

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: July 20, 2017

Findings Date: July 20, 2017

Project Analyst: Gloria C. Hale

Team Leader: Lisa Pittman

Project ID #: J-11333-17

Facility: Brightmore Healthcare Center of Cary

FID #: 110717

County: Wake

Applicants: Cary Senior Housing I Opco, LLC and Cary Senior Housing I Propco, LLC

Project: Develop a new combination NF as part of a new CCRC with 28 NF beds and 82 ACH beds (25 of the NF beds are authorized by Project I.D. #J-8727-11 and 3 will be developed pursuant to Policy NH-2; 30 of the ACH beds will be relocated from Cary Health and Rehabilitation Center and 52 will be developed pursuant to Policy LTC-1). Twenty-two of the ACH beds will be in a memory care unit.

### REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

N.C. Gen. Stat. §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

The applicants, Cary Senior Housing I Opco, LLC and Cary Senior Housing I Propco, LLC, propose to develop a new combination nursing facility (NF), Brightmore Healthcare of Cary (Brightmore), as part of a new continuing care retirement community (CCRC). Brightmore will be located at 101 Guernsey Trail in Cary, Wake County and will have 201

independent living (IL) units, 28 nursing facility (NF) beds, and 82 adult care home (ACH) beds, including a 22-bed memory care unit.

### **Need Determination**

The proposed project does not involve the addition of any new health service facility beds, services or equipment for which there is a need determination in the 2017 State Medical Facilities Plan (SMFP). Therefore, there are no need determinations applicable to this review.

### **Policies**

There are five policies in the 2017 SMFP applicable to this review: *Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities - Adult Care Home Beds*, *Policy LTC-2: Relocation of Adult Care Home Beds*, *Policy NH-2: Plan Exemption for Continuing Care Retirement Communities*, *NH-8: Innovations in Nursing Facility Design*, and *GEN-4: Energy Efficiency and Sustainability for Health Service Facilities*.

*Policy LTC-1*, on pages 25-26 of the 2017 SMFP, 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.”*

The applicants state, in Section III.4, pages 42-43, that 52 of the proposed 82 ACH beds will be consistent with all five requirements of *Policy LTC-1*.

The applicants adequately demonstrate conformance with the requirements of *Policy LTC-1*.

*Policy LTC-2*, on page 26 of the 2017 SMFP, states:

*“Relocations of existing licensed adult care home beds are allowed only within the host county and to contiguous counties. Certificate of need applicants proposing to relocate licensed adult care home beds to a contiguous county shall:*

1. *Demonstrate that the facility losing beds or moving to a contiguous county is currently serving residents of that contiguous county; and*
2. *Demonstrate that the proposal shall not result in a deficit, or increase an existing deficit in the number of licensed adult care home beds in the county that would be losing adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins; and*
3. *Demonstrate that the proposal shall not result in a surplus, or increase an existing surplus of licensed adult care home beds in the county that would gain adult care home beds as a result of the proposed project, as reflected in the North Carolina State*

*Medical Facilities Plan in effect at the time the certificate of need review begins.”*

In Section III.1, page 36, the applicants state that they plan to relocate 30 ACH beds from Cary Health and Rehabilitation Center (Cary Health), located in Wake County, to Brightmore, which will also be located in Wake County. Therefore, the proposal will not result in a net change in ACH beds in Wake County. Exhibit 8 contains a copy of a letter of intent to acquire 30 licensed ACH beds from Cary Health.

The applicants adequately demonstrate conformance with the requirements of *Policy LTC-2*.

*Policy NH-2*, on pages 23-24 of the 2017 SMFP, 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 statues 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 hundred percent of the nursing care beds developed under this exemption shall be excluded from the inventory and the occupancy rate 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 to 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.”*

In Section III.4, page 42, the applicants state that they will develop three NF beds concurrently with development of IL units and ACH beds and that they will adhere to all of the provisions of *Policy NH-2*.

The applicants adequately demonstrate conformance with the requirements of *Policy NH-2*.

*Policy NH-8*, on page 25, states:

*“Certificate of need applicants proposing new nursing facilities and replacement nursing facilities shall pursue innovative approaches in environmental design that address quality of care and quality of life needs of the residents. These plans could include innovative design elements that encourage less institutional, more home-like settings, privacy, autonomy and resident choice, among others.”*

In Section III.4, pages 43-47, the applicants describe the plans for the facility to be more home-like and less institutional, including patient care practices, workplace practices, and facility design elements to increase privacy, resident choice, autonomy, satisfaction, and convenience. In addition, the applicants state, on page 46, that they follow the principles of the Pioneer Network, a grassroots effort to de-institutionalize services and to individualize care.

The applicants adequately demonstrate conformance with the requirements of *Policy NH-8*.

*Policy GEN-4*, on page 33 of the 2017 SMFP, 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.*

*Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E-184 are required to submit a plan for energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN-4. The plan shall not adversely affect patient or resident health, safety or infection control.”*

The proposed capital expenditure for this project is greater than \$5 million. In Section III.4, pages 41-42, the applicants state that they will implement several techniques and policies to address energy efficiency and water conservation, including, but not limited to, the following:

- *“Energy Star rated appliances*
- *High-efficiency HVAC systems with HEPA filters for residents’ rooms*
- *Thermal pane windows*
- *Natural lighting through the use of strategically designed windows and solar tubes*
- *Cold water ozone laundry system for water and energy conservation*
- *Rainwater reclamation system for landscaping irrigation for water conservation.”*

The applicants adequately demonstrate conformance with the requirements of *Policy GEN-4*.

### **Conclusion**

In summary, the application is conforming to *Policies LTC-1, LTC-2, NH-2, NH-8* and *GEN-4*. 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.

### NC

The applicants, Cary Senior Housing I Opco, LLC and Cary Senior Housing I Propco, LLC, propose to develop a new combination NF, Brightmore, as part of a new CCRC. Brightmore will be located at 101 Guernsey Trail in Cary, Wake County and will have 201 IL units, 28 NF beds, and 82 ACH beds, including a 22-bed memory care unit. Twenty-five of the NF beds will be “open” beds, authorized through settlement of Project I.D. #J-8727-11, and three will be “closed” NF beds, to be developed pursuant to *Policy NH-2* of the 2017 State Medical Facilities Plan (SMFP). Thirty of the ACH beds will be “open” beds to be relocated from Cary Health pursuant to *Policy LTC-2* of the 2017 SMFP, and 52 will be “closed” beds developed pursuant to *Policy LTC-1* of the 2017 SMFP. In Section III.1, pages 38 and 43, the applicants state that all of the proposed NF beds and ACH beds will be in private rooms.

The applicants state, in Section I.9, page 7, that Brightmore will be managed by Senior Living Management Services, LLC. Exhibit 2 contains a copy of the proposed management contract with Senior Living Management Services, LLC.

### **Patient Origin**

On page 191, the 2017 SMFP defines the service area for NF beds as the county in which the bed is located. On page 219, the 2017 SMFP defines the service area for ACH beds as the county in which the bed is located. Thus, the service area for the proposed NF and ACH beds is Wake County. However, facilities may serve residents of counties not included in their service area.

In Section III.9, page 49, the applicants project that 95% of Brightmore's NF and ACH admissions will be from Wake County, 3% will be from Durham County, and 2% will be from Orange County upon completion of the project. The applicants provide the assumptions used to project patient origin in Section III.9, page 49, stating that their projections are based on their experience from their existing facility in Wake County and from demographic research.

The applicants adequately identify the population to be served.

### **Analysis of Need**

In Section III.1(a) and (b) of the application, pages 36-38, and Exhibits 4 and 9, the applicants describe the need for the proposed 28 NF beds and 82 ACH beds of the project, summarized as follows:

- Geographic accessibility will be preserved, bed distribution will be improved, and diversity of healthcare options will be expanded to Wake County residents (pages 36 and 38).
- ACH bed units will accommodate up to six levels of acuity, thereby providing a "true age in place continuum of care" allowing for only the level of care the residents need (page 36).
- There is a strong demand for NF and ACH beds within a 3 and 5-mile radius of the proposed location of the facility as evidenced by the over 90% NF occupancy rates of the two NFs located the closest to the proposed site and by data in Exhibit 9 which shows bed need within a 3 and 5-mile radius of the proposed site (page 37 and Exhibit 9).
- Approximately 1 in 9 persons aged 65 and over develop Alzheimer's disease or other forms of dementia and the incidence of these diseases is increasing, therefore a 22-bed memory care unit will support the demand (page 38).

However, based on a review of the information provided by the applicants in Section III and in Exhibits 4 and 9, the applicants do not adequately demonstrate the need to develop 52 *Policy LTC-1* ACH beds, 30 *Policy LTC-2* ACH beds (relocated from Cary Health), 25 NF beds approved through settlement of Project I.D. #J-8727-11, and three *Policy NH-2* NF beds.

### **Projected Utilization**

In Section IV.2, pages 52-54, the applicants provide projected utilization for Brightmore for the first partial Operating Year (OY), April 1, 2021 through September 30, 2021, OY2

(FFY2022), and OY3 (FFY2023) following completion of the project, as summarized below:

**Brightmore  
 Projected Utilization**

|                       | <b>Partial OY<br/>4/1/2021 –<br/>9/30/2022<br/>[9/30/2021]</b> | <b>OY1<br/>10/1/2021 –<br/>9/30/2022</b> | <b>OY2<br/>10/1/2022 –<br/>9/30/2023</b> |
|-----------------------|--|--|--|
| <b>NF Beds</b>        |  |  |  |
| Patient Days          | 3,239  | 9,125                                    | 9,125                                    |
| # of Beds             | 28   | 28                                       | 28                                       |
| Occupancy Rate        | 32% [63%]  | 89%                                      | 89%                                      |
| <b>ACH Beds</b>       |  |  |  |
| Patient Days          | 3,480  | 23,898                                   | 27,010                                   |
| # of Beds             | 82   | 82                                       | 82                                       |
| Occupancy Rate        | 12% [23%]  | 80%                                      | 90%                                      |
| <b>Total Facility</b> |  |  |  |
| Patient Days          | 6,719  | 33,023                                   | 36,135                                   |
| # of Beds             | 110  | 110                                      | 110                                      |
| Occupancy Rate        | 17% [34%]  | 82%                                      | 90%                                      |

\*The Project Analyst’s corrections are in brackets. The Project Analyst assumes the applicants made a typographical error in the ending date for partial OY.

As shown in the above table, the average annual occupancy rates for the NF beds are projected to be 63%, 89%, and 89% in the project’s first partial OY, OY1, and OY2, respectively. For ACH beds, the average annual occupancy rates are projected to be 23%, 80%, and 90% for the first partial OY, OY1, and OY2, respectively. The average annual occupancy rates for the NF beds and ACH beds combined are projected to be 34%, 82%, and 90% for the first partial OY, OY1, and OY2, respectively.

In Section III, page 36, the applicants discuss the results of an actuarial study that was conducted to project the number of NF and ACH beds needed at Brightmore. See Exhibit 4 for actuarial study results. The applicants state that the actuarial study projects that the CCRC will need a total of 96 healthcare beds (53 NF beds and 43 ACH beds). The number of beds proposed for Brightmore is 110 (28 NF beds and 82 ACH beds). However, the applicants state, on page 36, that the actuarial study is based on national data and further, based on their own experience in the state, “*there is a heavier trend towards ACH beds and less towards NF beds*” and that more time is spent by residents in ACH care than NF care. In addition, the applicants state, on page 36, that their experience with their Bradley Creek at Carolina Bay combination facility “*has seen success...with this type of ACH/NF bed configuration.*”

In Section III.1, page 37, the applicants state that the two closest NF facilities, Cary Health and Rex Rehab and Nursing Care Center, have over 90% occupancy. The applicants state that NF bed options in the area are limited. In addition, the applicants state, on page 37, that there is a strong demand for NF and ACH beds within a three mile radius of the

proposed location of Brightmore based on an analysis of population data. The applicants include demographic data from Claritas in Exhibit 9, however the applicants do not provide the methodology used to determine the number of ACH and NF beds needed. Moreover, the applicants do not provide any other methodology for projecting bed need or for projecting utilization at Brightmore. Therefore, projected utilization is not reasonable or adequately supported.

Therefore, the applicants do not adequately demonstrate that the assumptions and methodology used to project utilization of the proposed NF and ACH beds are reasonable and adequately supported. Therefore, the applicants' projected utilization is not reasonable and adequately supported.

### **Access**

In Section VI.5, page 62, the applicants state that Brightmore will not be restrictive with respect to social, racial, or gender-related issues and that admissions will occur on a first come, first served basis. In addition, on page 63, the applicants state that the proposed 25 "open" NF beds and the proposed 30 "open" ACH beds will be available to any person over the age of 18 who qualifies for and is in need of NF or ACH levels of service and for whom appropriate care can be provided by the facility. In addition, the applicants state, in Section III.4, pages 42-43, and Section VI.5, page 63, that the proposed three "closed" NF beds and the proposed 52 "closed" ACH beds will be used exclusively to meet the needs of people with whom the facility has continuing care contracts or for those persons who would qualify under *Policy NH-2 and LTC-1*, respectively.

The applicants state, in Section VI.3, page 62, that 2.7% of Brightmore's ACH patient days will be reimbursed by State-County Special Assistance in operating year two. The Project Analyst notes that ACH patient days reimbursed by State-County Special Assistance would necessarily be patient days from the 30 "open" ACH beds because the applicants are precluded from participating in State-County Special Assistance for the 52 "closed" ACH beds to be developed under *Policy LTC-1*. In addition, the applicants state, in Section VI.3, page 62, that 72% of Brightmore's NF patient days will be reimbursed by Medicare and 0% of Brightmore's NF patient days will be reimbursed by Medicaid. However, 25 of the applicants' 28 proposed NF beds will be "open" beds available to the general public, including low income persons, and the remaining three NF beds will be "closed" NF beds to be developed under *Policy NH-2* which are precluded from participating in the Medicaid program. Therefore, the applicants do not adequately demonstrate the extent to which all residents of the area, including underserved groups, will have access to the services proposed.

### **Conclusion**

In summary, the applicants adequately identify the population to be served by the proposed project, however the applicants do not demonstrate the need the population has for the services proposed, or the extent to which all residents of the area, and, in particular, low income persons, are likely to have access to the services proposed. Therefore, the application is not 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.

### C

In Section III.1, page 36, the applicants state that the 30 ACH beds that will be relocated from Cary Health are currently unoccupied, therefore no current residents will be affected. According to the 2017 License Renewal Application for Cary Health, there were no residents occupying the facility's 30 ACH beds from October 1, 2015 through September 30, 2016. The 52 other ACH beds proposed by the applicants will be developed pursuant to *Policy LTC-1*. Twenty-five of the 28 NF beds proposed by the applicants will be developed pursuant to a settlement agreement for Project I.D. #J-8727-11 and three will be developed pursuant to *Policy NH-2*. Therefore, none of the NF beds proposed are currently occupied. Further, none of the ACH or NF beds proposed to be developed at Brightmore will have an adverse effect on residents who are already being served.

The applicant demonstrates that the needs of the population presently served will be adequately met and that the proposal will not adversely affect the ability of medically underserved groups to obtain needed health care. Therefore, the application is conforming to this 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.

### NC

In Section III.2, pages 39-40, the applicants describe the alternatives considered prior to submitting this application for the proposed project, which include:

- Not constructing a facility –The applicants state that this alternative was not an option as discussions were held to determine the need for additional healthcare

services in Wake County and Cary and that the decision was made to offer a true continuum of care because it was in the best interest of the community. In addition, the applicants state that they are obligated to relocate 30 ACH beds to a new facility. Therefore, this is not the most effective alternative.

- Constructing a combination NF that is not part of a CCRC – The applicants state that constructing a traditional, combination NF with 25 NF beds and 30 ACH beds would not be a large enough facility to be financially feasible. Therefore, this is not the most effective alternative.
- Construct the facility with no licensed healthcare beds available to the public – The applicants state that there were three reasons that this alternative was not chosen: they would still be obligated to relocate 30 “open” ACH beds and develop 25 “open” NF beds; a traditional combination NF with only the combined 55 “open” NF and ACH beds would be operationally inefficient; and the facility would need to be fully staffed and operational, waiting for the IL units to fill up and waiting at least 30 days of occupancy before admitting the first resident to ACH care. The applicants concluded that this alternative would not be operationally efficient and would not be the most effective alternative.

After considering these alternatives, the applicants state that the alternative proposed in the application is the most effective alternative because *“a CCRC with a full service healthcare facility that was also available to the general public was the most economically feasible and operationally efficient alternative.”*

However, the application is not conforming to all other statutory and regulatory review criteria, and thus, is not approvable. See Criteria (3), (5), (6), (7), (13c), and (18a). An application that cannot be approved cannot be an effective alternative.

In summary, the applicants do not adequately demonstrate that the proposal is the least costly or most effective alternative to meet the identified need. Therefore, the application is not conforming to this 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.

NC

The applicants, Cary Senior Housing I Opco, LLC and Cary Senior Housing I Propco, LLC, propose to develop a new combination NF, Brightmore, as part of a new CCRC.

Brightmore will be located at 101 Guernsey Trail in Cary, Wake County, and will have 201 IL units, 28 NF beds, and 82 ACH beds, including a 22-bed memory care unit.

**Capital and Working Capital Costs**

In Section VIII.1, page 77, the applicants state the total capital cost of the proposed project, excluding the independent living units, is projected to be \$36,060,792, summarized as follows:

**Brightmore  
Projected Capital Costs**

| <b>Costs</b>                 | <b>Total Costs,<br/>ACH and NF<br/>Beds</b> |
|------------------------------|---|
| Site costs*                  | \$ 4,443,465                                |
| Construction                 | \$ 27,862,909                               |
| Equipment and furniture      | \$ 1,100,000                                |
| Consultant Fees              | \$ 1,666,411                                |
| Financing costs              | \$ 227,973                                  |
| Interest during construction | \$ 760,035                                  |
| <b>Total Capital Costs</b>   | <b>\$ 36,060,792</b>                        |

In Section IX, page 82, the applicants state that they will have \$339,681 in start-up costs and \$653,162 in initial operating costs, for a total of \$992,843 in working capital costs. The applicants provide the assumptions for start-up costs and operating costs on page 82 and in the pro formas, respectively.

**Availability of Funds**

In Section VIII.2, page 78, the applicants document that they intend to finance the capital costs of the entire CCRC, including Brightmore, through Kayne Anderson Capital Advisors, L.P. in the amount of \$118,632,235.

In Exhibit 13, the applicants provide a letter, dated April 10, 2017, from Kayne Anderson Real Estate Advisors stating their intention to provide debt and equity to finance the proposed project.

In Section IX.5, page 84, the applicants state that the total working capital costs of \$992,843 will be financed with owner's equity. In Exhibit 15, the applicants provide a letter, dated April 7, 2017, from the Certified Public Accountant of the owners, John A. McNeill, Jr. and Ronald B. McNeill, stating that each has in excess of \$25,000,000 in assets in order to fund the working capital costs of the proposed project.

The applicants adequately demonstrate the availability of sufficient funds for the capital and working capital needs of the project.

### **Financial Feasibility**

In Section X.4, page 92, the applicants project that the private pay charge for a private room for an NF bed will be \$310 per day and that the private pay charge for a private room for an ACH bed will be \$250 per day. In addition, the applicants state that the Medicare charge for a private room for an NF bed will be \$500 which is the weighted average of the facility's RUG rates. The State-County Special Assistance charge for a private room for an ACH bed will be \$42.68. The applicant does not provide a private pay charge for a semi-private room for either NF beds or ACH beds because all of the rooms proposed will be private.

The applicants provide pro forma financial statements for the first partial OY and the first two full OYs of the project following completion. In the pro forma financial statements (Form B), the applicants project that operating costs will exceed revenues in the first partial operating year of the project, and revenues will exceed operating costs in the first and second operating years of the project, as shown in the table below.

**Brightmore**

| <b>ACH Beds</b>  | <b>Partial OY<br/>(4/1/2021 –<br/>9/30/2022<br/>[9/30/2021]*)</b> | <b>OY1<br/>(10/1/2021 –<br/>9/30/2022)</b> | <b>OY2<br/>(10/1/2022 –<br/>9/30/2023)</b> |
|--|---|--|--|
| Projected # of Patient Days  | 3,480   | 23,898                                     | 27,010                                     |
| Projected Average Charge (Gross Patient Revenue / Projected # of Patient Days) | \$250   | \$244                                      |  |
| Gross Patient Revenue  | \$870,000   | \$5,823,160                                | \$6,601,160                                |
| Deductions from Gross Patient Revenue  | \$0   | \$0  | \$0  |
| Other Revenue  | \$7,482   | \$51,381                                   | \$58,072                                   |
| Total Net Revenue  | \$877,482   | \$5,874,540                                | \$6,659,231                                |
| Total Expenses   | \$1,603,786   | \$4,143,506                                | \$4,282,760                                |
| Net Income   | \$(726,304)   | \$1,731,035                                | \$2,376,471                                |
| <b>NF Beds</b>   |   |  |  |
| Projected # of Patient Days  | 3,239   | 9,125                                      | 9,125                                      |
| Projected Average Charge (Gross Patient Revenue / Projected # of Patient Days) | \$446   | \$447                                      | \$447                                      |
| Gross Patient Revenue  | \$1,445,270   | \$4,077,050                                | \$4,077,050                                |
| Deductions from Gross Patient Revenue  | \$105,585   | \$297,457                                  | \$297,457                                  |
| Other Revenue  | \$117,997   | \$332,424                                  | \$332,424                                  |
| Total Net Revenue  | \$1,457,682   | \$4,112,017                                | \$4,112,017                                |
| Total Expenses   | \$1,411,061   | \$3,173,953                                | \$3,154,768                                |
| Net Income   | \$46,621  | \$938,064                                  | \$957,249                                  |
| <b>Total Licensed Beds (NF and ACH)</b>  |   |  |  |
| Projected # of Patient Days  | 6,719   | 33,023                                     | 36,135                                     |
| Gross Patient Revenue  | \$2,315,270   | \$9,900,210                                | \$10,678,210                               |
| Deductions from Gross Patient Revenue  | \$105,585   | \$297,457                                  | \$297,457                                  |
| Other Revenue  | \$125,479   | \$383,804                                  | \$390,495                                  |
| Total Net Revenue  | \$2,335,164   | \$9,986,557                                | \$10,771,248                               |
| Total Expenses   | \$3,014,847   | \$7,317,458                                | \$7,205,778                                |
| Net Income   | \$(679,683)   | \$2,669,099                                | \$3,333,720                                |

\*The Project Analyst assumes that the applicants made a typographical error in the time period for first partial OY.

However, the assumptions used by the applicants in preparation of the pro forma financial statements are not reasonable, including projected utilization, costs and charges.

See the financial section of the application and the staffing section, Section VII, for the assumptions used regarding costs and charges. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference. The discussion regarding projected staffing found in Criterion (7) is incorporated herein by reference. The applicants adequately demonstrate sufficient funds for the operating needs of the proposal, however the applicants do not adequately demonstrate that the financial feasibility of the proposal is based upon reasonable projections of costs and charges. Therefore, the application is not 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.

NC

The applicants, Cary Senior Housing I Opco, LLC and Cary Senior Housing I Propco, LLC, propose to develop a new combination NF, Brightmore, as part of a new CCRC. Brightmore will be located at 101 Guernsey Trail in Cary, Wake County and will have 201 IL units, 28 NF beds, and 82 ACH beds, including a 22-bed memory care unit.

On page 191, the 2017 SMFP defines the service area for NF beds as the county in which the bed is located. On page 219, the 2017 SMFP defines the service area for ACH beds as the county in which the bed is located. Thus, the service area for the proposed NF and ACH beds is Wake County. However, facilities may serve residents of counties not included in their service area.

The applicants propose to develop 28 NF beds, however 25 of the 28 NF beds were acquired due to settlement of Project I.D. #J-8727-11 and are “open” or available to the general public. The 25 proposed NF beds are already included in the inventory of NF beds in the 2017 SMFP. In addition, the applicants propose to develop three “closed” NF beds pursuant to *Policy NH-2*. According to the 2017 SMFP, page 24, “closed” NF beds developed pursuant to *Policy NH-2* are excluded from the planning inventory in the methodology for determining need. The applicants project an average occupancy rate of 89% for OY1 and OY2 for the 28 NF beds. According to the 2017 SMFP, there are currently a total of 28 existing facilities with NF beds in Wake County. The table provides a summary of the 28 facilities with NF beds in Wake County, recreated from the 2017 SMFP, Chapter 10, Table 10A, page 206, and Table 10C, page 214. The 2017 SMFP projects a surplus of 108 NF beds in Wake County for 2020.

| <b>2017 SMFP NF Inventory<br/>&amp; 2020 Need Projections<br/>Wake County</b> |       |
|---|-------|
| # Facilities with NF Beds   | 28    |
| # Beds in Hospitals   | 175   |
| # Beds in Nursing Homes   | 2,260 |
| Total Licensed Beds   | 2,435 |
| # CON Approved  | 107   |
| Total # Available   | 2,662 |
| Total # in Planning Inventory   | 2,236 |
| Projected Bed Surplus   | 108   |
| Source: 2017 SMFP   |       |

In addition, the applicants propose to relocate 30 “open” ACH beds from Cary Health to Brightmore, pursuant to *Policy LTC-2*, and to develop 52 “closed” ACH beds, pursuant to *Policy LTC-1*. Cary Health is located in Wake County. The applicants project an average occupancy rate of 80% for OY1 and 90% for OY2 for the 82 ACH beds. The 2017 SMFP reports a surplus of 309 ACH beds for 2020. However, the 30 “open” ACH beds to be relocated will not have an effect on the inventory of ACH beds in Wake County. However, the applicants’ 52 proposed “closed” ACH beds will have an effect on the inventory of ACH beds in Wake County. The 2017 SMFP states, on page 26, that one-half of the ACH beds developed by a qualified CCRC are excluded from the planning inventory in the methodology for determining need. Therefore, of the applicants’ proposed 52 “closed” ACH beds, 26 additional beds would be added to the planning inventory, thereby increasing the surplus of ACH beds in Wake County. According to the 2017 SMFP, there are currently a total of 50 existing facilities in Wake County that have ACH beds. The table below provides a summary of the 50 facilities in Wake County. The table is recreated from the 2017 SMFP, Chapter 11, Table 11A, pages 243-244, and Table 11B, page 249. The 2017 SMFP projects a surplus of 309 ACH beds in Wake County in 2020, as shown in the table below.

| <b>2017 SMFP ACH Inventory<br/>&amp; 2020 Need Projections<br/>Wake County</b> |       |
|--|-------|
| # Facilities with ACH Beds   | 50    |
| # Beds in Nursing Homes  | 235   |
| # Beds in ACH Facilities   | 2,929 |
| Total Licensed Beds  | 3,164 |
| # CON Approved   | 149   |
| Total # Available  | 3,313 |
| Total # in Planning Inventory  | 3,286 |
| Projected Bed Surplus  | 309   |
| Source: 2017 SMFP  |       |

In Section III.1, pages 37, the applicants state that the majority of the proposed ACH beds will be “closed”, thus available only to CCRC residents, therefore they will not affect existing ACH facilities. On page 38, the applicants state that the ACH beds to be relocated are currently located in Wake County and therefore, will not increase a surplus or decrease a deficit of ACH beds in the county. In addition, the applicants state, in Section III.1, page 36, that the development of the 28 NF beds and 82 ACH beds will expand “*the diversity of healthcare options available to county residents.*”

However, the applicants do not adequately demonstrate the need the population to be served has for the 28 NF and 82 ACH beds. The discussion regarding analysis of need found in Criterion (3) is incorporated herein by reference. Therefore, the applicants do not adequately demonstrate that the proposed project will not unnecessarily duplicate existing or approved health service capabilities or facilities. Therefore, the application is not 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.

NC

In Section VII.3, pages 70-71, and in supplemental information, the applicants project the number of full-time equivalent (FTE) positions for Brightmore in the second full fiscal year of operation (FY2022), as shown in the following table:

**Brightmore  
 Proposed Staffing, OY2**

| <b>Position</b>                      | <b>Number of FTEs for NF Beds</b> | <b>Number of FTEs for ACH Beds</b> | <b>Total Facility FTEs</b> |
|--------------------------------------|-----------------------------------|------------------------------------|----------------------------|
| <b>Routine Services</b>              |                                   |                                    |                            |
| Medical Director*                    |                                   |                                    |                            |
| Director of Nursing                  | 0.25                              | 0.75                               | 1.00                       |
| Assistant Director of Nursing        | 0.00                              | 1.00                               | 1.00                       |
| Staff Development Coordinator        | 0.13                              | 0.38                               | 0.50                       |
| MDS Nurse                            | 1.00                              | 0.00                               | 1.00                       |
| Alzheimer's Coordinator              | 3.36                              | 0.84                               | 4.20                       |
| Ventilator RNs                       | 4.20                              | 0.00                               | 4.20                       |
| LPNs                                 | 11.81                             | 28.88                              | 40.69                      |
| Certified Ventilator Technicians     | 2.00                              | 0.00                               | 2.00                       |
| Ward Secretary                       | 1.00                              | 0.00                               | 1.00                       |
| Medical Records Consultant*          |                                   |                                    |                            |
| Pharmacy Consultant                  | 0.00                              | 11.20                              | 11.20                      |
| Other (Medical Technicians)*         |                                   |                                    |                            |
| <b>Dietary**</b>                     |                                   |                                    |                            |
| <b>Social Work Services</b>          | 0.25                              | 0.75                               | 1.00                       |
| <b>Activity Services</b>             | 0.50                              | 1.50                               | 2.00                       |
| <b>Housekeeping/Laundry Services</b> | 2.92                              | 8.76                               | 11.68                      |
| <b>Ancillary Services</b>            |                                   |                                    |                            |
| Physical Therapy Staff               | 3.00                              | 0.00                               | 3.00                       |
| Occupational Therapy Staff           | 2.00                              | 0.00                               | 2.00                       |
| Speech Therapist                     | 0.80                              | 0.00                               | 0.80                       |
| <b>Operations &amp; Maintenance</b>  | 0.75                              | 2.25                               | 3.00                       |
| <b>Administration &amp; General</b>  | 1.00                              | 3.00                               | 4.00                       |
| <b>TOTAL</b>                         | <b>34.97</b>                      | <b>59.31</b>                       | <b>94.27</b>               |

\*The Medical Director, Medical Records Consultant, and Other (Medical Technicians) are contractual positions and are not employees of the facility.

\*\*According to the applicants' pro formas, Form C, Dietary Services will be provided under a contractual agreement.

However, there are several inconsistencies between the position titles and FTEs listed in Section VI.3, pages 71-72, and the pro formas. Among these inconsistencies, the applicants state in a table provided in supplemental information that there will be Ventilator RNs and Certified Ventilator Technicians, however the applicants do not list these positions in the pro formas. In Section II.3, page 27, the applicants state that the proposed facility will not be providing ventilator care.

As shown in the table above, the applicants propose to staff Brightmore's 28 NF beds and 82 ACH beds with 94.27 FTEs. In Section VII.2, page 68, the applicants state that a total of 45.0 FTEs, including 14.4 FTEs nursing staff and 30.6 FTEs ACH staff, will provide

direct care. Salaries per FTE for the health manpower and management positions proposed by the applicants are provided in Section VII.3, pages 71-72 and in supplemental information. However, there are inconsistencies in the position titles, FTEs, and staffing salaries between the information provided by the applicants in Section VII.3, pages 71-72, and the applicants' pro formas, Form C. The total cost for salaries for staffing in the pro formas are over \$230,000 less than those calculated from staffing FTEs and salaries per FTEs provided in Section VII.3, pages 71-72, and supplemental information. Therefore, adequate costs for health manpower and management positions are not budgeted in the pro forma financial statements provided in Section XII.

The applicants provide a letter in Exhibit 12 from the Medical Director at Capital Nursing and Rehabilitation Center (Capital Nursing), expressing a willingness to consider serving as Medical Director at Paraclete of Cary [Brightmore].

The applicants do not adequately demonstrate the availability of sufficient health manpower and management personnel to provide the proposed services. Therefore, 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 II.4, pages 28-29, the applicants provide a listing of the proposed providers of the necessary ancillary and support services. The applicants state, in Section II.4, page 29, that they will contract with the same or similar providers providing ancillary and support services at Capital Nursing, their skilled nursing facility in the area. Exhibit 5 contains copies of existing agreements with ancillary and support services providers for Capital Nursing. In addition, in Section V.2, page 58, the applicants state that they expect to establish transfer agreements with WakeMed Health & Hospitals and UNC Rex Healthcare. A copy of a similar transfer agreement in place between Capital Nursing and WakeMed Health & Hospitals is included in Exhibit 5. Moreover, the applicants state, on pages 58-59, that they will extend their relationships with local physicians and other healthcare providers that they have in the area with Capital Nursing to Brightmore. The applicants adequately demonstrate that necessary ancillary and support services will be available and that the proposed services will be coordinated with the existing healthcare system. Therefore, 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

The applicants propose to develop 28 NF beds and 82 ACH beds in a new 90,413 square foot facility to be located at 101 Guernsey Trail in Cary. Exhibit 20 contains a letter from an architect that estimates that the construction costs will be \$25,329,917, which corresponds to the projection of construction costs provided by the applicants in Section VIII.1, page 77, of the application. Line drawings of the facility are provided in Exhibit 10. In Section III.4, pages 41-42, the applicants describe methods that will be used to maintain efficient energy and water use, including high-efficiency HVAC systems, thermal pane windows, natural lighting using specific design features, and a rainwater reclamation system for landscaping irrigation. The discussion regarding costs and charges found in Criterion (5) is incorporated herein by reference. The applicants adequately demonstrate that the cost, design and means of construction represent the most reasonable alternative,

and that the construction cost will not unduly increase costs and charges for health services. Therefore, 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 applicants propose to develop a combination NF with 28 NF beds and 82 ACH beds. Twenty-five of the NF beds were acquired through a settlement agreement and thus, are not currently licensed or operational anywhere in the state. Three NF beds will be developed pursuant to *Policy NH-2*. Fifty-two ACH beds will be developed pursuant to *Policy LTC-1*, and 30 ACH beds will be relocated from Cary Health, a facility that is not owned by the applicants or related entities of the applicants. Therefore, none of the proposed NF or ACH beds are existing beds of the applicants or related entities of the applicants.

- (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;

C

The applicants state, in Section VI.6(b), page 63, that there have been no civil rights access complaints filed against the applicants or any related entities. The application is conforming to this criterion.

- (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

NC

Under *Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds*, the applicants will develop 52 of the proposed 82 ACH beds to exclusively meet the needs of people with whom the facility has continuing care contracts and who have lived at the CCRC for at least 30 days. *Policy LTC-1* also prohibits the applicant from participation in the Medicaid program and serving State-County Special Assistance recipients for 52 of the proposed 82 ACH beds. Similarly, under *Policy NH-2: Plan Exemption for Continuing Care Retirement Communities – Nursing Home Beds*, the applicants will develop three of the 28 proposed NF beds to exclusively meet the needs of people with whom the facility has continuing care contracts and who have lived at the CCRC for at least 30 days.

However, the applicants propose to develop 25 NF beds, pursuant to a settlement agreement, and 30 ACH beds by relocating them from Cary Health, pursuant to *Policy LTC-2*. The 25 NF beds and the 30 ACH beds will be “open” to the general public. In Section VI.3, page 62, the applicants project the payor mix for Brightmore’s second operating year, as follows:

**Brightmore Projected Payor Mix  
OY2 (October 1, 2021 – September 30, 2022)**

| <b>Payor Category</b>           | <b>NF Patient Days</b> | <b>ACH Patient Days</b> |
|---------------------------------|------------------------|-------------------------|
| Private Pay                     | 28.0%                  | 97.3%                   |
| Medicare                        | 72.0%                  | N/A                     |
| Medicaid                        | 0.0%                   | 0.0%                    |
| State-County Special Assistance | N/A                    | 2.7%                    |
| <b>Total</b>                    | <b>100.0%</b>          | <b>100.0%</b>           |

As shown in the table above, the applicants project that 0% of Brightmore’s NF patient days will be covered by Medicaid and that 2.7% of Brightmore’s ACH patient days will be covered by State-County Special Assistance. In Section V.6, pages 59-60, the applicants state,

*“...Paraclete [Brightmore] will be all private pay and Medicare residents, due to the nature and financial structure of the project. However, Liberty has always and will continue to serve the medically underserved at its existing facility in Wake County and has projected to serve some State/County Special Assistance residents in the open ACH beds.”*

The applicants state that the majority of the NF beds proposed, 25 of 28 NF beds, will be available to the general public, however the applicants state, on page 60, that its existing facility in Wake County [Capital Nursing] will continue to serve

the medically underserved. In addition, the Project Analyst notes that the two closest NFs that the applicants identify in their application, Cary Health, and Rex Rehab and Nursing Care Center of Apex, served 67.4% and 45.6% Medicaid patient days in Federal Fiscal Year 2016, respectively, according to their 2017 LRAs.

Therefore, the applicants do not adequately demonstrate that medically underserved populations would have access to the proposed NF services. Consequently, the application is not conforming to this criterion.

- (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.

C

In Section VI.7, pages 63-64, the applicants state that referrals are anticipated from WakeMed Health & Hospitals, UNC Rex Healthcare, local physician practices, Liberty Home Care, and Liberty's in-house marketing team. In addition, in regard to three of 28 proposed NF beds, *Policy NH-2: Plan Exemption for Continuing Care Retirement Communities – Nursing Home Beds*, requires the applicants to use the three NF beds exclusively to meet the needs of people with whom the facility has continuing care contracts and who have lived at the CCRC for at least 30 days. Likewise, in regard to 52 of the 82 proposed ACH beds, *Policy LTC-1: Plan Exemption for Continuing Care Retirement Communities – Adult Care Home Beds* requires the applicants to use the 52 ACH beds exclusively to meet the needs of people with whom the facility has continuing care contracts and who have lived at the CCRC for at least 30 days.

The applicants adequately demonstrate that the facility will offer a range of means by which patients will have access to the proposed services. Therefore, the application is conforming to this criterion.

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

C

In Exhibit 5, the applicants provide copies of existing health professional training program agreements between area healthcare training programs, including HealthCore Resource School, and Capital Nursing, an NF owned by the applicants in Wake County. The applicants state, in Section V, page 58, that they will reach out to these training programs

and others for training at Brightmore. The information provided is reasonable and adequately supports a determination that 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.

NC

The applicants, Cary Senior Housing I Opco, LLC and Cary Senior Housing I Propco, LLC, propose to develop a new combination NF, Brightmore, as part of a new CCRC. Brightmore will be located at 101 Guernsy Trail in Cary, Wake County and will have 201 IL units, 28 NF beds, and 82 ACH beds, including a 22-bed memory care unit.

On page 191, the 2017 SMFP defines the service area for NF beds as the county in which the bed is located. On page 219, the 2017 SMFP defines the service area for ACH beds as the county in which the bed is located. Thus, the service area for the proposed NF and ACH beds is Wake County. However, facilities may serve residents of counties not included in their service area.

The table below is a summary of the 28 facilities with NF beds in Wake County, recreated from the 2017 SMFP, Chapter 10, Table 10A, page 206, and Table 10C, page 214.

| <b>2017 SMFP NF Inventory<br/>&amp; 2020 Need Projections<br/>Wake County</b> |       |
|---|-------|
| # Facilities with NF Beds   | 28    |
| # Beds in Hospitals   | 175   |
| # Beds in Nursing Homes   | 2,260 |
| Total Licensed Beds   | 2,435 |
| # CON Approved  | 107   |
| Total # Available   | 2,662 |
| Total # in Planning Inventory   | 2,236 |
| Projected Bed Surplus   | 108   |
| Source: 2017 SMFP   |       |

The 2017 SMFP projects a surplus of 108 NF beds in Wake County for 2020. The applicants propose to develop 25 NF beds as part of a settlement agreement for Project I.D. #J-8727-11. The 25 NF beds are already included in the 2017 SMFP, therefore there will be no increase in the number of NF beds in Wake County. The applicants propose to develop three NF beds pursuant to *Policy NH-2* which are only available to residents of the CCRC and are thereby excluded from the inventory of NF beds in Wake County.

According to the 2017 SMFP, there are currently a total of 50 existing ACH facilities in Wake County that have ACH beds. The table below provides a summary of the 50 facilities with ACH beds in Wake County. The table is recreated from the 2017 SMFP, Chapter 11, Table 11A, pages 243-244, and Table 11B, page 249. The 2017 SMFP projects a surplus of 309 ACH beds in Wake County in 2020, as shown in the table below.

| <b>2017 SMFP ACH Inventory<br/>&amp; 2020 Need Projections<br/>Wake County</b> |       |
|--|-------|
| # Facilities with ACH Beds   | 50    |
| # Beds in Nursing Homes  | 235   |
| # Beds in ACH Facilities   | 2,929 |
| Total Licensed Beds  | 3,164 |
| # CON Approved   | 149   |
| Total # Available  | 3,313 |
| Total # in Planning Inventory  | 3,286 |
| Projected Bed Surplus  | 309   |
| Source: 2017 SMFP  |       |

The applicants propose to relocate 30 ACH beds from Cary Health, an existing combination NF facility in Wake County, therefore there will be no impact on the inventory of ACH beds. In addition, the applicants propose to develop 52 additional ACH beds pursuant to *Policy LTC-1* which will be available only to residents of the CCRC. Of the 52 “closed” ACH beds, 26 will be excluded from the planning inventory because they will be exclusively serving the residents of the CCRC.

In Section III.5(d), page 48, the applicants state that the proposal will have a minimal impact on existing facilities with ACH beds in Wake County since the majority of the ACH beds proposed will be “closed” beds that are only available to residents of the CCRC. In addition, the applicants state that Brightmore “*will be a new competitor in the county with spacious rooms, state of the art amenities, and 100% private rooms.*” *This will encourage existing providers to maintain high quality and standards in the care provided.*” In addition, in Section V.6, page 59, the applicants state that the proposed project “*will improve the cost effectiveness of existing facilities by relocated [sic] unutilized beds and allowing for additional licensed private rooms, which are highly preferable for residents.*”

See also Sections II, III, V, VI and XII where the applicants discuss the impact of the project on cost-effectiveness, quality and access to the proposed services.

However, the information provided by the applicants is not reasonable and does not adequately demonstrate that any enhanced competition in the service area includes a positive impact on access to the proposed services and on cost-effectiveness. This determination is based on the information in the application and the following analysis:

- The applicants do not adequately demonstrate that the proposed project will have a positive impact on access for medically underserved populations. The discussions regarding access found in Criteria (3) and (13c) are incorporated herein by reference.
- The applicants do not adequately demonstrate that the proposed project is a cost-effective alternative. The discussions regarding need found in Criterion (3), alternatives found in Criterion (4), financial feasibility found in Criterion (5), and staffing found in Criterion (7) are incorporated herein by reference.

Consequently, the application is not conforming to this criterion.

- (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

The applicants or related entities of the applicants own or manage 24 NFs in the state. Of these, one incident occurred at each of two facilities, and two incidents occurred at one facility within the 18 months immediately preceding the submission of the application through the date of this decision related to quality of care. As of the date of this decision, all three of the facilities' problems have been corrected and they are back 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 affiliated facilities, the applicants provide sufficient evidence that quality care has been provided in the past. 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 proposal is conforming with all applicable Criteria and Standards for Nursing Facility or Adult Care Home Services in 10A NCAC 14C Section .1100, as indicated below.

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

**.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- The applicants are not proposing to add nursing facility beds to an existing facility.

(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.*

-NC- The applicants are proposing to establish a combination NF which will be part of a CCRC consisting of both NF and ACH beds. In Section IV.2, page 54, the applicants project an average annual occupancy rate of 89%

for the NF beds in OY2 which is lower than the 90% occupancy rate required. Therefore, the application is not conforming to this criterion.

- (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- The applicants are not proposing to add ACH beds to an existing facility.

- (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.*

-NA- The applicants are not proposing to establish a new ACH facility or add ACH beds to an existing facility.