to the north of BRHC's Valdese Hospital. Malcolm Boulevard is the main thoroughfare that serves the hospital. According to the Morganton News Herald, approximately 9,000 drivers use the bridge every day to take Malcolm Boulevard to U.S. 70 to U.S. 321 to Connelly Springs Road. Closing Castle Bridge for an estimated 8 months will make it difficult for many patients, hospital staff and physicians to access services at BRHC's Valdese campus.



With the clearly documented trend of declining outpatient utilization and the pending closure of the Castle Bridge to the immediate north, it is unreasonable to expect utilization to increase. However, the BRHC application is disconnected from reality and its own historical data because the assumptions show that all the services will increase at a rate of 0.5% annually simply due to population growth. This unsupported annual growth projection for the intervening years assumes

that more patients will choose to use the hospital outpatient services in Valdese in spite of the supposed facility limitations that will continue to exist from CY 2018 through CY 2022.

**Projected CHS Blue Ridge-Valdese Utilization by Service Component**

	<b>CY18</b>	<b>CY19</b>	<b>CY20</b>	<b>CY21</b>	<b>CY22</b>	<b>CY23</b>	<b>CY24</b>	<b>CY25</b>	<b>CAGR</b>
ED Visits	19,488	19,577	19,665	19,755	19,844	19,934	20,025	20,116	0.5%
Infusion Therapy Patients	5,087	5,110	5,133	5,157	5,180	5,204	5,227	5,251	0.5%
CT Scans	3,728	3,745	3,762	3,779	3,796	3,813	3,831	3,848	0.5%
MRI Scans	1,103	1,108	1,113	1,118	1,123	1,128	1,133	1,139	0.5%
X-Ray Scans	13,215	13,275	13,335	13,396	13,456	13,517	13,579	13,640	0.5%
Mammography Scans	2,109	2,118	2,128	2,137	2,147	2,157	2,167	2,176	0.5%
Ultrasound Scans	3,078	3,092	3,106	3,120	3,134	3,148	3,163	3,177	0.5%
Nuclear Medicine Scans	431	433	435	437	439	441	443	445	0.5%
Bone Density Scans	546	549	551	554	556	559	562	564	0.5%
Linear Accelerator Procedures	5,448	5,472	5,497	5,522	5,547	5,572	5,598	5,623	0.5%
Linear Accelerator Patients	267	268	270	271	272	273	275	276	0.5%
Lab Utilization	61,324	61,603	61,882	62,163	62,445	62,729	63,014	63,300	0.5%
Physical Therapy (incl. Cardiac Rehab)	8,824	8,864	8,904	8,945	8,985	9,026	9,067	9,108	0.5%
Speech Therapy	154	154	155	156	157	157	158	159	0.5%
Occup. Therapy	876	880	884	888	892	896	900	904	0.5%
Respiratory Therapy	14,839	14,906	14,974	15,042	15,110	15,179	15,248	15,317	0.5%

Even if one were to assume that the proposed new facility would be a potential attractor for patients beginning in CY2024, the projected ramp-up in volumes for all of the outpatient services is not reasonable for several reasons:

- Non-hospital providers in the region provide lower cost urgent care, imaging, and therapy services
- The project application lacks adequate physician support letters
- No physician recruitment plan is described to replace those physicians who will likely retire

In addition to the unreliable utilization projections, the BRHC’s proposal includes the unsupported development of the eight-bed “clinical decision unit” within the Emergency Department. It is unclear how the applicant foresees the specific need for an eight-bed clinical decision unit without

having reviewed any statistical data or made any future years' projections. The Valdese hospital campus already has an abundance of vacant licensed acute care beds that can be used for observation. Furthermore, the application does not explain if this eight-bed unit will likely increase or decrease the frequency and need for patients to be transferred to BHRC's Morganton Hospital for admission as hospital inpatients. The lack of any real analysis and data for this project component underscores the inadequacies of the overall project plan.

Moreover, the BRHC application indicates it will replace its remaining diagnostic equipment because of "age and use." No further explanation is given, and the rationale provided is insufficient to illustrate the need for replacement equipment.

On page 51 of the BRHC application, BRHC indicates that "as a result of the smaller square footage and lower operational costs" of the proposed 113,000 square foot building, BRHC will cost \$3.8 million less to operate than the existing facility, which they claim adds to up to \$20 million in savings over 20 years. This statement is false because BRHC must continue to maintain and operate the existing building unless it intends to abandon the CON-approved project (Project ID # E-11298-17) which is under appeal. As BRHC acknowledges on page 50 of its Application, "All of the fundamental systems such as power, water, and sewer are located in the 1950s construction and ... require significant maintenance at high expense. ... [even spaces not in active use] must be maintained due to adjacencies to space that is being actively used. ... issues with plumbing systems in inactive space must be addressed to safely operate space that is below or next to that inactive space." Because the CON-approved project (Project ID # E-11298-17) will be housed in this very space, BRHC will still face these high expense maintenance issues even if the building proposed in its Application is constructed.

The unanswered questions raised by this project application are absolutely within the scope of the Certificate of Need review and include:

- 1) What is the hospital doing differently today to enable it to achieve continual growth in outpatient utilization for the next eight years?
- 2) Why does BRHC need to maintain the acute care beds and 180,000 square feet of facility space in the 50-year old hospital building at the Valdese campus?



- 3) How will the proposed project achieve any real cost savings if there is no planned reduction of the existing square footage of vacated space on the Valdese campus?

For all of these reasons discussed above, the utilization projections and the patient origin projections for the proposed project are not based on reasonable assumptions and historical data. Consequently, the BRHC application is nonconforming to Criterion 3.

**Criterion 3a** *“In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.”*

The proposed project includes the reduction in the number of units of certain diagnostic equipment; however, the utilization projections for these are not reliable as discussed in the Criterion 3 comments. Given this circumstance, the application fails to conform to Criterion 3a because the projections do not adequately demonstrate that the needs of the population will be adequately served.

**Criterion 4** *“Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.”*

The BRHC project application provides inadequate analysis and discussion of the alternatives considered on pages 65 and 66 of the application. Multiple problems exist within the applicant’s cursory analysis of alternatives:

- 1) The applicant simply complains that there are “age related and design related” deficiencies instead of documenting the specific facility constraints for each of the services that are included in the scope of the project.

- 2) BRHC states that it intends to develop an ambulatory surgery facility within the existing facility. Page 31 of the application states that the inpatient beds and related space will remain in the existing building. Therefore, the existing utilities, water, sewer and building systems must be adequate for inpatient beds and the ambulatory surgical facility where the higher acuity patients could be served.
- 3) The applicant fails to explain why the existing building is so outdated and deficient that it is not able to accommodate the existing laboratory, pharmacy, therapy services, infusion services and support services, while at the same time taking the position that the existing building would require only very minimal modifications to convert the surgery suite into an ambulatory surgical facility as described in CON Project # E-11298-17. Consequently, there is a fundamental contradiction between the two CON applications with respect to the characterization of the existing 180,000 square foot building. It is disingenuous for BRHC to claim that renovating the existing building is not an effective alternative on the ground that the long-term operational cost would exceed the capital cost of the project, when this is exactly what BRHC contemplated in CON Project # E-11298-17.
- 4) The proposed project will potentially result in a huge amount of vacant space because the scope of the project does not include demolition of any portions of the existing building.
- 5) With no reduction in the total facility space at Valdese, it is unreasonable to forecast reductions in expenses for the line items that include Other Supplies, Housekeeping and Laundry and Utilities beginning in FY2022.
- 6) The BRHC application omits a financial analysis that demonstrates how the future reduction in operational costs will be achieved.

**Criterion 5** *“Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.”*

There are problems with the financial projections that cause the BRHC application to be nonconforming to Criterion 5. Contrary to the historical trend for most of outpatient services, BRHC predicts across-the-board growth in future years and unsupported reductions in expenses.

With the addition of 113,000 to the existing 180,000 square feet, one would reasonably expect a large increase in the facility-related expenses in addition to higher depreciation. Instead, the Form F-3 shows unsupported reductions for the expenses related to Other Supplies, Housekeeping, and Laundry and Utilities beginning in FY2022. There is no rationale for the 7.26% decrease in the expenses for these line items in FY2022 except that this is what the consultants say the projections should be to offset the increase in the additional depreciation expense.

According to the financing letter, the proposed project will be financed from reserves and operating income. However, since the financial projections are unreliable due to overstated utilization, any future expectations of operating income are highly speculative. The applicant has previous outstanding bond issues that likely require BRHC to maintain a certain level of reserves that is omitted from the financing letter. The project also has no back-up source of financing from a bank should the combination of reserves and operating income fall short.

**Criterion 6** *“The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.”*

The BRHC application fails to conform to Criterion 6 due to the unreasonable utilization projections and the proposed development of unnecessary space for existing services. The applicant fails to explain why the existing building is so outdated and deficient that it is not able to accommodate the existing laboratory, pharmacy, therapy services, infusion services and support services, while this same building would require what the applicant characterizes as only very minimal modifications to convert the surgery suite into an ambulatory surgical facility as described in CON Project # E-11298-17. As mentioned, there is a fundamental contradiction between these two CON applications with respect to the characterization of the existing 180,000 square foot building. There is no justification to develop an eight-bed clinical decision unit and also maintain the existing facility to house unused licensed acute care beds.

**Criterion 12** *“Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person*

*proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.”*

The BRHC proposal is nonconforming to Criterion 12 for the following reasons:

- In the BRHC Exhibit F.1-1, Architect Minta Ferguson discusses the potential benefit of co-locating hospital outpatient services in a new building but fails to address the operational problems and facility costs caused by leaving the unused acute care beds and the proposed ambulatory surgical facility (CON Project # E-11298-17) in the existing outdated building with deficient building systems.
- The proposed project scope of work omits costs to repair the walls, floors and ceilings in the existing building following the removal of fixed equipment. The repairs to the firewalls are required to maintain compliance with NC Building Code and to maintain a safe environment in accordance with CMS requirements, especially when the existing building will continue to house outpatient surgical services.
- If the scope of the project actually includes the eventual demolition of some or all of the existing building, then the capital cost for this component of the project is omitted. It is impossible to determine whether demolition costs would exceed 14.99% of the existing project, as no estimates for demolition are provided.
- The proposed project will not improve energy efficiency or water conservation because it is simply a huge expansion project with no reductions in square footage that must continue to have utilities, water and sewer.

***Criterion 13*** *The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:*

*(a) The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;*

*(c) That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and*

The BRHC application is nonconforming to Criterion 13a and 13c because the applicant chose to provide incomplete payor data that is inconsistent with the information requested in the CON application form.

Section L (Criterion 13) of the Acute Care and Medical Equipment CON Application Form includes the following specific table requested in question L 1(b) and L 3 (b).

<b>Payor Source</b>	<b>Entire Facility or Campus</b>	<b>(Service Component)</b>	<b>(Service Component)</b>
Self-Pay	%	%	%
Charity Care	%	%	%
Medicare *	%	%	%
Medicaid *	%	%	%
Insurance *	%	%	%
Workers Compensation	%	%	%
TRICARE	%	%	%
Other (Specify)	%	%	%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

\* Including any managed care plans

Since the time this new CON form was adopted, CON analysts have repeatedly instructed that applicants should not make changes to the CON form, tables and Excel worksheets. In section L of the BRHC application these tables have been changed as follows:

**Last Full FY before Submission of Application  
CHS Blue Ridge-Valdese  
(01/01/2017 to 12/31/2017)**

<b>Payor Source</b>	<b>ED</b>	<b>Imaging</b>	<b>Lab</b>	<b>OP Therapy</b>	<b>Infusion Therapy</b>	<b>Linac</b>	<b>Total</b>
Medicare	15.7%	52.8%	45.3%	51.9%	66.2%	71.1%	44.4%
Medicaid	31.0%	8.3%	14.4%	8.2%	7.5%	4.8%	14.3%
Commercial/Managed Care	18.8%	34.2%	32.3%	34.5%	24.2%	20.0%	30.8%
Self Pay	30.7%	3.3%	7.0%	2.4%	1.8%	2.7%	8.7%
Other (Other Gov't, Worker's Comp)	3.8%	1.4%	1.1%	3.0%	0.3%	1.5%	1.8%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: CHS Blue Ridge internal data.

**Projected Payor Sources During CY 2024  
CHS Blue Ridge-Valdese  
(01/01/2024 to 12/31/2024)**

<b>Payor Source</b>	<b>ED</b>	<b>Imaging</b>	<b>Lab</b>	<b>OP Therapy</b>	<b>Infusion Therapy</b>	<b>Linac</b>	<b>Total</b>
Medicare	15.7%	52.8%	45.3%	51.9%	66.2%	71.1%	44.4%
Medicaid	31.0%	8.3%	14.4%	8.2%	7.5%	4.8%	14.3%
Commercial/Managed Care	18.8%	34.2%	32.3%	34.5%	24.2%	20.0%	30.8%
Self Pay	30.7%	3.3%	7.0%	2.4%	1.8%	2.7%	8.7%
Other (Other Gov't, Worker's Comp)	3.8%	1.4%	1.1%	3.0%	0.3%	1.5%	1.8%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

There is no documentation in the BRHC application to show that the Agency granted BRHC approval to modify the tables in Section L so that the specified Charity and TRICARE payor percentages would not be required. The omission of this data from the application sends a powerful message that the applicant is indifferent about providing healthcare services to indigent patients and US military personnel and their dependents. Based on the way that BRHC presented their payor mix data that omits the Charity Care and Tricare categories, this application includes no measurable commitment to provide care to Charity Care and Tricare recipients in future years.

**Criterion 18a** *“The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a*

*favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.”*

The BRHC application is nonconforming to Criterion 18a because the utilization projections are unreliable, thereby causing the financial projections to be flawed. Thus, a project that is not demonstrated to be needed or financially feasible will not enhance competition or have a positive impact on cost effectiveness.

Regardless of whether the BRHC application is “non-competitive” or one that is considered in a competitive review in response to a need determination, the statutory CON review criteria are exactly the same. Caldwell Memorial Hospital is adamant that the BRHC application must be critically analyzed due to the inconsistencies, omissions and unanswered questions. From a competitive standpoint, the BRHC application does not hold any exemptions from the applicable CON review criteria and should not be permitted to make substantive changes to the CON application form that are not permitted for other applicants.

**Criterion 20** *“An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.”*

On page 103 of its Application, BRHC describes an “alleged incident.” This is inaccurate. In fact, an Immediate Jeopardy Incident was identified at BRHC’s Morganton campus during the relevant look-back period. Also, the timeline reported by BHRC on page 103 of its Application is incomplete. Immediate Jeopardy began on January 12, 2016 and was not corrected until July 29, 2016 with the Immediate Jeopardy abated on August 3, 2016. Please see Attachment A.

Question 3(c)(ii) is part of Section O of the Application and requires the Applicant to furnish the following information: “indicate the number of patients, if any, affected by each deficiency.”

An application for a certificate of need shall be made on forms provided by the Department. The application forms, which may vary according to the type of proposal, shall require such information as the Department, by its rules deems necessary to conduct the review. An applicant

shall be required to furnish only that information necessary to determine whether the proposed new institutional health service is consistent with the review criteria implemented under G.S. 131E-183 and with duly adopted standards, plans and criteria. N.C. Gen. Stat. Ann. § 131E-182.

Notwithstanding the request for information on the number of patients affected by the deficiency, Blue Ridge responded only that its deficiency “required the relocation of an unspecified number of patients.” This is inaccurate.

In its Immediate Jeopardy determination, The Department of Health and Human Services, Centers for Medicare & Medicaid Services, found the following:

***“Census affected at the time of survey is 196 occupants, staff, patients and visitors on floors 600 through 300.”***

The Statement of Deficiencies indicates that BRHC “Incident Command” requested additional staffing support to begin facilitating patient relocation. At that time, there were three patients on the 3<sup>rd</sup> floor, one patient on the 4<sup>th</sup> floor, eight patients in the intensive care unit and ten patients on the 6<sup>th</sup> floor. Please see Attachment A.

Since Section 131E-182 indicates that only information “necessary to determine” consistency with the Review Criteria can be required to be furnished by an Application form, the information on patients affected was, by definition, necessary information. Yet, none of the above information on census affected and patients relocated was provided by BRHC in response to Application question 3 in Section O.

BRHC cannot amend its Application to provide the required but omitted information detailing the timing and extent to which patients were affected by the Immediate Jeopardy at Blue Ridge Morganton. For this reason, BRHC did not meet provide adequate information related to Criterion 20 and should be found non-conforming.



## **Attachment A**

REMARKS - CMS 1539 FORM

STATE AGENCY REMARKS

Referenced in the Life Safety report of survey completed July 28, 2016 through July 29, 2016, an Immediate Jeopardy was identified pursuant to 482.41 Physical Protection. The facility failed to ensure approximately 5 required exits were rendered unusable due to new construction at the lobby level exit discharge to the former exit area. The Northwest Egress stairwell, designed to provide an alternate exit for floors 600, 500, 400, and 300 levels was observed discharging through a construction area and terminating at a scaffolding stair designed for construction workers using protective equipment. The scaffold stair did not conform to minimum design requirements for exit stairs, and was an alternate exit for balcony behind operating room suite. Immediate Jeopardy began on January 12, 2016 according to document provided by hospital administration - identified as Incident Command Report dated July 28, 2016. The non-compliance was corrected and verified on-site on July 29, 2016 at 3:30 PM. Immediate jeopardy was abated on August 3, 2016 when the facility provided and implemented an acceptable credible allegation of compliance.

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED  
OMS NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  340075	(X2) MULTIPLE CONSTRUCTION A. BUILDING 01 - MAIN BLDG  B. WING	(X3) DATE SURVEY COMPLETED  C 07/29/2016
NAME OF PROVIDER OR SUPPLIER  CAROLINAS HEALTHCARE SYSTEM-BLUE RIDGE		STREET ADDRESS, CITY, STATE, ZIP CODE 2201 S STERLING ST MORGANTON, NC 28655	
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)
K 000	INITIAL COMMENTS	K 000	
	<p>A complaint concerning the obstruction and use of a noncompliant means of egress was reported to the State Agency on Thursday afternoon of July 28, 2016. An on-site complaint investigation was conducted by DHSR Construction Section-Life Safety on July 28, 2016 beginning at approximately 3:30PM.</p> <p>On July 28, 2016, this Life Safety Code (LSC) survey was conducted as per The Code of Federal Register at 42CFR 482.41(a); using the 2000 Existing Health Care section of the LSC and its referenced publications. This building is Type I, 11(22) construction, six stories, without a complete automatic sprinkler system. The facility utilizes a combination of sprinklers and detection devices to cover all spaces within the facility. This facility has potentially 168 Licensed Beds on floors 600 through 300. Census affected at time of survey is 196 occupants - staff, patients, and visitors on floors 600 through 300.</p> <p>As a result of the complaint investigation a LSC-K-Tag 32, and K-Tag 38 was cited for approximately 5 required exits being rendered unusable due to new construction at the lobby level exit discharge to the former parking area. The Northwest Egress stairwell, designed to provide an alternate exit for floors 600, 500, 400, and 300 levels was observed discharging through a construction zone and terminating at a scaffolding stair designed for construction workers using protective equipment. The scaffold stair did not conform to minimum design requirements for exit stairs, and was an alternate exit for balcony behind operating robot suite. Immediate Jeopardy began on January 12, 2016</p>		

LABORATORY DIRECTORS OR PROVIDER/SUPPLIER REPRESENTATIVES SIGNATURE: *Thomas J. Fine* TITLE: *General Counsel* DATE: *9/6/2016*

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 60 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

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K000

Behavioral Health Unit is located, for the safety of the patients, the cross corridor doors were locked prohibiting entry into the vacated north-west wing. Partitions were also installed for a portion of Radiology and Surgery.

At the time of the transitions, there were three patients on the 3rd Floor, one patient on 4th Floor, 8 patients in the intensive care unit located on the north-west wing, and 10 patients on 6th Floor. All patients were safely relocated to other areas of Hospital.

At 3:30p.m., DHR Life Safety Surveyor arrived and announced he was conducting a complaint investigation of the Hospital. Hospital's President and CEO, VP of Operations, Director of Capital Projects and General Counsel met with the Surveyor who asked to tour the back dock area where the temporary egress stairwell was located. The tour continued through the Hospital on the 3rd through 6th Floors. Surveyor also toured the surgical services area wherein he determined that there too existed a deficiency with the National Fire Protection Association ( "NFPA" ) codes and standards. He determined that the current exits exceeded the maximum distances-100 feet-allowed by NFPA code.

At around 4:00p.m., Surveyor informed Hospital's senior management that he had determined that the Hospital was deficient in compliance with the NFPA code in the following:

1. Hospital had improperly deleted or removed an exit
2. Hospital had created dead-end corridors
3. Hospital had exceeded the maximum distances for interior points to exists

Based on these three findings, Surveyor further informed Hospital's senior management that the findings constituted an immediate jeopardy to patients.