

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: February 25, 2020

Findings Date: February 25, 2020

Project Analyst: Ena Lightbourne

Team Leader: Gloria C. Hale

Project ID #: K-11819-19

Facility: The Gardens of Warrenton

FID #: 190516

County: Warren County

Applicant(s): Warrenton Opco, LLC

Warrenton Propco, LLC

Project: Develop a new 70-bed ACH facility pursuant to the need determination in the 2019 SMFP

### 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, Warrenton Opco, LLC and Warrenton Propco, LLC, collectively referred to hereinafter as “the applicant”, propose to develop a new adult care home (ACH) facility located in Warren County pursuant to the 2019 State Medical Facilities Plan (SMFP) need determination for a total of 70 beds (70 ACH beds and 0 Special Care Unit (SCU) beds) upon project completion.

Table 11D in the 2019 SMFP, on page 253, shows there is a need determination for 70 ACH beds in Warren County. This application proposes to develop 70 ACH beds in Warren County. The application is consistent with the need determination.

### Policies

There are three policies in the 2019 SMFP which are applicable to this review: Policy LTC-3: Certification of Beds for Special Assistance, Policy GEN-3: Basic Principles, and Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities.

**Policy LTC-3: Certification of Beds for Special Assistance**, on page 24 of the 2019 SMFP, states:

*“Certificate of need applicants proposing to develop new adult care home beds pursuant to a need determination shall demonstrate that the proposed beds will be certified for special assistance and that at least 5 percent of the projected days of care in the third full fiscal year of operation shall be provided to residents receiving State-County Special Assistance.”*

In Section B, page, 17, the applicant states that Affinity Living Group, LLC, retained by the applicant to manage The Gardens of Warrenton, has many years’ experience managing adult care homes that qualify for State-County Special Assistance. The applicant states that they are committed to reserving at least 27% of the ACH beds as Medicaid and Special Assistance.

In Section L.3, page 65, the applicant projects that 27.14% of the total ACH days of care in the third full fiscal year will be provided to residents receiving State-County Special Assistance.

The applicant adequately demonstrates that at least 5% of the projected days of care will be provided to residents receiving State-County Special Assistance. The application is consistent with Policy LTC-3.

**Policy GEN-3: Basic Principles**, on page 31 of the 2019 SMFP, states:

*“A certificate of need applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing healthcare value for resources expended. A certificate of need applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the availability of capacity to provide these services. A certificate of need applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the State Medical Facilities Plan as well as addressing the needs of all residents in the proposed service area.”*

Promote Safety and Quality - The applicant describes how it believes the proposed project would promote safety and quality in Section B.10(a), pages 18-19; Section N, page 68; Section O, page 70; and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant’s proposal would promote safety and quality.

Promote Equitable Access – The applicant describes how it believes the proposed project would promote equitable access in Section B.10(b), page 19; Section, C, page 38; Section L, pages 65-66; Section N, page 69; and referenced exhibits. The information provided by the

applicant is reasonable and adequately supports the determination that the applicant's proposal would promote equitable access.

Maximize Healthcare Value – The applicant describes how it believes the proposed project would maximize healthcare value in Section B.10(b) and (c), pages 19-20; Section K, pages 60-63, and Section N, page 69. The information provided by the applicant is reasonable and adequately supports the determination that the applicant's proposal would maximize healthcare value.

The applicant adequately demonstrates how the projected volumes incorporate the concepts of quality, equitable access and maximum value for resources expended in meeting the need for Warren County ACH beds. The application is consistent with Policy GEN-3.

**Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities**, on page 31 of the 2019 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 of 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; therefore, Policy GEN-4 is applicable to this review. In Section B.11, pages 21-22, the applicant states that The Gardens of Warrenton will be constructed to utilize the latest technologies to assure maximum energy efficiency and meet the NC Energy Conservation Code. The applicant further states that the energy efficient design will allow for the fulfillment of the 2019 SMFP Policy GEN-4.

In Section K, pages 61-62, the applicant provides examples of strategies to be incorporated as energy saving features into the construction plans. The applicant adequately demonstrates the

project's plan to assure improved energy efficiency and water conservation. The application is consistent with Policy GEN-4.

### **Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant does not propose to develop more ACH beds than are determined to be needed in the service area.
- The applicant adequately demonstrates that the proposal is consistent with the applicable policies for the following reasons:
  - The applicant adequately demonstrates how the projected volumes incorporate the concepts of quality, equitable access and maximum value for resources expended in meeting the need for Warren County ACH beds.
  - The applicant adequately demonstrates that at least 5% of the projected days of care will be provided to residents receiving State-County Special Assistance.
  - The applicant adequately demonstrates that the proposal is consistent with Policy GEN-4 based on the description of the project's plan to assure improved energy efficiency and water conservation.

(2) Repealed effective July 1, 1987.

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

### C

The applicant proposes to develop a new adult care home (ACH) facility located in Warren County pursuant to the 2019 State Medical Facilities Plan (SMFP) need determination for a total of 70 beds (70 ACH beds and 0 Special Care Unit (SCU) beds) upon project completion.

On page 219, the 2019 SMFP defines the service area for ACH beds as "*the county in which the adult care home bed is located.*" The Gardens of Warrenton will be located in Warren County; thus, the service area for this project is Warren County. Facilities may also serve residents of counties not included in their service area.

In Section C, page 25, the applicant states that they are unable to provide historical patient origin for the 70 ACH beds since the proposed project is for a new facility that does not currently exist. The applicant states that Affinity Living Group, LLC, the proposed management company, does not manage any facilities in Warren County, therefore the applicant does not have access to relevant historical data for Warren County.

However, the applicant projects that the large majority of residents who will reside in the proposed facility will originate from Warren County. The following table illustrates projected patient origin.

County	3 <sup>rd</sup> Full Fiscal Year (FFY) (10/1/2026 to 9/30/2027)	
	General ACH beds	
	# of Patients	% of Total
Franklin	2	3.28%
Granville	2	2.73%
Halifax	3	4.10%
Nash	1	2.19%
Vance	4	6.01%
Warren	55	81.69%
<b>Total</b>	<b>67</b>	<b>100.00%</b>

Source: Section C, page 26

In Section C, pages 26-30, the applicant provides the assumptions and methodology used to project its patient origin. The applicant's assumptions are reasonable and adequately supported based on the following:

- The applicant begins its projections using limited historical patient origin data from one of the ACH facilities in Warren County.
- The applicant used the 2015 SMFP surplus and deficit predictions for 2018 from Magnolia Gardens of Warrenton for comparison to current inventory of ACH beds in Warren County.
- The applicant utilized county of origin trends from surrounding counties.

### **Analysis of Need**

In Section C, pages 27-31, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services. The applicant states:

- There is a need determination in the 2019 SMFP for 70 ACH beds in Warren County. (page 30)
- Although the Warren County population is steadily decreasing, in the next 20 years, the population that most likely will need assisted living services is increasing. According to the North Carolina Office of State Budget and Management (OSBM), by the year 2038 the senior population (75 and older) is expected to grow by 21.43% and the 85+ population is expected to grow by 60.39%. (pages 31-33)

- Market demand for Medicaid/Special Assistance beds in Warren County. According to the 2017-2019 License Renewal Applications (LRA) for all ACH facilities in Warren county, 90% of the ACH bed inventory in Warren County was occupied by residents on State/County Special Assistance. (pages 33-34)
- There is a lack of choices for potential ACH residents in rural communities. Of the three existing facilities in Warren County, Boyd’s Rest Home #2 is the only one that operates as a full ACH facility and is currently limited to 10 ACH beds. [pages 34-35]
- Warren County healthcare providers and the senior community support the addition of the 70 beds. (pages 35-36 and Exhibit C.4.)

The information is reasonable and adequately supported for the following reasons.

- The 2019 SMFP projects a 65-bed deficit for Warren County and identifies a need for 70 additional ACH beds.
- The North Carolina Office of State Budget and Management (OSBM) projects that Warren County senior population (75 and older) is expected to grow by 21.43% and the 85+ population is expected to grow by 60.39% by the end of 2038.
- Medicaid/Special Assistance beds in Warren County are in demand.

*Projected Utilization*

In Section C, page 25, The applicant states that Affinity Living Group, LLC does not manage any facilities in Warren County, therefore the applicant does not have access to relevant historical data.

In Section Q, page 75, the applicant provides the projected utilization, as illustrated in the following table.

<b>The Gardens of Warrenton Projected Utilization</b>			
	<b>1<sup>st</sup> FFY (10/1/2024-9/30/2025)</b>	<b>2<sup>nd</sup> FFY (10/1/2025-9/30/2026)</b>	<b>3<sup>rd</sup> FFY (10/1/2026-9/30/2027)</b>
# General ACH Beds	70	70	70
Days of Care	11,437	22,052	24,455
Occupancy Rate	44.8%	86.3%	95.7%
#SCU ACH Beds	0	0	0
Days of Care	0	0	00
Occupancy Rate	n/a	n/a	n/a
Total # ACH Beds	70	70	70
Days of Care	11,437	22,052	24,455
Occupancy Rate	44.8%	86.3%	95.7%

In Exhibits C.7 and Q.1, the applicant provides the assumptions and methodology used to project utilization, which are summarized below.

- The applicant based its projections on Affinity Living Group’s experience in reserving ACH beds pre-opening, marketing the facility post-opening, and their overall experience with managing ACH facilities.
- Facility begins operations with 15 reserved beds on October 1, 2024 (first month of operation in FFY2025)
- Fill-up rate is equal to 1.5 residents per month until ACH fills to 95.7% occupancy in third full fiscal year (October 2026-September 2027).

Projected utilization is reasonable and adequately supported because projected utilization is based on Affinity Living Group’s experience with managing of adult care homes.

**Access**

In Section C, page 38, the applicant states:

*“Persons whose health, habilitative, or rehabilitative needs cannot be met by the services offered in the facility will not be admitted.*

...

*Otherwise, all persons will be admitted to the facility without regard to their race, color, creed, age, national origin, handicap, sex, or source of payment.”*

In Section L, page 65, the applicant projects the following payor mix for the proposed services during the third full fiscal year of operation following completion of the project, as shown in the table below.

**3<sup>rd</sup> FFY**  
**(10/01/2026-09/30/2027)**  
**The Gardens of Warrenton ACH Beds**

Payor Source	Patient Days in ACH beds		% of Total Beds in ACH beds	
	General Beds	Total ACH beds	General Beds	Total ACH Beds
Private Pay	18,615	18,615	72.86%	72.86%
County Assistance	6,935	6,935	27.14%	27.14%
<b>Total</b>	<b>25,550</b>	<b>25,550</b>	<b>100.00%</b>	<b>100.00%</b>

The projected payor mix is reasonable and adequately supported because it is based on the Affinity Living Group’s experience with operating adult care home facilities.

**Conclusion**

The Agency reviewed the:

- Application

- Exhibits to the application
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately identifies the population to be served.
- The applicant adequately explains why the population to be served needs the services proposed in this application.
- Projected utilization is reasonable and adequately supported.
- The applicant projects the extent to which all residents, including underserved groups, will have access to the proposed services (payer mix) and adequately supports its assumptions.

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

NA

The applicant does not propose a reduction or elimination of a service. Therefore, Criterion (3a) is not applicable to this review.

- (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

The applicant proposes to develop a new adult care home (ACH) facility located in Warren County pursuant to the 2019 State Medical Facilities Plan (SMFP) need determination for a total of 70 beds (70 ACH beds and 0 Special Care Unit (SCU) beds) upon project completion.

In Section E, pages 44-46, the applicant fails to describe any alternatives it considered or explains why any alternative is either more costly or less effective than the alternative proposed in this application to meet the need.

### **History of Project Development**

The applicants for the proposed project, Warrenton Opco, LLC and Warrenton Propco, LLC are new limited liability companies whose manager is Charles E. Trefzger, Jr. Mr. Trefzger is also a manager of Affinity Living Group, LLC, the operator of approximately 85 adult care homes (ACH) in North Carolina. Projects affiliated with Affinity and Mr. Trefzger have taken much longer to develop than initially proposed in their applications, with inadequate reasons to justify the length of the delays, and some certificates of need (CONs) have been withdrawn by the

Agency because of unacceptable project delays. The following table summarizes eight projects that have had significant delays, or which resulted in the withdrawal of a CON by the Agency:

Facility	Date CON Issued	CON Proj. Offering of Svcs	Revised Offering of Svcs	CON Withdrawn?	Appeal?	Settlement?	Licensure Date	Time Since 1 <sup>st</sup> Proj. Offering of Svcs*
Alexander Youth Services	12/5/14	3/1/16	3/1/17 10/1/18	- 4/30/18	- No	- -	NA – CON withdrawn	NA – never developed
Alleghany House	11/28/11	11/1/13	7/10/17 11/3/18 10/31/20	- - 4/30/18	- - Yes	- - Yes**		7 years (if no further changes to timetable)
Franklin House	9/30/08	10/1/10	-	11/7/13	Yes	Yes	10/24/14	6 years, 1 month
Lake Lure Assisted Living	5/11/12	8/1/14	7/10/17	11/1/13	Yes	Yes		
	1/24/18	11/1/19	1/1/21 10/1/21	-	-	-		
Lakeview Village	12/29/16	10/1/18	11/15/18 6/30/21	- -	- -	- -		2 years, 9 months (if no further changes to timetable)
Murphy House	9/30/08	10/1/10	10/15/13	7/8/11	Yes	Yes	-	NA – never developed
			7/10/17	12/20/13	Yes	Yes	-	
			-	7/25/17	No	-	-	
Reidsville House	3/29/11	10/1/12	7/10/17	12/20/13	Yes	Yes	-	8 years, 7 months (if no further changes to timetable)
			12/1/18	-	-	-	-	
			5/1/20	-	-	-	-	
			5/15/21	-	-	-	-	
Taylorsville House	1/22/10	7/1/10	-	11/19/12	No	-	-	NA – never developed

\*Amount of time between original projected date to offer services and most recent projected date to offer services.

\*\*Obtain financing by 4/1/2019; the applicants have not yet provided sufficient information to demonstrate compliance with this requirement.

Below is a written summary of key events in the timetable for each application.

- **Alexander Youth Services (Alexander County)**

A CON for **Alexander Youth Services** (Project I.D. #E-10289-14) was issued December 5, 2014 to develop a 15-bed child/adolescent substance use disorder facility pursuant to the 2014 SMFP Need Determination for the Western Region. The application listed March 1, 2016 as the projected date for offering of services. Three progress reports were submitted for this project; each progress report requested a timetable extension, with the final approved extension projecting to offer services November 1, 2019 – three years and seven months after the projected offering of services listed in the application. After learning through a news report that the site for the proposed facility was for sale, the Agency sent a Notice of Intent to Consider Withdrawal of a Certificate of Need on December 20, 2017. This Notice included a request for a comprehensive progress report. On January 19, 2018, the Agency received an email from AYS which stated:

*“Given that nothing has transpired on this project and CON section {sic} has recommended withdrawal, do I still need to submit a progress report?”*

The Agency never received any further information about the status of the project. On September 18, 2018, the Agency withdrew the CON. The applicants appealed but then withdrew the appeal with prejudice; the CON no longer exists.

- **Alleghany House** (Alleghany County)

An application for **Alleghany House** (Project I.D. # D-8377-09) was denied, settled, and a CON was issued November 28, 2011 to develop a new 40-bed ACH, pursuant to the need determination in the 2009 SMFP, with all 40 beds designated as special care unit (SCU) beds. The settlement agreement listed November 1, 2013 as the projected date for offering of services. Between December 10, 2013 and April 30, 2018, the Agency sent three Notices of Intent to Consider Withdrawal of a Certificate of Need, and granted two timetable extensions, before ultimately withdrawing the CON on April 30, 2018 for failure to develop the project and not demonstrating a good faith effort to develop the project in accordance with approved timetables. The applicants appealed the withdrawal and settled with the Agency on January 2, 2019, with the following conditions and timetable included in the settlement agreement:

1. *The certificate holders shall complete the Progress Report form provided by the Healthcare Planning and Certificate of Need Section.*
2. *Progress reports will be due on the first day of every other month. The first progress report shall be due on May 1, 2019. The second progress report shall be due on July 1, 2019 and so forth.*
3. *Each progress report shall describe in detail all steps taken to develop the project since the last progress report and shall include documentation to substantiate each step taken.*
4. *Progress reports should be received by the due date but in no case shall they be received more than one week after the due date.*
5. *Timetable milestones shall be completed no later than three months after the projected date on the timetable subject to reasonable extensions due to conditions beyond the certificate holders' control such as act of God, fire, flood, or other natural disaster, malicious injury, strikes, lock outs, or other labor troubles, riots, insurrection, war, government delays, or other reason of like nature not the fault of the certificate holders.*
6. *There will be no further extensions of the timetable milestone dates except for reasonable extensions described in Condition #5.*
7. *In the event that the project is not developed in accordance with the timetable, including any reasonable extensions described in Condition #5, the Healthcare Planning and Certificate of Need Section may impose a civil monetary penalty of \$1,000 per day for each day the project is delayed beyond the 90<sup>th</sup> day following the milestone date on the timetable.*

***Timetable***

*Obtain financing ..... April 1, 2019*  
*Construction contract executed ..... April 1, 2019*  
*25% of construction completed (25% of the contract amount) . November 30, 2019*

<i>50% of construction completed</i> .....	<i>February 27, 2020</i>
<i>75% of construction completed</i> .....	<i>May 31, 2020</i>
<i>Construction completed</i> .....	<i>August 31, 2020</i>
<i>Licensure obtained</i> .....	<i>October 31, 2020</i>
<i>Services offered</i> .....	<i>October 31, 2020</i>
<i>State County Special Assistance certification obtained</i> .....	<i>October 31, 2021</i>
<i>Final Annual Report due</i> .....	<i>January 31, 2024</i>

The Agency received the first progress report pursuant to the settlement agreement dated May 1, 2019. The second progress report was dated July 1, 2019. The Agency did not receive a progress report September 1, 2019 as stipulated in the Settlement Agreement above. The next progress report was received October 25, 2019, with unsupported documentation regarding financing.

On November 5, 2019, the Agency requested additional information regarding capital costs and loan documents. The 40 ACH beds from the 2009 need determination in Alleghany County could have been awarded to other applicants who might have developed the beds and provided services to the residents of Alleghany County during the last six years (between the original projected date to offer services and the date of these findings).

- **Franklin House** (Macon County)

A CON for **Franklin House** (Project I.D. #A-8082-08) was issued September 30, 2008, to develop a 70-bed adult care home facility pursuant to the need determination in the 2008 SMFP. The application listed October 1, 2010 as the projected date for offering of services. The CON was withdrawn January 11, 2012, because the applicants had not adequately documented that they were making a good faith effort to develop the project in accordance with representations in the application. The applicants appealed the withdrawal and later settled with the Agency, and the Agency rescinded the withdrawal. The CON was again withdrawn November 7, 2013, because the applicants again had not adequately documented that they were making a good faith effort to develop the project in accordance with representations in the application. The applicants appealed the withdrawal and later settled with the Agency, and the Agency rescinded the withdrawal. The facility was licensed October 24, 2014, four years after the projected initial occupancy date.

- **Lake Lure Assisted Living** (Rutherford County)

A CON for **Lake Lure Assisted Living** (Project I.D. #C-8626-11 – previously listed as Ruth Manor) was issued May 11, 2012, to relocate a 46-bed adult care home facility. The application listed August 1, 2014 as the projected date for offering of services. The CON was withdrawn November 1, 2013, because the applicants had not adequately documented they were making a good faith effort to develop the project in accordance with representations in the application. The applicants appealed the withdrawal and settled with the Agency on June 18, 2014, and the Agency rescinded the withdrawal. The revised timetable indicated that services would be offered July 10, 2017.

On September 15, 2016, a change of scope application (Project I.D. #C-11244-16) was filed with the Agency to relocate 16 beds from Oak Grove Healthcare Center to Lake Lure Assisted Living for a total of 62 ACH beds (48+16). The application was disapproved February 27, 2017, the disapproval was appealed by the applicants, and ultimately the applicants settled with the Agency on December 21, 2017. A CON for the change of scope application was issued effective January 24, 2018, with the following condition:

3. *Rutherfordco LLC and Bostic Health Holdings, LLC shall begin constructing the building no later than December 31, 2018. In the event that Rutherfordco LLC and Bostic Health Holdings, LLC fail to begin constructing the building by December 31, 2018, the right to develop the projects (for both Project I.D. #s C-8626-11 and C-11244-16) shall cease.*

The timetable projected that services would be offered November 1, 2019. A progress report dated May 1, 2019, was received by the Agency requesting an extension of the timetable extending the execution of the construction contract to August 1, 2019 and offering of services to January 1, 2021. On October 14, 2019, a Project Analyst with the Agency acknowledged receipt of the May 1, 2019 progress report via email and provided a due date of February 3, 2020 for the next progress report. The Agency did not address the timetable in its email response. A progress report dated February 3, 2020, was received by the Agency requesting an extension of the timetable extending the execution of the construction contract to May 1, 2020 and offering services to October 1, 2021. As of the date of these findings, the applicants are not in compliance with Condition #3 in its CON.

- **Lakeview Village** (Halifax County)

A CON for **Lakeview Village** (Project I.D. #L-11186-16) was issued December 29, 2016 to relocate and replace a 60-bed ACH facility. The application listed October 1, 2018 as the projected date for offering of services. After its first progress report submitted on March 31, 2017, the applicants did not submit another progress report, despite multiple requests from the Agency, until almost two and a half years later (October 18, 2019). In that progress report, the applicants requested a timetable extension, with the new projected date to offer services being June 30, 2021. In the three years since the CON was issued, the applicants have purchased the land and gotten drawings approved by the Construction Section but have not executed a construction contract and have not yet secured financing despite repeated attempts. Even if the applicants do not request further timetable extensions, the applicants will not be able to offer services to Halifax County residents for at least two years and nine months past the original date the applicants projected to offer services.

- **Murphy House** (Cherokee County)

A CON for **Murphy House** (Project I.D. #A-8084-08) was issued September 30, 2008 to develop a 70-bed ACH pursuant to the need determination in the 2008 SMFP. The application listed October 1, 2010 as the projected date for offering of services. The CON was withdrawn July 8, 2011, because the applicants had not adequately documented they were making a good faith effort to develop the project in accordance with representations in the

application. The applicants appealed the withdrawal and settled with the Agency on April 18, 2012, and the Agency rescinded the withdrawal. The revised timetable indicated services would be offered October 15, 2013. The CON was again withdrawn December 20, 2013, because the applicants had not adequately documented they were making a good faith effort to develop the project in accordance with representations in the application. The applicants appealed the withdrawal and settled with the Agency on June 16, 2014, and the Agency rescinded the withdrawal. The revised timetable indicated services would be offered July 10, 2017. The CON was withdrawn a third time on July 25, 2017, because no meaningful progress toward developing the project had been made since it was approved nine years earlier. The withdrawal was not appealed. The 70 ACH beds from the 2008 Need Determination in Cherokee County were unavailable to other applicants who might have developed the beds and provided services to the residents of Cherokee County for seven years after the occupancy date projected in the application. Additionally, due to changes in population and methodology, those 70 ACH beds from the 2008 Need Determination no longer exist and cannot be developed to provide services to Cherokee County residents.

- **Reidsville House** (Rockingham County)

A CON for **Reidsville House** (Project I.D. #G-8600-10) was awarded March 29, 2011 to relocate a 43-bed ACH and convert all 43 beds to SCU beds. The application listed October 1, 2012 as the projected date for offering of services. The CON was withdrawn December 20, 2013 because the applicants had not adequately documented they were making a good faith effort to develop the project in accordance with representations in the application. The applicants appealed the withdrawal and settled with the Agency on June 16, 2014, and the Agency rescinded the withdrawal. The revised timetable indicated services would be offered July 10, 2017. The applicants requested and received Agency approval to change the site of development on March 13, 2017. In the five and a half years since the withdrawal was settled and rescinded, the applicants have requested three additional timetable extensions, with the most recent extension projecting to offer services on May 1, 2021. In the same five and a half years, the applicants have purchased the land and gotten drawings approved by the Construction Section but have not executed a construction contract and have not yet secured financing despite repeated attempts. In its original application, the applicants emphasized the need the community has for special care unit beds; however, the applicants have now denied the residents of Rockingham County access to needed special care unit beds for the last seven years and will likely be unable to offer services to Rockingham County residents for another one and a half years. Even if the applicants do not request further timetable extensions, the residents of Rockingham County will have been denied access to special care unit beds for eight and a half years past the original date the applicants projected to offer services.

- **Taylorsville House** (Alexander County)

A CON for **Taylorsville House** (Project I.D. #E-8375-09) was issued January 22, 2010 to add 10 ACH beds in a Special Care Unit (SCU) pursuant to the need determination in the 2009 SMFP. The application listed July 1, 2010 as the projected date for offering of services. The CON was withdrawn November 19, 2012 because the applicants had not adequately

documented that they were making a good faith effort to develop the project in accordance with representations in the application. The CON no longer exists.

Since 1996, the Agency has withdrawn CONs for 10 projects where the CON no longer exists. Of those 10, three are projects affiliated with Charles E. Trefzger, Jr. (Project I.D. #s A-8084-08, E-8375-09, and E-10289-14). None of the remaining seven CONs that no longer exist have any applicants with common ownership or affiliation with any other applicants with withdrawn CONs. Additionally, since 2012, CONs affiliated with Charles E. Trefzger, Jr. have been withdrawn 10 times for failure to develop the project in a timely manner or in accordance with representations in the CON application.

The Gardens of Warrenton project is not unlike the projects discussed above. Not developing the above projects, as approved, has left Alexander, Alleghany, Cherokee, Halifax, Macon, Rockingham, and Rutherford County residents without the proposed adult care homes, additional ACH beds/facilities, and a child/adolescent substance use disorder facility.

- Alexander County residents were denied access to 10 approved ACH beds in an SCU because the CON was withdrawn by the Agency after applicants failed to develop the project in a timely manner.
- Alexander County residents were denied access to a 15-bed child/adolescent substance use disorder facility because the CON was withdrawn by the Agency after the applicants failed to develop the project in a timely manner.
- Cherokee County residents were denied access to a 70-bed ACH facility because the CON was withdrawn (multiple times) by the Agency after the applicants failed to develop the project in a timely manner.
- Halifax County residents have been denied access to a 60-bed ACH facility since the original projected occupancy date of October 1, 2018 and are still being denied access.
- Macon County residents were denied access to a 70-bed ACH facility for four additional years because the applicants failed to develop the project in a timely manner.
- Rockingham County residents have been denied access to 43 SCU beds since the original projected occupancy date of October 1, 2012 and are still being denied access.
- Rutherford County residents have been denied access to a 46-bed ACH facility since the original occupancy date of August 14, 2014 and are now being denied access to an additional 16 beds at the same facility since the projected occupancy for the additional beds was November 1, 2019.

Thus, the history of undeveloped CON-approved projects affiliated with Charles E. Trefzger makes additional affiliated projects an ineffective alternative with regard to history of project development.

### **History of Statutory Compliance and Compliance with Settlement Agreements**

Projects affiliated with Charles E. Trefzger, Jr. have a history of violating legally binding settlement agreements with the Agency or attempting to change legally binding settlement agreements soon after making them; violating conditions imposed on the project in the CON; or failing to submit progress reports to the Agency as required by N.C.G.S. §131E-189(a). Listed below are projects affiliated with Charles E. Trefzger, Jr. which have such a history:

- **Alleghany House** (Alleghany County) – as discussed in the narrative above, the applicants have missed deadlines to submit progress reports; despite requests by the Agency, the applicants have still not submitted requested information regarding project development and as of the date of these findings are in violation of the legally binding settlement agreement.
- **Cabarrus Senior Living** (Cabarrus County)

On July 14, 2017, an application was submitted (Project I.D. #F-11368-17), proposing to develop **Cabarrus Senior Living** by relocating 66 beds from Cabarrus Manor and leaving 67 ACH beds at Cabarrus Manor (Cabarrus Manor was originally approved in Project I.D. #F-10263-14 and subsequent change of scope applications; see Project I.D. #s F-10311-14 and F-11101-15). The application was denied and subsequently settled by the Agency. A CON for Cabarrus Senior Living was issued December 21, 2018, with the following condition:

3. *Cabarrus Propco, LLC and Cabarrus Opco, LLC shall execute the construction by July 4, 2019. In the event that Cabarrus Propco, LLC and Cabarrus Opco, LLC fail to execute the construction contract by October 9, 2019, the right to develop the project shall cease and Cabarrus Propco, LLC and Cabarrus Opco, LLC shall relinquish the Certificate of Need to develop this project.*

The settlement agreement listed February 1, 2021 as the projected date for offering of services. In both of the first two progress reports submitted by the applicant subsequent to the issuance of the CON (June 28, 2019 and September 6, 2019), the applicants requested changes to the proposed timetable which would violate the settlement agreement. The Agency denied each request. On November 13, 2019, the applicants provided the Agency with a copy of a construction contract executed on October 7, 2019; however, the contract contains a provision that work will not begin until financing sufficient to fund the entire project has been secured. On December 13, 2020, the applicants provided information requested by the Agency regarding its proposed financing and revised timetable. The applicants were approved for a timetable extension with the requirement that a progress is report due to Agency no later than three weeks after each milestone.

- **Hampton Manor** (Northampton County)

A CON for **Hampton Manor** (Project I.D. #L-11280-16) was awarded May 23, 2017, to relocate 33 ACH beds from The Oaks at Pleasant Hills to the existing 82-bed ACH facility for a total of 115 ACH beds. The application listed October 1, 2019 as the projected date for

offering of services. The first due date for a progress report was January 31, 2018. After repeated requests from the Agency, the first progress report was submitted November 8, 2019 stating that the applicants plan to file an additional application to move the 33 beds to an undeveloped facility in Moore County.

- **Lake Lure Assisted Living** (Rutherford County) – as discussed in the narrative above, the CON was subject to a condition requiring the applicants to begin construction of the building by December 31, 2018; as of the date of these findings, there is no evidence the applicants have executed a construction contract, let alone begun construction of the building. As of the date of these findings, the applicants appear to be in violation of Condition #3 of the CON.
- **Lakeview Village** (Halifax County) – as discussed in the narrative above, the applicants submitted their first progress report but did not submit a second progress report until two and a half years later, despite multiple requests from the Agency.
- **New Hanover Senior Living** (New Hanover County)

A CON for **New Hanover Senior Living** (Project I.D. #O-11279-16) was awarded January 1, 2018, to relocate 40 ACH beds from Sherwood Manor to the existing 61-bed New Hanover House for a total of 101 ACH beds. The application listed October 1, 2019 as the projected date for offering of services. The first due date for a progress report was September 30, 2018, despite repeated requests from the Agency.

- **Rich Square Villa** (Northampton County)

A CON for **Rich Square Villa** (Project I.D. #L-11281-16) was awarded May 23, 2017, to relocate 33 ACH beds from The Oaks at Pleasant Hills to the existing 38-bed ACH facility for a total of 71 ACH beds. The application listed October 1, 2019 as the projected date for offering of services. The first due date for a progress report was January 31, 2018. The first progress report was submitted November 8, 2019 stating that the applicants plan to file an additional application to move the 11 of the 33 beds to an undeveloped facility in Moore County.

- **The Landings of Brunswick** (Brunswick County)

A CON for **The Landings of Brunswick** (Project I.D. #O-11065-15) was awarded July 1, 2016, after a competitive review, to develop an 80-bed ACH pursuant to the need determination in the 2015 SMFP. The CON listed October 1, 2017 as the projected date for offering of services. The first due date for a progress report was October 31, 2016; the applicants did not submit a progress report until July 2018. When the Agency responded to the July 2018 progress report with a request for further information, the applicants did not respond to the Agency until more than a year later, despite repeated requests by the Agency. The applicants have since filed a change of scope application (Project I.D. #O-11817-19) to relocate the proposed facility.

Thus, the history of violating legally binding settlement agreements with the Agency or

attempting to change legally binding settlement agreements soon after making them; violating conditions imposed on the project in the CON; or failing to submit progress reports to the Agency as required by N.C.G.S. §131E-189(a) makes additional affiliated projects an ineffective alternative with regard to history of statutory compliance and compliance with settlement agreements.

There is a history of certain projects associated with Charles E. Trefzger, Jr. taking far longer to develop than projected, if they are developed at all. There is also a history of violating legally binding settlement agreements with the Agency or attempting to change legally binding settlement agreements soon after making them; violating conditions imposed on the project in the CON; or failing to submit progress reports to the Agency as required by N.C.G.S. §131E-189(a). The Agency cannot determine whether the proposed project will be one of the projects that will take far longer to develop than projected, or whether the applicants will comply with statutory requirements, and the applicants provide no other information in the application as submitted to adequately demonstrate that developing the proposed project is a more effective alternative than maintaining the status quo. Therefore, due to the history of failure to develop certain projects at all, the history of failure to develop certain projects in a timely manner, and the history of failure to comply with statutory requirements and failure to comply with settlement agreements, developing the project as proposed is an ineffective alternative.

Therefore, the applicant does not adequately demonstrate that the alternative proposed in this application is the most effective alternative to meet the need.

### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is not conforming to this criterion for the reasons stated above. Therefore, the application is not approved.

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

### C

The applicant proposes to develop a new adult care home (ACH) facility located in Warren County pursuant to the 2019 State Medical Facilities Plan (SMFP) need determination for a total of 70 beds (70 ACH beds and 0 Special Care Unit (SCU) beds) upon project completion.

**Capital and Working Capital Costs**

In Section Q, page 77, the applicant projects the total capital cost of the project as shown in the table below.

<b>Capital Cost</b>	
Purchasing Price of the Land	\$150,000
Closing Costs	\$75,000
Site Preparation	\$475,000
Construction/Renovation Contract (s)	\$4,795,00
Landscaping	\$25,000
Architect/Engineering Fees	\$275,000
Non-Medical Equipment	\$200,000
Furniture	\$450,000
Financing Costs	\$175,000
Interest during Construction	\$250,000
<b>Total</b>	<b>\$6,870,000</b>

In Section F, pages 48, the applicant projects that initial operating expenses will be \$649,400.84 for a total working capital of \$649,400.84. The applicant states that there are no start-up expenses. The applicant provides the assumptions and methodology used to project the working capital needs of the project in Exhibit Q.1 and Q.2.

**Availability of Funds**

In Section F, page 47, the applicant states that the capital cost will be funded as shown in the table below.

**Sources of Capital Cost Financing**

Type	Warrenton Opco, LLC	Warrenton Propco, LLC	Total
Loans	\$0	\$6,870,000	\$6,870,000
Accumulated reserves or OE *	\$0	\$0	\$0
Bonds	\$0	\$0	\$0
Other (Specify)	\$0	\$0	\$0
<b>Total Financing</b>	<b>\$0</b>	<b>\$6,870,000</b>	<b>\$6,870,000</b>

\* OE = Owner's Equity

In Section F, page 49, the applicant states that the working capital needs of the project will be funded as shown in the table below.

<b>Sources of Financing for Working Capital</b>		<b>Amount</b>
(a)	Loans	\$649,400.84
(b)	Cash or Cash Equivalents, Accumulated Reserves or Owner's Equity	\$
(c)	Lines of credit	\$
(d)	Bonds	\$
(e)	<b>Total</b>	<b>\$649,400.84</b>

Exhibits F.2 and F.3 contain two letters dated October 7, 2019, from the Managing Director of Integrated Asset Advisors, confirming a willingness to provide funding to Warrenton Propco, LLC for the capital needs and Warrenton Opco, LLC for the working capital needs of the proposed project. Exhibits F.2 and F.3 contain amortization schedules for each proposed loan.

### **Financial Feasibility**

The applicant provided pro forma financial statements for the first three full fiscal years of operation following completion of the project. In Section Q, Form F.5, pages 89-90, the applicant projects that revenues will exceed operating expenses in operating years two and three of the project, as shown in the table below.

<b>The Gardens of Warrenton Projected Utilization Revenue and Expenses</b>			
	<b>1<sup>st</sup> FFY (10/1/2024-9/30/2025)</b>	<b>2<sup>nd</sup> FFY (10/1/2025-9/30/2026)</b>	<b>3<sup>rd</sup> FFY (10/1/2026-9/30/2027)</b>
ACH Beds	70	70	70
Total Gross Revenues (Charges)	\$1,078,020	\$2,132,880	\$2,393,280
Total Net Revenue	\$1,067,240	\$2,111,551	\$2,369,347
Average Net Revenue per Bed	\$15,246.28	\$30,165.01	\$33,847.81
Total Operating Expenses (Costs)	\$1,581,141	\$1,838,081	\$1,901,546
Average Operating Expense per Bed	\$22,587.72	\$26,258.30	\$27,164.94
Net Income	(\$513,901)	\$273,470	\$467,801

The assumptions used by the applicant in preparation of the pro forma financial statements are reasonable, including projected utilization, costs and charges. See Section Q and Exhibits Q.1 and Q.2 for the assumptions used regarding costs and charges. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately demonstrates that the capital and working capital costs are based on reasonable and adequately supported assumptions.

- The applicant adequately demonstrates availability of sufficient funds for the capital and working capital needs of the proposal.
  - The applicant adequately demonstrates sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of costs and charges.
- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

C

The applicant proposes to develop a new adult care home (ACH) facility located in Warren County pursuant to the 2019 State Medical Facilities Plan (SMFP) need determination for a total of 70 beds (70 ACH beds and 0 Special Care Unit (SCU) beds) upon project completion.

On page 219, the 2019 SMFP defines the service area for ACH beds as “*the county in which the adult care home bed is located.*” The Gardens of Warrenton will be located in Warren County; thus, the service area for this project is Warren County. Facilities may also serve residents of counties not included in their service area.

Table 11A on page 244 of the 2019 SMFP shows there are three facilities with ACH beds in Warren County owned by three other providers. Table 11C, page 252, shows Warren County with an occupancy rate of 90.00% and a projected deficit of 65 ACH beds.

<b>Inventory of ACH Beds –Warren County</b>	
<b>Facility Name</b>	<b># of Beds</b>
Boyd’s Rest Home #2	10
Magnolia Gardens of Warrenton	86
Warren Hills Nursing Center	20
<b>Total</b>	<b>116</b>

Source: Table 11A, 2019 SMFP, page 244

In Section G, pages 52-53, the applicant explains why it believes its proposal would not result in the unnecessary duplication of existing or approved ACH beds in Warren County. The applicant states:

*“As of the date of this application, the 70 ACH beds proposed to be added to a brand-new facility do not currently exist within Warren County. The 2019 SMFP identified the need for an additional 70 ACH beds, further reinforcing that duplication of existing beds does not exist in Warren County. On the contrary, further need for assisted living services is required in Warren County.”*

The applicant adequately demonstrates that the proposal would not result in an unnecessary duplication of existing or approved services in the service area for the following reasons:

- There is a need determination in the 2019 SMFP for the proposed 70 ACH beds in Warren County.

- The applicant adequately demonstrates the need for the proposed 70 new beds in addition to the existing ACH beds.

**Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information which was publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

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

**C**

In Section Q, page 91, the applicant provides projected full-time equivalent (FTE) staffing for the proposed services, as illustrated in the following table.

<b>Projected Staffing-The Gardens of Warrenton</b>			
<b>Position</b>	<b>1st FFY (10/1/2024- 9/30/2025)</b>	<b>2nd FFY (10/1/2025- 9/30/2026)</b>	<b>3rd FFY (10/1/2026- 9/30/2027)</b>
Register Nurse	0.5	0.5	0.5
Aides	9.7	14.0	15.4
Alzheimer's Coordinator	1.0	1.0	1.0
Staff Development Coordinator	1.0	1.0	1.0
Clerical	1.3	1.4	1.4
Dietary	3.4	3.7	3.7
Activities	0.8	1.0	1.0
Transportation	0.6	0.9	0.9
Laundry and Linen	0.6	0.6	0.6
Housekeeping	1.6	1.8	1.8
Plant Operation and Maintenance	0.8	0.9	0.9
Administration	1.0	1.0	1.0
<b>TOTAL</b>	<b>22.4</b>	<b>27.8</b>	<b>29.2</b>

The assumptions and methodology used to project staffing are provided in Exhibit Q.1, Adequate costs for the health manpower and management positions proposed by the applicant are budgeted in Form F.4, which is found in Section Q. In Section H.2 and H.3, page 54, the applicant describes the methods to be used to recruit or fill new positions and its proposed

training and continuing education programs. In Section H, page 55, the applicant states that there is no proposed medical director because the new facility does not exist but once the facility has been established it will obtain staff to fill the position.

The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services.

**Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (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 I, pages 57-58, the applicant states that the following ancillary and support services are necessary for the proposed services:

<b>Provider</b>	<b>Ancillary and Support Services</b>
Warrenton County DSS	Social Services
Beckford Medical Center Health	Hospital
Warren Hills Franklin Oaks Nursing and Rehab	Rehabilitation
Kindred Hospice Warren County Health Department	Home Health
Amedisys Hospice Community Home Care and Hospice	Hospice
Bowen Primary and Urgent Care	Physicians
Vance Granville Community College	Community College

In Section I, page 56, the applicant states that Affinity Living Group’s pre-existing relationship with local and state healthcare providers will be able to readily provide ancillary and other supporting services. The applicant states that they already have a pre-existing relationship with a number of physicians and rehabilitative services operating in the Warren County area and provides supporting documentation in Exhibit C.4.

Furthermore, in Section Q, page 91, the applicant provides the proposed staff which includes providers of necessary ancillary and support services. The applicant adequately demonstrates that the proposed services will be coordinated with the existing health care system.

**Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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

The applicant does not project to provide the proposed services to a substantial number of persons residing in Health Service Areas (HSAs) that are not adjacent to the HSA in which the services will be offered. Furthermore, the applicant does not project to provide the proposed services to a substantial number of persons residing in other states that are not adjacent to the North Carolina county in which the services will be offered. Therefore, Criterion (9) is not applicable to this review.

- (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

The applicant is not an HMO. Therefore, Criterion (10) is not applicable to this review.

- (11) Repealed effective July 1, 1987.

- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

C

In Section K, page 60, the applicant states that the project involves constructing 28,272 square feet of new space. Line drawings are provided in Exhibit K.1.

On pages 60-61, the applicant adequately explains how the cost, design and means of construction represent the most reasonable alternative for the proposal.

On pages 60-61, the applicant adequately explains why the proposal will not unduly increase the costs to the applicant of providing the proposed services or the costs and charges to the public for the proposed services and provides supporting documentation in Exhibit K.3.

On pages 61-62, the applicant identifies any applicable energy saving features that will be incorporated into the construction plans.

On pages 62-63, the applicant identifies the proposed site and provides information about the current owner, zoning and special use permits for the site, and the availability of water, sewer and waste disposal and power at the site.

**Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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

Neither the applicant nor any related entities own, operate or manage an existing health service facility located in the service area. Therefore, Criterion (13a) is not applicable to this review.

- (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

Neither the applicant nor any related entities own, operate or manage an existing health service facility located in the service area. Therefore, Criterion (13b) is not applicable to this review.

- (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 L, page 65, the applicant projects the following payor mix for the proposed services during the third full fiscal year of operation following completion of the project, as shown in the table below.

**3<sup>rd</sup> FFY  
 (10/01/2026-09/30/2027)  
 The Gardens of Warrenton ACH Beds**

Payor Source	Patient Days in ACH beds		% of Total Patient Days in ACH beds	
	General Beds	Total ACH beds	General Beds	Total ACH Beds
Private Pay	18,615	18,615	72.86%	72.86%
County Assistance	6,935	6,935	27.14%	27.14%
<b>Total</b>	<b>25,550</b>	<b>25,550</b>	<b>100.00%</b>	<b>100.00%</b>

As shown in the table above, during the third full fiscal year of operation, the applicant projects that 73% of total services will be provided to private-pay patients and 27% to county assistance patients.

In Section B, pages 17-18, and Exhibit Q.1, the applicant provides the assumptions and methodology used to project payor mix during the third full fiscal year of operation following completion of the project. The projected payor mix is reasonable and adequately supported because the applicant incorporates the experience of Affinity Living Group, LLC in its projections. In Exhibit B.9, the applicant provides a list of facilities managed by Affinity Living Group, LLC and its percentage of Medicaid beds.

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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 L, page 66, the applicant adequately describes the range of means by which patients will have access to the proposed services.

### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application.

Based on that review, the Agency concludes that 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 M, page 67, the applicant describes the extent to which health professional training programs in the area will have access to the facility for training purposes.

### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the applicant adequately demonstrates that the proposed services will accommodate the clinical needs of area health professional training programs, and 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.

C

The applicant proposes to develop a new adult care home (ACH) facility located in Warren County pursuant to the 2019 State Medical Facilities Plan (SMFP) need determination for a total of 70 beds (70 ACH beds and 0 Special Care Unit (SCU) beds) upon project completion.

On page 219, the 2019 SMFP defines the service area for ACH beds as “*the county in which the adult care home bed is located.*” The Gardens of Warrenton will be located in Warren County; thus, the service area for this project is Warren County. Facilities may also serve residents of counties not included in their service area.

Table 11A on page 244 of the 2019 SMFP shows there are three facilities with ACH beds in Warren County owned by three other providers. Table 11C, page 252, shows Warren County with an occupancy rate of 90.00% and a projected deficit of 65 ACH beds.

<b>Inventory of ACH Beds –Warren County</b>	
<b>Facility Name</b>	<b># of Beds</b>
Boyd’s Rest Home #2	10
Magnolia Gardens of Warrenton	86
Warren Hills Nursing Center	20
<b>Total</b>	<b>116</b>

Source: Table 11A, 2019 SMFP, page 244

Regarding the expected effects of the proposal on competition in the service area, in Section N, page 68, the applicant states:

*“The proposed project will have a positive effect on competition in the area, as the demand for these 70 ACH beds may encourage other facilities with poor utilization in Warren County to improve their current situations in order to compete with the proposed project, thereby encouraging greater efficiencies and better quality.”*

Regarding the impact of the proposal on cost effectiveness, in Section N, page 68, the applicant states:

*“The proposed project anticipates offering rates that are competitive to those surrounding facilities, while still being within a reasonable range for private pay residents that will allow the facility to maintain excellent utilization.”*

Regarding the impact of the proposal on quality, in Section N, page 68, the applicant states:

*“...the proposed project will be established with the intent to provide a home-like setting in a community of care. The applicants will also provide Quality Assurance (“QA”) Services in an effort to adhere to ‘best practices’ in the industry and exceed patient expectations.”*

Regarding the impact of the proposal on access by medically underserved groups, in Section N, page 69, the applicant states:

*“Persons whose health, habilitative, or rehabilitative needs cannot be met by the services offered in the facility will not be admitted.*

...

*Otherwise, all persons will be admitted to the facility without regard to their race, color, creed, age, national origin, handicap, sex, or source of payment.”*

Considering all the information in the application, the applicant adequately describes the expected effects of the proposed services on competition in the service area and adequately demonstrates the proposal would have a positive impact on:

- Cost-effectiveness (see Sections C, F, N and Q of the application and any exhibits)
- Quality (see Sections C, N and O of the application and any exhibits)
- Access to medically underserved groups (see Sections C, L and N of the application and any exhibits)

## **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application
- Information which was publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion based on the reasons stated above.

- (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 Exhibit O.3, the applicant identifies the adult care homes located in North Carolina managed by the applicant or a related entity. The applicant identifies a total of 85 of this type of facility located in North Carolina.

In Exhibit O.3, the applicant demonstrates that during the 18 months immediately preceding the submittal of the application, incidents related to quality of care occurred in 19 of these facilities. In Section O, page 71, the applicant states that all of the problems have been corrected. According to the files in the Adult Care Licensure Section, DHRS, during the 18 months immediately preceding submission of the application through the date of this decision, incidents related to quality of care occurred in 19 of these facilities. 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 85 facilities, the applicant provided 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 Criteria and Standards for Nursing Facility or Adult Care Home Services promulgated in 10A NCAC 14C .1100 are applicable to this review. The specific criteria are discussed below.

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

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

- (a) *An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.*
- NA- The applicant does not propose 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.*
- NA- The applicant does not propose to establish a new nursing facility or add nursing facility beds to an existing facility.
- (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 applicant does not propose to add adult care home bed 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.*
- C- In Section Q, page 75, the applicant projects that the proposed facility will have an occupancy rate of at least 85 percent by the end of the second operating year following project completion. The applicant provides the assumptions and methodology to project utilization in Exhibits Q.1 and Q.2.