



March 31, 2025

Gregory F. Yakaboski, Project Analyst
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health and Human Services
809 Ruggles Drive
Raleigh, North Carolina 27603

RE: Comments on Cumberland County Hospice Home Care Office CON Applications

Dear Mr. Yakaboski:

Enclosed please find comments prepared by Hospice & Palliative Care Charlotte Region (d/b/a VIA Health Partners) regarding the competing CON applications for one new Hospice Home Care Office to meet the Cumberland County need identified in the *2025 State Medical Facilities Plan*. Thank you for the opportunity to submit these comments for consideration regarding this important community need.

If you have any questions about the information presented here, please contact me at 704.335.3501.

Sincerely,

Pete Brunnick

Peter A. Brunnick, CPA
President & Chief Executive Officer
VIA Health Partners

WRITTEN COMMENTS ABOUT COMPETING CERTIFICATE OF NEED APPLICATIONS

CUMBERLAND COUNTY HOSPICE HOME CARE OFFICE

Submitted by VIA Health Partners

March 31, 2025

Three applicants submitted Certificate of Need (CON) applications in response to the need identified in the *2025 State Medical Facilities Plan (SMFP)* for one additional Hospice Home Care Office in Cumberland County:

- M-12590-25 – Hospice & Palliative Care Charlotte Region
- M-12592-25 – VITAS Healthcare Corporation of North Carolina
- M-12594-25 – Well Care Hospice of Cumberland, inc.

In accordance with North Carolina General Statute §131E-185(a1)(1), this document includes comments relating to the representations made by the competing applicants, and a discussion about whether the information in their applications complies with the relevant review criteria, plans, and standards. Hospice & Palliative Care Charlotte Region (d/b/a VIA Health Partners, referred to hereafter as HPCCR) organizes its discussion first with a summary of comparative factors the Agency typically considers, and then by reviewing each competing application according to the general CON statutory review criteria. These comments illustrate why the HPCCR application represents the most effective alternative for development of a new hospice home care program in Cumberland County.

These comments discuss the deficiencies in the competing applications that necessitate their denial. Combined with a comparative analysis of the applications, HPCCR believes these comments summarize the superiority of HPCCR's proposed project versus the other applicants. HPCCR was chartered by the State of North Carolina in 1978 as the first hospice established in North Carolina. In part because of its long history of providing hospice services in North Carolina and South Carolina, HPCCR has established a significant level of support and coordination with other healthcare providers. In its application, HPCCR summarizes its outreach efforts and engagement with the local healthcare provider community and with Cumberland County residents. HPCCR is energized by this opportunity to receive Agency approval to offer hospice services to residents of Cumberland County and surrounding communities, and believes that its application represents the most effective alternative for Cumberland County residents.

*Hospice & Palliative Care Charlotte Region Written Comments
2025 Cumberland County Hospice Home Care Office Competitive Review*

The Agency typically performs a comparative analysis when evaluating applications in a competitive batch review. The purpose is to assist in the process of identifying which proposal would bring the greatest overall benefit to local communities. The table below summarizes objective metrics for this review, based on comparative factors the Agency has applied in the most recent hospice home care office reviews, including the 2018 Cumberland County and 2020 Rowan County hospice home care office Agency Findings.

2025 Cumberland County Hospice Home Care Batch Review - Comparative Analysis

Comparative Factor	VIA Health Partners	Well Care	VITAS Healthcare
Conformity to Statutory Review Criteria	Yes	No	No
Not for Profit/For Profit	NFP	FP	FP
Office Location	Fayetteville	Fayetteville	Fayetteville
Date of Offering Services	4/1/2026	10/1/2026	7/1/2026
Unduplicated Admissions - PY3	242	312	371
Patient Days of Care - PY3	19,059	29,203	31,200
Average Length of Stay (ALOS) - PY3	78.8	93.6	84.1
Cumberland Patient Origin % - PY3	61.7%	38.8%	82.7%
Charity Care % of Gross Revenue - PY3	1.35%	2.38%	0.82%
Medicare % of Days of Care - PY3	88.9%	90.0%	94.3%
Medicaid % of Days of Care - PY3	6.6%	7.0%	2.4%
Net Revenue - PY3	\$2,674,887	\$5,240,509	\$7,146,166
Net Revenue/Unduplicated Admission - PY3	\$11,053	\$16,797	\$19,262
Net Revenue/Day of Care - PY3	\$140	\$179	\$229
Total Operating Expense - PY3	\$2,583,072	\$3,809,155	\$7,114,770
Operating Expense/Unduplicated Admission - PY3	\$10,674	\$12,209	\$19,177
Operating Expense/Day of Care - PY3	\$136	\$130	\$228
Staff Taxes & Benefits % - PY3	19.90%	18.36%	18.82%

*Hospice & Palliative Care Charlotte Region Written Comments
2025 Cumberland County Hospice Home Care Office Competitive Review*

The following table ranks the results of the comparative analysis, showing that HPCCR's application, with the lowest cumulative score (1 = most effective, 3 = least effective), ranks as the overall most effective alternative. In addition, as will be explained in subsequent comments, each of the competing applications is non-conforming to the CON statutory review criteria, and is thus not approvable. Therefore, HPCCR is both the most effective alternative in the comparison and the only approvable application.

2025 Cumberland County Hospice Home Care Batch Review - Comparative Analysis Rankings

Comparative Factor	VIA Health Partners	Well Care	VITAS Healthcare
Conformity to Statutory & Regulatory Review Criteria	1	2	2
Not for Profit/For Profit	1	2	2
Competition/Access to New or Alternative Provider	1	1	1
Scope of Services (Routine, GIP, Respite, Continuous Care)	1	1	1
Office Location/Geographic Access	1	1	1
Date of Offering Services	1	3	2
Unduplicated Admissions - PY3	3	2	1
Patient Days of Care - PY3	3	2	1
Average Length of Stay (ALOS) - PY3	1	3	2
Cumberland Patient Origin % - PY3	2	3	1
Direct Care Staff Salaries (RN/CNA/SW) - PY3	3	1	2
Charity Care % of Gross Revenue - PY3	2	1	3
Medicare % of Days of Care - PY3	3	2	1
Medicaid % of Days of Care - PY3	2	1	3
Net Revenue/Unduplicated Admission - PY3	1	2	3
Net Revenue/Day of Care - PY3	1	2	3
Operating Expense/Unduplicated Admission - PY3	1	2	3
Operating Expense/Day of Care - PY3	2	1	3
Staff Taxes & Benefits % - PY3	1	3	2
Total Value	31	35	37
Conclusion	Most Effective	Not Approvable	Not Approvable

HPCCR is the only not-for-profit applicant, and will have the most positive impact on access to hospice services for all in need. As healthcare spending on hospice services has increased since 2000, the number of for-profit hospice agencies has skyrocketed from 30% to, in 2023, representing approximately 80% of all hospice agencies in the United States¹. Between 2022 and 2023, the number of for-profit hospices grew by more than 10%. Between 2022 and 2023, the number of hospices with nonprofit ownership or government ownership declined, continuing the downward trend observed from 2019 to 2022. Even though not-for-profit and for-profit hospices are paid the same, for-profit corporations often use tactics to reduce costs and generate more profit for shareholders or owners. Medicare reimburses hospices on a fixed per diem basis, regardless of patient diagnosis. Because under this system patients with lower expected costs are more profitable, hospices can selectively enroll patients with longer lengths of stay.² Many such for-profit providers appear to be “profiteering” by leveraging the Medicare Hospice Benefit to make hospice a business model and generate unfair profits by putting financial goals ahead of quality care for the terminally ill. To examine this, a study was conducted about key differences between not-for-profit and for-profit hospices. In 2019, the National Partnership for Healthcare and Hospice Innovation (NPHI) partnered with Milliman, a global actuarial and consulting firm, to conduct a study³ with the objective of understanding the differences and similarities in financials and quality of care between not-for-profit and for-profit hospices serving those who receive the Medicare benefit. Here are the high-level takeaways of the study:

- Results show that overall, for-profit hospices place more focus on a higher net margin than the not-for-profit hospices (19.9% versus 3%).
- Not-for-profit hospices provide patients with 10% more nursing visits, 35% more social worker visits and twice as many therapy visits versus for-profit hospices, per patient day.
- Not-for-profit hospices admit more critically ill patients immediately after a hospital stay than for-profit hospices. This means not-for-profit hospices are caring for individuals who have significantly more needs requiring more visits, supplies, medication and more.
- For-profit hospices report spending more than 300% more on advertising costs than not-for-profit hospices.

¹ https://www.medpac.gov/wp-content/uploads/2025/03/Mar25_Ch9_MedPAC_Report_To_Congress_SEC.pdf

² Gandhi SO. Differences between non-profit and for-profit hospices: patient selection and quality. *Int J Health Care Finance Econ.* 2012 Jun;12(2):107-27. doi: 10.1007/s10754-012-9109-y. Epub 2012 Apr 20. PMID: 22527254.

³ https://www.nphihealth.org/wp-content/uploads/2020/05/Hospice_Medicare_Margins_NPHI_7-2019-1.pdf

- For-profit hospices report spending less than half what not-for-profit hospices report on grief support services.

The results show that for-profit hospices engage in patient selection through significantly different referral networks than non-profits. They receive more patients from long-term care facilities and fewer patients through more traditional paths, such as physician referrals. This mechanism of patient selection is supported by the result that for-profits have fewer cancer patients and more patients with longer lengths of stay. By contrast, as a mission-focused organization, a not-for-profit provider such as HPCCR typically spends more on comprehensive care per patient, provides more care in home settings, readmits for hospital care at lower frequency than for profits, and discharges patients before dying at a lower percentage.

HPCCR projects the second highest Cumberland County patient origin percentage, again reflecting HPCCR's not-for-profit commitment to serving Cumberland County residents, and, unlike one of the for-profit competing applicants, not leveraging the Cumberland County need determination as a vehicle for accessing residents of the larger and more profitable Triangle service area.

HPCCR has a strong and documented history of providing high quality of care. The Centers for Medicare and Medicaid Services (CMS) created the Hospice Compare website to publicly share quality data for hospice providers. HPCCR is included in the report, which CMS recently updated with data collected between April 1, 2023 and March 31, 2024. HPCCR's scores compare favorably with both the North Carolina and the national average scores of all hospice providers in each of the seven quality measures. HPCCR also compares favorably with competing applicants VITAS Healthcare and Well Care Hospice, as shown in the following tables.

*Hospice & Palliative Care Charlotte Region Written Comments
2025 Cumberland County Hospice Home Care Office Competitive Review*

**Most Recent CMS Hospice Compare Scores
Family Experience of Care**

Agency	Communication with Family	Timely Help	Treat Patient with Respect	Emotional/Spiritual Support	Help - Pain & Symptoms	Training family to care for patient	Rating of Hospice	Willing to Recommend
HPCCR (Charlotte, NC)	85%	81%	93%	90%	76%	77%	85%	90%
North Carolina Average	84%	81%	92%	91%	77%	79%	84%	88%
National Average	81%	77%	91%	90%	74%	75%	81%	84%
VITAS (Fairfax, VA)	67%	57%	81%	88%	62%	58%	65%	70%
Well Care Hospice (Mocksville, NC)	85%	84%	96%	90%	84%	76%	87%	90%

Source: CMS, retrieved from website March 18, 2025. Selected VITAS' Fairfax, VA office, which is the closest to Cumberland County.

Quality of Patient Care

Agency	Patients who got an assessment of all 7 HIS quality measures at beginning of hospice care	% of patients who received visits from an RN	Hospice Care Index Score (0-10)
HPCCR (Charlotte, NC)	97.5%	69.9%	10
North Carolina Average	95.1%	61.9%	9.5
National Average	91.9%	47.4%	8.8
VITAS (Fairfax, VA)	91.4%	58.2%	10
Well Care Hospice (Mocksville, NC)	95.3%	72.6%	10

Source: CMS, retrieved from website March 18, 2025

HPCCR projected utilization based upon a reasonable and conservative methodology, using supported assumptions associated with the Cumberland County marketplace. As demonstrated later in these comments, the competing applicants created unrealistic utilization projections with unreasonable patient average length of stay and patient days of care, seemingly designed to portray more favorable comparable statistics for the Agency comparative review.

HPCCR projects a combined Medicare, Medicaid and self-pay/charity care payor mix of 97%. This realistic and supported projection is indicative of HPCCR's commitment to serving the medically needy and indigent with quality healthcare services. This philosophy is also consistent with the Access Basic Principle described in the 2025 State Medical Facilities Plan.

HPCCR will provide a full continuum of hospice services to Cumberland County residents, including specialized services for particular populations in need of hospice services, such as veterans, African-Americans, and pediatric patients. In fact, of the two competing applicants, Well Care did not discuss or evidence providing care for pediatric patients.

The competing applicants projected unreasonably high staff salaries. By contrast, HPCCR projected realistic staff salaries based on its actual experience as a hospice employer in North Carolina and South Carolina, and a review of salaries in the Cumberland County labor market.

HPCCR has demonstrated its engagement with and commitment to the Cumberland County community. The application describes the efforts HPCCR has made to speak with Cumberland citizens and providers regarding hospice and palliative care, and in coordinating care with the local provider organizations. The healthcare provider and community letters of support and list of community contacts made that were included in HPCCR's application are evidence of this foundation which HPCCR is developing.

The HPCCR application conforms with all CON Review Criteria and best achieves the Basic Principles of the 2025 SMFP. The competing applications are not conforming to all the CON Review Criteria. In particular, neither of the competing applicants should be approved because the applicants were unrealistically aggressive in projecting admissions, average length of stay and days of care. As discussed further in these comments, they include in their applications unsupported utilization projections designed to maximize days of care and thus make their applications appear more

attractive in the Agency comparative analysis. Common among the competing applications was an unjustifiably high average length of stay projection. Longer lengths of stay can draw the attention of regulators such as the Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of Health and Human Services Office of the Inspector General. Longer lengths of stay are also associated with higher profitability among hospice organizations, according to the recently released March 2025 Report to Congress⁴ by the Medicare Payment Advisory Commission (MedPAC). Not surprisingly, for-profit hospices tended to see the most significant margin increases due to length of stay. As stated in MedPAC's 2025 Report to Congress: *"In our March 2021 report to the Congress, an analysis of new hospices . . . found that these providers tended to be small and had long average lengths of stay, high live-discharge rates, and high rates of exceeding the aggregate cap; nearly all were for profit (Medicare Payment Advisory Commission 2021)"*.

In summary, HPCCR represents the only approvable application, and is the most effective alternative for development of the need-determined hospice home care office in Cumberland County.

⁴ https://www.medpac.gov/wp-content/uploads/2025/03/Mar25_Ch9_MedPAC_Report_To_Congress_SEC.pdf, p.274

Specific Comments Regarding the Competing Applications

VITAS Healthcare Corporation of North Carolina (VITAS) Project ID # M-12592-25

VITAS Healthcare is a wholly-owned subsidiary of a publicly traded company (Chemed Corporation) on the New York Stock Exchange, and has no history of offering healthcare services in North Carolina. The Cumberland County hospice home care SMFP need determination simply represents a business investment opportunity for this out-of-state for-profit corporation. It is noteworthy that, in 2017, Chemed Corporation and various wholly-owned subsidiaries, including VITAS Hospice Services LLC and VITAS Healthcare Corporation, agreed to pay \$75 million to resolve a government lawsuit alleging that defendants violated the False Claims Act (FCA) by submitting false claims for hospice services to Medicare.⁵ The United States Department of Justice filed a lawsuit in 2013 against Chemed Corporation, VITAS Hospice Services LLC and VITAS Healthcare Corporation. The government allegations were that between 2002 and 2013 VITAS knowingly submitted or caused to be submitted false claims to Medicare for services to hospice patients who were not terminally ill. The government's complaint alleged that VITAS billed for patients who were not terminally ill and thus did not qualify for the hospice benefit. The government alleged that the defendants rewarded employees with bonuses for the number of patients receiving hospice services, without regard to whether they were actually terminally ill and whether they would have benefited from continuing curative care. The Acting Assistant Attorney General Chad A. Readler of the Justice Department's Civil Division stated that the *"resolution represents the largest amount ever recovered under the False Claims Act from a provider of hospice services."* In addition to paying the substantial fine, VITAS also entered into a five-year Corporate Integrity Agreement (CIA) with the HHS Office of Inspector General (HHS-OIG) to settle the agency's administrative claims.

Also, the attached July 2022 Report in Brief from the United States Department of Health and Human Services (DHHS) Office of Inspector General (OIG) lists an allegation that VITAS did not comply with Medicare requirements for 89 of 100 claims that DHHS audited. The OIG *"estimated that VITAS received at least \$140 million in improper Medicare reimbursement for hospice services that did not comply with Medicare requirements"*.

⁵ <https://www.justice.gov/archives/opa/pr/chemed-corp-and-vitas-hospice-services-agree-pay-75-million-resolve-false-claims-act#:~:text=The%20settlement%20resolves%20allegations%20that,who%20were%20not%20terminally%20ill.>

VITAS's lack of North Carolina hospice infrastructure means that it would have to build from scratch an interdisciplinary hospice care team, as well as start from the ground up to begin to establish relationships with the local residents and provider community. All of this will likely lead to lost time in establishing a fully functioning hospice program.

VITAS's application should not be approved. HPCCR identified the following specific issues, each of which contributes to the application's non-conformity to statutory review criteria.

Comments Specific to Criterion 1

- VITAS does not adequately demonstrate that projected utilization is based on reasonable and adequately supported assumptions. See discussion regarding Criterion 3. Therefore, VITAS does not adequately demonstrate that its proposal would improve access, including to the underserved populations and communities of Cumberland County. Consequently, the application is not consistent with Policy GEN-5 and is not conforming to Criterion 1.

Comments Specific to Criterion 3

- VITAS's application should not be approved as proposed, because the applicant projected unsupported utilization projections and unreasonable projection of days of care, with a projection of 31,200 patient days of care in PY3. In Section Q (page 8), VITAS projects that in Project Year 3 it will hold 18.5% market share in Cumberland County. Cumberland County currently has eight hospice home care agencies licensed in the county, which represents an average market share of 12.5% (100/8), which is much less than VITAS' projected third year market share. VITAS justifies this market share projection with a claim that it has "*extensive experience in entering new markets and in effectively increasing the penetration rate of hospice*". However, VITAS has no experience in serving North Carolina markets, and has not adequately justified its market share assumption. In the 2018 Cumberland County hospice home care CON batch review, the two applicants projected much lower, and more reasonable, patients served and patient days of care, as shown below.

**2018 Cumberland County Hospice Home Care Agency Review
Projected Patients and Days of Care**

	PY 3
3HC	
Patients Served	247
Total Days of Care	13,262
Well Care	
Patients Served	277
Total Days of Care	16,539

Source: 2018 Cumberland County Hospice Home Care Agency Findings, p. 43

Similarly, in the 2020 Rowan County CON batch review, the most recent North Carolina hospice home care need determination, the eight applicants projected much lower, and more reasonable, patient days of care, as shown below.

**2020 Rowan County Hospice Home Care Agency Review
Projected Patients and Days of Care**

	Days of Care
BAYADA	18,830
Amedisys	20,341
HOIC	18,564
Adoration	16,473
PruittHealth	23,100
CCNC	15,074
Carolina Caring	16,092
PHC	18,464

Source: 2020 Rowan County Hospice Home Care Agency Findings, p. 128

Both of these Agency Findings are evidence of the unreasonableness of the VITAS utilization projections.

- VITAS’s projection of average length of stay (ALOS) is 84.1 days during the third project year, which is unreasonably high (especially for a start-up organization) and the second highest of the applications. On page 11 of the Section Q Form C.6 utilization projection assumptions, the applicant indicates this is based on its *“Pensacola, Florida start-up experience.”* This is a fatal flaw; VITAS did not document how its ALOS experience in a

different state is in any way relevant and applicable to Cumberland County. This unrealistic ALOS projection is apparently designed to increase the projected days of care and portray more favorable VITAS comparable statistics for the Agency review. In the 2018 Cumberland County hospice home care CON batch review, the two applicants projected much lower, and more reasonable, patient average length of stay, (3HC: 53.69 days ALOS, and Well Care: 59.71 days ALOS) as calculated from the earlier 2018 Cumberland County table. Similarly, in the 2020 Rowan County CON batch review, the most recent North Carolina hospice home care need determination, the eight applicants projected much lower, and more reasonable, patient average length of stay, as shown below.

**2020 Rowan County Hospice Home Care Agency Review
Projected Patient Average Length of Stay**

Applicant	Carolina Caring	Bayada Hospice	Amedisys Hospice	Hospice & Palliative Care of Rowan County	Adoration Home Health & Hospice	PruittHealth Hospice	Continuum Care of North Carolina	Personal Home Care of NC
Unduplicated Admissions - PY3	224	241	273	238	263	308	194	227
Days of Care - PY3	16,092	18,830	20,341	18,564	16,473	23,100	15,074	18,464
Average Length of Stay (ALOS), PY3	71.8	78.1	74.5	78.0	62.6	75.0	77.7	81.3

Source: 2020 Rowan County Hospice Home Care applications

Therefore, VITAS’s ALOS projection is not supported.

- In summary, the product of the unsupported market share projection and the high projected ALOS results in an unreasonably high projection of hospice admissions and hospice days of care. VITAS does not reasonably demonstrate the need the projected population has for the proposed hospice agency. Consequently, the application is not conforming to Criterion 3, and its application is not approvable.

Comments Specific to Criterion 4

- The VITAS application is not conforming to other statutory and regulatory review criteria, and thus, is not approvable. See discussion regarding Criterion 3. A project that cannot be approved cannot be an effective alternative. Consequently, VITAS’s application is not conforming to this criterion.

- VITAS's lack of experience in providing healthcare services in North Carolina makes it difficult for the Agency to ascertain whether or not VITAS would be likely to be successful as a hospice agency in serving the Cumberland County population. With hospice home care office need determinations being so rare, the risk is too great, and given that the batch review includes HPCCR, an experienced North Carolina hospice provider, the VITAS application is not the most effective alternative.

Comments Specific to Criterion 5

- The VITAS application is not conforming to other statutory and regulatory review criteria, and thus, is not approvable. See discussion regarding Criterion 3. Specifically, VITAS manufactured an unreasonably high and unsupported projection of hospice patients and days of care, which results in an unwarranted projection of costs and charges. A project that does not reasonably demonstrate need cannot demonstrate financial feasibility. Consequently, the application is not conforming to this criterion.
- VITAS projects unreasonably high staff salaries for a Cumberland County-based hospice agency. The analysis of this must be that VITAS used artificially high salary projections for RNs, CNAs, and Social Workers apparently to appear to be more appealing in the Agency comparative analysis.

Comments Specific to Criterion 6

- VITAS did not adequately demonstrate that its projected utilization is reasonable, credible or adequately supported. Therefore, VITAS did not adequately demonstrate in its application that the Hospice Home Care Office it proposes to develop in Cumberland County is needed in addition to the existing agencies. See Criterion 3 for additional discussion. Consequently, the VITAS application did not demonstrate that its proposed project will not result in unnecessary duplication of existing health services, and thus is not conforming to Criterion 6.

Comments Specific to Criterion 18a

- VITAS did not adequately demonstrate the 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 and access to services proposed. VITAS did not adequately demonstrate that projected utilization is reasonable, credible or adequately supported. The applicant did not adequately demonstrate financial feasibility based upon a reasonable projection of costs and charges. VITAS did not adequately demonstrate in its application that the Hospice Home Care Office it proposes to develop in Cumberland County is needed in addition to the existing agencies, and did not demonstrate that its proposal is the most effective alternative. See Criteria 3, 4, 5, and 6 for additional discussion. Consequently, the VITAS application is not conforming to Criterion 18a.

Well Care Hospice of Cumberland (Well Care) Project ID # M-12594-25

Although Well Care is a provider of home health services in North Carolina, it has minimal hospice experience, and is licensed to operate just one hospice agency in North Carolina (in Davie County, with offering of hospice services in that county only since FY2021). Well Care's relative lack of hospice experience would mean that Well Care would have to build from scratch an entire interdisciplinary hospice care team, which would likely lead to lost time in establishing a fully functioning hospice program. In comparison, HPCCR has a proven history of dedicated service to the residents of North Carolina for 47 years, and has extensive experience and expertise providing comprehensive hospice services in North Carolina. With Well Care's relative lack of hospice experience, it is difficult for the Agency to know whether or not Well Care is likely to be successful as a hospice agency in serving the Cumberland County population.

The Well Care application should not be approved as proposed. HPCCR identified the following specific issues, each of which contributes to the application's non-conformity to statutory review criteria.

Comments Specific to Criterion 1

- Well Care does not adequately demonstrate that projected utilization is based on reasonable and adequately supported assumptions. See discussion regarding Criterion 3. Therefore, Well Care does not adequately demonstrate that its proposal would improve access, including to the underserved populations and communities of Cumberland County. Consequently, the application is not consistent with Policy GEN-5 and is not conforming to Criterion 1.

Comments Specific to Criterion 3

- Well Care's application should not be approved as proposed, because the application fails to support its projected utilization projections, which feature high and unreasonable projections of admissions and days of care. First, Well Care proposes to serve hospice patients in Johnston County, which is not even contiguous with Cumberland County. Patients in Johnston County are already well served by their local hospice providers and are unlikely to need to obtain hospice services from a Cumberland County agency. Clearly Well Care is looking to leverage the Cumberland

County need determination as a vehicle for accessing residents of the larger and more profitable Triangle area. Second, in Section Q (page 127) of its application, Well Care projects that in Project Year 3 it will serve 100% of the projected unserved hospice deaths in not only Cumberland County, but also in Harnett and Sampson counties. Well Care justifies this projection with a claim that it *“as a new hospice provider, (Well Care) is uniquely positioned to deliver . . . services that enhance access to hospice care for residents. . . .”* Well Care then claims that its assumptions are *“conservative”*. However, by any reasonable assessment, claiming to capture 100% market share of any target market is not conservative, but rather, maximally aggressive. One cannot assume a market share higher than 100%. Well Care provides no further justification for the market share projection; this one sentence does not represent a rationale. Cumberland County currently has eight hospice home care agencies licensed in the county, which represents an average market share of 12.5% (100/8), which is much less than Well Care’s projected 100% third year market share. Therefore, the market share projection is not supported.

- Further, this aggressive and unreasonable market share assumption results in an unjustifiably high number of projected patients served. By comparison, in the 2018 Cumberland County hospice home care CON batch review, the two applicants (including Well Care) projected much lower, and more reasonable, patients served and patient days of care, as shown below.

**2018 Cumberland County Hospice Home Care Agency Review
Projected Patients and Days of Care**

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3HC	
Patients Served	247
Total Days of Care	13,262
Well Care	
Patients Served	277
Total Days of Care	16,539

Source: 2018 Cumberland County Hospice Home Care Agency Findings, p. 43

Similarly, in the 2020 Rowan County CON batch review, the most recent hospice home care need determination, the eight applicants projected much lower, and more reasonable, patient days of care, as shown in the following table.

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Projected Patients and Days of Care**

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PruittHealth	23,100
CCNC	15,074
Carolina Caring	16,092
PHC	18,464

Source: 2020 Rowan County Hospice Home Care Agency Findings, p. 128

Both of these Agency Findings are evidence of the unreasonableness of the Well Care utilization projections.

- The Well Care projection of average length of stay (ALOS) is 93.6 days is unreasonably high, and by far the highest of the three applications in this review. Well Care’s ALOS assumption is much higher than the North Carolina average ALOS of 77.50 days in 2022 and 79.71 days in 2023 (as shown from data in the 2024 and 2025 SMFPs). This unrealistic ALOS projection is apparently designed to increase the projected days of care and portray more favorable Well Care comparable statistics for the Agency review. In the 2018 Cumberland County hospice home care CON batch review, the two applicants (including Well Care) projected much lower, and more reasonable, patient average length of stay, (3HC: 53.69 days ALOS, and Well Care: 59.71 days ALOS) as shown in the earlier 2018 Cumberland County table. Similarly, in the 2020 Rowan County CON batch review, the most recent hospice home care need determination, the eight applicants projected much lower, and more reasonable, patient average length of stay, as shown in the following table.

**2020 Rowan County Hospice Home Care Agency Review
Projected Patient Average Length of Stay**

Applicant	Carolina Caring	Bayada Hospice	Amedisys Hospice	Hospice & Palliative Care of Rowan County	Adoration Home Health & Hospice	PruittHealth Hospice	Continuum Care of North Carolina	Personal Home Care of NC
Unduplicated Admissions - PY3	224	241	273	238	263	308	194	227
Days of Care - PY3	16,092	18,830	20,341	18,564	16,473	23,100	15,074	18,464
Average Length of Stay (ALOS), PY3	71.8	78.1	74.5	78.0	62.6	75.0	77.7	81.3

Source: 2020 Rowan County Hospice Home Care applications

Therefore, Well Care’s ALOS projection is not reasonable.

- In addition, Well Care projects that only 38.8% of the patients to be served by the proposed Cumberland County hospice office will be residents of Cumberland County. In other words, Well Care projects that nearly 62% of its Cumberland agency patients will be residents of other counties. This again is evidence that perhaps Well Care is most focused on leveraging the Cumberland County hospice license to profiteer rather than to primarily focus on serving Cumberland County residents in need of hospice care.
- In summary, the product of the unsupported market share projection, the high projected ALOS, and substantial numbers of patients from other counties, results in an unreasonably high projection of hospice patient days of care. Well Care does not adequately demonstrate the need the projected population has for the proposed hospice agency. Consequently, the application is not conforming to Criterion 3.

Comments Specific to Criterion 4

- The Well Care application is not conforming to other statutory and regulatory review criteria, and thus, is not approvable. See discussion regarding Criterion 3. A project that cannot be approved cannot be an effective alternative. Consequently, Well Care’s application is not conforming to this criterion.
- As previously stated, Well Care’s lack of hospice experience makes it difficult for the Agency to ascertain whether or not Well Care would be likely to be successful as a hospice agency in serving the Cumberland County population. With hospice home care

office need determinations being so rare, the risk is too great, and given that the batch review includes HPCCR, an experienced North Carolina hospice provider, the Well Care application is not the most effective alternative.

Comments Specific to Criterion 5

- The Well Care application is not conforming to other statutory and regulatory review criteria, and thus, is not approvable. See discussion regarding Criterion 3. Specifically, Well Care manufactured an unreasonably high and unsupported projection of admissions and hospice days of care, which results in an unwarranted projection of costs and charges. Well Care apparently used the artificially high projection of days of care to appear to be more appealing. A project that does not adequately demonstrate need cannot demonstrate financial feasibility. Consequently, the application is not conforming to this criterion.

Comments Specific to Criterion 6

- Well Care did not adequately demonstrate that its projected utilization is reasonable, credible or adequately supported. Therefore, Well Care did not adequately demonstrate in its application that the Hospice Home Care Office it proposes to develop in Cumberland County is needed in addition to the existing agencies. See Criterion 3 for additional discussion. Consequently, the Well Care application did not demonstrate that its proposed project will not result in unnecessary duplication of existing health services, and thus is not conforming to Criterion 6.

Comments Specific to Criterion 18a

- Well Care did not adequately demonstrate the 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 and access to services proposed. Well Care did not adequately demonstrate that projected utilization is reasonable, credible or adequately supported. Well Care did not adequately demonstrate in its application that the Hospice Home Care Office it proposes to develop in Cumberland County is needed in addition to the existing agencies, and did not demonstrate that its proposal is the most effective alternative. The applicant did not adequately

demonstrate financial feasibility based upon a reasonable projection of costs and charges. See Criteria 3, 4, 5, and 6 for additional discussion. Consequently, the Well Care application is not conforming to Criterion 18a.

CONCLUSION

For all of the foregoing reasons, both of the competing applications should be disapproved. As noted in the preceding discussion, the competing applications are each non-conforming with multiple statutory review criteria. By contrast, HPCCR's application is conforming with all applicable review criteria. With regard to conformity with review criteria, HPCCR is the only approvable application. Also, the results of the comparative analysis show that HPCCR's application, with the lowest cumulative score, ranks as the most effective alternative. The HPCCR application can and should be approved because it satisfies all the applicable CON review criteria and is comparatively superior to each of the competing applications.

Report in Brief

Date: July 2022

Report No. A-02-19-01018

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

The Medicare hospice benefit allows providers to claim Medicare reimbursement for hospice services provided to individuals with a life expectancy of 6 months or less and who have elected hospice care. Previous OIG reviews found that Medicare inappropriately paid for hospice services that did not meet certain Medicare requirements.

Our objective was to determine whether certain hospice services provided by Vitas Healthcare Corporation of Florida (Vitas) complied with Medicare requirements.

How OIG Did This Audit

Our audit covered 50,850 claims for which Vitas received Medicare reimbursement totaling \$210 million for certain hospice services provided during the period April 2017 through March 2019. We reviewed and evaluated a stratified sample of 100 claims for compliance with selected Medicare requirements. In addition, we submitted medical records associated with the sample to an independent medical review contractor who determined whether the documents supported the hospice services billed.

Medicare Hospice Provider Compliance Audit: Vitas Healthcare Corporation of Florida

What OIG Found

Vitas did not comply with Medicare requirements for 89 of the 100 claims in our sample. Specifically, the clinical record did not support the continuous home care (CHC) level of hospice care claimed for Medicare reimbursement (68 claims), the clinical record did not support the general inpatient level of hospice care claimed for Medicare reimbursement (28 claims), and CHC services were not documented or supported in the beneficiary's clinical record (23 claims). The total exceeds 89 because 27 claims contained more than 1 error.

These improper payments occurred because Vitas' policies and procedures were not effective to ensure that it maintained documentation to support the level of care and hospice services claimed for Medicare reimbursement. On the basis of our sample results, we estimated that Vitas received at least \$140 million in improper Medicare reimbursement for hospice services that did not comply with Medicare requirements.

What OIG Recommends and Vitas Comments

We made a series of recommendations to Vitas, including that it refund to the Federal Government the portion of the estimated \$140 million in Medicare overpayments that are within the 4-year claims reopening period; identify, report and return any overpayments in accordance with the 60-day rule; and strengthen its policies and procedures to ensure that hospice services comply with Medicare requirements.

In written comments on our draft report, Vitas disagreed with some of our recommendations and partially agreed with our findings. Vitas indicated that it voluntarily refunded payments to Medicare for nine sample claims and adjusted five other claims. Although Vitas acknowledged its obligations under the 60-day rule, it reviewed our audit findings and did not agree that a refund pursuant to the rule was warranted. Vitas also did not agree with our recommendation to strengthen its policies and procedures. Lastly, Vitas stated that OIG's sampling and extrapolation were not statistically valid.

After reviewing Vitas' comments, we adjusted our determinations for seven claims for CHC services for which the clinical record supported the number of units submitted to Medicare for payment. However, all of the claims had other errors; therefore, we maintain that our findings and recommendations, as revised, are valid. We also maintain that our sampling methodology and extrapolation were statistically valid.