

Petition for An Adjustment to Eliminate the 2023 SMFP Home Health Agency Need Determinations and Call for Further Study of the Data & Methodology

Via E-Mail Only: DHSR.SMFP.Petitions-Comments@dhhs.nc.gov

The following Petition is submitted on behalf of Well Care Health by its Chief Executive Officer:

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Background

With approximately 35 years of operating experience, Well Care Health (“Well Care”) is a family-owned and operated home-based care provider that serves more than 50 counties in North Carolina. As a patient-centered and mission-driven organization, Well Care has grown from seven to over 1,000 team members and expanded our care delivery model to offer a full spectrum of home-based care services, including home health, private duty nursing, personal care services, and hospice home care.

Today, Well Care proudly serves patients from seven licensed Home Care offices, six Medicare-certified home health branches, and a Medicare-certified Hospice Home Care center.

Well Care operates the following Medicare-certified home health agencies in North Carolina:

- | | | |
|--|--------|-------------|
| • Well Care Home Health of the Triangle, Inc. | HC0074 | Wake |
| • Well Care Home Health of the Southern Triangle, Inc. | HC5229 | Wake |
| • Well Care Home Health, Inc. | HC1231 | New Hanover |
| • Well Care Home Health of the Triad, Inc. | HC0496 | Davie |
| • Well Care Home Health of the Piedmont, Inc. | HC5130 | Mecklenburg |

Through operating these home health agencies across North Carolina, Well Care has built deep experience as a provider of industry-leading home health patient care. In fact, Well Care today cares for a home health patient census of more than 3,800 patients and has been consistently recognized by CMS as a 5-star rated home health provider in quality of patient care, which corresponds nationally with the top 4-5% of providers nationally.

Well Care is a strong supporter of the SMFP process and the state’s Certificate of Need regulations which provide critical safeguards that ensure quality and access, while avoiding costly duplication of services. Well Care applauds the work of the Healthcare Planning staff in developing and presenting the information in support of each Chapter of the annual SMFP.

Historically, Well Care has responded in multiple instances to SMFP Need Determinations as an applicant for CON approvals for new agencies in various Counties of our State. As examples:

- In 2017, Well Care was approved to develop a new agency in Mecklenburg County in a competitive review involving three applicants; Well Care’s approval was challenged by a denied applicant, requiring Well Care to expend significant resources in successfully defending the Agency approval in a multi-week contested case hearing.

- In 2019, Well Care was approved to develop its second home health agency in Wake County
- in 2021, Well Care applied in a field of five applicants vying for another Mecklenburg County agency but was not approved.

Statement of Requested Change / Citation to Need Determination(s)

Well Care petitions the State Health Coordinating Council to remove the announced Home Health Need Determinations from Chapter 12 of the 2023 State Medical Facilities Plan (“SMFP”) and, instead establish a working group to study the methodology for determining home health needs in our State.

Well Care respects the overarching healthcare planning process which both generates proposed Need Determinations based on a standard methodology, while also empowers SHCC with the authority and responsibility to make adjustments to such need determinations when special or extraordinary circumstances are present. Due to the plainly anomalous and inconsistent nature of the 12 Proposed 2023 Need Determinations and considering the clear foreseeable adverse impacts that such Need Determinations would have on the state’s home health provider community and continuity of patient care across North Carolina, Well Care requests an adjustment to remove the Proposed 2023 need determinations and the establishment of a workgroup to examine and revise the home health need methodology to ensure a workable methodology governs future need determinations. In light of the issues and concerns identified by Well Care and the broader home health industry (as expressed in AHHC’s prior public hearing comments) and the urgent need for modernization of the methodology, Well Care believes that a workgroup can update the home health need methodology to help ensure the methodology can be relied upon to consistently produce reliable projections of the need for new home health agencies in our State.

Moreover, the 2023 SMFP’s extraordinary and unprecedented proposal of Need Determinations for 12 home health agencies would foreseeably have profound impacts on Well Care, its staff, and the patients it serves, as well as similarly situated home health providers across the state. As a leading provider in multiple communities across the State, Well Care stands to face an onslaught of proposals from providers seeking entry into areas Well Care currently serves. Accordingly, such prospective new entrants would further increase competition for the precious limited clinical workforce resources available in the market, in the context of a worsening clinical workforce shortage across North Carolina. Conversely, the Need Determinations would offer a myriad of opportunities for Well Care to apply for CON approvals and potentially expand its operations in North Carolina.

Reasons for the Proposed Change

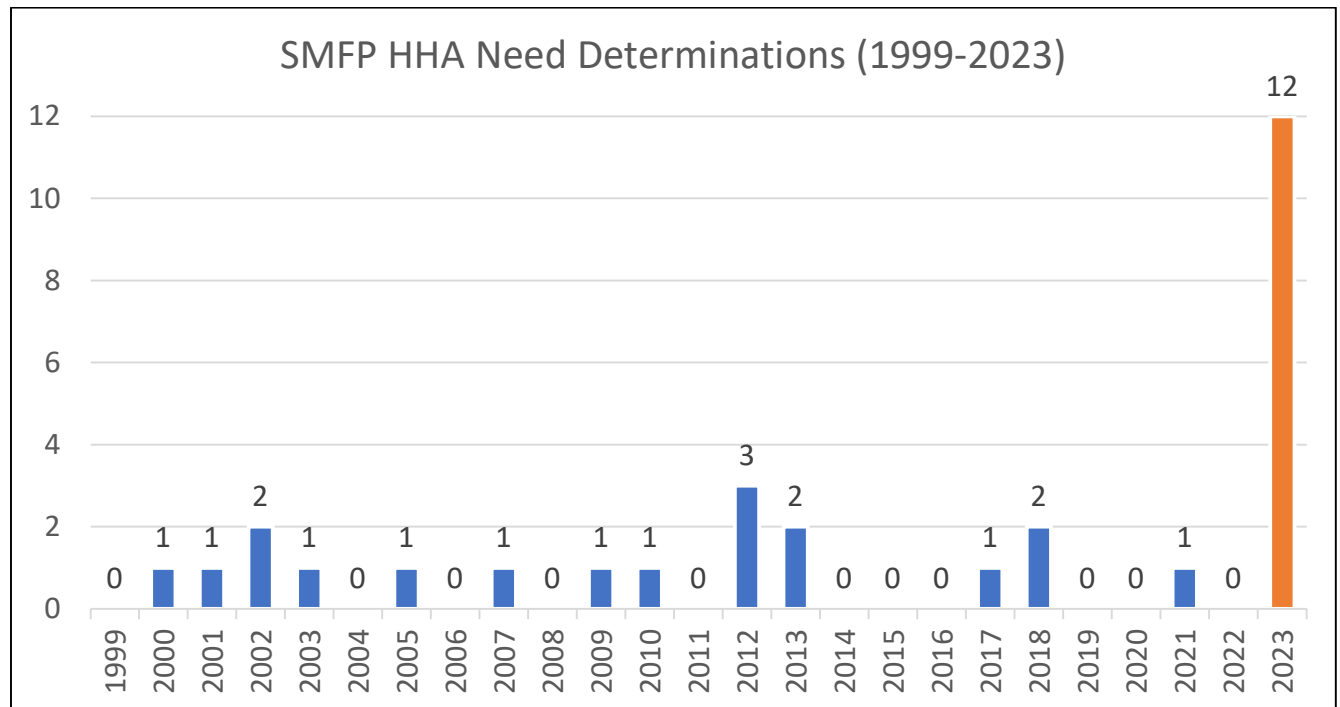
Earlier this year, the 2023 Proposed SMFP was released, revealing for a surprising and unprecedented showing of Need Determinations for 12 additional Medicare-Certified Home Health Agencies or Offices in locations throughout North Carolina.

Well Care respectfully requests (a) an adjustment to remove the 12 Need Determinations in Chapter 12 of the 2023 Proposed SMFP for Home Health Agencies; and (b) the creation of a working group to update and modernize the home health methodology. The requested adjustment is justified and necessary because the result of 12 Need Determinations is extraordinary, unprecedented, inconsistent with SMFP Need Determinations for similar healthcare services

(including those for Hospice Home Care offices), a by-product of a years-old and unique methodology, and risks substantial disruption for health care providers and continuity of patient care in North Carolina.

1. *The Proposed 2023 Need Determinations are Unprecedented and Extraordinary*

To compare the 12 HHA Need Determinations in the 2023 Proposed SMFP to prior years, Petitioner accessed the HHA Need Determinations from every SMFP from 1999 through 2023, as is summarized in the following table:

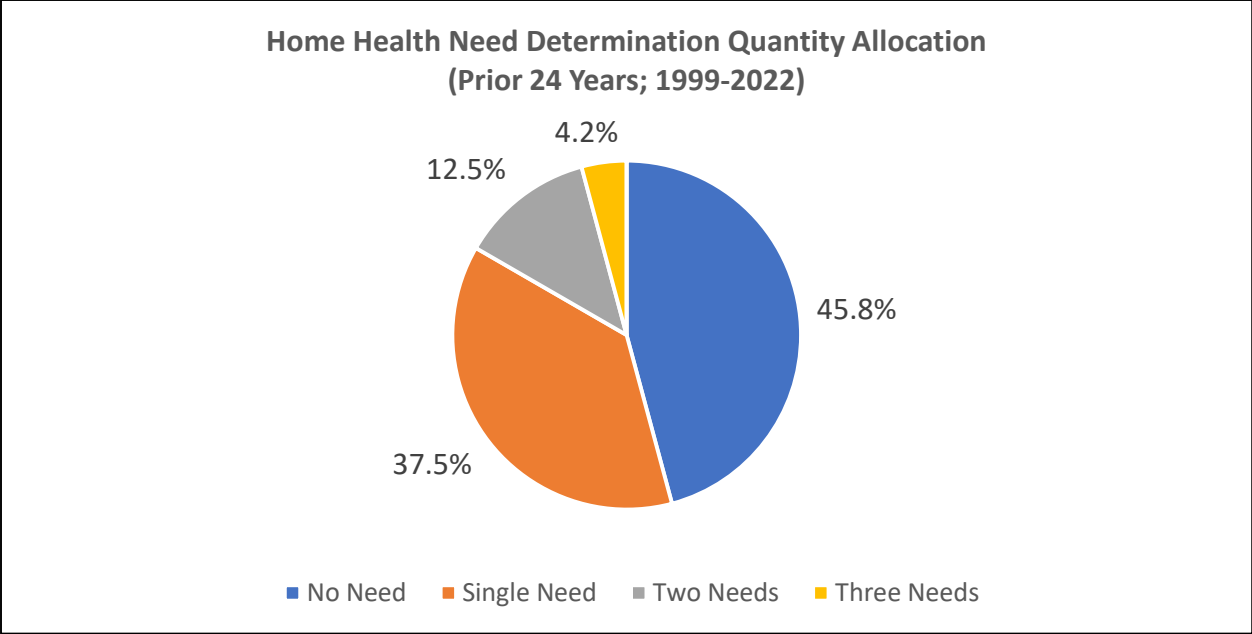


Source: Public SMFP Data

*Proposed 2023 Home Health Need Determination in Orange

This striking historical backdrop illuminates the extent to which this proposed result is anomalous, unprecedented, inconsistent, and extraordinary – especially given the following key insights:

- The 12 proposed HHA need determinations in 2023 is equivalent to the total HHA need determinations found over the **prior 16 years combined**
- The 12 proposed HHA need determinations in 2023 is equivalent to **four times** the prior annual record (3) for need determinations during this time period
- The 12 proposed HHA need determinations in 2023 is equivalent to **sixteen times** the average annual need determinations (0.75) found during this time period
- From 1999 to 2022, each SMFP has shown either 0, 1, or 2 HHA Need Determinations, except one year (2012) in which 3 HHA Need Determinations were identified
- The most recent plan year (2022) produced **zero** Need Determinations, while the prior 5 years produced a total of **3** Need Determinations.



Source: Public SMFP Data

The yearly Need Determination allocation further supports the incongruent and concerning nature of the 12 Proposed 2023 Home Health Need Determinations – especially given the following key insights from the prior 24 year time period:

- In **more than 83%** (83.3%) of plan years, **one or fewer** need determinations were found
- In **nearly 96%** (95.6%) of plan years, **two or fewer** need determinations were found
- In **only one year** (2012) did the SMFP show a need for **more than two** new home health agencies
- In **no plan years** were more than 3 need determinations found

As shown, the 12 Proposed 2023 Home Health Need Determinations do not present an incremental increase or relatively high number of Need Determinations, it represents a highly anomalous departure from historical home health planning outcomes. The striking magnitude of this extraordinary departure and inconsistency clearly signals that some type of material abnormality has occurred, and hence this result deserves heightened scrutiny by SHCC.

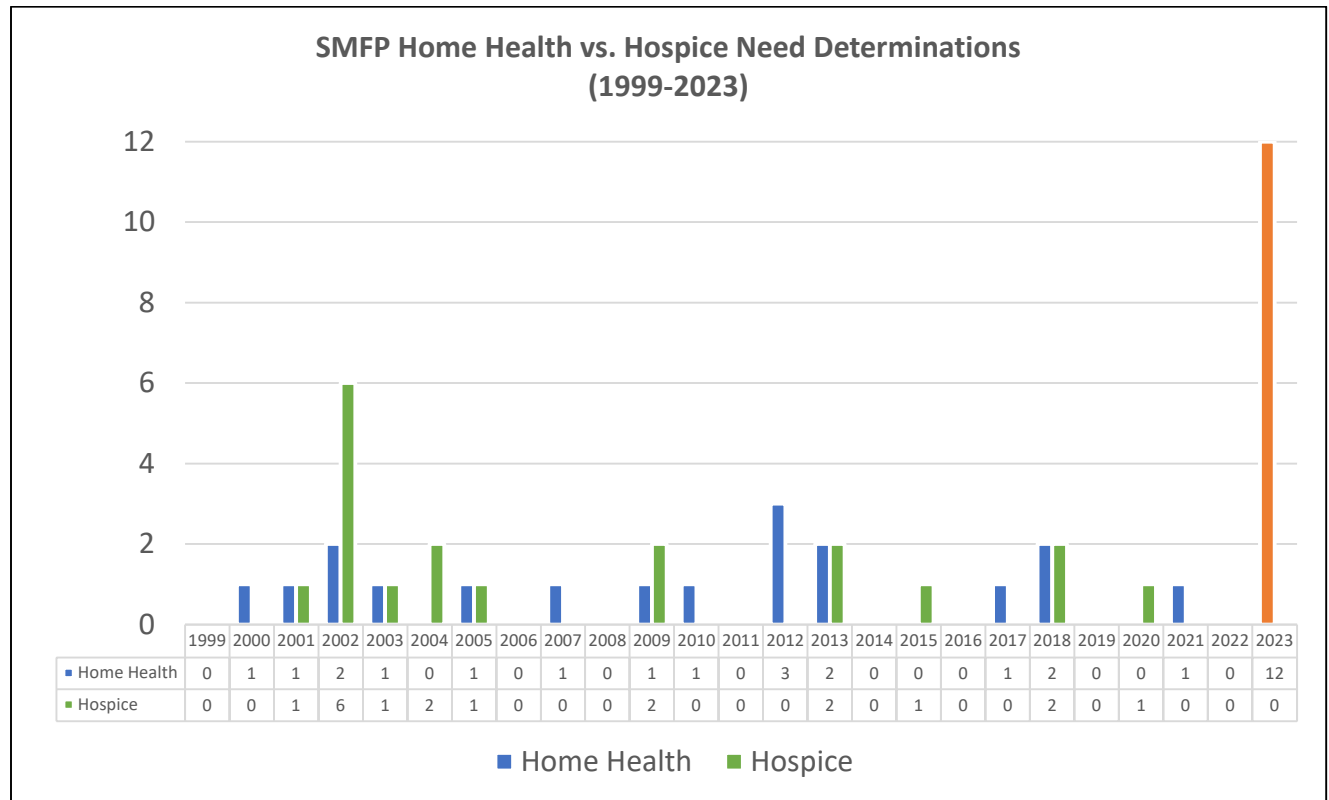
2. The Proposed 2023 Home Health Need Determinations are Incongruent and Inconsistent with Historical SMFP Need Determinations for Related Healthcare Services

The 12 Proposed Home Health Need Determinations in the 2023 SMFP are not only extreme and inconsistent with historical home health need determinations, but also glaringly incongruent with the SMFP’s need determinations for similar healthcare services, particularly for new hospice home care offices.

Home Health and Hospice Home Care are in many ways adjacent “sister” service offerings, as both are Medicare-certified home care services and involve health care professionals delivering care in patient residences to meet their health care needs. Home health and hospice home care

serve similar patient profiles (largely Medicare-aged patients), and regularly work closely together in coordinating patient care. While needs for home health and hospice are based on distinct methodologies, the respective methodologies are applied to same the geographic area and are based on similar principles of service use rate, population data, and growth trends.

To compare the historical Home Health Need Determinations with the Need Determinations for Hospice Home Care offices, Petitioner accessed the Need Determinations for both services from every SMFP from 1999 through 2023.



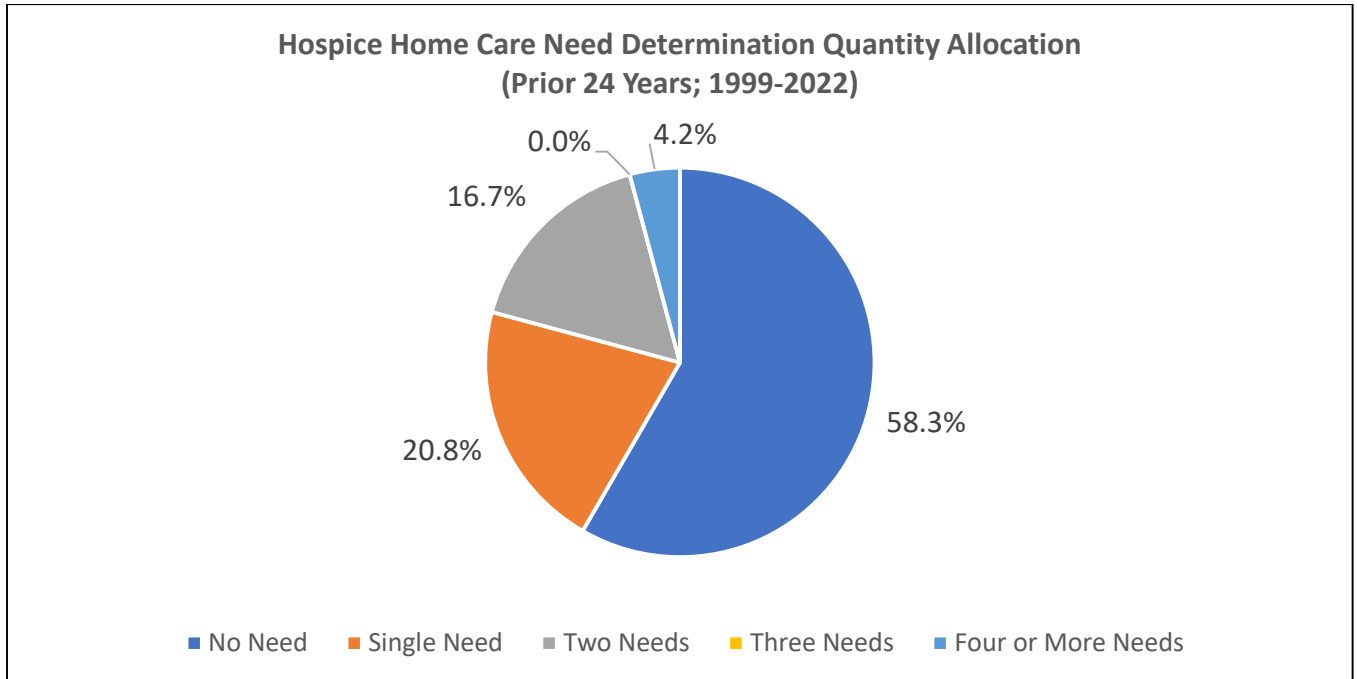
Source: Public SMFP Data

*Proposed 2023 Home Health Need Determination in Orange

As shown above, over the years, the home health and hospice methodologies have historically produced quantitatively similar Need Determinations. Several key takeaways emerge from this analysis with respect to the prior 24 year time period of 1999-2022:

- The SMFP has established **a nearly identical total number of Need Determinations** for Home Health (18) and Hospice Home Care (19)
- The SMFP has produced a **tightly aligned annual average number of Need Determinations** for Home Health (0.75) and Hospice Home Care (0.79)
- The 12 proposed HHA need determinations in 2023 is equivalent to the total need determinations found for **both Home Health and Hospice combined over the prior 10 years**
- The average annual need determinations found for Hospice Home Care was 0.79, meaning that the 12 proposed HHA need determinations in 2023 is equivalent to **more than 15 (15.15) times this average annual need determination**

- The **three most recent plan years** (2020, 2021, 2022) produced **zero** need determinations for Hospice Home Care
- The Need Determination in every year but one has shown a need for 0, 1, 2 or 3 for both home health and hospice agencies.
- In all but three years (2002, 2004, and 2012), there has been a discrepancy between Hospice Home Care and Home Health need determinations of one or less.



Source: Public SMFP Data

As shown in the graph above, historical Hospice Home Care and Home Health need determination results are highly aligned and similar.

- In **almost 80%** (79.2%) of plan years, one or fewer need determinations were found for Hospice Home Care
- In **nearly 96%** (95.8%) of plan years, two or fewer need determinations were found for Hospice Home Care
- In **only one year** (2002) did the SMFP show a need for more than two Hospice Home Care agencies
- In **no plan years** were more than 6 need determinations for Hospice Home Care found, and that result was from twenty years ago (2002).

Assessing this comparative Home Health and Hospice Home Care data clearly shows the striking inconsistency and incongruency of the Proposed 2023 Home Health Need Determinations. This extraordinary result is especially concerning given that Home Health and Hospice Home Care are similar service offerings in the core patient demographics served, in addition to sharing the same geographic area and corresponding population characteristics and trends.

Particularly perplexing also is that the 2023 Proposed SMFP shows **no** Need Determinations for hospice home care offices anywhere in the State. This result is in sharp contrast to the 2023 Proposed SMFP's 12 HHA Need Determinations and a dramatic departure from the decades of

relatively aligned results in which the two methodologies generated comparable Need Determinations.

Furthermore, looking beyond Hospice Home Care to other healthcare services governed under the SMFP, the 2023 Proposed SMFP Need Determinations for 12 new home health agencies is similarly markedly inconsistent with the Need Determinations for numerous other healthcare services. Home health agencies in North Carolina serve a high percentage of senior age patients and patients with chronic conditions such as diabetes and heart disease, a patient demographic often associated with nursing home and hospital level care settings. Yet the 2023 Proposed SMFP does **not** identify unusually high Need Determinations for hospital (acute care) beds **nor** for long-term care (nursing home or adult care home) beds.

For these methodologies to be effectively working in tandem, if the home health methodology produced 12 Need Determinations, one would expect to see at least some correlated spike in the need for hospital or nursing home beds, hospice home care agencies, and other health care services. To the contrary, the 2023 Proposed SMFP does **not** incorporate any out-of-ordinary Need Determinations for these related service offerings. In fact, the 2023 Proposed SMFP shows **no** need for new nursing home beds or hospice home care agencies anywhere in the State.

3. The HHA Need Methodology is Antiquated, Inconsistent with the Need Methodologies in place for Similar Healthcare Services, and in Urgent Need of Modernization

Having now been in place many years, the HHA Need Methodology has become outdated and antiquated, as well as inconsistent with methodologies used to evaluate need for similar health services. The use of “Council of Governments” or COG data is an especially arcane feature of the HHA methodology. North Carolina COGs were established by the General Assembly in 1972 as an avenue for local governments across the state to collaborate regionally around issues affecting their region. North Carolina's 16 regional COGs focus on areas such as state programs, economic development, geographic information systems (GIS) planning, grants, and other services. While COGs may have been born for the purposes of county and municipal government collaboration, it is difficult to understand its value or relevance to **county-specific** healthcare planning for home health services. In fact, **no other service category methodology in the SMFP Long-Term Care Section relies on use rates for COG regions.**

Also concerning is the potential disconnect between use of regional COG territories in identifying county-based healthcare planning need determinations. The home health methodology identifies need by County but nonetheless relies on the historical utilization trends by COG region. The methodology, as written, incorporates an inherent inconsistency between planning on a County-by-County basis and use of data from broader COG regions.

For these reasons, Well Care supports the recent public hearing comments made by the Association for Home & Hospice Care of North Carolina (AHHC of NC) expressing concern about the current home health methodology and the urgent need for a workgroup to be formed to modernize the methodology.

Well Care acknowledges that three (3) of the 12 need determinations are based on Criterion 1 or Criterion 2 of the HHA methodology, *i.e.*, Edgecombe, Granville, and Montgomery counties. The Proposed 2023 SMFP is the first year that the provisions of Policy HH-3 have been incorporated into the HHA methodology. Well Care believes that it is responsible and appropriate to defer these Need Determinations based on Criterion 1 or Criterion 2 of the HHA methodology until the efforts of a SHCC methodology workgroup are complete. Until this process is completed, Edgecombe,

Granville, and Montgomery counties would continue to be served by a substantial pool of existing home health agencies. According to Chapter 12: Home Health Data by County of Patient Origin - 2021 Data:

- Edgecombe County is served by 13 individual home health agencies
- Granville County is served by 17 individual home health agencies
- Montgomery County is served by 9 individual home health agencies

Especially in light of the extraordinary Proposed 2023 Home Health Need Determinations and the substantial public policy implications for the state's home health provider community, pausing to thoughtfully and carefully evaluate the HHA methodology is timely, appropriate, and responsible.

4. Approving the Anomalous 2023 HHA Need Determinations Would Deal a Significant Blow to North Carolina's Home Health Provider Community During a Period of Unprecedented Change and Challenge

Unquestioningly accepting the 12 Proposed HHA Need Determinations, thereby likely opening North Carolina to a tsunami of additional HHAs collectively poses real and substantial public policy concerns that would directly impact patient care continuity. For Home Health providers in North Carolina and across the country, far and away, the primary constraint on service capabilities and growth is a worsening supply shortage in clinical workforce. In fact, North Carolina is one of the most severely impacted states nation-wide in workforce shortages, which was recently highlighted by WRAL article that reported **more than 2,500 nurse openings in Research Triangle-area hospitals alone.**¹ This pressing clinical workforce shortage impacts providers across the care continuum, including Home Health providers, leading to intense competition for clinical staff, ongoing staffing shortages, and increased reliance on travel nurses (when available).

Proceeding with these anomalous, outlier Need Determinations, and the likely resulting material influx in new market applicants/entrants would risk further strain on the limited existing clinical workforce resources relied upon by the state's HHA providers. The disruptive impact of this tsunami would hit the state's HHA providers at an especially difficult and precarious time, when such providers are still reeling not only from delivering needed home care services during a global pandemic, but also from the transformative changes in the industry's regulatory and payment framework. Effective in January 2020, CMS's shift to the Patient Driven Groupings Model ("PDGM") represented a complete overhaul of the payment structure for Home Health organizations and the most significant industry change in the past 20 years. The impact of this recent payment change is further exacerbated by the recently proposed Federal Rule for Calendar Year 2023 in which CMS has proposed substantial permanent rate reductions. In addition, Review Choice Demonstration ("RCD") is a pilot program from CMS designed to reduce fraud, waste and abuse, while imposing significant added administrative burden and resource investments to ensure compliance. North Carolina has been included in the demonstration as one of 5 pilot states, effective in 2021.

In summary, the disruptive impact of proceeding with an unprecedented 12 Need Determinations in the context of this broader industry transformation would serve to "pile

¹ WRAL, "Nursing shortage: With over 2,500 openings, local hospitals feel the strain," Posted and Updated July 26, 2022. <https://www.wral.com/nursing-shortage-with-over-2-500-openings-local-hospitals-feel-the-strain/20390878/>.

on” the state’s home health providers at a critical time when agencies need stability and support more than ever in fulfilling their patient care focused missions.

Statement of the Adverse Effects on Providers/Consumers Absent Change

Well Care believes that retaining 12 HHA Need Determinations in the Plan could adversely affect North Carolina providers and consumers/patients of home health agency services.

It is difficult to envision how providers will respond to 12 HHA Need Determinations. Well Care is one of the largest and most well-respected home health providers in the State. Notwithstanding Well Care’s strong interest in serving the home health needs of the residents of North Carolina, the prospect of applying for 12 new CON approvals in a single year is without comparison in NC’s home health planning history. With each Need Determination giving rise to a CON approval, once the 12 new home health agencies are authorized for operation in Counties throughout the State of North Carolina, such new offices will operate in perpetuity.

Some existing providers that otherwise would have applied to serve the home health needs in a community may be unable to do so because resources can only be stretched so thin. Although home health does not involve the same capital demands as other bricks-and-mortar health care services, investment in a new home health agency operation is a significant undertaking. Having 12 HHA opportunities in a single year skews the normal dynamics under which *bona fide* providers budget and plan based on logical growth expectations based on the history of Need Determinations in our State. If experienced providers opt out of certain filing opportunities because of the enormous scope of HHA Need Determinations across the State, it is possible that some needs will be met by smaller, less-experienced agencies that may win approvals without the typical CON competition.

For health care consumers, the potential for 12 new home health agency reviews in a single CON year raises a sizable concern over how the CON Section will be able to receive and meaningfully review such an influx of CON proposals with its existing staff and resources, and how it will be able to issue decisions and author detailed Agency Findings within the statutory deadlines. As a reference, the proposed 2023 influx of home health need determinations is **four times** the magnitude of the previous annual high mark in need determinations.

The typical CON Review Schedule creates only four filing opportunities for new home health agencies in a year. If each review attracts multiple applicants – which is entirely common – the CON Section could receive 30 or 40 HHA CON Applications or more within 2023. By way of example, in response to the 2020 Rowan County hospice Need Determination, eight (8) different providers submitted CON Applications and, predictably, and litigation followed the Agency’s approval of a single Applicant.

To balance all the HHA reviews across the year, the CON Section would have to simultaneously conduct three competitive HHA reviews on proposals for different Counties, starting in each of the four review cycles. Findings would have to be issued in multiple reviews at the same time other reviews were starting or on-going based on earlier filings. Decisions in reviews with multiple Applicants could lead to litigation and associated demands on the time of Agency personnel. For the consumer, such a scenario raises doubt over the scrutiny that can be applied to each HHA applicant.

There is good reason that the SMFP process does not automatically or mechanically finalize Need Determinations based on a formulaic algorithm. The process has justifiably

incorporated a safeguard against clearly inconsistent and extraordinary results, whereby the SHCC can evaluate and consider the totality of the circumstances where heightened scrutiny is necessary. Well Care asks the SHCC to exercise this important safeguard to avoid an unprecedented and potentially damaging result.

As shown above, in the vast majority (83.3%) of prior SMFPs plan years, need determinations for Home Health have been limited to zero or one. Limiting the 2023 Plan to show no home health need and allowing for a workgroup evaluation of the HHA methodology would be consistent with this historical approach and result set, and would represent a far more responsible course given the likely disruptive impact of unquestioningly approving this unprecedented Need Determination.

Statement of Alternatives to the Proposed Change Considered & Rejected

Well Care considered standing silent in the face of the 12 Need Determinations but, considering the significance of these Need Determinations for patients and providers, Well Care rejected this option in favor of filing this Petition asking that the Need Determinations be removed and that a workgroup be installed to address the methodology for identifying home health agency needs in North Carolina.

Evidence the Proposed Change will Not Result in Unnecessary Duplication

Well Care is asking that the 12 HHA Need Determinations be removed which, obviously, will forestall the development of new agencies and the potential for unneeded duplication until a workgroup can address the home health methodology.

Evidence the Proposed Change is Consistent with the SMFP Basic Principles

Well Care's request that the Need Determinations be removed and the HHA methodology be studied is a request that is consistent with the objective of ensuring that only quality providers are approved for operation in our State. While the request will not add new agency access, it will allow for a proper evaluation of the extent of access called for in each community. And the request will ensure North Carolina avoids approving an onslaught of new agencies that could strain State resources for the administration of comprehensive CON reviews and result in the approval of a host of additional agencies which could raise charges to fund their operations in the face of competition.

Safety and Quality Basic Principle

The delivery of safe, high-quality home health services is critically important to the residents of North Carolina.

If left unaddressed, the HHA Need Determinations in the 2023 Proposed SMFP will lead to a proliferation of new home health agencies unlike anything the State of North Carolina has experienced over the last two decades (or longer).

For the last twenty years, the CON Section has been called upon to conduct no more than a few HHA reviews each year. If left in the Plan, the 12 HHA Need Determinations would require the CON Section to foreseeably undertake the evaluation of 30 or 40+ competing home health agency CON proposals in a single year, under strict statutory time deadlines. In some instances, the decisions of the CON Section could give rise to challenges at the Office of Administrative Hearings ("OAH"). If 12 HHA Need Determinations remain in place, decisions

on the first round of CON Section filings could be under challenge at OAH at the same time CON Section personnel are expected to be conducting reviews on the subsequent rounds of HHA CON Application filings. All this unprecedented and extraordinary activity creates a risk that each CON proposal will not receive the usual scrutiny as it relates to the proponent's intended service offerings and its quality record under Criterion 20 (N.C. Gen. Stat. § 131E-183(a)(20)).

Access Basic Principle

Well Care respectfully requests that the HHA Need Determinations be removed from the SMFP, and a work group be commissioned to examine the home health need methodology. While a dozen new agencies would create a significant amount of new home health agency access, increased access is not a metric to be evaluated in a vacuum. The CON process is intended to provide a meaningful assessment of potential providers in terms of their quality track records and their specific agency proposals. The central objective of the healthcare planning process is to ensure North Carolina has the "right" amount of access based on the populations and health care needs of its communities. **Considering the unprecedented and extraordinary nature of the HHA Need Determinations and the uncertain impacts such an onslaught of agencies could have on the clinical workforce and the delivery of care in North Carolina, Well Care urges a more cautious approach.**

Value Basic Principle

Home Health is an essential health care service because of the value it offers patients in need of health care, particularly as compared to accessing care in an institutional setting.

However, if North Carolina approves fully a dozen new home health agencies in one year, the competition for patients will correspondingly escalate. With 12 new agencies in the landscape, agencies will be vying to serve the available patient population and provide sufficient levels of service to support their operational demands.

This radical change could lead some HHA providers to charge more to cover the costs of agency operations. Charging more reduces the cost-efficiencies normally associated with home health. Considering the unprecedented and extraordinary nature of the HHA Need Determinations, the number of agencies could be misaligned with the demand for services, leaving too many agencies serving not enough patients. In that situation, agencies may charge more to improve their financial pictures and detract from the value typically associated with home health services.

Conclusion

In conclusion, Well Care seeks an adjustment to remove the HHA Need Determinations because these Need Determinations are markedly inconsistent with both past HHA Need Determinations and Need Determinations for similar healthcare services, are a by-product of a years-old and unique methodology in urgent need of reevaluation and modernization, and risks substantial disruption for health care providers and continuity of patient care in North Carolina.

For the reasons outlined above, Well Care respectfully asks that the SHCC exercise its vested authority and responsibility to protect the state healthcare planning process from anomalous results, as well as adverse policy consequences, by adjusting the 2023

Proposed SMFP to show no Need Determinations for new home health agencies and calling for a working group to be formed to update and modernize the home health methodology.

Thank you for your consideration of this petition,



Zac Long
CEO and General Counsel
Well Care Health