



July 31, 2017

Ms. Martha Frisone, Chief  
Health Planning and Certificate of Need Section  
2704 Mail Service Center  
Raleigh, NC 27699-2704

RE: Comments Regarding Home Health and Hospice, Inc., CON Project ID No. M-11360-17

Dear Ms. Frisone:

I am writing on behalf of BAYADA Home health Inc. d/b/a BAYADA Hospice to submit comments regarding Home Health and Hospice, Inc. (3HC) CON Project No. O-011277-16. These comments are submitted in accordance with G.S.131 E-185(a1)(1).

Thank you for your consideration of this information.

Sincerely,

A handwritten signature in black ink that reads 'David J. French'. The signature is written in a cursive style and is positioned above a horizontal line.

David J. French  
Consultant to BAYADA Home Health Inc.



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**Comments Regarding Home Health and Hospice, Inc.  
CON Project ID No. M-11360-17  
Submitted by BAYADA Hospice**

The CON application submitted by Home Health and Hospice, Inc. (3HC) proposes to establish a hospice home care office in Cumberland County. The 3HC application fails to conform to numerous CON criteria. Some of the major deficiencies include:

- Inaccurate and unreasonable patient origin projections with overstated numbers of patients from Cumberland and other counties.
- Overstated utilization projections that far exceed the actual experience of the existing 3HC branch offices cause the application to be nonconforming to Criterion 3.
- Unreasonable assumptions regarding projected market share and the ratio of hospice admissions per deaths cause the operational projections to be unrealizable.
- Erroneous financial projections based on overstated utilization projections and inaccurate expense projections cause the application to be nonconforming to Criterion 5.
- Unnecessary duplication of services - the proposed project will be duplicative of the services provided by the existing 3HC waystation located in Fayetteville that will continue to be utilized by the 3HC Sampson office.
- Inaccurate staffing projections that show no RN positions cause the 3HC application to be nonconforming to Criterion 7.

*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."*

The 3HC application does not conform to Criterion 3 because the patient origin projections and utilization projections are unreasonable.

While 3HC has achieved strong utilization and market penetration in Wayne County, this has been accomplished over 36 years and is not a reliable indicator for projecting 3HC utilization in Cumberland County for the first two years of operation. Also, since 3HC operates both a hospice home care office and an inpatient hospice facility in Wayne County, its historical utilization is not comparable to the proposed project that involves a new hospice home care office but no inpatient hospice beds. On page 78 of the application, 3HC admits that the Wayne County utilization is not useful for making projections for the proposed project.

The 3HC application fails to accurately identify the population to be served based on reasonable assumptions. Patient origin data for the proposed 3HC office in Cumberland County are provided as follows based on applicant's inflated projections:

	Year 1 Admissions	Year 1 %	Year 2 Admissions	Year 2 %
Cumberland	174	92.06%	243	88.69%
Bladen	0	0.00%	7	2.55%
Harnett	8	4.23%	17	6.20%
Hoke	8	4.23%	7	2.55%
Totals	189	100.00%	274	100.00%

The projections are extremely overstated and unreliable because the existing 3HC branch offices that are most similar to the proposed project (located in Sampson, Pitt, Lenoir, Jones, Johnston and Wilson) all admitted less than 100 patients from their home counties in 2016. The existing 3HC hospice home care offices have been in operation for decades and none have achieved the excessive utilization as proposed by 3HC for Cumberland County.

The following table shows the actual numbers of patients served by 3HC branch offices in their respective home counties based on the 2017 SMFP Table 13A.

	Admissions for Home County	Days of Care for Home County	Deaths Served for Home County
3HC Sampson	48	3,172	28
3HC Pitt	57	3,398	39
3HC Lenoir	96	5,613	73
3HC Jones	12	1,060	5
3HC Johnston	74	4,577	49
3HC Wilson	44	2,840	28
3HC Branch Offices Average	55	3,443	47

These volumes represent the actual market penetration and home county admissions for the 3HC offices in the counties where the applicant has been serving patients for decades. It is not credible for the applicant to project to serve 174 hospice admissions in Year 1 and 243 hospice patients in Year 2 from Cumberland County because the existing 3HC offices that are most similar to the proposed project serve, on average, far fewer patients even though these offices are well established. Furthermore, Sampson, Pitt, Lenoir, Jones and Wilson Counties, where 3HC has existing hospice offices, also have large projected hospice deficits. Therefore 3HC demonstrates to lack the capability and market penetration to consistently bring hospice utilization up to the statewide average.

It is also unreasonable for 3HC to project 174 admissions from Cumberland County in Year 1 when the previously-approved hospice home care office of PruittHealth Hospice – Fayetteville admitted only 46 Cumberland patients in its first year of operation and 76 Cumberland patients in the second year.

Page 17 of the 3HC application states that 3HC Sampson County has an existing work station/waystation located in Fayetteville. Consequently, hospice patients in Cumberland County already have the option of choosing to utilize 3HC and yet the service area population is

severely underserved. The 3HC utilization projections on pages 58 to 66 of the application do not explain how the assumptions take into consideration the existing Cumberland market share served by the 3HC Sampson waystation located in Fayetteville. Therefore the 3HC application double counts the Cumberland patients to be served by both the proposed new hospice and the existing Fayetteville waystation. This causes the 60 percent market penetration assumption of projected unserved deaths for the proposed new hospice office to be unreasonable.

Page 66 of the 3HC application includes the statement that the ratio of hospice admissions to patient deaths for its existing Cumberland hospice patients has been 1.66 admissions per hospice deaths. The historical 3HC hospice utilization for Cumberland is based on a small number of patients and a limited scope of services with no continuous hospice care and no respite hospice care. This 1.66 ratio is unreasonably high as compared to the total Cumberland County ratio of hospice admissions to deaths and the statewide ratio as seen in the following table.

Hospice Admissions and Deaths by County of Patient Origin

	Hospice Admissions	Hospice Deaths	Ratio
SMFP Table 13A Cumberland	860	658	1.31
SMFP Table 13A NC Grand Total	44,246	39,164	1.13

Also, the 3HC ratio of 1.66 admissions per hospice death exceeds the ratios for all of the existing hospice home care office located in Cumberland County.

Existing Hospices in Cumberland - Hospice Data by County of Patient Origin

	Cumberland Hospice Admissions	Cumberland Hospice Deaths	Ratio
Cape Fear Valley Hospice and Palliative Care	174	122	1.43
Community Home Care and Hospice	217	193	1.12
Health Keeperz	154	111	1.39
Liberty Home Care and Hospice	66	57	1.16
PruittHealth Hospice-Fayetteville	46	29	1.59

Source: 2017 SMFP Table 13A

Furthermore, the 3HC application fails to explain why the 1.66 ratio should be applied to the proposed project in Year 1 because there are no carry-over patients that were admitted in the previous year. In the first year of operation there would be no patients admitted in a prior year that would be projected to die or be discharged in Year 1. At the end of the first year of operation there would be a number of patients that would carry over to the next year and their deaths or discharges would occur in the second year. As a result of these circumstances, the ratio of admissions to deaths in the first year of operation should be substantially less than the second year.

Page Section IV of the 3HC application incorrectly states that the applicant does not own or operate any licensed hospice office in the service area. However, the applicant admits that it has an existing 3HC Sampson waystation in Cumberland County. Furthermore, the 2017 SMFP reports that the 3HC Sampson office serves Cumberland patients. Failing to disclose the historical utilization for the existing 3HC hospice services in Cumberland is an attempt to

disguise the double counting of future 3HC hospice utilization in Cumberland County. If 3HC intends to maintain its existing 3HC Sampson waystation in Cumberland and also implement its proposed new hospice, the CON application should include utilization for both the waystation and the proposed new office and explain the basis for these projections.

The utilization assumptions for the proposed 3HC project are defective:

- Overall utilization projections for the proposed 3HC office are based on the unreasonable ratio assumption of 1.66 hospice admissions per hospice death; this ratio greatly exceeds the experience of the existing hospice providers located in Cumberland County.
- Utilization projections in Section IV are based on the unsupported assumption that the average length of stay for routine hospice care will be 60 days for both Years 1 and 2.
- Utilization projections for the numbers of patients and the days of care by payor category are not adequately explained. The projected days of care for Medicaid, Commercial Insurance and Self Pay patients are based on unexplained average lengths of stay that are less than the 60 day assumption.
- 3HC projects that it will provide continuous care for the proposed project even though none of its existing hospice offices provide this level of care.

For the same reasons that the 3HC application does not conform to CON Criterion 3, the application also does not conform to the Hospice Home Care Performance Standard 10A NCAC 14C .1503. 3HC fails to demonstrate that it will meet the performance standard because the utilization projections are overstated and based on unreasonable assumptions.

*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.”*

Pages 73 to 74 of the application describe the alternatives considered by 3HC. However, the application does not adequately demonstrate the need to develop the proposed project and also to relocate and maintain its existing 3HC Sampson Fayetteville waystation. The 3HC proposal fails to conform to Criterion 3 and therefore is not an effective alternative regarding Criterion 4.

3HC fails to provide utilization projections for the relocated workstation to demonstrate that there is a need to maintain a workstation in Sampson County in addition to the proposed project. There is no documentation that having a workstation and a new hospice office is the least costly or most effective alternative. The least costly alternative would probably be to utilize only one office location because this would result in no capital costs for relocation and no lease expense for the waystation at its new location.

*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.”*

As explained in the Criterion 3 comments, the utilization projections for the proposed project are based on overstated volumes and unreasonable assumptions regarding the ratio of admissions to deaths. Therefore the financial projections for the proposed project are based on unreasonable operational projections. Consequently the projected revenues and expenses are

not reliable. Capital costs for the project are not adequately documented because the application includes no list of the necessary furniture and equipment.

The cash flow projections are unreasonable because page 121 of the application shows large receipts for Medicare and Medicaid billings in the first quarter of Year 1 even though page 12 of the application states that 3HC “expects to be certified within the first few months of operation.” Therefore it is not reasonable to project receipt of \$152,321 in Medicare revenue and \$7,031 in Medicaid revenue for the first quarter of Year 1 because the 3HC office will not yet be certified. The erroneous cash flow projections mean that 3HC has understated its working capital cost for Year 1.

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.”

3HC’s application does not adequately demonstrate the need to develop the proposed project and also relocate and maintain its existing Fayetteville (3HC Sampson) waystation. The application fails to conform to Criterion 3. Consequently the proposed project will result in unnecessary duplication of health service capabilities and is nonconforming to Criterion 6.

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.”

The 3HC application fails to conform with Criterion 7 because the staffing resources for the proposed project are inadequate. Table VII.2 on page 112 of the 3HC applications shows no RN positions.

Table VII.1: Projected Staff For The Hospice During Second Year of Operation

Category	Column 1	Column 2		Column 3	Column 4	Contractors		
	Number of Full Time Personnel	Number of Part Time Personnel (a)	Total hours/year (b)	Full Time Equivalents (FTE): Column 1 + (column 2(b)/2080)	Average Salary for one FTE	Name	# Visits	Fee/Visit
Administrator	1			1.00	\$83,430			
Secretary	1			1.00	\$30,900			
Accounting		1	1,040	0.50	\$32,960			
Other Adm. (Marketer)	1			1.00	\$73,542			
Patient/Family Care Coordinator	4	1	1,040	4.50	\$68,667			
RN (Care Provider)								
LPN		1	1,420	0.68	\$39,552			
Certified Nurse Assistant	4	1	1,040	4.50	\$24,033			
Dietary Counselor		1	520	0.25	\$31,158			
Medical Records*	1			1.00	\$61,800			
Social Worker	1	1	1,040	1.50	\$52,530			
Bereavement Counselor	1			1.00	\$55,620			
Family Counselor								
Physical Therapist		1	104	0.05	\$82,400			
Occupational Therapist		1	104	0.05	\$82,400			
Speech Therapist		1	104	0.05	\$82,400			
Homemaker/Chore								



It is unreasonable to project no RN positions for the proposed project because the interdisciplinary team that is vital for licensure and certification requires registered nurses for

hospice home care. Given the fact that the applicant states that registered nurses are essential to the provision of hospice home care, and none are included in the Staffing Table, the 3HC proposal is not a viable proposal. The application lacks adequate staffing to provide the hospice nursing visits that are projected.

The 3HC financial proforma statements do not include a staffing worksheet with FTE numbers and salaries to demonstrate that there are sufficient funds for RN positions. Therefore the application again does not include adequate staffing information regarding RN positions.

While 3HC may want to attempt to correct or revise the Staffing Table VII.2 of the application by changing or moving numbers within various line items of the table, such an amendment to the application would be contrary to the CON regulations. All information the applicant intends to rely on to demonstrate conformance of the application with the review criteria must be provided by the applicant in its application when first submitted to the agency.

*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 3HC proposal is nonconforming to Criteria 3 and 5 due to unreasonable operational and financial projections. No utilization projections are provided for the existing 3HC Fayetteville waystation (3HC Sampson) to demonstrate the expected effects of the proposed project on competition in the service area.

The proposed 3HC staffing projections omit the necessary RN positions. This omission does not support adequate access or quality. Without adequate staffing, 3HC could not obtain licensure and certification. Consequently the proposal will not enhance competition and quality.

The absence of RN FTEs in the proposed staffing translates to an incomplete scope of services that fails to meet licensure requirements and the Medicare Conditions of Participation. Therefore, 3HC's proposal would not be eligible to receive Medicare or Medicaid reimbursement.

The population of Cumberland County is underserved for hospice home care services, in part, because 3HC has chosen to provide less than all four levels of hospice care to the population through its existing offices. Clearly the population of Cumberland County deserves a new choice of hospice provider that is committed to increase hospice access to all levels of care.

## **Comparative Analysis**

### Conformity to CON Review Criteria

The 3HC application does not conform to CON Review Criteria 3, 4, 5, 6, 7, and 18a for the reasons described in the previous comments. In contrast, the BAYADA Hospice application does conform to the CON Review Criteria and is the comparatively superior application.



### Patient Access to New Alternative Provider

3HC proposes a new hospice home care office in addition to relocating its existing hospice waystation. With the existing waystation, 3HC Sampson has had the opportunity to provide all levels of hospice home care to Cumberland patients but has chosen not to provide this complete scope of services.

BAYADA Hospice has no existing hospice home care offices in North Carolina. BAYADA Hospice is committed to provide all levels of hospice care and offers Cumberland County access to a new alternative hospice home care provider. The BAYADA Hospice application is comparatively superior regarding this factor.

### Documentation of Support

As an existing hospice home care provider, the 3HC application includes contact lists and letters of support from physicians, a hospital, nursing facilities and vendors. As a proposed new provider of hospice home care, the BAYADA Hospice application includes lists of referral sources, letters of support from physicians, hospitals, a nursing facility provider, contractors and vendors. With regard to documentation of support, both proposals provide adequate documentation of support and are equally effective.

### Access by Underserved Groups

Page 106 of the 3HC application includes the following table:

**Second Operating Year: From October 2019 To September 2020**

	<i>Projected Days of Care as % of Total Utilization</i>	<i>Projected Hours of Continuous Care as % of Total Utilization</i>	<i>Projected Revenue as % of Total Revenue</i>
Medicare	90.0%	100.0%	90.4%
Medicaid	4.6%	0.0%	4.2%
Commercial/Other	4.4%	0.0%	4.4%
Self Pay/Charity	1.0%	0.0%	1.0%
<b>Total</b>	<b>100.0%</b>	<b>100%</b>	<b>100%</b>

Contrary to the instructions in the CON application, 3HC provides no assumptions or any explanation of the projected payor mix. 3HC does not address the issue of hospice billing and reimbursement for room and board that is typically paid to the nursing facilities.

Page 88 of the BAYADA Hospice application provides the following table.

**BAYADA Hospice Year 2 October 1, 2019 to September 30, 2020**

	Projected Days of Care as % of Total Utilization	Projected Hours of Continuous Care as % of Total Utilization	Projected Revenue as % of Total Revenue
<b>Medicare</b>	90.0%	100.0%	80.1%
<b>Medicaid</b>	5.0%	0%	15.5%
<b>Commercial Insurance</b>	4.0%	0%	3.5%
<b>Self Pay</b>	1.0%	0%	0.9%
<b>Other (specify)</b>	0.0%	0%	0.0%
<b>Total</b>	100%	100%	100.0%

The BAYADA application provides assumptions regarding the projected payor mix. Also BAYADA addresses the issue of hospice billing and reimbursement for room and board that is typically paid to the nursing facilities.

The BAYADA application is comparatively superior because the combined percentage for projected days of care for Medicare, Medicaid and Self Pay totals 96 percent while the 3HC Medicare, Medicaid and Self Pay totals 95.6 percent. Also the BAYADA application provides assumptions for its payor mix while the 3HC application omits the assumptions.

Staffing Comparison

The following table provides a comparison of the Year 2 projected FTEs and average salary per FTE for RN, CNA and Social Worker positions.

Year 2	3HC		BAYADA	
FTE and Salary Comparison	FTE	Salary / FTE	FTE	Salary / FTE
RN	None	None	3.5	63,942
CNA	4.5	24,033	3.5	26,476
Social Worker	1.5	52,530	1.0	56,650

As seen in the above table, the 3HC staffing omits the RN position and has comparatively lower salaries for the CNA and Social Worker positions. Consequently the BAYADA application is comparatively superior with regarding to staffing.

### Financial Comparison

The following table provides a comparison of the gross revenue per day, net revenue per day and total expense per day obtained from the Year 2 financial proforma for the 3HC and BAYADA applications.

Year 2 Financial Data	3HC	BAYADA
Gross Revenue	3,351,665	1,938,981
Patient Days	16,656	9,395
Gross Revenue per Patient Day	201.23	206.38
Net Revenue	2,772,674	1,855,465
Patient Days	16,656	9,395
Net Revenue per Patient Day	166.47	197.49
Total Expenses	2,074,572	1,704,806
Patient Days	16,656	9,395
Total Expense per Patient Day	124.55	181.46

As seen in the above table the proposal by 3HC projects the lower gross revenue, net revenue and total expenses per day as compared to the BAYADA application. However, the utilization projections for the 3HC application are not based on reasonable and credible methodology and assumptions causing the financial projections to be unreliable.

In contrast, the BAYADA application includes financial projections that are based on reasonable and credible utilization projections and assumptions. Therefore the BAYADA application is comparatively superior with regard to overall financial projections of revenue and expenses.

### Consistency with SMFP Policy GEN-3

The 3HC application fails to demonstrate the need for its project under Criterion 3 and is therefore inconsistent with Policy GEN-3. Also, 3HC fails to demonstrate that the proposal will improve access and quality due to the omission of FTEs and salaries for Registered Nurse positions. The BAYADA proposal demonstrates consistency with Policy GEN-3 because the applicant demonstrates the need for the proposed project. The BAYADA application includes staffing projections for all necessary positions, quality and accreditation documentation, and programs and strategies to improve patient access.