

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: March 31, 2016

Findings Date: March 31, 2016

Project Analyst: Julie Halatek

Team Leader: Fatimah Wilson

Project ID #: D-11122-16

Facility: The Foley Center at Chestnut Ridge

FID #: 110348

County: Watauga

Applicants: Chestnut Ridge at Blowing Rock, LLC

Blowing Rock Hospital, Inc.

Project: Cost overrun for Project I.D. #D-8685-11 (develop 20 NF beds and relocate 72 NF beds) and Project I.D. #D-8829-12 (relocate 20 ACH beds) for a total of 92 NF and 20 ACH beds upon completion of all three projects

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

C

Chestnut Ridge at Blowing Rock, LLC (Chestnut Ridge) and Blowing Rock Hospital, Inc. (BRH) propose a cost overrun for Project I.D. #s D-8685-11 and D-8829-12, which together created The Foley Center at Chestnut Ridge (Foley Center), by authorizing the development of 20 nursing facility (NF) beds, the relocation of 72 NF beds, and relocation of 20 adult care home (ACH) beds for a total of 92 NF beds and 20 ACH beds at completion of both projects. There is no material change in scope from the originally approved projects in this application.

Need Determination

The applicants do not propose to increase the number of licensed beds in any category, add any new health services, or acquire equipment for which there is a need determination in the 2016 State Medical Facilities Plan (SMFP). Therefore, there are no need determinations in the 2016 SMFP that are applicable to this review.

Policies

There is one policy in the 2016 SMFP that is applicable to this review: Policy GEN-4: ENERGY EFFICIENCY AND SUSTAINABILITY FOR HEALTH SERVICE FACILITIES.

Policy GEN-4 states:

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

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

Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E-184 are required to submit a plan for energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN-4. The plan shall not adversely affect patient or resident health, safety, or infection control.”

The proposed capital expenditure for this project is greater than \$5 million. In Section VIII.5, pages 53-54, the applicants provide a written statement describing the proposed project’s plan to assure improved energy efficiency and water conservation. The application is consistent with Policy GEN-4.

Conclusion

In summary, the applicants were previously approved to develop 20 NF beds, relocate 72 NF beds, and relocate 20 ACH beds for a total of 92 NF beds and 20 ACH beds at completion of both projects. In Project I.D. #s D-8685-11 and D-8829-12, the applicants were conforming to

this criterion. The applicants adequately demonstrate that their proposal is consistent with Policy GEN-4. Therefore, the application is conforming to this criterion.

- (2) Repealed effective July 1, 1987.
- (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

C

Chestnut Ridge at Blowing Rock, LLC (Chestnut Ridge) and Blowing Rock Hospital, Inc. (BRH) propose a cost overrun for Project I.D. #s D-8685-11 and D-8829-12, which together created The Foley Center at Chestnut Ridge (Foley Center), by authorizing the development of 20 NF beds, the relocation of 72 NF beds, and relocation of 20 ACH beds for a total of 92 NF beds and 20 ACH beds at completion of both projects. The certificate of need (CON) for Project I.D. #D-8685-11 authorized a capital expenditure of \$19,247,424. The CON for Project I.D. #D-8829-12 authorized an additional capital expenditure of \$835,742 for a total approved capital expenditure of \$20,083,166. The proposed cost overrun application will also affect the completion date of the project. In Project I.D. #D-8829-12, the applicants projected licensure of the facility by October 1, 2013. In the cost overrun application, the applicants project occupancy and offering of services by October 1, 2016.

There is no material change in scope from the originally approved projects in this application. The total capital cost is now expected to be \$26,212,416; an increase of \$6,129,250 or 30.5 percent ($\$6,129,250 / \$20,083,166 = .305$ or 30.5%) over the previously approved capital cost. See Section VI.2, page 42.

Analysis of Need

On page 199, the 2016 SMFP defines the service area for licensed nursing care facilities as the county where the facility is located. Thus, in this application, the service area is Watauga County. Nursing care facilities may serve residents of counties not included in their service area.

The following table compares the previously approved capital cost and the proposed capital cost in this application, as shown in Section VI.1, page 42.

Foley Center Previously Approved and Proposed Capital Costs			
	Previously Approved Cost	Proposed Cost	Difference
Site Costs			
Site Inspection/Survey	\$24,750	\$24,750	\$0
Site Preparation Costs	\$1,436,383	\$2,069,797	\$633,414
Water and Sewer Extensions	\$243,100	\$243,100	\$0
Subtotal Site Costs	\$1,704,233	\$2,337,647	\$633,414
Construction Costs			
Cost of Materials	\$15,150,000	\$16,157,280	\$1,007,280
Subtotal Construction Costs	\$15,150,000	\$16,157,280	\$1,007,280
Miscellaneous Costs			
Fixed Equipment Purchase/Lease	\$0	\$1,400,000	\$1,400,000
Equipment and Furniture	\$525,000	\$1,600,000	\$1,075,000
Architect and Engineering Fees	\$1,397,745	\$2,000,000	\$602,255
Consultant/Administrative Fees	\$80,000	\$80,000	\$0
Other Consultant Fees	\$617,000	\$1,105,000	\$488,000
Financing Costs	\$0	\$1,032,489	\$1,032,489
Project Contingency	\$609,188	\$500,000	(\$109,188)
Subtotal Miscellaneous Costs	\$3,228,933	\$7,717,489	\$4,488,556
Total Capital Costs	\$20,083,166	\$26,212,416	\$6,129,250

The applicants seek approval for an increased capital cost due to unanticipated increases in site preparation costs, costs of materials, fixed equipment costs (safety features and IT systems), equipment and furniture, consultant fees, and financing costs. In Section II.3, pages 10-12, the applicants discuss the reasons for the increases in each set of costs identified above. The original project scope will not change nor will the population to be served; including access by underserved groups.

Conclusion

In the original applications, the applicants adequately identified the population to be served, demonstrated the need to develop 20 NF beds, relocate 72 NF beds, and relocate 20 ACH beds and the extent to which all residents of the service area, including underserved groups, are likely to have access to their services. However, the applicants underestimated the capital cost necessary to complete the projects. In this application, the applicants adequately demonstrate the need for the proposed cost overrun. Consequently, the cost overrun application is conforming to this criterion.

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

NA

- (4) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

CA

The applicant discusses the need for the cost overrun application in Section II, pages 8-12. In Section II.5, pages 23-24, the applicants describe the alternatives considered prior to submitting this application for the proposed project, which include:

- **Maintain the Status Quo:** The applicants state that this alternative is not feasible because the construction of the facility is approximately 75 percent complete but they are unable to proceed without a certificate of need because they will exceed 115 percent of the previously approved capital cost.
- **Develop the Facility in Another Location:** The applicants state that this alternative is not realistic or cost-effective because construction of the facility is approximately 75 percent complete.

The applicants adequately demonstrate that the proposed alternative is the most effective and least costly alternative to meet the previously identified need for the development of 20 NF beds, relocation of 72 NF beds, and relocation of 20 ACH beds in Watauga County.

Furthermore, the application is conforming to all other statutory review criteria, and thus, is approvable. A project that cannot be approved cannot be an effective alternative.

In summary, the applicants adequately demonstrate that their proposal is the least costly or most effective alternative to meet the identified need. Therefore, the cost overrun application is conforming to this criterion and approved subject to the following conditions:

- 1. Chestnut Ridge at Blowing Rock, LLC, and Blowing Rock Hospital, Inc. shall materially comply with all conditions of approval on the certificate of need for Project I.D. #s D-8685-11 and D-8829-12 except as specifically modified by the conditions of approval for this application, D-11122-16.**
- 2. The total approved capital expenditure for Project I.D. #s D-8685-11, D-8829-12, and D-11122-16 is \$26,212,416.**
- 3. Chestnut Ridge at Blowing Rock, LLC, and Blowing Rock Hospital, Inc. shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VI of the application and that would otherwise require a certificate of need.**
- 4. Chestnut Ridge at Blowing Rock, LLC, and Blowing Rock Hospital, Inc. shall develop and implement an Energy Efficiency and Sustainability Plan for the project that**

conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.

- 5. Prior to issuance of the certificate of need, Chestnut Ridge at Blowing Rock, LLC, and Blowing Rock Hospital, Inc. shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Healthcare Planning and Certificate of Need Section in writing prior to issuance of the certificate of need.**
- (5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

C

The proposed project is for a cost overrun for Project I.D. #s D-8685-11 and D-8829-12. The total capital cost is now expected to be \$26,212,416; an increase of \$6,129,250 or 30.5 percent ($\$6,129,250 / \$20,083,166 = .305$ or 30.5%) over the previously approved capital cost. See Section VI.2, page 42.

Availability of Funds

In Section VI.5, page 44, the applicants state the total capital cost of the project will be funded with accumulated reserves. Exhibit 6 contains a January 13, 2016 letter from the Chief Financial Officer of Appalachian Regional Healthcare System (ARHS), the parent company of Chestnut Ridge, stating that the company is submitting a cost overrun certificate of need application and has committed accumulated reserves in the amount of \$6,129,250 for the project's capital expenditure.

In Exhibit 8, the applicants provide the audited financial statements for AHRS for the years ending September 30, 2014 and September 30, 2013. As of September 30, 2014, AHRS had \$32,522,094 in cash and cash equivalents, \$207,900,000 in total assets, and \$137,500,000 in net assets (total assets less total liabilities).

Financial Feasibility

In the original applications, Project I.D. #s D-8685-11 and D-8829-12, the applicants projected that revenues would exceed operating expenses in the second full year of operation (FFY 2015) following project completion.

In Form C of the current application, the applicants also project that revenues will exceed operating expenses in each of the first two years of operation following project completion, as illustrated in the table below.

Projected Revenues and Operating Expenses		
Foley Center	Operating Year 1 FFY 2017	Operating Year 2 FFY 2018
Gross Revenue	\$9,241,255	\$9,603,357
Other Revenue	\$442,062	\$456,238
Total Revenue	\$9,683,317	\$10,059,595
Total Operating Expenses	\$9,672,467	\$9,774,502
Net Income/Profit	\$10,850	\$285,093

The original applications were determined to be conforming to this criterion with regard to the financial feasibility of the development of the new facility with 20 new NF beds, the relocation of 72 NF beds, and the relocation of 20 ACH beds. In the current application, the applicants do not propose any changes that would affect that determination.

Conclusion

In summary, the applicants adequately demonstrate the availability of funds for the increased capital needs of the project. Therefore, the cost overrun application is conforming to this criterion.

- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

C

On page 199, the 2016 SMFP defines the service area for licensed nursing care facilities as the county where the facility is located. Thus, in this application, the service area is Watauga County. Nursing care facilities may serve residents of counties not included in their service area.

In Project I.D. #s D-8685-11 and D-8829-12, the applicants were approved to develop a new facility in Watauga County by developing 20 NF beds, relocating 72 NF beds, and relocating 20 ACH beds. In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

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

C

The applicants proposed a total of 68.55 FTEs for The Foley Center in previously approved Project I.D. #s D-8685-11 and D-8829-12. The applicants do not propose any additional staff in this application. In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

C

In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
 - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
 - (iii) would cost no more than if the services were provided by the HMO; and
 - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

C

The proposed project is for a cost overrun for Project I.D. #s D-8685-11 and D-8829-12. The total capital cost is now expected to be \$26,212,416; an increase of \$6,129,250 or 30.5 percent ($\$6,129,250 / \$20,083,166 = .305$ or 30.5%) over the previously approved capital cost.

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Financing Costs	\$0	\$1,032,489	\$1,032,489
Project Contingency	\$609,188	\$500,000	(\$109,188)
Subtotal Miscellaneous Costs	\$3,228,933	\$7,717,489	\$4,488,556
Total Capital Costs	\$20,083,166	\$26,212,416	\$6,129,250

Exhibit 5 contains a letter from the architect detailing the increases in costs associated with construction (site costs, construction costs, and associated fees). The letter states in part:

“The Site Preparation Costs increased from the original budget of \$1,436,383 to a current cost of \$2,069,797. This represents an increase of \$633,414. We can attribute at least three things to this increase. Escalation, excessive rock excavation that exceeded the allowance, and additional site features required by HUD and local code enforcement that were not planned for in the original design. ...

The Cost of Materials increased from the original budget of \$15,150,000 to a current cost of \$16,157,280. This represents an increase of \$1,007,280. We can also attribute at least three things to this increase. Escalation of 7.5%, new energy code requirements put in force in 2012, and additional smoke detection features (\$43,000) required by HUD that are not required by the current building codes. The new 2012 energy code also imposed a variety of requirement [sic] to the design that were not required in the

2009 edition. Most of these features are associated with the electrical scope and the thermal envelope of the building. ...

In addition, due to the additional design and value-engineering efforts, the A&E fees are increasing by \$602,255, to \$2,000,000.” (emphasis in original)

In Section IX.5, pages 64-65, the applicants describe the methods that will be used by the facility to maintain efficient energy operations and contain the costs of utilities. The discussion regarding costs and charges found in Criterion (5) is incorporated herein by reference. The applicants adequately demonstrate that the cost, design, and means of construction represent the most reasonable alternative, and that the construction cost will not unduly increase costs and charges for health services. Therefore, the application is conforming to this criterion.

- (13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:

- (a) The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;

C

In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

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

C

In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

- (c) That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and

C

In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

- (d) That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

C

In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

C

In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

- (15) Repealed effective July 1, 1987.
- (16) Repealed effective July 1, 1987.
- (17) Repealed effective July 1, 1987.
- (18) Repealed effective July 1, 1987.
- (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

C

On page 199, the 2016 SMFP defines the service area for licensed nursing care facilities as the county where the facility is located. Thus, in this application, the service area is Watauga County. Nursing care facilities may serve residents of counties not included in their service area.

In Project I.D. #s D-8685-11 and D-8829-12, the applications were conforming to this criterion and no changes are proposed in this application that affect that determination. Consequently, the cost overrun application is conforming to this criterion.

- (19) Repealed effective July 1, 1987.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

C

In Section I, pages 3-4, the applicants state they currently operate Blowing Rock Rehab Davant Extended Care Center (where the 72 NF beds to be relocated are currently licensed). The applicants and their parent company, ARHS, do not own or operate any other nursing home facilities in North Carolina. According to the files in the Nursing Home Licensure and Certification Section, DHSR, no incidents occurred within the eighteen months immediately preceding submission of the application through the date of this decision, for which any sanctions or penalties related to quality of care were imposed by the State on any facility owned and operated by the applicants in North Carolina. After reviewing and considering information provided by the applicant and by the Nursing Home Licensure and Certification Section and considering the quality of care provided at the existing facility, the applicants provide sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion.

- (21) Repealed effective July 1, 1987.
- (b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

C

Project I.D. #D-8685-11 was conforming to the Criteria and Standards for Nursing Facility or Adult Care Home Services, promulgated in 10A NCAC 14C .1102, and the applicants propose no changes in the current application that would affect that determination. Consequently, the cost overrun application is conforming to this criterion.