

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming
CA = Conditional
NC = Nonconforming
NA = Not Applicable

Decision Date: February 27, 2017
Findings Date: March 6, 2017

Project Analyst: Julie Halatek
Team Leader: Lisa Pittman
Assistant Chief: Martha J. Frisone

Project ID #: C-11244-16
Facility: Lake Lure Assisted Living
FID #: 110040
County: Rutherford
Applicants: Rutherfordco, LLC
Bostic Health Holdings, LLC

Project: Relocate 16 adult care home beds from Oak Grove Healthcare Center to the previously approved Lake Lure Assisted Living for a total of 62 adult care home beds upon completion of this project and Project I.D. #C-8626-11

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

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

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

C

Rutherfordco, LLC and Bostic Health Holdings, LLC propose to acquire and relocate 16 adult care home (ACH) beds from Oak Grove Healthcare Center (Oak Grove) in Rutherford County to Lake Lure Assisted Living (LLAL). LLAL is a previously approved but not yet developed 46-bed ACH facility, comprised entirely of special care unit (SCU) beds, in Rutherford County. At the completion of this project and Project I.D. #C-8626-11, LLAL will have a total of 62 ACH beds, including 46 SCU beds, and Oak Grove will have no remaining ACH beds.

In Chapter 11, page 244, of the 2016 State Medical Facilities Plan (SMFP), Table 11A lists Oak Grove as having 16 licensed ACH beds in the inventory of Rutherford County ACH beds.

Need Determination

The proposed project does not involve the addition of any new health service facility beds, services or equipment for which there is a need determination in the 2016 SMFP. Therefore, there are no need determinations applicable to this review.

Policies

The following two policies are applicable to this review:

- Policy LTC-2: Relocation of Adult Care Home Beds
- Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities

Policy LTC-2: Relocation of Adult Care Home Beds states:

“Relocations of existing licensed adult care home beds are allowed only within the host county and to contiguous counties. Certificate of need applicants proposing to relocate licensed adult care home beds to a contiguous county shall:

- 1. Demonstrate that the facility losing beds or moving to a contiguous county is currently serving residents of that contiguous county; and*
- 2. Demonstrate that the proposal shall not result in a deficit, or increase an existing deficit in the number of licensed adult care home beds in the county that would be losing adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins; and*
- 3. Demonstrate that the proposal shall not result in a surplus, or increase an existing surplus of licensed adult care home beds in the county that would gain adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins.”*

All 16 existing ACH beds at Oak Grove are located in Rutherford County, and the facility under development is also located in Rutherford County; therefore, the number of licensed adult care home beds in Rutherford County will not change as a result of this project. The application is consistent with Policy LTC-2.

Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities states:

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

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

Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E-184 is 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."

In supplemental information received December 21, 2016, the applicants describe how the facility will be constructed to comply with the requirements of Policy GEN-4. In Exhibit W, the applicants provide a letter from an architectural firm which outlines the energy conservation standards that will be incorporated into the facility design in order to comply with Policy GEN-4. The application is consistent with Policy GEN-4.

Conclusion

In summary, the applicants adequately demonstrate that the proposal is consistent with Policy LTC-2 and 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.

NC

The applicants propose to acquire and relocate 16 ACH beds from Oak Grove, a combination nursing facility with ACH beds in Rutherford County, to LLAL. LLAL is a previously approved but not yet developed 46-bed ACH facility, comprised entirely of special care unit (SCU) beds, in Rutherford County. At the completion of this project and Project I.D. #C-8626-11, LLAL will have a total of 62 ACH beds, including 46 SCU beds, and Oak Grove will have no remaining ACH beds.

Patient Origin

On page 223, the 2016 SMFP defines the service area for ACH beds as “*the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrell, are considered a combined service area.*” Thus, the service area for this project consists of Rutherford County. Facilities may also serve residents of counties not included in their service area.

In Section III.7, page 19, the applicants provide the projected patient origin for LLAL. The applicants state that 100 percent of patients are projected to be residents of Rutherford County. In Section III.6(c), pages 18-19, the applicants state that the replacement facility is located “*within the same general area as the original facility*” (referring to Oak Grove) and thus projected patient origin will not differ from historical patient origin.

The applicants adequately identify the population to be served.

Analysis of Need

In Section III.1, page 16, the applicants state the following with regard to the need to relocate the 16 ACH beds:

“The current facility is old and does not have modern systems that could otherwise improve quality of care and increase efficiency. The facility is not protected by a fire sprinkler system. The systems and insulation in place are not energy efficient. Lighting is insufficient to conduct quality care. In short, the current facility is inadequate to provide care for Adult Care Home residents. This is further referenced [sic] by ‘Exhibit F,’ the Rutherford County Aging Report.”

...

“The prior operator of the facility was forced to close the facility due to the Licensure Section’s concerns related to the ability of this facility to provide care for Adult Care Home residents.”

It is unclear what facility the applicants are referring to in response to this question. LLAL has already been approved to replace and relocate 46 SCU beds as part of Project I.D. #C-8626-11, while Oak Grove is currently licensed and operational.

The Project Analyst reviewed applications submitted by entities affiliated with the applicants or the proposed management company for LLAL, going back to 2011, and found virtually identical language (with any differences almost exclusively limited to the names of the facilities and the relevant county) in the following applications:

- C-8626-11 (relocate and replace an existing 46-bed ACH facility – Rutherford County)
- F-10263-14 (replace and relocate an existing 60-bed ACH facility – Cabarrus County)

- F-10311-14 (change of scope/cost overrun to Project I.D. #F-10263-14 by adding 48 ACH beds to a previously approved 60-bed ACH facility – Cabarrus County)
- B-10312-14 (develop a new 40-bed ACH facility as a replacement for two existing ACH facilities – Henderson County)
- J-11046-15 (construct a new 132-bed ACH facility as a replacement for two existing ACH facilities – Johnston County)
- P-11113-15 (relocate and replace an existing 40-bed ACH facility – Onslow County)
- L-11186-16 (relocate and replace an existing 60-bed ACH facility – Halifax County)
- P-11215-16 (change of scope/cost overrun to Project I.D. #P-11113-15 by adding 40 ACH beds to a previously approved 40-bed ACH facility – Onslow County)

The use of virtually identical language in applications for different types of projects in several different counties calls into question the reliability of the representations in these applications. Specifically, by saying the same thing in virtually every application, the Agency does not know if the representations are true with respect to the specific project under review. How can the same exact facts be true for every single one of the facilities listed above? For at least some of the facilities above, the facts were not true – as is the case in the current application. In this application, the applicants said the facility is closed, but in fact there were patients in the ACH beds at the time the application was submitted.

Furthermore, the applicants do not show how the statistics provided in Exhibit F support a need to relocate ACH beds in Rutherford County.

In Section III.6, pages 18-19, the applicants state the following with regard to the impact that relocation of beds will have on residents:

“Because the [sic] one of the current facilities is closed and the other having difficulty serving its residents given the current condition of the water and sewer system, replacing these facilities with the proposed new facility would increase bed availability for the residents in the county. Currently, the residents in the county are unable to utilize some of these beds.

The replacement facility will provide services above and beyond that which the old facility did. Furthermore, the replacement facility is within the same general area as the original facility it will replace. As such, any Rutherford County residents who would have been served by the original facility will be served by the replacement facility.”

Again, it is unclear what facility the applicants are referring to in response to this question. LLAL has already been approved to replace and relocate 46 SCU beds as part of Project I.D. #C-8626-11. Oak Grove is currently licensed and operational.

In response to an initial request for additional information to support a need to relocate the 16 ACH beds, received by the Agency on December 21, 2016, the applicants state the following:

“As previously discussed in the certificate of need application, unmet need is demonstrated by the ESRI data contained in Exhibit E, as well as being evidenced by

the Rutherford County Aging Profile (Exhibit F). Further, the 2016 State Medical Facilities Plan shows a total of 461 (in assisted living facilities) total beds in the Rutherford County Planning Inventory. Of these beds that are allocated, Rutherford County has an overall assisted care bed utilization rate of 84.2%. Given the high occupancy of the in-place beds, [sic] further demonstrates the need for additional beds to be located in adequately appointed Assisted Care Facilities in Rutherford County.”

Although the applicants state that Exhibit E supports the need to relocate 16 ACH beds, Exhibit E contains only a map showing the approximate location of LLAL as well as demographic information for Rutherford County. The applicants do not show how the information in Exhibit E supports a need to relocate 16 ACH beds in Rutherford County.

Further, the applicants’ statement regarding 461 total ACH beds and 84.2 percent utilization is incorrect and does not support the need to relocate 16 ACH beds, as discussed below.

Rutherford County has ten ACH facilities and three combination nursing facilities with ACH beds. The information about those facilities, the number of ACH beds at each facility, and the population at each facility as of September 30, 2016 is shown in the table below.

Rutherford County Inventory of ACH Beds / Patient Census – September 30, 2016				
Facility	Type	# ACH beds	# Patients	% Utilization
Brookdale Forest City	ACH	76	57	75.0%
Colonial Manor Rest Home	ACH	34	0	0.0%
Fair Haven Home	NF	37	34	91.9%
Forest City Health & Rehab	NF	28	23	82.1%
Lake Lure Assisted Living	ACH	46	0*	n/a*
Henderson Care Center	ACH	86	41	47.7%
Holly Springs Senior Citizens Home	ACH	32	27	84.4%
Nana’s Assisted Living Facility #2	ACH	44	26	59.1%
Oak Grove Healthcare Center	NF	16	3	18.8%
Oakland Living Center	ACH	40	32	80.0%
Restwell Home	ACH	20	18	90.0%
Southern Manor Rest Home	ACH	25	15	60.0%
Sunnyside Retirement Home	ACH	34	34	100.0%
Totals		518	310	59.8%
Totals without LLAL beds		472	310	65.7%
Totals for ACH facilities (no LLAL)		391	250	63.9%

*LLAL is under development and the beds have not been licensed yet.

Sources: Table 11A, 2016 SMFP; LTI Database; 2017 License Renewal Applications (LRAs)

As shown in the table above, there are 437 ACH beds in ACH facilities (391 + 46 at LLAL = 437). Utilization of the ACH beds in Rutherford County ranges from 59.8 percent to 65.7 percent depending on how the information is calculated. In Table 11B on page 252 of the 2016 SMFP, Rutherford County is listed as having a planning inventory of 518 ACH beds and a 2019 Projected Bed Utilization Summary total of 292 ACH beds, leaving a projected surplus of 226 ACH beds (a projected 77.4 percent surplus).

The Project Analyst emailed the applicants a second request for additional information, including a second request to provide more information to support a need to relocate 16 ACH beds. The applicants responded on January 13, 2017. With regard to the request for information to support a need to relocate the 16 ACH beds, the applicants state the following:

“Unmet need is demonstrated through the demographic information included in exhibits [sic] E and F. Unmet need is further substantiated by the demonstrated increase in the aged population witnessed and projected within Rutherford County. Additionally, the Agency is correct in its assumption that the Subject facility Oak Grove) [sic] is open and in operation however, the beds proposed for relocation (from Oak Grove) are not currently in use. Further, criteria (3), (3a), (4), (5), (6), (13), and (18) speak to the type of resident cared for as well as certain financial implications that may or may not be created due to the relocation of the proposed beds. Upon analysis, the Applicant [sic] does not seek to discriminate or otherwise prevent any type of Resident from entering or being approved for care in the newly proposed facility. Furthermore, no adverse financial implication will be realized through the approval and subsequent relocation of the 16-beds from Oak Grove Healthcare Center.”

As previously discussed above, the information provided by the applicants in Exhibits E and F shows the aging population of Rutherford County. However, none of the information provided by the applicants provides adequate information to support a need to relocate the 16 ACH beds.

The Project Analyst emailed the applicants a third request for additional information, including a third request to provide more information to support a need to relocate 16 ACH beds, and asked the applicants to consider in their response the projected 226-bed surplus for Rutherford County. The applicants responded on February 9, 2017. With regard to the request for information to support a need to relocate the 16 ACH beds, the applicants stated the following:

“The licensed bed distribution in Rutherford County is heavily skewed towards certain heavily populated towns within the County limits. See the attached map.

Locating these 16-additional [sic] beds to the already planned Lake Lure Assisted Living in Town of Lake Lure, will extend quality of care and accessibility to an area of the county currently underserved. Furthermore, the already planned Lake Lure Assisted Living is planned to be all 46 SCU beds. Adding these 16 non-SCU Adult Care beds to the project will extend even more quality of care and accessibility to this area of the County.”

However, the applicants do not adequately support their claim that the area of the county in which the 16 ACH beds will be located is currently underserved.

Additionally, the applicants note that the development of LLAL was “*already planned*” and that the proposed 16 ACH bed relocation will be added to the undeveloped LLAL project. In fact, as part of a settlement agreement to avoid withdrawal of the certificate of need, the applicants had agreed to begin development of LLAL by mid-2016 (submit final drawings to the Agency by August 5, 2016). This deadline was already an extension of the original timeline which included having the final drawings submitted to the Agency by November 1, 2012.

The applicants did not meet the agreed upon timetable to submit final drawings to the Agency by August 5, 2016, nor did the applicants notify the Agency of any delay until just before filing this application on September 15, 2016. Moreover, the applicants project that this project will not begin development until January 2018; an additional postponement of a project that was initially projected to be complete by August 2014 and later revised to be complete by July 2017. The applicants fail to demonstrate a good faith effort to develop the original project in a timely manner, which calls into question the need for the development of LLAL in the first place as well as the need to relocate 16 ACH beds.

In summary, the applicants did not adequately demonstrate the need for the proposed 16 ACH bed relocation.

Projected Utilization

In Section IV.2, page 17, the applicants provide projected utilization for the proposed project during the first two operating years (OYs), as shown in the tables below.

Projected Utilization – Lake Lure Assisted Living – OY 1					
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
FFY 2019	10/1/18 – 12/31/18	1/1/19 – 3/31/19	4/1/19 – 6/30/19	7/1/19 – 9/30/19	
ACH Beds					
Patient Days	460	977	1,306	1,369	4,112
Occupancy Rate	31.3%	67.8%	89.7%	93.0%	70.4%
# of Beds	16	16	16	16	16
SCU Beds					
Patient Days	1,196	1,980	2,821	3,648	9,645
Occupancy Rate	28.3%	47.8%	67.4%	86.2%	57.4%
# of Beds	46	46	46	46	46
Total Facility					
Patient Days	1,656	2,957	4,127	5,017	13,757
Occupancy Rate	29.0%	53.0%	73.1%	88.0%	60.8%
# of Beds	62	62	62	62	62

Projected Utilization – Lake Lure Assisted Living – OY 2					
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
FFY 2020	10/1/19 – 12/31/19	1/1/20 – 3/31/20	4/1/20 – 6/30/20	7/1/20 – 9/30/20	
ACH Beds					
Patient Days	1,369	1,354	1,354	1,369	5,446
Occupancy Rate	93.0%	94.0% [93.0%]	93.0%	93.0%	93.3% [93.0%]
# of Beds	16	16	16	16	16
SCU Beds					
Patient Days	3,868	3,826	3,826	3,868	15,388
Occupancy Rate	91.4%	91.4%	91.4%	91.4%	91.4%
# of Beds	46	46	46	46	46
Total Facility					
Patient Days	5,237	5,180	5,180	5,237	20,834
Occupancy Rate	91.8%	92.8% [91.8%]	91.8%	91.8%	92.1% [91.8%]
# of Beds	62	62	62	62	62

As shown in the table above, during the second operating year (FFY 2020), the applicants project that the facility will average 91.8 percent occupancy [$20,834 / 366 / 62 = 0.918$, or 91.8%].

In Exhibit L, the applicants provide the assumptions and methodology used to project utilization of the 62 ACH beds. In Exhibit L, the applicants state:

“1) Occupancy

- A) Facility begins operations with 13 reserved beds on October 1, 2018*
- B) Fill-up at the rate of 5 residents per month until ACH fills”*

The applicants provide no other information in the application to demonstrate that the assumptions are reasonable and adequately supported.

In supplemental information received by the Agency on February 9, 2017, the applicants state:

“It is typical to begin the marketing of a new facility 4-6 months in advance of its projected opening with the goal of having a wait-list / deposits for 10-20 resident [sic] by opening day. This practice has lead [sic] to the successful marketing and opening of several like facilities such as Rose Glen Manor, Franklin House, Gates House and currently on-going at Tyrrell House, Eagle’s Pointe and Northlake House.”

However, the applicants do not adequately demonstrate that projecting 13 reserved beds at the time the facility opens is reasonable or adequately supported. Additionally, the applicants do not provide any information to support projected utilization for the first two years of operation.

Thus, projected utilization is not based on reasonable and adequately supported assumptions.

In summary, the applicants do not adequately demonstrate the need to relocate 16 existing but unoccupied ACH beds from Oak Grove to LLAL.

Based on review of: 1) the information provided by the applicants in Section III, pages 16-19, Section IV, pages 20-22, and referenced exhibits; and 2) responses to requests for information received by the Agency on December 21, 2016, January 13, 2017, and February 9, 2017, the applicants do not adequately demonstrate the need for the proposed project for the reasons discussed above.

Access

In Sections VI.3(a)-(b), pages 26-27, the applicants state that all persons will be admitted to the facility, receive services at the facility, and have the same payment policies regardless of race, color, creed, age, national origin, handicap, sex, or source of payment. In Exhibit L, the applicants project that 60.9 percent of SCU patients will receive State/County Special Assistance/Basic Medicaid funding and 39.1 percent of SCU patients will be private pay patients, and 62.5 percent of ACH patients will receive State/County Special Assistance/Basic Medicaid funding and 37.5 percent of ACH patients will be private pay patients. The applicants also state on page 27 that private pay residents who spend down and become eligible for special assistance will

not be discharged and every effort will be made to assist the resident and family with applying for State/County Special Assistance with Medicaid. The applicants adequately demonstrate the extent to which all residents of the area, including medically underserved groups, are likely to have access to the proposed services.

Conclusion

In summary, the applicants adequately identify the population to be served and adequately demonstrate the extent to which all residents, including underserved groups, will have access to the proposed services. However, the applicants do not adequately demonstrate the need to relocate 16 existing but unoccupied ACH beds from Oak Grove to LLAL. Therefore, the application is nonconforming 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.

NC

Although this application proposes a relocation of existing ACH beds to a new location in Rutherford County, the applicants state that the 16 existing ACH beds proposed to be relocated are not currently utilized. In supplemental information received February 9, 2017, with regard to the status of the occupancy of the 16 ACH beds at issue, the applicants state:

“FC Encore Rutherfordton, LLC, the owner of the asset, (16 ACH beds in Oak Grove Healthcare Facility) has indicated willingness to surrender 16 Licensed ACH beds to applicant upon completion of the transaction. The owner of the asset told the Applicant that the beds were unused and historical utilization from the existing operator was not made available.

See the attached Exhibit answering questions ‘relocation in services.’”

The exhibit referenced by the applicants is a response to the questions in Section III.6 of the application regarding proposals to relocate ACH beds to a different site. A summary of each question and the applicants’ response is provided below.

In response to the question in Section III.6(a), regarding plans for relocation of people currently served, the applicants state:

“The closing of the ACH bed at Oak Grove will be planned and executed according to licensure protocols in 10A NCAC 13F.0702. The facility will provide Residents, Families and Guardians with appropriate notice and assistance with placement into new facilities.”

In response to the question in Section III.6(b), regarding any medical and/or financial impact the relocation of the beds will have on the people currently served, the applicants state:

“The closing of the ACH bed at Oak Grove will be planned and executed according to licensure protocols in 10A NCAC 13F.0702. The facility will provide Residents, Families and Guardians with appropriate notice and assistance with placement into new facilities to minimize medical and financial impact.”

In response to the question in Section III.6(d), regarding evidence of support for the proposal from individuals currently served, the applicants state:

“The seller of the 16 beds indicated that the beds were unused, thus no support from individuals currently was sought. The option of relocating to Lake Lure Assisted Living and its modern features should receive high level of support.”

Based on these responses, it is unclear whether or not there are any occupants currently in the 16 ACH beds. The applicants stated in their first response to the inquiry that historical utilization from the operator was not made available. However, publicly available information is accessible to the applicants with regard to historical utilization of the facility. According to Oak Grove’s 2016 and 2017 LRAs, as of September 30, 2015, Oak Grove had five ACH patients at its facility. And as of September 30, 2016 – 15 days after the applicants submitted this application to the Agency for review – Oak Grove reported to the Agency that it had three ACH patients at its facility.

Because the applicants provide conflicting information as to whether the 16 ACH beds are currently utilized, the applicants do not adequately demonstrate that the needs of the population presently served will be adequately met by the relocation and do not adequately demonstrate the effect the relocation will have on underserved groups and the elderly to obtain needed healthcare. Therefore, the application is nonconforming to this criterion.

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

NC

In Section III.3, page 17, the applicants state the following with regard to alternatives considered in development of the proposed project:

“There were four alternatives considered in development of the proposed project: (1) to reopen and operate the current facility, (2) to renovate the current facility, (3) to build a replacement facility at the current location, or (4) to build a replacement facility at a new location. The first alternative was not possible; the current facility is not in the condition necessary to render quality care to residents. The second alternative was not possible; the current facility does not lend itself to a cost-effective renovation. The third alternative, while possible, does not serve the residents of the County most effectively because the current location would require significant demolition work, significantly postponing the opening of the replacement facility and the parcel of land the facility is

located on currently does not allow for the extra square footage necessary to meet current licensure standards for Adult Care Homes. The fourth alternative was the best choice because the facility was able to be replaced with a new, efficient building that gives the best care to residents, while being built in a location that still serves the same population as it did before.”

However, the statement provided by the applicants appears to be discussing alternatives considered for a facility which was either closed or had only ACH beds, instead of addressing the present situation of an existing combination nursing facility that is selling its 16 ACH beds and retaining its 60 nursing facility beds.

The applicants state that the last alternative – to relocate the ACH beds to a new facility – is the most effective alternative because it is able to provide the best care to residents in a location that still serves the same population as before. However, this contradicts information provided by the applicants in supplemental information received February 9, 2017, where the applicants state that part of the need for the proposed project is to relocate the 16 ACH beds from their current location to an area of the county currently underserved. Additionally, the applicants do not adequately demonstrate a need for the proposed project. Therefore, this project, as proposed, cannot be the most effective alternative. The discussion regarding need and projected utilization found in Criterion (3) is incorporated herein by reference.

Further, it is unclear whether the applicants will actually obtain ownership of the 16 ACH beds in question. In supplemental information requested on November 16, 2016 as well as on December 22, 2016, the applicants were asked to provide information showing that they would be able to obtain ownership of the 16 ACH beds, since no evidence of ownership had been provided with the application as originally submitted. In supplemental information received on January 13, 2017, the applicants included an unsigned and undated Asset Purchase Agreement for the 16 ACH beds, with introductory language suggesting it was drafted for execution in September 2016, between FC Encore Rutherfordton, LLC (the owner of Oak Grove) and Agemark Acquisitions, LLC. Neither party is an applicant in this review.

Therefore, the applicants have not provided sufficient documentation of ownership of the 16 ACH beds to be relocated. Relocating 16 ACH beds to a new facility cannot be the most effective alternative if the applicants do not own the beds and thus cannot relocate them.

Furthermore, the application is not conforming to all other statutory and regulatory review criteria, and thus, is not approvable. A project that cannot be approved cannot be an effective alternative. See Criteria (3), (3a), (5), (6), and (18a).

In summary, the applicants do not adequately demonstrate that this proposal is the least costly or most effective alternative to meet the need. Therefore, the application is nonconforming to this criterion and cannot be approved.

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

NC

The applicants propose to acquire and relocate 16 ACH beds from Oak Grove to LLAL, a previously approved but not yet developed 46-bed ACH facility, comprised entirely of SCU beds, in Rutherford County. At the completion of this project and Project I.D. #C-8626-11, LLAL will have a total of 62 ACH beds, including 46 SCU beds, and Oak Grove will have no remaining ACH beds.

Capital and Working Capital Costs

In supplemental information received February 9, 2017, the applicants project the total capital cost of developing the new facility, which includes the costs for the previously approved Project I.D. #C-8626-11, will be \$6,703,740. The applicants provide a breakdown of previously approved costs as well as projected costs, as shown below:

	<u>C-8626-11</u>	<u>C-11244-16</u>	<u>Total</u>
Site Costs:	\$666,750	\$636,950	\$1,303,700
Construction:	\$1,590,435	\$2,509,605	\$4,100,040
Equipment:	\$300,000	\$200,000	\$500,000
Financing/Interest:	\$135,000	\$260,000	\$395,000
Consultant Fees:	\$98,500	\$156,500	\$255,000
<u>Contingency:</u>	<u>\$0</u>	<u>\$150,000</u>	<u>\$150,000</u>
Total:	\$2,790,685	\$3,913,055	\$6,703,740

In supplemental information received December 21, 2016, the applicants project the total working capital (start-up and initial operating expenses) costs for the development of LLAL, which includes the start-up and initial operating expenses from the previously approved Project I.D. #C-8626-11, will be \$391,640, an increase of \$83,227 from the previously approved project.

Availability of Funds

In Section VIII.2, page 36, the applicants state that the capital costs will be financed by a commercial loan in the amount of \$6,703,740. In Exhibit N, the applicants provide a letter dated September 14, 2016 from DCR Loan Servicing offering to provide financing for the capital costs via a loan in the amount of \$6,703,740. The applicants further state that the loan information for the working capital expenditures can be found in Exhibits P and Q. In supplemental information received December 21, 2016, the applicants provide a letter dated September 15, 2016 from DCR Loan Servicing offering to provide financing for the working capital costs via a loan in the amount of \$391,640. The applicants adequately demonstrate the availability of sufficient funds for the capital and working capital needs of the project.

Financial Feasibility

The applicants provide pro forma financial statements for the first three full fiscal years of operation following completion of the project. In the pro forma financial statements (Form B), provided in supplemental information received on February 9, 2017, the applicants project

revenues and operating expenses for the first three operating years of the project, as shown in the table below.

LLAL Projected Revenue / Expenses – OYs 1-3			
	OY 1 – FFY 2019	OY 2 – FFY 2020	OY 3 – FFY 2021
Total Patient Days	13,757	20,834	20,776
Total Gross Revenues (Charges)	\$1,444,214	\$2,197,631	\$2,196,209
Total Net Revenue	\$1,444,214	\$2,197,631	\$2,196,209
Average Net Revenue per Patient Day	\$104.98	\$105.48	\$105.71
Total Operating Expenses (Costs)	\$1,698,959	\$2,183,117	\$2,158,300
Average Operating Expense per Patient Day	\$123.50	\$104.79	\$103.88
Net Income/(Loss)	(\$254,745)	\$14,514	\$37,909

The applicants project that revenues will exceed operating expenses in the second and third operating years following project completion. However, the applicants do not adequately demonstrate that all assumptions used in preparation of the pro forma financial statements are reasonable. Specifically, projected utilization is questionable. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

Conclusion

In summary, the applicants adequately demonstrate that sufficient funds will be available for the capital and operating needs of the project. However, the applicants do not adequately demonstrate that the financial feasibility of the proposal is based upon reasonable projections of costs and charges. Therefore, the application is nonconforming 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.

NC

The applicants propose to acquire and relocate 16 ACH beds from Oak Grove, an existing and licensed combination nursing facility with ACH beds in Rutherford County, to LLAL. LLAL is a previously approved but not yet developed 46-bed ACH facility, comprised entirely of SCU beds, in Rutherford County. At the completion of this project and Project I.D. #C-8626-11, LLAL will have a total of 62 ACH beds, including 46 SCU beds, and Oak Grove will have no remaining ACH beds.

On page 223, the 2016 SMFP defines the service area for ACH beds as “*the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrell, are considered a combined service area.*” Thus, the service area for this project consists of Rutherford County. Facilities may also serve residents of counties not included in their service area.

Oak Grove is a combination nursing facility that has 16 licensed ACH beds. The applicants provide conflicting information as to whether the existing ACH beds are occupied, and publicly available information suggests that at least some of the beds may still be occupied.

On page 244 of the 2016 SMFP, Table 11A documents that there are currently a total of 12 existing facilities in Rutherford County that offer ACH services as well as LLAL, which has not started development and which has licensed but unoccupied beds. The table below is a summary of those 13 facilities in Rutherford County, recreated from the 2016 SMFP, Chapter 11, Table 11A and Table 11B, page 251. There is a projected surplus of 226 ACH beds in 2019 for Rutherford County.

2016 ACH Inventory and 2019 Need Projections for Rutherford County	
# ACH Facilities*	13
# Beds in ACH Facilities	437
# Beds in Nursing Facilities	81
Total # Licensed Beds	518
# CON Approved Beds (License Pending)	0
Total # ACH Beds Available**	472
Total # ACH Beds in Planning Inventory	518
Projected Bed Utilization Summary	292
Projected Bed Surplus (Deficit)	226

*Includes Haven-n-Hills Living Center, which has 46 licensed but unoccupied beds, and was the subject of Project I.D. #C-8626-11.

**Does not include the beds from Haven-n-Hills Living Center.

The applicants do not adequately demonstrate that there is a need to relocate 16 ACH beds. The discussions regarding analysis of need, including projected utilization, and alternatives found in Criteria (3) and (4), respectively, are incorporated herein by reference. Because the applicants did not demonstrate a need to relocate the 16 ACH beds, the applicants do not adequately demonstrate that the proposed project would not result in the unnecessary duplication of existing or approved ACH beds in Rutherford County. Consequently, the application is nonconforming 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 propose to provide personal care staff twenty-four hours per day, seven days per week. In Section VII, Table VII.3, page 31, the applicants state that by FFY 2020 (the second full fiscal year) the ACH facility will be staffed by 27 full-time equivalent (FTE) positions, including 13 FTEs that will be personal care aides. Adequate costs for the health manpower and management positions proposed by the applicants are budgeted in the pro forma financial statements. The applicants adequately demonstrate the availability of sufficient health manpower and management personnel to provide the proposed services. Therefore, the 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 Section II, pages 7-9 and 12-13, the applicants identify the necessary ancillary and support services and describe how they will be made available. Exhibit X contains copies of letters from a food service provider, a medical lab and pharmacy, and a registered nurse consultant, all offering to provide services to the facility. Exhibit J contains letters from the applicants to Rutherford Hospital, Cleveland Regional Medical Center, and St. Luke's Hospital, stating that they intend to establish transfer agreements with each facility. The applicants adequately demonstrate that the necessary ancillary and support services will be made available and that the proposed services will be coordinated with the existing healthcare system. Therefore, the application is conforming to this criterion.

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

NA

- (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 applicants propose to relocate 16 existing ACH beds from an existing combination nursing facility to an ACH facility that is not yet under development. Exhibit V contains architectural conceptual site and floor plans for the proposed 29,286 square foot facility. In Exhibit V, the applicants provide a letter from an architect that estimates that site and construction costs for the proposed facility will be approximately \$140 per square foot, which corresponds to the projected capital costs in Section VIII, page 35. The letter further describes the proposed project's plan to assure improved energy efficiency and water conservation. The applicants adequately demonstrate that the cost, design, and means of construction represent the most reasonable alternative for the type of facility proposed, and that the construction project will not unduly increase costs and charges for health services. Consequently, the application is conforming to this criterion.

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

NA

The applicants propose to relocate 16 existing ACH beds from Oak Grove, an operational combination nursing facility that is not owned by the applicants, to LLAL, a previously approved but not yet developed facility. The applicants do not currently operate any of the ACH beds proposed for LLAL.

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

NA

The applicants propose to relocate 16 existing ACH beds from Oak Grove, an operational combination nursing facility that is not owned by the applicants, to LLAL, a previously approved but not yet developed facility. The applicants do not currently operate any of the ACH beds proposed for LLAL.

- (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 Table VI.3, page 26, the applicants project the following payor mix during the second FFY of operation (FFY 2020):

Projected Payor Mix – FFY 2020 - LLAL			
Payor Source	ACH Beds	SCU Beds	Total
Private Pay	37.5%	38.1%	37.9%
State/County Special Assistance	62.5%	61.9%	62.1%
Total	100.0%	100.0%	100.0%

As shown in the table above, the applicants project 62.1 percent of all residents will have services paid for by State/County Special Assistance with Medicaid and 37.9 percent of all residents will be private pay residents. In Section VI.3, pages 26-27, the applicants state that all persons will be admitted to the facility, receive services at the facility, and have the same payment policies regardless of race, color, creed, age, national origin, handicap, sex, or source of payment.

The applicants adequately demonstrate that medically underserved populations will have access to the proposed ACH services. Therefore, the application is conforming to this criterion.

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

C

In Section VI.3, page 26, the applicants state admission to the facility will be upon the written order of a physician. In Exhibit M, the applicants provide a copy of the Residency & Services Admission Agreement. The applicants adequately demonstrate that the facility will offer a range of means by which patients will have access to the proposed services. Therefore, the application is conforming to this criterion.

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

C

In Section V.1, page 23, the applicants state that the facility is not yet operational but provide the names of health professional training programs in the area which they have contacted. Exhibit K contains undated letters from the applicants to three local health professional training programs in the area, as well as to physicians in the area, offering to provide the facility for

training for clinical programs and to work with area physicians in providing care. The information provided is reasonable and supports a finding of conformity with 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.

NC

The applicants propose to acquire and relocate 16 adult care home (ACH) beds from Oak Grove Healthcare Center, an existing combination nursing facility with ACH beds in Rutherford County, to Lake Lure Assisted Living (LLAL). LLAL is a previously approved but not yet developed 46-bed ACH facility, comprised entirely of special care unit (SCU) beds, in Rutherford County. At the completion of this project and Project I.D. #C-8626-11, LLAL will have a total of 62 ACH beds, including 46 SCU beds, and Oak Grove Healthcare Center will have no remaining ACH beds.

On page 223, the 2016 SMFP defines the service area for ACH beds as “*the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrell, are considered a combined service area.*” Thus, the service area for this project consists of Rutherford County. Facilities may also serve residents of counties not included in their service area.

Oak Grove is a combination nursing facility that has 16 licensed ACH beds. The applicants provide conflicting information as to whether the existing ACH beds are occupied, and publicly available information suggests that at least some of the beds may still be occupied.

On page 244 of the 2016 SMFP, Table 11A documents that there are currently a total of 12 existing facilities in Rutherford County that offer ACH services as well as LLAL, which has not started development and which has licensed but unoccupied beds. The table below is a summary of those 13 facilities in Rutherford County, recreated from the 2016 SMFP, Chapter 11, Table 11A and Table 11B, page 251. There is a projected surplus of 226 ACH beds in 2019 for Rutherford County.

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*Includes Haven-n-Hills Living Center, which has 46 licensed but unoccupied beds, and was the subject of Project I.D. #C-8626-11.

**Does not include the beds from Haven-n-Hills Living Center.

The applicants do not propose to develop new ACH beds, but rather to relocate 16 ACH beds, which are located in a combination nursing facility, to a new facility under development. There will be no increase in the inventory of ACH beds or the number of facilities in Rutherford County.

In Section VI.5, page 27, and in supplemental information received February 9, 2017, the applicants discuss how the project will promote cost-effectiveness, quality, and access to the proposed services.

See also Sections II, III, V, VI, and VII where the applicants discuss the impact of the project on cost-effectiveness, quality, and access to the proposed services

However, the information provided by the applicants is not reasonable and does not adequately demonstrate that any enhanced competition in the service area includes a positive impact on cost-effectiveness for the proposed services. This determination is based on the information in the application and the following analysis:

- The applicants do not adequately demonstrate the need for the proposed project and that it is a cost-effective alternative. The discussions regarding analysis of need and alternatives found in Criteria (3) and (4), respectively, are incorporated herein by reference.
- The applicants do not adequately demonstrate the financial feasibility of the project, as proposed. The discussions regarding financial feasibility and cost found in Criteria (5) and (12), respectively, are incorporated herein by reference.

Consequently, the application is nonconforming 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 supplemental information provided January 13, 2017, the applicants identify facilities in North Carolina which are operated and managed by Affinity Living Group, LLC, the proposed operator of the proposed facility. A total of 77 affiliated facilities were identified either by the applicants or by information obtained from the Adult Care Licensure Section, DHSR. According to the files in the Adult Care Licensure Section, 19 incidents occurred at 17 of the affiliated facilities within the 18 months immediately preceding the submission of the application through the date of this decision related to quality of care. As of the date of this decision, the problems had been corrected. After reviewing and considering information provided by the applicant and by the Adult Care Licensure Section and considering the quality of care provided at all affiliated facilities, 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.

NA

The Criteria and Standards for Nursing Facility or Adult Care Home Facility Services promulgated in 10A NCAC 14C.1100 are not applicable because the applicants do not propose to establish new adult care home beds or add adult care home beds to an existing facility.