

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: March 31, 2017

Findings Date: March 31, 2017

Project Analyst: Tanya S. Rupp

Team Leader: Fatimah Wilson

Assistant Chief: Martha Frisone

Project ID #: K-11278-16

Facility: Henderson Senior Living

FID #: 160566

County: Vance

Applicants: Vance Propco, LLC

Vance Opco, LLC

Project: Replace and relocate Green-Bullock Assisted Living, a 129-bed adult care home on a new site and rename it Henderson Senior Living

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

N.C. Gen. Stat. §131E-183(a) The Department 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

Vance Propco, LLC and Vance Opco, LLC (the applicants) propose to relocate 129 existing adult care home (ACH) beds from Green-Bullock Assisted Living to develop a new facility, Henderson Senior Living. Green-Bullock Assisted Living is currently closed; although the license is current through December 31, 2017. In addition, Green-Bullock Assisted Living's 129 ACH beds are listed in the inventory of ACH beds in Chapter 11, Table 11A, of the 2016 State Medical Facilities Plan (2016 SMFP).

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 2016 SMFP. Therefore, there are no need determinations applicable to this review.

Policies

The following two policies are applicable to this review:

- Policy LTC-2: Relocation of Adult Care Home Beds
- Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities

Policy LTC-2: Relocation of Adult Care Home Beds states:

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

- 1. Demonstrate that the proposal shall not result in a 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 State Medical Facilities Plan in effect at the time the certificate of need review begins, and*
- 2. Demonstrate that the proposal shall not result in a 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 State Medical Facilities Plan in effect at the time the certificate of need review begins.”*

All 129 existing ACH beds at Green-Bullock Assisted Living are located in Vance County, and the proposed facility will also be located in Vance County; therefore, the number of licensed adult care home beds in Vance County will not change as a result of this project. The application is consistent with Policy LTC-2.

Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities states:

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

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

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 capital expenditure for the proposed project is greater than \$5 million. In Section X.9, pages 37 - 38, the applicants provide a written statement describing the proposed project's plan to assure improved energy efficiency and water conservation. The application is consistent with Policy GEN-4.

Conclusion

In summary, the applicants adequately demonstrate that the proposal is consistent with Policy LTC-2 and Policy 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

Vance Propco, LLC and Vance Opco, LLC (the applicants) propose to relocate 129 existing adult care home (ACH) beds from Green-Bullock Assisted Living to develop a new facility, Henderson Senior Living. Green-Bullock Assisted Living is currently closed; although the license is current through December 31, 2017.

Patient Origin

On page 223, the 2016 SMFP defines the service area for adult care home beds as “*the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrell, are considered a combined service area.*” Thus, the service area for this facility consists of Vance County. Facilities may also serve residents of counties not included in their service area.

In Section III.7(b), page 15, the applicants provide the projected patient origin, stating that 100% of the patients are projected to be residents of Vance County. The applicants state on page 15 that the patient origin projections are based on the proposed central location of the facility within Vance County. The applicants also state the proposed location will be within a short drive for “*a majority of the residents of Vance County.*”

The applicants adequately identify the population to be served.

Analysis of Need

In Section III.1, page 12, the applicants state the following with regard to the need to relocate Green-Bullock Assisted Living’s 129 existing, but non-operational ACH beds to the proposed new Henderson Senior Living facility:

“The current facility is old and does not have modern systems that could otherwise improve quality of care and increase efficiency. The facility is not protected by a fire sprinkler system. The systems and insulation in place are not energy efficient. Lighting is insufficient to conduct quality care. In short, the current facility is inadequate to provide care for Adult Care Home residents. This is further referenced by ‘Exhibit F,’ the Vance County Aging Report.”

The Project Analyst reviewed applications submitted by entities affiliated with the applicants going back to 2011, and found virtually identical language (with any differences almost exclusively limited to the names of the facilities and the relevant county) in the following applications:

- C-8626-11 (relocate and replace an existing 46-bed ACH facility – Rutherford County)
- F-10263-14 (replace and relocate an existing 60-bed ACH facility – Cabarrus County)
- F-10311-14 (change of scope/cost overrun to Project I.D. #F-10263-14 by adding 48 ACH beds to a previously approved 60-bed ACH facility – Cabarrus County)
- B-10312-14 (develop a new 40-bed ACH facility as a replacement for two existing ACH facilities – Henderson County)
- J-11046-15 (construct a new 132-bed ACH facility as a replacement for two existing ACH facilities – Johnston County)
- P-11113-15 (relocate and replace an existing 40-bed ACH facility – Onslow County)

- L-11186-16 (relocate and replace an existing 60-bed ACH facility – Halifax County)
- P-11215-16 (change of scope/cost overrun to Project I.D. #P-11113-15 by adding 40 ACH beds to a previously approved 40-bed ACH facility – Onslow County)

The use of virtually identical language in applications for different projects in several different counties calls into question the reliability of the representations in this application. Specifically, since the applicants use the same language in virtually every application, the Agency does not know if the representations are true with respect to the specific project under review. How can the same exact facts be true for every single one of the facilities listed above, and for this application as well? For at least some of the facilities above, the facts were not true – as is the case in Project ID #C-11244-16, submitted in the same review cycle as this application – in which the applicants represented that the facility was closed, but in fact there were patients in the ACH beds at the time the application was submitted.

In addition, in Section III.2, page 12, the applicants state Exhibits E and F provide statistical or other data that supports the need for the relocation of the adult care home beds. Exhibit E contains a map of Vance County and U.S. Census Bureau data entitled “*market profile*” for Vance County, North Carolina. The applicants do not show how the statistics provided in Exhibit E support a need to relocate 129 existing ACH beds in Vance County. Furthermore, the applicants do not adequately show how the Vance County population statistics provided in Exhibit F support a need to relocate 129 existing ACH beds in Vance County.

Vance County currently has two ACH facilities and two combination nursing facilities with ACH beds. The information about those facilities, the number of ACH beds at each facility, and the population at each facility as of September 30, 2016 is shown in the table below.

VANCE COUNTY INVENTORY OF ACH BEDS / PATIENT CENSUS AS OF SEPTEMBER 30, 2016				
FACILITY	TYPE	# ACH BEDS	# PATIENTS	% UTILIZATION
Green-Bullock Assisted Living (GBAL)	ACH	129	0	0%
Kerr Lake Nursing and Rehabilitation Center	NF	23	14	60.8%
Senior Citizen's	NF	54	31	57.4%
Woodlawn Retirement Home	ACH	12	5	41.7%
Total with GBAL Beds		218	50	22.9%
Total without GBAL Beds		89	50	56.2%

Sources: Table 11A, 2016 SMFP, 2017 License Renewal Applications (LRAs)

As shown in the table above, there are 218 existing ACH beds in Vance County, including the 129 beds that are the subject of this application. Utilization of the currently occupied ACH beds in Vance County ranges from 41.7% to 60.8%. In Table 11B on page 249 of the 2016 SMFP, Vance County is listed as having a planning inventory of 218 ACH beds and a 2019 Projected Bed Utilization Summary total of 170 ACH beds, leaving a projected surplus of 48 ACH beds, which is 28.2% of the total 2019 Projected Bed Utilization [48 bed surplus / 170 projected bed utilization in 2019 = 0.282].

In Section III.1(b), page 12, the applicants state that the current owner closed the facility due to bankruptcy, and that once the facility re-opens, “...occupancy levels will rise to above 85%

of capacity within two (2) years....” In support of this, the applicant refers to Exhibit D. However, Exhibit D contains an *Asset Purchase Agreement* which outlines the terms of the sale of Green-Bullock Assisted Living Center. There is no information in Exhibit D that supports projected occupancy levels rising to above 85% two years after opening the facility.

In addition, in Section III.6(c), page 14, the applicants state:

“Because the current facility is closed and unable to serve residents given its current condition, replacing this facility with the proposed new facility would increase bed availability for the residents in the county. Currently, the residents in the county are unable to utilize these beds. Even when this facility was operational, the conditions were not conducive for quality resident care [sic], and therefore it did not provide services at the same level that the replacement facility will.

The replacement facility will provide services above and beyond that which the old facility did. Furthermore, the replacement facility is within the same general area as the original facility it will replace. As such, any Vance County residents who would have been served by the original facility will be served by the replacement facility.”

The last time patients were served at this facility was in 2013. The overall Vance County ACH utilization rate is either 22.9% or 56.2% depending on whether or not the GBAL beds are included or excluded, respectively. The 2016 SMFP shows a surplus of 48 ACH beds in Vance County (or a 28.2% surplus). The applicants did not provide any data, assumptions or methodology which supports the stated need to relocate 129 ACH beds that have not been utilized for nearly four years.

In summary, the applicants did not adequately demonstrate the need to relocate the 129 ACH beds.

Projected Utilization

In Section IV.2, pages, 17 - 18, and Exhibit L, the applicants provide projected utilization for all 129 ACH beds during the first three full federal fiscal years (FFYs) of operation, beginning in FFY 2020. The following table illustrates projected utilization during the second and third full FFYs.

**Projected Utilization
 First Full Federal Fiscal Year
 October 1, 2019 through September 30, 2020**

	1ST QUARTER 10/1 TO 12/31	2ND QUARTER 1/1/ TO 3/31	3RD QUARTER 4/1 TO 6/30	4TH QUARTER 7/1 TO 9/30	TOTAL
Patient Days	1,840	3,185	4,520	5,700	15,245
Occupancy Rate	15.5%	27.1%	38.5%	48.0%	32.3%
# of Beds	129	129	129	129	129

Projected Utilization
Second Full Federal Fiscal Year
October 1, 2020 through September 30, 2021

	1ST QUARTER 10/1 TO 12/31	2ND QUARTER 1/1/ TO 3/31	3RD QUARTER 4/1 TO 6/30	4TH QUARTER 7/1 TO 9/30	TOTAL
Patient Days	6,808	7,740	8,918	9,995	33,461
Occupancy Rate	57.4%	66.7%	76.0%	84.2%	71.1%
# of Beds	129	129	129	129	129

As shown in the table above, in the second full FFY of operation, the applicants project the 129 ACH beds will operate at 71.1% of capacity $[(33,461 / 365) / 129 = 0.7106, \text{ or } 71.1\%]$, according to the information provided on page 17. However, these utilization projections are not consistent with the applicants' representations in Section III.1(b), page 12, where the applicants state: "...occupancy levels will rise to above 85% of capacity within two (2) years...."

In addition, in Section IV, pages 17 - 18, the applicants refer to Exhibit L, which states:

"Vance Senior Living

1) Occupancy

- A) Facility begins operations with 15 reserved beds on October 1, 2019*
- B) Fill-up at the average rate of 5 residents per month until ACH fills"*

Exhibit L also includes a breakdown of payor types, rates and staffing information for the proposed replacement facility. The exhibit does not include methodology or assumptions which support the occupancy projections. The applicants provide no other information in the application or exhibits to demonstrate that the assumptions are reasonable and adequately supported, particularly since the beds are currently unoccupied and have been for nearly four years; and Vance County has a surplus of ACH beds reported in the 2016 SMFP.

The applicants do not provide sufficient information in the application as submitted to adequately document that the replacement facility will operate at either 71.1% of capacity or greater than 85% of capacity. The applicants did not provide any assumptions to support the projected utilization; and the methodology the applicants used was not provided.

Based on review of: 1) the information provided by the applicants in Section III, pages 12 - 15, Section IV, pages 16 - 18, and referenced exhibits, the applicants do not adequately demonstrate the need for the proposed project for the reasons discussed above.

Access

In Sections VI.2(a)-(b), pages 21 - 22, the applicants state that all persons will be admitted to the facility, receive services at the facility, and have the same payment policies regardless of race, color, creed, age, national origin, handicap, sex, or source of payment. In Exhibit L, the

applicants project that 52.7% of the patients will receive State/County Special Assistance/Basic Medicaid funding and 47.3% will be private pay patients.

However, in Section VI.2, page 21, the applicants project the following payor mix during the second full FFY (2021):

Henderson Senior Living Projected Payor Mix 2d Operating Year

	PRIVATE PAY	MEDICAID	TOTAL
Private Room	43.3%	0.0%	43.30%
Semi-Private Room	7.64%	49.1%	56.74%

Numbers may not foot due to rounding

Therefore, the applicants provide inconsistent representations regarding the projected payor mix.

The applicants also state on page 22 that private pay residents who spend down and become eligible for special assistance will not be discharged and every effort will be made to assist the resident and family with applying for State/County Special Assistance with Medicaid. The applicants adequately demonstrate the extent to which all residents of the area, including medically underserved groups, are likely to have access to the proposed services.

Conclusion

In summary, the applicants adequately identify the population to be served and adequately demonstrate the extent to which all residents, including underserved groups, will have access to the proposed services. However, the applicants do not adequately demonstrate the need to relocate 129 existing but unoccupied ACH beds from Green-Bullock Assisted Living to Henderson Senior Living. 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

The applicants propose to relocate 129 existing but unutilized ACH beds within Vance County from Green-Bullock to a new facility to be developed in Henderson. Green-Bullock Assisted Living is closed; although its 129 existing ACH beds are listed in the inventory of ACH beds in Chapter 11, Table 11A, of the 2016 SMFP. According to Map Quest®, Henderson Senior Living will be located approximately 3.6 miles (a ten minute drive) from the existing Green-Bullock Assisted Living. Therefore, the 129 beds would be geographically accessible to the same population that had been previously served by Green-

Bullock Assisted Living. Furthermore, the town of Henderson is centrally located in Vance County, thus making the location easily accessible from all directions. Since Green-Bullock is not currently operational and is not currently serving residents, no residents would be impacted by the relocation of the 129 ACH beds. The applicants adequately demonstrated that 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.3, pages 12 - 13, the applicants state the sole alternative considered was the project as described for the following reasons:

- The age and condition of the current building necessitate the construction of a new facility and the proposed site is only 3.6 miles from the existing site.
- The outdated, closed facility will be reconstructed with a new, energy efficient building to more effectively and efficiently serve its patients
- The proposed location of the replacement facility is close enough to the existing, closed facility that the same patient base that was being served by Green-Bullock before it closed will be served.

The applicants concluded that the proposed project provides the most effective alternative because the new proposed site is within the same county and allows for the provision of the same services to the same population but with a new, efficient building. The applicants are not developing new ACH beds or increasing the inventory of ACH beds in Vance County. Rather, they propose to relocate existing but unutilized ACH beds within the County, only 3.6 miles from the current location.

However, given that the facility has not been occupied since 2013, the applicants do not adequately demonstrate in the application as submitted that a new efficient building is needed by patients projected to be served, without demonstrating the need those prospective patients have for the beds.

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

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 propose to relocate 129 existing but unutilized ACH beds within Vance County from Green-Bullock Assisted Living to a new facility, Henderson Senior Living, to be developed in Henderson.

Capital and Working Capital Costs

In Section VIII.1, page 29, the applicants project the total capital cost to construct the 129-bed replacement facility will be:

Site costs	\$ 702,200
Construction costs	\$4,665,024
Equipment/Building	\$1,145,000
Consultant Fees	\$ 70,000
Interest/Contingency	\$ 160,000
Financing	\$ 80,000
Total:	\$6,822,224

In Exhibit P, the applicants project start up costs for the proposed facility of \$135,500, and initial operating costs of \$352,356, for a total working capital of \$487,826. In Exhibit W, the applicants provide a letter dated November 11, 2016 from an architect that confirms the construction costs identified in Section VIII.

Availability of Funds

In Section VIII.2, page 30 and Exhibit N, the applicants state that the capital and working capital costs will be financed by a commercial loan.

In Exhibit N, the applicants provide a letter dated November 11, 2016 from the managing partner of Locust Point Capital, which states that the Locust Point Capital will provide 100% financing for the capital costs in the amount of \$6,822,238. The letter includes the proposed terms of the commercial loan, and amortization schedules are provided in Exhibit O.

In Exhibit P, the applicants provide a letter dated November 11, 2016 from the managing partner of Locust Point Capital, which states that the Locust Point Capital will provide 100% financing for the projected working capital costs in the amount of \$487,826. The letter includes the proposed terms of the commercial loan.

The applicants adequately demonstrate that sufficient funds will be available for the capital and working capital needs of the project.

Financial Feasibility

The applicants provided pro forma financial statements for the first three full fiscal years of operation following completion of the project. In the pro forma financial statement (Form B), the applicants project that revenues will exceed operating expenses in the last operating year of the project, as shown in the table below.

	1ST FULL FISCAL YEAR	2ND FULL FISCAL YEAR	3RD FULL FISCAL YEAR
Total Patient Days	15,245	33,461	42,217
Total Gross Revenues (Charges)	\$1,418,945	\$3,197,803	\$3,992,992
Total Operating Expenses (Costs)	\$1,760,733	\$2,727,584	\$2,951,274
Average Operating Expense per Patient Day	\$ 115.50	\$ 81.52	\$ 69.91
Net Income (loss)	(\$341,788)	\$ 470,219	\$1,041,718

However, the applicants do not adequately demonstrate that all assumptions used in preparation of the pro forma financial statements are reasonable. Specifically, projected utilization is questionable. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference. Therefore, projected costs and revenues, which are based in part on projected utilization, are also questionable.

Conclusion

In summary, the applicants adequately demonstrate that sufficient funds will be available for the capital and operating needs of the project. 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 nonconforming 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 propose to relocate 129 existing but unutilized adult care home (ACH) beds from Green-Bullock Assisted Living to develop a new facility, Henderson Senior Living. Green-Bullock Assisted Living is closed, although the license is current through December 31, 2017. In addition, the existing facility's 129 ACH beds are listed in the inventory of ACH beds in Chapter 11, Table 11A, of the 2016 State Medical Facilities Plan (2016 SMFP).

On page 223, the 2016 SMFP defines the service area for adult care home beds as "*the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrell, are considered a combined service area.*" Thus, the service area for this facility consists of Vance County. Facilities may also serve residents of counties not included in their service area.

Table 11A in the 2016 SMFP lists a total of 4 ACH facilities in Vance County and a total of 218 beds, 77 of which are in nursing homes. The table below is based on Table 11A, page 224, and Table 11B, page 252, in the 2016 SMFP.

2016 SMFP ACH INVENTORY & 2019 NEED PROJECTIONS VANCE COUNTY	
# Facilities	4
# Beds in ACH Facilities	141
# Beds in Nursing Homes	77
# Beds in Hospitals	0
Total Licensed Beds	218
# CON Approved	0
Total # Available	218
Total # in Planning Inventory	218
Projected Bed Surplus 2019	48

As shown in the table above, there is a projected surplus of 48 ACH beds in Vance County in 2019. There will be no increase in the inventory of ACH beds or in the number of facilities in Vance County. The applicants do not propose to develop new ACH beds, but rather to relocate 129 existing but unutilized ACH beds to a new facility in the same town. There will be no increase in the total inventory of ACH beds or the number of facilities in Vance County.

However, the applicants do not adequately demonstrate that there is a need to relocate and replace 129 ACH beds. The discussions regarding analysis of need, including projected utilization and alternatives to the proposed project found in Criteria (3) and (4), respectively, are incorporated herein by reference. Because the applicants did not demonstrate a need to relocate the 129 ACH beds, the applicants do not adequately demonstrate that the proposed project would not result in the unnecessary duplication of existing or approved ACH beds in Vance County. Consequently, 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.

C

The applicants propose to provide personal care staff twenty-four hours per day, seven days per week. In Section VII, page 25, the applicants state that by FFY 2021 (the second full fiscal year) the adult care home facility will be staffed by 21.00 full-time equivalent (FTE) positions. Adequate costs for the health manpower and management positions proposed by the applicants are budgeted in the pro forma financial statements. The applicants 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.1, pages 7 - 8, the applicants describe the ancillary and support services that will be provided by the facility or made available through agreements with other providers including dietary, medical transportation, dentistry, physician, therapy, recreation, personal care, housekeeping and laundry services. Exhibit X contains copies of letters for lab, RN consultant and dietary services. In addition, Exhibit B contains a copy of the professional consulting and accounting services agreement for Affinity Living Group, LLC to provide services for the proposed project. The applicants adequately demonstrate that the necessary ancillary and support services will be available and that the proposed services will be coordinated with the existing health care 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 replace and relocate a 129-bed ACH facility, Green-Bullock Assisted Living in Henderson to a new facility, Henderson Senior Living, located on Graham Street in Henderson, approximately 3.6 miles away. The total square footage of the replacement facility is 41,652 square feet. Exhibit W contains a letter from an architect that estimates that construction costs will be \$112.00 per square foot or \$4,665,024 [$\$112.00 \times 41,652$ square feet = \$4,665,024], which corresponds to the projected capital costs in Section VIII.1, line 9, page 29. In Section X.9, pages 37 - 38, the applicants provide a written statement describing the proposed project's plan to assure improved energy efficiency and water conservation. 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 project 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 129 ACH beds to be relocated from Green-Bullock Assisted Living are not currently in use and thus there is no information to report with regard to the medically underserved populations that currently use the applicants existing services.

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

NA

The 129 ACH beds to be relocated from Green-Bullock Assisted Living are not currently in use and thus there is no information to report with regard to the medically underserved populations that currently use the applicant's existing services.

- (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

C

In Section VI.1, page 21, the applicants project the following payor mix during the second full FFY (2021):

PAYOR CATEGORY	% OF TOTAL	
	PRIVATE ROOM	SEMI-PRIVATE ROOM
Private Pay	43.3%	7.64%
Medicaid	0.0%	49.1%

As shown in the table above, the applicants project that 49.1% of residents will be covered by Medicaid. The 129 ACH beds are presently unutilized and thus are not providing access to anyone.

In Section VI.3, page 22, the applicants state: *“Private-pay patients who spend down and become eligible for Medicaid will not be discharged from the facility. Source of payment will not affect the delivery of either routine services or specialized nursing care. ... Residents who spend down will not be discriminated against in room availability or services.”* Exhibit M contains a copy of the admission policies.

The applicants adequately demonstrate the extent to which medically underserved populations would have access to the proposed ACH services. Therefore, the application is 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 V.4, page 20, the applicants state patients will have access to the services offered at Henderson Senior Living through the following referral sources:

- Hospitals
- Vance County Department of Social Services

- Local Churches
- Community Organizations

The applicants adequately demonstrate they offer a range of means by which residents will have access to the facility. 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 Section V.1, page 19, the applicants states the facility is not yet operational, and state:

“...Steps have been taken to create agreements with the following health professional training programs:

Vance-Granville Community College...”

In addition, Exhibit K contains a copy of a letter to Vance-Granville Community College offering the facility for clinical rotation and nurse training when it is operational.

The applicants adequately demonstrate that the proposed facility would accommodate the clinical needs of area health professional training programs. Therefore, 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 propose to relocate 129 existing adult care home (ACH) beds from Green-Bullock Assisted Living to develop a new facility, Henderson Senior Living. Green-Bullock Assisted Living is closed, although the license is current through December 31, 2017. In

addition, the existing facility's 129 ACH beds are listed in the inventory of ACH beds in Chapter 11, Table 11A, of the 2016 State Medical Facilities Plan (2016 SMFP).

On page 223, the 2016 SMFP defines the service area for adult care home beds as *“the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrell, are considered a combined service area.”* Thus, the service area for this facility consists of Vance County. Facilities may also serve residents of counties not included in their service area.

Table 11A in the 2016 SMFP lists a total of 4 ACH facilities in Vance County and a total of 218 beds, 77 of which are in nursing homes. The table below is based on Table 11A, page 224, and Table 11B, page 252, in the 2016 SMFP.

2016 SMFP ACH INVENTORY AND 2019 NEED PROJECTIONS VANCE COUNTY	
# Facilities	4
# Beds in ACH Facilities	141
# Beds in Nursing Homes	77
# Beds in Hospitals	0
Total Licensed Beds	218
# CON Approved	0
Total # Available	218
Total # in Planning Inventory	218
Projected Bed Surplus 2019	48

As shown in the table above, there is a projected surplus of 48 ACH beds in Vance County in 2019.

The applicants do not propose to develop new ACH beds, but rather to relocate 129 existing but unutilized ACH beds to a new facility in the same town. There will be no increase in the total inventory of ACH beds or the number of facilities in Vance County.

In Section VI.4, page 22, the applicants discuss how any enhanced competition will have a positive impact on cost-effectiveness, quality, and access to the proposed services.

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

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 cost-effectiveness of the proposed services. This determination is based on the information in the application, which does not adequately demonstrate the need for the proposed project and that it is an effective alternative. The discussions regarding analysis of need and alternatives found in Criteria (3) and (4), respectively, 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

In Section II.3, page 11, the applicants state that they currently do not own, lease, or manage any other facilities in North Carolina, as the two applicant entities were created to manage the replacement facility. However, in Section I.10, page 6, the applicants identify Affinity Living Group as the proposed management group for the facility. In supplemental information provided to the Agency on January 13, 2017 pursuant to a request regarding Project ID # C-11244-16, the applicants identify other facilities in North Carolina which are operated and managed by Affinity Living Group, LLC. A total of 77 affiliated facilities were identified either by the applicants or by information obtained from the Adult Care Licensure Section, DHSR. According to the files in the Adult Care Licensure Section, 19 incidents occurred at 17 of the affiliated facilities 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, the problems had been corrected. After reviewing and considering information provided by the applicant and by the Adult Care Licensure 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.

NA

The Criteria and Standards for Nursing Facility or Adult Care Home Facility Services promulgated in 10A NCAC 14C .1100 are not applicable because the applicants do not propose to establish new adult care home beds.