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September 2, 2010

VIA EMAIL

Elizabeth K. Brown, Chief
Medical Facilities Planning Section
Division of Health Service Regulation
2714 Mail Service Center
Raleigh, NC 27699-2714

Re: Comments on Petition Submitted by Brookdale Senior Living

Dear Ms. Brown:

On August 2, 2010, Brookdale Senior Living ("Brookdale") submitted a petition to the Medical Facilities Planning Section requesting that the State Health Coordinating Council ("SHCC") "create an adjusted need determination of 240 nursing care ("NF") beds for Wake County in the 2011 State Medical Facilities Plan ("SMFP")." We believe that approval of this request would not be in the best interest of the State's health planning process and should be rejected.

In its petition, Brookdale contends that Step 4 of the standard NF-bed need determination methodology[1] ("the methodology") should not apply to Wake County. Based on its rationale leading to this contention, Brookdale concluded that an adjusted need determination for 240 NF beds is warranted. Essentially, Brookdale is proposing that NF-bed need be calculated differently for Wake County than it is for any of the other 99 counties in North Carolina. Although there are sometimes bases for the SHCC to authorize adjusted need determinations for various health services, Brookdale's request does not warrant such treatment. The principal reason supporting denial of the petition is described forthwith.

On January 6, 2010, the North Carolina Health Care Facilities Association ("NCHCFA") petitioned the SHCC to establish a work group "to review the current [NF-bed] need determination methodology." (NCHCFA Petition, p. 1) In response, the SHCC established a Long Term Care Work Group comprised of members of the Long Term and Behavioral Health Committee and industry representatives. This Work Group will first convene on September 10, 2010 and its specific charge is "to review and recommend changes to the nursing facility bed

[1] Step 4 requires that the average occupancy of all existing nursing facilities in a county be 90% or greater for an allocation to occur.

need methodology." According to all information available about this group, it appears that its clear purpose is to comprehensively evaluate all aspects of the existing methodology, including Step 4.

Rather than authorize a one-time exception to the current methodology, we believe it would instead be prudent to allow this Work Group to perform its designated assignment to address all components of the existing methodology. Based on representations made in its petition, it is even likely that Brookdale would endorse this approach, as it apparently had contemplated "petitioning for a methodology change," only rejecting this option because it had missed the SMFP-mandated deadline for a request of this nature. (Brookdale Petition, Page 4 of 6)

In closing, we, like the NCHCFA, are of the opinion that it is time to review the existing methodology to determine whether or not it adequately accounts for the changing demographics of the state and the "long term health care options available for today's seniors." (NCHCFA letter) Therefore, we believe that it is sensible for the SHCC to evaluate the recommendations of the Long Term Care Work Group in 2011 so that the 2012 SFMP will be truly responsive to future NF-bed need in each county. To assist in accomplishing this objective, we encourage all providers to address any issues they have with the need determination methodology directly to the Work Group, whose members, we believe, are open to provider feedback and suggestions.

I thank you for your consideration of these comments. Should you need any additional information, or require clarification of any aspect of these comments, please do not hesitate to contact me.

Sincerely,

Max Mason
Development Coordinator

Enclosures

NCHCFA
North Carolina Health Care Facilities Association

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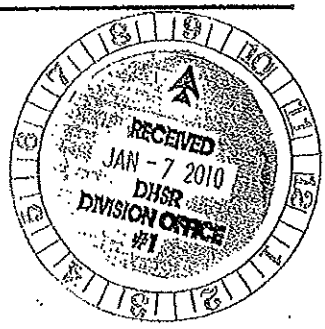
January 6, 2010



The Honorable Lanier Cansler
Secretary
Department of Health and Human Services
2001 Mail Service Center
Raleigh, North Carolina 27699-2001

Dear Secretary Cansler,

The State Health Coordinating Council (SHCC) makes annual determinations of the need for additional skilled nursing facility beds. The basic framework of the methodology used by the SHCC to make the allocations has not changed or undergone review in twenty years or more.

Based on the current need determination methodology, which is essentially a historical "use rate" based on the population in a given county over the ages of 65, 75, and 85, we could see a projected need for 12,000 or more additional beds by 2020. Is this number and our reliance on current use rates appropriate and accurate, will the beds be allocated where the need is the greatest, and are we properly considering in the methodology the long term health care options available for today's seniors? These are some of the issues in need of review before the 2011 State Medical Facilities Plan (SMFP) is finalized.

We are requesting that a small work group be established to review the current need determination methodology and report its findings and recommendations to the SHCC's Long Term and Behavioral Health Committee by March 1, 2010. This should allow ample time for the committee to consider any proposed changes to the nursing home bed need methodology before the 2011 SMFP development process is completed.

I don't anticipate that this will be a complicated or lengthy process. A group of 8-10 people, representing the Long Term and Behavioral Health Committee, staff from the Division of Health Service Regulation, and provider representatives could begin work soon and, barring any unforeseen issues, should be able to meet the SHCC's planning schedule for development of the 2011 SMFP.

I hope you will support the establishment of the work group and charge them with completing the task in a timely fashion. Thank you for your consideration.

Sincerely,

J. Craig Souza
President

cc: Allen Feezor
Jeff Horton

Long-Term and Behavioral Health Committee
Exhibit 1
Chapter 10 Long Term Care Nursing Home Beds Work Group
Charge Statement

The Long Term Care Nursing Home Beds Work Group is charged with the following:

- To review and recommend changes to the nursing home bed need methodology.

PETITION

Petition for Special Need Adjustment for Nursing Care Beds

PETITIONER

Brookdale Senior Living
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STATEMENT OF REQUESTED ADJUSTMENT

Brookdale Senior Living respectfully petitions the State Health Coordinating Council to create an adjusted need determination of 240 nursing care beds for Wake County in the *2011 SMFP*.

BACKGROUND

Brookdale Senior Living, Inc. (hereafter referred to as Brookdale), owns and operates 54 long term care facilities in North Carolina, including independent living, assisted living (adult care home), skilled nursing and specialty care (i.e. Alzheimer's). Brookdale communities provide active retirement living for thousands of residents, serving seniors and their families since 1978. Today, Brookdale is the nation's largest owner and operator of senior living communities throughout the United States and a leading national provider of senior-related services. Its communities feature a high quality of life and the highest levels of personal service. Brookdale currently operates more than 565 senior living and retirement communities across the nation. Each day, more than 32,000 Brookdale associates serve over 53,600 residents in a variety of settings.

REASON FOR THE REQUESTED ADJUSTMENT

As the SHCC is aware, the methodology for nursing care beds in Chapter 10 of the *Proposed 2011 SMFP* includes in Step 4 the formula for determining the number of additional nursing care beds needed in a county. The formula requires that the average occupancy of licensed beds in the county be 90 percent before any additional beds are allocated. While the 90 percent occupancy requirement is helpful in preventing unnecessary duplication of existing facilities, Brookdale believes that there are some facilities that may not reach 90 percent occupancy in the near future, if ever. Some of this need is met periodically through the development of continuing care retirement communities (CCRC's); however, only one-half of the beds developed in CCRC's are considered in the methodology for meeting the need for community beds.

As shown in the following table, most of the existing nursing facilities in Wake County are well utilized, with 70 percent (14 of 20) of operational facilities with available data operating at 85 percent occupancy or higher.

Facility	Planning Beds	Total Beds	Patient Days	Occupancy Rate
Blue Ridge Health Care Center	114	134	42,629	87%
Capital Nursing and Rehab	125	125	34,792	76%
Cary Health and Rehab	120	120	40,981	94%
City of Oaks Health and Rehab	180	180	48,547	74%
Springmoor CCRC	86	173	44,455	70%
Glenaire CCRC	45	65	22,873	96%
Guardian Care of Zebulon	60	60	21,042	96%
Hillside Nursing of Wake Forest	130	130	43,723	92%
Litchford Falls	90	90	30,624	93%
Mayview Convalescent Ctr	139	139	43,736	86%
Raleigh Rehab and Healthcare	174	174	58,192	92%
Rex Rehab and Nursing Care	120	120	39,891	91%
Rex Rehab and Nursing Apex	107	107	34,361	88%
Searstone[1]	12	NA	NA	NA
Sunnybrook	110	114	32,747	79%
The Cardinal at North Hills[1]	7	NA	NA	NA
The Cypress CCRC	18	36	3,028	23%
The Laurels of Forest Glenn	120	120	42,768	98%
Unihealth	150	150	51,887	95%
Universal Health North Raleigh	112	112	36,506	89%
Universal Health F-V[2]	49	NA	NA	NA
WakeMed Zebulon/Wendell[3]	19	NA	NA	NA
WakeMed F-V[3]	36	NA	NA	NA
Wellington	80	80	30,041	103%
Windsor Point CCRC	22	45	12,854	78%

Source: 2010 Nursing Home License Renewal Applications;
[1]Facility is currently under development.
[2]Per License Renewal Application, facility is closed while replacement facility is being constructed.
[3]As of July 29, 2010, Nursing Home Licensure and Certification Section had no copy of the License Renewal Application for this facility on file.

The average occupancy rate for these facilities is 85 percent, driven by the majority of the facilities with high occupancy rates[1]. A few facilities, however, are not well utilized. The reason for this underutilization can be attributed to several factors, and may include a ramp-up period for newer facilities (such as The Cypress), but may also include referral patterns or a perception of lower quality for facilities that have continuously

[1] Note that the average was calculated using only those facilities with reported data for 2009.

been underutilized. These "chronically underutilized" facilities may never be preferred by patients, yet their low utilization rates prevent the development of additional nursing care beds in Wake County. Further, Brookdale believes it is unfair to effectively force the residents of Wake County to either utilize these facilities that they clearly do not want to use, or seek care in other counties. If just the three facilities with the lowest occupancy rates (23, 70 and 74 percent) were excluded from the analysis, the average utilization of the remaining 17 facilities would be 90 percent, the threshold for generating a need determination for more beds.

To calculate the number of nursing beds that Brookdale is petitioning for Wake County, Brookdale considered that the *Proposed 2011 SMFP* shows a deficit of 976 beds for Wake County. One-fourth of the 976 beds is 244 beds, and if 244 beds were allocated using the standard methodology, they would be rounded to 240 beds. On that basis, Brookdale is effectively petitioning for one-fourth of the needed beds to be allocated, which is a total of 240.

As the SHCC may note, several other counties in the state also show a deficit of nursing beds that represents a high proportion (i.e. 10 percent or greater) of their total needed beds, including Currituck, Dare, Onslow, Orange, Pender and Watauga; however, none of these counties shows as great a numerical deficit as Wake County. In fact, the next highest deficit of beds in a county in which there is no need determination is 69 beds in both Dare and Onslow counties. Clearly, Wake County is an outlier[2] given its large deficit of nursing care beds and should be given primary consideration in this petition. The SHCC may also see fit to allocate beds in some of these other counties for similar reasons; however, Brookdale is petitioning specifically only for Wake County.

ADVERSE EFFECTS IF PETITION IS NOT APPROVED

Brookdale believes that failing to approve the petition will result in several adverse effects. First, residents of Wake County will continue to face an overwhelming need for additional nursing care beds. Although beds may be available in CCRC's, community beds, which are needed for the underserved patients in the county, will continue to be highly needed. This is particularly true since nursing care beds in CCRC's are available only to the residents of the CCRC, and since CCRC's cannot have Medicaid-certified nursing care beds. As a result, families may be forced to choose between admitting their loved one to a nursing facility that, for whatever reason, has historically not been favored in the community (as evidenced by low utilization) or trying to find a facility in a more distant county in which to locate their loved one.

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2 Defined statistically, an outlier has a value that is three or more standard deviations from the mean. The mean deficit of beds for the 21 counties with nursing bed deficits is 73.85 beds; the standard deviation is 208.19. All counties with deficits are within one standard deviation of the mean, except Wake with its 976 bed deficit, which is 4.33 standard deviations from the mean, clearly establishing it as an outlier.

Another important adverse effect that will occur is that existing facilities will continue to be forced to contend with very high utilization. Although nursing facilities can more easily endure high occupancy rates due to their relatively low discharge rate, the numerous facilities with occupancy rates higher than 90 percent will face increased capacity constraints until additional beds are allocated.

Another adverse effect if the petition is not approved, and perhaps the most important one for the SHCC to consider, is the eventual allocation of all of the needed beds at one time. Assuming that all of the well utilized facilities can continue to operate at increasingly high occupancy levels and that the average occupancy in Wake County eventually reaches 90 percent, the number of beds that would be allocated in one year will be overwhelming. For example, if that were to have occurred for the *2010 SMFP*, 820 beds would have been allocated. For the *2011 SMFP*, that number would be nearly 1,000 beds. As each year passes, the deficit of beds in Wake County continues to increase and eventually, if the 90 percent standard is reached, the dam will break and Wake County will be flooded with a tremendous allocation of beds at one time. A more thoughtful and careful approach would be to allocate a portion of those beds in 2011, ensuring continued access to the services for Wake County residents while preventing an overwhelming number of beds from being allocated at one time.

ALTERNATIVES CONSIDERED

Brookdale considered three primary alternatives, including maintaining the status quo, petitioning for a change in the methodology, and requesting a different number of beds. However, if the status quo is unchanged, the high utilization of most existing facilities and the deficit of nursing beds would continue to increase, creating access issues for patients and operational challenges for providers. Even if beds were eventually allocated through the standard methodology, releasing such a tremendous number of beds at one time seems less prudent than a more conservative approach. For these reasons, the status quo was not considered to be effective.

Brookdale also contemplated petitioning for a methodology change, specifically a change to address the existence of "chronically underutilized" facilities and exclude them from the methodology. However, such a petition would need to be filed in the Spring in order to be considered. Moreover, Wake County is a clear outlier in the number and percentage of beds that it needs, and a petition with statewide implications is not needed to address issues that are unique (at least in proportion, if not in circumstance) to one county.

Brookdale also considered petitioning for a different number of beds, such as 490 (one-half the deficit beds) or 100 beds (one-tenth the deficit beds). While the need in Wake County is certainly tremendous, one of the central themes of this petition is to allocate the beds more rationally; requesting nearly 500 beds be allocated at once is not as conservative as the proposed 240 beds. At the other end of the spectrum, requesting only 100 beds would result in too small an allocation and would possibly result in only one provider being approved for the beds. With 240 beds, it may be possible that

multiple applicants can be approved, even new providers, which is consistent with the Basic Assumption 2 of the methodology.

EVIDENCE THAT THE PROPOSED CHANGE WOULD NOT RESULT IN UNNECESSARY DUPLICATION

Brookdale recognizes that the 90 percent threshold in the methodology is likely intended to prevent unnecessary duplication of existing health services. The implied intention is to ensure that there is effective utilization of the existing providers in a county before additional resources are allocated. While this is an important part of the health planning and regulatory process, the SHCC has recognized in the past that a need exists for additional capacity, even though some existing providers may continue to be underutilized. For example, Step 4 (m) of the operating room methodology has a provision to define and exclude "chronically underutilized" facilities. In addition, the methodology for acute care beds at one time combined all of the beds in a county in order to determine need; the SHCC modified the methodology to calculate need on a hospital or system basis, recognizing that this sometimes created disparate levels of utilization in hospitals within a county and that some hospitals could be underutilized without obviating the need for beds at another hospital in the county. Similarly, Brookdale believes that some nursing facilities within Wake County may never be fully utilized, but a need exists for additional beds nonetheless, as demonstrated by the significant deficit of nursing care beds in the county. Moreover, by petitioning for only a portion of the deficit, Wake County will continue to have a need for more beds, even if the petition is approved. For these reasons, Brookdale does not believe that its petition will result in unnecessary duplication.

EVIDENCE OF CONSISTENCY WITH THE THREE BASIC PRINCIPLES

Brookdale believes the petition is consistent with the three basic principles: quality and safety, access and value. First, the petition recognizes that an important part of the quality and safety principle is that "safety, clinical outcomes and satisfaction...are often interconnected in practice." Since some nursing facilities in Wake County are underutilized, it is logical to conclude that those facilities do not enjoy the same level of patient satisfaction as the well-utilized facilities in the county. The facilities that are more highly utilized and potential new providers, as well as their patients, should not be penalized for the low utilization at a handful of providers that may not provide the same level of quality and patient satisfaction.

The petition promotes access to nursing care services. As noted above, many Wake County residents in need of nursing care are currently faced with three options: seek care at an undesired location, seek placement outside their home county, or, if possible, wait for an available bed at a facility of their choosing. Each of these options indicates a barrier to access, including barriers of geography, time, age, disability, low income, and limited health coverage. The purpose of these community nursing care beds is to provide care for patients without the necessary resources to seek care elsewhere.

Clearly, providing additional nursing care beds in Wake County will expand access, particularly for the underserved.

The petition also promotes value. As noted in the SMFP language concerning this basic principle, "long-term enhancement of health care value will result from...a balance of competition and collaboration and...innovation in health care delivery." The allocation of an additional 240 nursing care beds in Wake County will stimulate competition among existing and potential new providers in the county, and will not reward those underutilized facilities that are not providing the quality of care demanded by patients and families. By approving the need determination for only a portion of the bed deficit for Wake County, the SHCC will also continue to balance the cost and benefit equation, providing tremendous additional benefit to Wake County residents, without allocating nearly 1,000 beds at one time, which would add significantly more costs to the health care system all at once.

CONCLUSION

Brookdale believes that the proposed petition is needed to ensure that the long term care needs of Wake County residents continue to be met. The overwhelming deficit of nursing care beds in Wake County is clearly unique, and should be addressed as proposed in this petition for a special need adjustment. Even if the standard methodology eventually allocates beds for Wake County, the methodology would generate an overwhelming number of additional beds at one time. This petition proposes a more rational approach to allocating a reasonable portion of those beds to meet the needs of Wake County residents.

Thank you for your consideration.