

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: December 4, 2015

Findings Date: December 4, 2015

Project Analyst: Julie Halatek

Assistant Chief: Martha J. Frisone

Project I.D. #: O-11070-15

Facility: Carolina Bay of Wilmington at Autumn Hall

FID #: 130064

County: New Hanover

Applicants: Carolina Bay of Wilmington, LLC

Carolina Bay Properties of Wilmington, LLC

Carolina Bay Healthcare Center of Wilmington, LLC

Project: Change of scope for Project I.D. #O-10088-13 (develop 30 Policy NH-2 beds) by developing 12 Policy NH-2 beds and developing 18 Policy LTC-1 beds

### REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Agency shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (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.

C

Carolina Bay of Wilmington, LLC (Carolina Bay), Carolina Bay Properties of Wilmington, LLC (CB Properties), and Carolina Bay Healthcare Center of Wilmington, LLC (CB Healthcare Center) propose to change the scope of the previously approved Project I.D. #O-10088-13 (develop 30 Policy NH-2 beds) by instead developing 12 Policy NH-2 beds and 18 Policy LTC-1 beds in a facility that will be operating as part of Carolina Bay of Wilmington at Autumn Hall (CBWAH), a continuing care retirement community (CCRC). The applicants previously received certificates of need on October 21, 2013 for Project I.D.s #O-10086-13 (relocate 52 licensed but inactive adult care home [ACH] beds to be part of a CCRC), #O-10087-13 (relocate 18 licensed but inactive nursing home [NF] beds to be part of a CCRC),

and #O-10088-13 (develop 30 Policy NH-2 beds as part of a CCRC). This application pertains only to the beds being developed as part of Project I.D. #O-10088-13.

### **Need Determinations**

There are no need determinations in the 2015 SMFP applicable to the review of this proposal.

### **Policies**

The following two policies are applicable to this review:

- Policy NH-2: Plan Exemption for Continuing Care Retirement Communities
- Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds

**Policy NH-2: Plan Exemption for Continuing Care Retirement Communities** states:

*“Qualified continuing care retirement communities may include from the outset or add or convert bed capacity for nursing care without regard to the nursing care bed need shown in Chapter 10: Nursing Care Facilities. To qualify for such exemption, applications for certificates of need shall show that the proposed nursing care bed capacity:*

- 1. Will only be developed concurrently with or subsequent to construction on the same site of facilities for both of the following levels of care:*
  - a. independent living accommodations (apartments and homes) for people who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages and rooms;*
  - b. licensed adult care home beds for use by people who, because of age or disability, require some personal services, incidental medical services, and room and board to assure their safety and comfort.*
- 2. Will be used exclusively to meet the needs of people with whom the facility has continuing care contracts (in compliance with the North Carolina Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract.*
- 3. Reflects the number of nursing care beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care after making use of all feasible alternatives to institutional nursing care.*

4. *Will not be certified for participation in the Medicaid program.*

*One half of the nursing care beds developed under this exemption shall be excluded from the inventory used to project nursing care bed need for the general population. Certificates of need issued under policies analogous to this policy in the North Carolina State Medical Facilities Plans subsequent to the 1985 State Medical Facilities Plan are automatically amended to conform with the provisions of this policy at the effective date of this policy. Certificates of need awarded pursuant to the provisions of Chapter 920, Session Laws 1983 or Chapter 445, Session Laws 1985 shall not be amended.”*

A certificate of need was issued on October 21, 2013 for Project I.D. #O-10088-13 to develop 30 Policy NH-2 beds. The applicants propose to reduce the number of Policy NH-2 beds to 12. The applicants adequately demonstrated the need for 18 Policy NH-2 beds in the previously approved application. No changes are proposed that would affect the determination that the applicants adequately demonstrated the need for at least 12 Policy NH-2 beds. The proposed project is consistent with Policy NH-2.

**Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds** states:

*“Qualified continuing care retirement communities may include from the outset or add or convert bed capacity for adult care without regard to the adult care home bed need shown in Chapter 11: Adult Care Homes. To qualify for such exemption, applications for certificates of need shall show that the proposed adult care home bed capacity:*

1. *Will only be developed concurrently with, or subsequent to, construction on the same site of independent living accommodations (apartments and homes) for people who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms.*
2. *Will provide for the provision of nursing services, medical services or other health related services as required for licensure by the North Carolina Department of Insurance.*
3. *Will be used exclusively to meet the needs of people with whom the facility has continuing care contracts (in compliance with the North Carolina Department of Insurance statutes and rules) who have lived in a non-nursing or adult care unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the adult care home unit at the time the other spouse or sibling moves into a non-nursing or adult care unit, or when the medical condition requiring nursing or adult care home care was not known to exist or be imminent when the individual became a party to the continuing care contract.*
4. *Reflects the number of adult care home beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care after making use of all feasible alternatives to institutional adult care home care.*

5. *Will not participate in the Medicaid program or serve State-County Special Assistance recipients.*

*One half of the adult care home beds developed under this exemption shall be excluded from the inventory used to project adult care home bed need for the general population. Certificates of need issued under policies analogous to this policy in the North Carolina State Medical Facilities Plans subsequent to the North Carolina 2002 State Medical Facilities Plan are automatically amended to conform with the provisions of this policy at the effective date of this policy.”*

In Section I.8, page 4; Section II.1, pages 12-13; Section III.1, pages 30-33; Section III.4, page 35; Section IV.2, pages 40-42; Section VI.3 [labeled by the applicants as VI.2], page 50; Sections X.3-4, pages 78-81, and supplemental information received November 10, 2015, the applicants describe how the proposed project is consistent with Policy LTC-1. The applicants adequately demonstrate the proposal is consistent with Policy LTC-1.

### **Conclusion**

In summary, the applicants adequately demonstrate that the application is consistent with Policy NH-2 and Policy LTC-1. Therefore, the application is conforming to this criterion.

- (2) Repealed effective July 1, 1987.
- (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.

### C

Carolina Bay of Wilmington, LLC (Carolina Bay), Carolina Bay Properties of Wilmington, LLC (CB Properties), and Carolina Bay Healthcare Center of Wilmington, LLC (CB Healthcare Center) propose to change the scope of the previously approved Project I.D. #O-10088-13 (develop 30 Policy NH-2 beds) by instead developing 12 Policy NH-2 beds and 18 Policy LTC-1 beds in a facility that will be operating as part of Carolina Bay of Wilmington at Autumn Hall (CBWAH), a continuing care retirement community (CCRC). The applicants previously received certificates of need on October 21, 2013 for Project I.D.s #O-10086-13 (relocate 52 licensed but inactive ACH beds to be part of a CCRC), #O-10087-13 (relocate 18 licensed but inactive NF beds to be part of a CCRC, and #O-10088-13 (develop 30 Policy NH-2 beds as part of a CCRC). This application pertains only to the beds being developed as part of Project I.D. #O-10088-13.

### **Population to be Served**

On page 217, the 2015 SMFP defines the service area for ACH beds as the ACH bed planning area in which the bed is located. Ninety-eight counties in the state are separate ACH bed

planning areas. Two counties, Hyde and Tyrell, are considered a combined service area. On page 191, the 2015 SMFP defines the service area for NF beds as the NF bed planning area in which the bed is located. All 100 counties in the state are separate NF bed planning areas. Thus, the service area for this facility consists of New Hanover County. Facilities may also serve residents of counties not included in their service area.

In Section III.9, pages 37-38, the applicants provide the proposed patient origin by county of residence and indicate that the patient origin will not change from the original application, as follows:

<b>Projected Patient Origin – CBWAH – Project Year 1</b>		
<b>County</b>	<b>% Total Admissions – NF Beds</b>	<b>% Total Admissions – ACH Beds</b>
New Hanover	100%	100%
<b>Total</b>	<b>100%</b>	<b>100%</b>

The applicants state that 100 percent of admissions to CBWAH will be from New Hanover County because all of the beds will be reserved for existing independent living residents who by definition reside in New Hanover County.

The applicants adequately identify the population to be served.

### **Analysis of Need**

In Section III.1, pages 30-31, the applicants discuss why it is necessary to change the scope of the previously approved project from developing 30 Policy NH-2 beds to developing 12 Policy NH-2 beds and 18 Policy LTC-1 beds, as follows:

- “Aging-in-place” is a large part of the reason prospective CCRC residents choose to reside at a CCRC. If there are not enough available beds at a particular level of service, residents may end up transferring out of the community to receive appropriate care. (See page 31 of the application.)
- Related entities to the applicants operate Quail Haven, an existing CCRC, in Pinehurst. Quail Haven began operation with 25 “closed” NF beds and no “closed” ACH beds (a “closed” bed is a bed only available to independent living residents of the CCRC that have resided there for 30 days or more). When the population at Quail Haven began needing ACH beds in greater numbers than the beds that were available, residents began transferring out of the community until Quail Haven converted 10 of the 25 closed NF beds to closed ACH beds. (See page 30 of the application.)
- Based on the experience with Quail Haven and the design of the building for CBWAH, the applicants believe the same type of situation that occurred at Quail Haven will also occur at CBWAH. (See pages 30-31 of the application.)
- Changing the scope of the previously approved project to instead develop 12 Policy NH-2 beds and 18 Policy LTC-1 beds will allow any open beds at CWBAH to meet necessary

occupancy thresholds, which allows the applicants to maximize residency at the facility, while at the same time the closed beds will exist at the facility for residents in need of those types of services. Structuring the bed count in this manner will lead to operational efficiency and allow the CCRC to be profitable while still keeping rates low for residents. (See pages 30-31 of the application.)

- The current design of the facility will require six NF beds to be located on a separate floor from the rest of the NF beds (if all rooms are private rooms), which will create operational inefficiency and not be conducive to the best interests of the residents. Converting the types of beds developed from all Policy NH-2 beds to a mix of Policy NH-2 beds and Policy LTC-1 beds will allow all NF beds to remain in private rooms on the same floor. (See page 31 of the application.)

The applicants adequately demonstrate the need for the proposed change of scope to develop 12 Policy NH-2 beds and 18 Policy LTC-1 beds instead of 30 Policy NH-2 beds.

Projected Utilization

In Section IV.2, pages 40-42, the applicants provide the projected utilization for the 12 Policy NH-2 beds and 18 Policy LTC-1 beds for the partial federal fiscal year (FFY) after the facility begins operation as well as the first two full FFYs following project completion, as shown below:

<b>Projected Utilization – CBWAH – Partial FFY 1 and Full FFYs 1-2</b>						
<b>Policy NH-2 Beds</b>				<b>Policy LTC-1 Beds</b>		
	<b>Patient Days</b>	<b># of Beds</b>	<b>% Occupancy</b>	<b>Patient Days</b>	<b># of Beds</b>	<b>% Occupancy</b>
<b>Partial FFY 2016 (April 1, 2016 – September 30, 2016)</b>						
3 <sup>rd</sup> Quarter	327.6	12	30%	491.4	18	30%
4 <sup>th</sup> Quarter	624.8	12	57%	937.2	18	57%
<b>Full FFY 1 – FFY 2017</b>						
1 <sup>st</sup> Quarter	846	12	77%	1,270	18	77%
2 <sup>nd</sup> Quarter	983	12	90%	1,474	18	90%
3 <sup>rd</sup> Quarter	983	12	90%	1,474	18	90%
4 <sup>th</sup> Quarter	994	12	90%	1,490	18	90%
<b>Full FFY 2 – FFY 2018*</b>						
1 <sup>st</sup> Quarter	994	12	91%	1,490	18	90%
2 <sup>nd</sup> Quarter	972	12	89%	1,458	18	89%
3 <sup>rd</sup> Quarter	983	12	90%	1,474	18	90%
4 <sup>th</sup> Quarter	994	12	91%	1,490	18	90%

\*On page 42, the applicants state that the occupancy rate for the Policy NH-2 beds during Full FFY 2 will be 30% in each quarter. This appears to be a typo. The Project Analyst divided the projected number of patient days by the total number of days for each quarter (12 beds X 91 days/quarter = 1,092 total days/quarter) to obtain the percentages shown in the table.

As shown above, the applicants project CBWAH will be at 90 percent occupancy for each quarter of FFY 2 after project completion.

In supplemental information received November 10, 2015, the applicants provide the assumptions and methodology used to project utilization, which are summarized below.

- The independent living portion of the facility will have been open for several months prior to the opening of the healthcare portion of the facility; as a result, the applicants anticipate having some residents ready to transition to the Policy NH-2 and Policy LTC-1 beds during the first month of operation.
- The projection to add a net average of four residents per week (for the entire facility) is consistent with the applicants' overall historical experience, which includes opening several new nursing facilities within the last few years.
- The applicants state it is likely that the Policy NH-2 beds and Policy LTC-1 beds, because of the limited population eligible to be admitted to those beds, will fill at a rate slower than four residents per week. The applicants state that the portion of the facility that is open to the public will most likely fill at a rate higher than four residents per week because of the desirability of living in an ACH or NF bed within a CCRC. Thus, the applicants project the average net fill rate for the entire facility to be four residents per week.
- The applicants have been involved in a large marketing effort via television, radio, and newspaper that has been going on for more than a year prior to this application being filed, which includes advertising the nursing facility as well as the CCRC. The applicants also state that the high visibility within the community and surrounding area will attract residents as well.
- The applicants state: "*Carolina Bay will be the newest and by far the nicest, most residential nursing facility in southeastern North Carolina.*" The applicants also state that the "*high-end nature of Carolina Bay*" will result in a high number of new residents.

Projected utilization is based on reasonable and adequately supported assumptions.

### **Access**

In Section III.1, pages 30-31, the applicants state that the proposed Policy NH-2 beds and Policy LTC-1 beds will be used exclusively to meet the needs of people with whom the facility has continuing care contracts with. Additionally, in Section VI.2, page 50, the applicants state that the proposed Policy NH-2 beds and Policy LTC-1 beds will be private pay only.

### **Conclusion**

In summary, the applicants adequately identify the population to be served, adequately demonstrate the need the population projected to be served has for the proposed project, and adequately demonstrate the extent to which all residents of the service area will have access to the services. Therefore, the application is conforming to this 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.

NA

- (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.

CA

In Section III, pages 30-34, the applicants discuss the alternatives considered prior to submitting this application, which include:

1. Maintain the Status Quo - The applicants state that if they develop the 30 Policy NH-2 beds previously approved in Project I.D. #O-10088-13, costs cannot be reduced through operational efficiencies. The applicants further state that if the status quo is maintained, some of the Policy NH-2 beds will need to be located on a separate floor from the majority of the NF beds (both publicly available NF beds and closed NF beds), which will result in operational inefficiency and is not in the best interests of the residents. The applicants also state that without developing the Policy LTC-1 beds, some residents will potentially have to leave the CCRC to obtain ACH services.
2. Change the Scope to Develop 12 Policy NH-2 Beds and 18 Policy LTC- Beds – The applicants state that by changing the scope of the previously approved Project I.D. #O-10088-13 by instead developing 12 Policy NH-2 beds and 18 Policy LTC-1 beds, operational efficiencies will be achieved which can result in lower costs to residents; result in more efficient bed placement within the facility which will reduce inefficiency; and residents are more likely to stay at the CCRC at the point in time when they need ACH services.

After considering the above alternatives, the applicants state that they believe the most effective alternative is to apply to change the scope of the previously approved Project I.D. #O-10088-13 (develop 30 Policy NH-2 beds) to instead develop 12 Policy NH-2 beds and 18 Policy LTC-1 beds.

Furthermore, the application is conforming to all other statutory and regulatory review criteria, and thus, is approvable. A project that cannot be approved cannot be an effective alternative.

In summary, the applicants adequately demonstrate that this proposal is the least costly or most effective alternative to meet the identified need. Therefore, the application is conforming to this criterion and approved subject to the following conditions:



- 1. Carolina Bay of Wilmington, LLC, Carolina Bay Properties of Wilmington, LLC, and Carolina Bay Healthcare Center of Wilmington, LLC shall materially comply with all representations made in the certificate of need application and supplemental information received November 10, 2015. In those instances where representations conflict, Carolina Bay of Wilmington, LLC, Carolina Bay Properties of Wilmington, LLC, and Carolina Bay Healthcare Center of Wilmington, LLC shall materially comply with the last made representation.**
- 2. Carolina Bay of Wilmington, LLC, Carolina Bay Properties of Wilmington, LLC, and Carolina Bay Healthcare Center of Wilmington, LLC shall not construct or operate more than 12 Policy NH-2 nursing facility beds and 18 Policy LTC-1 adult care home beds as part of this project.**
- 3. The 12 Policy NH-2 nursing facility beds shall not be certified for participation in the Medicaid program.**
- 4. The 12 Policy NH-2 nursing facility beds shall be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and regulations) who have lived in a non-nursing unit of the continuing care facility for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract.**
- 5. The 18 Policy LTC-1 adult care home beds shall not participate in the Medicaid program or serve State-County Special Assistance recipients.**
- 6. The 18 Policy LTC-1 adult care home beds shall be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and regulations) who have lived in a non-nursing or adult care unit of the continuing care facility for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the adult care home unit at the time the other spouse or sibling moves into a non-nursing or adult care unit, or when the medical condition requiring nursing or adult care home care was not known to exist or be imminent when the individual became a party to the continuing care contract.**
- 7. The 12 new Policy NH-2 nursing facility beds and 18 new Policy LTC-1 adult care home beds shall be developed on the same site with the independent living units.**
- 8. Carolina Bay of Wilmington, LLC, Carolina Bay Properties of Wilmington, LLC, and Carolina Bay Healthcare Center of Wilmington, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Healthcare Planning and Certificate of Need Section in writing prior to issuance of the certificate of need.**

- (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.

C

In Sections VIII.1-2, pages 64-66, the applicants state that the change in the scope of the project will not result in any additional capital cost or working capital costs. In Project I.D. #O-10088-13, the application was conforming to this criterion, and the applicants propose no changes in the current application that would affect that determination. Consequently, the application is conforming to this 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.

C

On page 217, the 2015 SMFP defines the service area for ACH beds as the ACH bed planning area in which the bed is located. Ninety-eight counties in the state are separate ACH bed planning areas. Two counties, Hyde and Tyrell, are considered a combined service area. On page 191, the 2015 SMFP defines the service area for NF beds as the NF bed planning area in which the bed is located. All 100 counties in the state are separate NF bed planning areas. Thus, the service area for this facility consists of New Hanover County. Facilities may also serve residents of counties not included in their service area.

On October 21, 2013, the applicants received certificates of need for three projects: Project I.D. #O-10086-13 (relocate 52 licensed but inactive ACH beds to be part of a CCRC), #O-10087-13 (relocate 18 licensed but inactive NF beds to be part of a CCRC), and #O-10088-13 (develop 30 Policy NH-2 beds as part of a CCRC). The beds which are the subject of this application, from Project I.D. #O-10088-13, are proposed to be “closed” beds, and will only be available to existing residents of CBWAH.

The applicants propose to change the scope of the previously approved Project I.D. #O-10088-13 (develop 30 Policy NH-2 beds) to instead develop 12 Policy NH-2 beds and 18 Policy LTC-1 beds. In Section III.1, page 430, the applicants state that the 12 Policy NH-2 beds will be available exclusively to persons with continuing care contracts with CBWAH, pursuant to Policy NH-2, and the 18 Policy LTC-1 beds will be available exclusively to persons with continuing care contracts with CBWAH, pursuant to Policy LTC-1. Furthermore, the applicants adequately demonstrate the need the population to be served has for 12 Policy NH-2 beds and 18 Policy LTC-1 beds. The discussion regarding the need for the proposed beds found in Criterion (3) is incorporated herein by reference. Consequently, the applicants adequately demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities. Therefore, the application is conforming to this criterion.

- (7) The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided.

C

In supplemental information received November 10, 2015, the applicants propose to provide Registered Nurse (RN), Licensed Practical Nurse (LPN), and Aide coverage for the full health center (including the proposed 12 Policy NH-2 beds and 18 Policy LTC-1 beds) 24 hours per day, 7 days per week. The applicants provide the projected number of direct care staff per shift for the second project year as shown in the following table:

<b>Projected Direct Care Staff by Shift – CBWAH Full Health Center – Project Year 2 (FFY 2018)</b>				
	<b>RNs</b>	<b>LPNs</b>	<b>Aides</b>	<b>Total</b>
<b>NF Beds (18 “Open” Beds and 12 Policy NH-2 Beds)</b>				
Day Shift	0.60	0.29	2.93	3.83
Evening Shift	0.60	0.29	2.64	3.53
Night Shift	0.60	0.29	1.76	2.65
<b>Totals:</b>	<b>1.80</b>	<b>0.88</b>	<b>7.34</b>	<b>10.02</b>
<b>ACH Beds (52 “Open” Beds and 18 Policy LTC-1 Beds)</b>				
Day Shift	0.40	0.71	7.07	8.17
Evening Shift	0.40	0.71	6.36	7.47
Night Shift	0.40	0.71	4.24	5.35
<b>Totals:</b>	<b>1.20</b>	<b>2.12</b>	<b>17.66</b>	<b>20.98</b>
<b>Totals for the Day</b>				
<b>NF Beds</b>	1.80	0.88	7.34	10.02
<b>ACH Beds</b>	1.20	2.12	17.66	20.98
<b>Full Facility</b>	<b>3.00</b>	<b>3.00</b>	<b>25.00</b>	<b>31.00</b>

Note: Totals may not foot due to rounding.

Adequate costs for the direct care nursing positions proposed by the applicants in supplemental information received November 10, 2015, are budgeted in the pro forma financial statements. The table below, which is based on supplemental information received November 10, 2015, shows the applicants’ proposed direct care nursing staff and total direct care hours per patient day for year two of the project:

<b>Direct Care Nursing Staff Hours per Patient Day - CBWAH Full Health Center – Project Year 2 (FFY 2018)</b>				
	<b>RNs</b>	<b>LPNs</b>	<b>Aides</b>	<b>Total</b>
<b>NF Beds (18 “Open” Beds and 12 Policy NH-2 Beds)</b>				
FTEs	2.52	0.41	15.00	11.16 [17.93]
# of Nursing Hours/Year/FTE	2,080	2,080	1,950	
Total Nursing Hours/Year	5,242	855	29,250	35,346
# of Patient Days/Year	9,855	9,855	9,855	9,855
Nursing Hours/Patient Day	0.53	0.09	2.97	3.59
<b>ACH Beds (52 “Open” Beds and 18 Policy LTC-1 Beds)</b>				
FTEs	1.68	0.99	10.00	12.67
# of Nursing Hours/Year/FTE	2,080	2,080	1,950	
Total Nursing Hours/Year	3,494	2,059	19,500	25,054
# of Patient Days/Year	23,725	23,725	23,725	23,725
Nursing Hours/Patient Day	0.15	0.09	0.82	1.06
<b>Totals for the Day</b>				
FTEs	4.20	1.40	25.00	30.60
# of Nursing Hours/Year/FTE	2,080	2,080	1,950	
Total Nursing Hours/Year	8,736	2,912	48,750	60,398
# of Patient Days/Year	33,580	33,580	33,580	33,580
Nursing Hours/Patient Day	0.25	0.09	1.45	1.80

Note: Totals may not foot due to rounding.

The application is conforming to this criterion.

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

C

In Section V, pages 46-48, the applicants describe the efforts made to coordinate with the existing health care system, and provide the names of hospitals with which they expect to establish transfer agreements. Exhibits 19-22 from the application for Project I.D. #O-10088-13 contain documentation of the applicants’ efforts to establish relationships with local healthcare providers and physicians. Moreover, in Project I.D. #O-10088-13, the application was conforming to this criterion, and the applicants propose no changes in the current application that would affect that determination. Consequently, the application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
  - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
  - (iii) would cost no more than if the services were provided by the HMO; and
  - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (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.

C

In Section XI, pages 92-93, the applicants state that the change in the scope of the project will not result in any changes to the cost, design, and means of construction. In Project I.D. #O-10088-13, the application was conforming to this criterion, and the applicants propose no changes in the current application that would affect that determination. Consequently, the application is conforming to this 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;

NA

The 2015 SMFP Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds and Policy NH-2: Plan Exemption for Continuing Care Retirement Communities requires the applicants to exclusively meet the needs of people with whom the facility has continuing care contracts and who have lived at CBWAH for at least 30 days. The policies also prohibit participation in the Medicaid program and serving State-County Special Assistance recipients.

- (b) Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

NA

The 2015 SMFP Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds and Policy NH-2: Plan Exemption for Continuing Care Retirement Communities requires the applicants to exclusively meet the needs of people with whom the facility has continuing care contracts and who have lived at CBWAH for at least 30 days. The policies also prohibit participation in the Medicaid program and serving State-County Special Assistance recipients.

- (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

NA

The 2015 SMFP Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds and Policy NH-2: Plan Exemption for Continuing Care Retirement Communities requires the applicants to exclusively meet the needs of people with whom the facility has continuing care contracts and who have lived at CBWAH for at least 30 days. The policies also prohibit participation in the Medicaid program and serving State-County Special Assistance recipients.

- (d) That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

NA

The 2015 SMFP Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds and Policy NH-2: Plan Exemption for Continuing Care Retirement Communities requires the applicants to exclusively meet the needs of people with whom the facility has continuing care contracts and who have lived at CBWAH for at least 30 days. The policies also prohibit participation in the Medicaid program and serving State-County Special Assistance recipients.

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

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In Project I.D. #O-10088-13, the application was conforming to this criterion and the applicants propose no changes in the current application that would affect that determination. Consequently, the application is conforming to this criterion.

- (15) Repealed effective July 1, 1987.
- (16) Repealed effective July 1, 1987.
- (17) Repealed effective July 1, 1987.
- (18) Repealed effective July 1, 1987.
- (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.

NA

The 2015 SMFP Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds and Policy NH-2: Plan Exemption for Continuing Care Retirement Communities requires the applicants to exclusively meet the needs of people with whom the facility has continuing care contracts and who have lived at CBWAH for at least 30 days. The policies also prohibit participation in the Medicaid program and serving State-County Special Assistance recipients.

- (19) Repealed effective July 1, 1987.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

C

In Section I.12, pages 8-9, the applicants state that they or their affiliates currently own, lease, or manage 19 nursing facilities in North Carolina. In Section II.6, pages 28-29, the applicants identify three nursing facilities that were found to have provided substandard quality of care, as that term is defined in 42 CFR 488.301, during the 18 months immediately preceding the submittal of the application. The applicants also provide Form CMS-2567 for each of the facilities identified in Section II.6 in Exhibit 1. The applicants identify three additional facilities that paid fines during that same period. The applicants state in Exhibit 1 that all facilities are back in compliance and provide the dates that each facility was back in compliance.

According to the Nursing Home Licensure and Certification Section, DHSR, during the 18 months immediately preceding the submittal of the application through the date of the decision there were three incidents in two facilities for which certification deficiencies constituting substandard quality of care were found at the facilities listed on pages 8-9 of the application. According to the Nursing Home Licensure and Certification Section, both facilities are currently in compliance. After reviewing and considering information provided by the applicants and by the Nursing Home Licensure and Certification Section and considering the quality of care provided at all 19 facilities, the applicants provide sufficient evidence that quality care has been provided in the past and adequately demonstrate that there is no pattern of substandard quality of care. Therefore, the application is conforming to this criterion.

- (21) Repealed effective July 1, 1987.
- (b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

## C

The application is conforming with all applicable Criteria and Standards for Nursing Facility or Adult Care Home Services promulgated in 10A NCAC 14C .1100. The specific criteria are discussed below.

### **SECTION .1100 - CRITERIA AND STANDARDS FOR NURSING FACILITY SERVICES or ADULT CARE HOME SERVICES**

#### **10A NCAC 14C .1101 INFORMATION REQUIRED OF APPLICANT**

- (a) *An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.*
- C- The applicants project occupancy levels for the first eight calendar quarters following project completion in Section IV.2, pages 40-42, and provide assumptions and methodologies for projecting occupancies in supplemental information received November 10, 2015.
- (b) *An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be stated.*



- C- In Section III.9, pages 37-38, the applicants project patient origin by county of residence and provide the assumptions and methodologies used to make the projections.
- (c) *An applicant proposing to establish new nursing facility or adult care home beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within a 45 mile radius of the facility, with the exception that this standard shall be waived for applicants proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, facilities that are fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.*
- NA- The applicants propose to develop the 12 Policy NH-2 beds and 18 Policy LTC-1 beds as part of a CCRC.
- (d) *An applicant proposing to establish a new nursing facility or adult care home shall specify the site on which the facility will be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify at least one alternate site on which the services could be operated should acquisition efforts relative to the proposed site ultimately fail, and shall demonstrate that the proposed and alternate sites are available for acquisition.*
- C- In Project I.D. #O-10088-13, the application was conforming to this criterion and the applicants propose no changes in the current application that would affect that determination.
- (e) *An applicant proposing to establish a new nursing facility or adult care home shall document that the proposed site and alternate sites are suitable for development of the facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a certificate of need is obtained.*
- C- In Project I.D. #O-10088-13, the application was conforming to this criterion and the applicants propose no changes in the current application that would affect that determination.
- (f) *An applicant proposing to establish new nursing facility or adult care home beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10A NCAC 13D or 10A NCAC 13F, whichever is applicable.*
- C- In Project I.D. #O-10088-13, the application was conforming to this criterion and the applicants propose no changes in the current application that would affect that determination.

**10A NCAC 14C .1102 PERFORMANCE STANDARDS**

- (a) *An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State*

*Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.*

- NA- CBWAH, the CCRC where the beds proposed in this application will be located, is not yet developed.
- (b) *An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.*
- C- In Section IV.2, pages 40-42, the applicants project that the average occupancy of its Policy NH-2 beds at the end of FFYs One and Two following completion of the proposed project will be 87 percent and 90 percent, respectively. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.
- (c) *An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.*
- NA- CBWAH, the CCRC where the beds proposed in this application will be located, is not yet developed.
- (d) *An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.*
- C- In Section IV.2, pages 40-42, the applicants project that the average occupancy of its Policy LTC-1 beds at the end of FFYs One and Two following completion of the proposed project will be 87 percent and 90 percent, respectively. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.