

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: March 15, 2017

Findings Date: March 15, 2017

Project Analyst: Julie Halatek

Team Leader: Lisa Pittman

Project ID #: B-11270-16

Facility: Buncombe Senior Living

FID #: 160507

County: Buncombe

Applicants: Buncombe Propco, LLC

Buncombe Opco, LLC

Project: Develop a replacement 60-bed adult care home facility by relocating 24 adult care home beds from Nana's Assisted Living Facility and 36 adult care home beds from The Laurels of Summit Ridge

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

Buncombe Propco, LLC and Buncombe Opco, LLC propose to develop Buncombe Senior Living (BSL), a replacement 60-bed adult care home (ACH) facility, by relocating 24 ACH beds from Nana's Assisted Living Facility (Nana's) and 36 ACH beds from The Laurels of Summit Ridge (The Laurels). Nana's is an existing ACH facility with 49 licensed ACH beds (25 of which are being relocated as part of Project I.D. #B-11047-15). The Laurels is a combination nursing facility with 63 licensed ACH beds. At the conclusion of this project and Project I.D. #B-11047-15, Nana's will have no remaining ACH beds and The Laurels will have 27 ACH beds remaining.

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.”*

Both Nana’s and The Laurels are located in Buncombe County, and the proposed facility will also be located in Buncombe County; therefore, the number of licensed adult care home beds in Buncombe 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 Section X.9, page 40, 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 develop BSL, a replacement 60-bed ACH facility, by relocating 24 ACH beds from Nana's and 36 ACH beds from The Laurels. Nana's is an existing ACH facility with 49 licensed ACH beds (25 of which are being relocated as part of Project I.D. #B-11047-15). The Laurels is a combination nursing facility with 63 licensed ACH beds. At the conclusion of this project and Project I.D. #B-11047-15, Nana's will have no remaining ACH beds and The Laurels will have 27 ACH beds remaining.

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 Buncombe County. Facilities may also serve residents of counties not included in their service area.

In Section III.7, pages 16-17, the applicants provide the projected patient origin for BSL. The applicants state that 100 percent of patients are projected to be residents of Buncombe County. The applicants state that the utilization projections are reasonable because the replacement facility will be within a short drive for a majority of Buncombe County residents and it will be located centrally within Buncombe County.

The applicants adequately identify the population to be served.

Analysis of Need

Utilization of the ACH beds in Buncombe County ranges from 66.9 percent to 67.7 percent depending on how the information is calculated. In Table 11B on page 252 of the 2016 SMFP, Buncombe County is listed as having a planning inventory of 1,165 ACH beds and a 2019 Projected Bed Utilization Summary total of 1,171 ACH beds, leaving a projected deficit of six ACH beds.

In Section III.1, page 13, the applicants state the following with regard to the need to develop the replacement facility:

“The replacement facility will (i) replace a current facility [Nana’s] that is moving beyond its useful life as an adult care home and does not have modern systems and design elements that could otherwise improve quality of care and increase staff efficiency and (ii) will incorporate currently unused beds that are within a skilled nursing facility and are not being utilized by that facility. The replacement facility will be able to provide better resident care in a more cost effective manner in a substantially improved resident environment. The existing adult care home that is being replaced is not protected by a fire sprinkler system. Lighting is insufficient and inadequate. The physical plant is no longer suitable to provide care for adult care home residents. This project will also incorporate beds from a neighboring nursing facility [The Laurels] that is primarily intended to provide a different type of services. ...

There is substantial need for this replacement facility. It will help accommodate the considerable growth in senior population over the next 20 years as shown the Buncombe County Aging Report (112% growth of the 75-84 age group, 64% growth of the 85+ age group).

See Exhibit F”

The Project Analyst reviewed applications submitted by entities affiliated with the applicants or the proposed management company for BSL, 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)
- C-11244-16 (change of scope/cost overrun to Project I.D. #C-8626-11 by adding 16 ACH beds to a previously approved 46-bed ACH facility – Rutherford 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?

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

In Section III.2(b), the applicants refer to Exhibits E and F as containing statistical or other data that substantiates a need for a new service. Exhibit F is discussed above. Although the applicants state that Exhibit E supports the need to relocate 60 ACH beds, Exhibit E contains only a map showing the approximate location of BSL as well as demographic information for Buncombe County. The applicants do not show how the information in Exhibit E supports a need to relocate 60 ACH beds in Buncombe County.

In summary, the applicants do not adequately demonstrate the need for the proposed 60 bed replacement facility.

Projected Utilization

In Section IV.2, page 19, the applicants provide projected utilization for the proposed project during the first two operating years (OYs), as shown in the table below.

Projected Utilization – Buncombe Senior Living – OYs 1 & 2					
	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	
Patient Days	1,196	2,250	3,367	4,449	11,262
Occupancy Rate	21.7%	41.7%	61.7%	80.6%	51.4%
# of Beds	60	60	60	60	60
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	
Patient Days	5,034	5,078	5,078	5,134	20,324
Occupancy Rate	91.2%	93.0%	93.0%	93.0%	92.6%
# of Beds	60	60	60	60	60

As shown in the table above, during the second operating year (FFY 2020), the applicants project that the facility will average 92.6 percent occupancy [20,324 / 366 / 60 = 0.9255, or 92.6%].

In Exhibit L, the applicants provide the assumptions and methodology used to project utilization of the 60 ACH beds. In Exhibit L, the applicants state:

“1) Occupancy

- A) Facility begins operations with 9 reserved beds on October 1, 2018*
- B) Fill-up at the rate of 4 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. The applicants do not adequately demonstrate that projecting nine 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 60 ACH beds to a replacement facility.

Based on review of the information provided by the applicants in Section III, pages 13-17, Section IV, pages 18-20, and referenced exhibits, 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 24-25, 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 Section VII.2, page 24, as well as Exhibit L, the applicants project that 43.5 percent of ACH patients will receive State/County Special Assistance/Basic Medicaid funding and 56.5 percent of ACH patients will be private pay patients. The applicants also state on page 25 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 the medically underserved, are likely to have access to the proposed services.

Conclusion

In summary, the applicants adequately identify the population to be served. However, the applicants do not adequately demonstrate the need to relocate 24 existing ACH beds from Nana's and 36 existing ACH beds from The Laurels to a proposed replacement facility. 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.

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The applicants propose to relocate 24 existing ACH beds from Nana's and 36 existing ACH beds from The Laurels to a 60-bed replacement facility.

The applicants state that the 36 ACH beds from The Laurels are currently unoccupied. This information is supported by publicly available information in the 2017 LRA for The Laurels; the LRA shows a population of 24 ACH residents as of September 30, 2016, which leaves 39 unoccupied beds.

In Section III.6(a), page 15, in response to a question regarding plans for relocation of people currently served, the applicants state:

“The closing of Nana's Assisted Living 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.”

The applicants demonstrate that the needs of the population presently served will be adequately met and that the proposal will not adversely affect the ability of underserved groups to obtain needed healthcare.

Therefore, the application is conforming 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 14, the applicants state the following with regard to alternatives considered in development of the proposed project:

“The existing physical plant of Nana’s Assisted living [sic] is not suitable to address the current healthcare needs of residents in Buncombe County. Additionally, a portion of the beds currently held by The Laurels of Summit Ridge would more effectively serve the current and future needs of Buncombe County residents as part of a consolidated, purpose built, newly designed, newly constructed facility. The proposed redevelopment and expanded size of the outdated Nana’s Assisted Living facility is the most effective alternative due to its ability to implement significantly better building design and construction, room configuration, energy efficiency, and resident environment and safety. The existing facility will be replaced with a new, efficient building pursuant to Policy GEN-4 ‘Energy Efficiency and Sustainability for Health Service Facilities’. Furthermore, the new facility will be well suited to provide safety, quality healthcare, promote equitable access and give the best of value in healthcare to its residents pursuant to Policy GEN-3 ‘Basic Principles’. The applicant has identified a site in Buncombe County which is the service area of Nana’s Assisted Living and Laurels of Summit Ridge.”

However, 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.

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), (5), (6), (13c), 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 relocate 24 existing ACH beds from Nana’s and 36 existing ACH beds from The Laurels to a 60-bed replacement facility.

Capital and Working Capital Costs

In Section VIII.1, pages 31-32, the applicants project the total capital cost of developing the new facility will be \$8,443,050, as follows:

Site Costs:	\$1,589,200
Construction:	\$4,931,850
Equipment/Building:	\$925,000
Financing/Interest:	\$417,000
Consultant Fees:	\$255,000
Contingency:	\$325,000
Total:	\$8,443,050

In Exhibit P, the applicants project a two month start-up period with \$135,000 in start-up expenses, and 11 months of initial operating expenses at \$444,796 for a total working capital cost of \$580,296.

Availability of Funds

In Section VIII.2, page 33, the applicants state that the capital costs will be financed by a commercial loan in the amount of \$8,443,050. In Exhibit N, the applicants provide a letter dated October 13, 2016 from Locust Point Capital offering to provide financing for the capital costs via loan in the amount of \$8,443,050. In Exhibit P, the applicants provide a letter dated October 13, 2016 from Locust Point Capital offering to provide financing for the working capital costs via loan in the amount of \$580,296. 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), the applicants project revenues and operating expenses for the first three operating years of the project, as shown in the table below.

BSL Projected Revenue / Expenses – OYs 1-3			
	OY 1 – FFY 2019	OY 2 – FFY 2020	OY 3 – FFY 2021
Total Patient Days	11,262	20,323	20,367
Total Gross Revenues (Charges)	\$1,175,555	\$2,172,282	\$2,185,435
Total Net Revenue	\$1,175,555	\$2,172,282	\$2,185,435
Average Net Revenue per Patient Day	\$104.38	\$106.89	\$107.30
Total Operating Expenses (Costs)	\$1,614,884	\$2,166,404	\$2,166,527
Average Operating Expense per Patient Day	\$143.39	\$106.60	\$106.37
Net Income/(Loss)	(\$439,329)	\$5,878	\$18,908

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 the assumptions used in preparation of the pro forma financial statements are reasonable, specifically with regard to projected utilization. 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 develop a replacement 60-bed ACH facility by relocating 24 ACH beds from Nana’s and 36 ACH beds from The Laurels. Nana’s is an existing ACH facility with 49 licensed ACH beds (25 of which are being relocated as part of Project I.D. #B-11047-15). The Laurels is a combination nursing facility with 63 licensed ACH beds. At the conclusion of this project and Project I.D. #B-11047-15, Nana’s will have no remaining ACH beds and The Laurels will have 27 ACH beds remaining.

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 Buncombe County. Facilities may also serve residents of counties not included in their service area.

On pages 225-226 of the 2016 SMFP, Table 11A documents that there are currently a total of 32 existing facilities in Buncombe County that offer ACH services. The table below is a summary of those 13 facilities in Buncombe County, recreated from the 2016 SMFP, Chapter 11, Table 11A and Table 11B, page 251. There is a projected deficit of six ACH beds in 2019 for Buncombe County.

2016 ACH Inventory and 2019 Need Projections for Buncombe County	
# ACH Facilities	22
# Beds in ACH Facilities	885
# Beds in Nursing Facilities	290
Total # Licensed Beds	1,175
# CON Approved Beds (License Pending)	0
Total # ACH Beds Available	1,175
Total # ACH Beds in Planning Inventory	1,165
Projected Bed Utilization Summary	1,171
Projected Bed Surplus (Deficit)	(6)

The applicants do not adequately demonstrate that there is a need to relocate 60 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 do not demonstrate a need to relocate the 60 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 Buncombe 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 28, the applicants state that by FFY 2020 (the second full fiscal year) the ACH facility will be staffed by 16 full-time equivalent (FTE) positions, including nine 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 a letter dated October 13, 2016 from the applicants to Mission Hospital, stating they wish to enter into a transfer agreement with Mission once the facility is open. The applicants adequately demonstrate that necessary ancillary and support services are 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 24 existing ACH beds from Nana's and 36 existing ACH beds from The Laurels to a 60-bed replacement facility. Exhibit V contains architectural conceptual site and floor plans for the proposed 32,879 square foot facility. In Exhibit W, the applicants provide a letter from an architect that estimates that site and construction costs for the proposed facility will be approximately \$150 per square foot, which corresponds to the projected capital costs in Section VIII, page 32. 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 24 existing ACH beds from Nana’s and 36 existing ACH beds from The Laurels, an operational combination nursing facility, to BSL, a proposed replacement facility. The applicants do not currently own or operate any of the ACH beds proposed for BSL.

- (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 24 existing ACH beds from Nana’s and 36 existing ACH beds from The Laurels, an operational combination nursing facility, to BSL, a proposed replacement facility. The applicants do not currently own or operate any of the ACH beds proposed for BSL.

- (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

NC

In Section VII.2, page 24, as well as in Exhibit L, the applicants project the following payor mix during the second FFY of operation (FFY 2020):

Projected Payor Mix – FFY 2020 - BSL	
Private Pay	56.5%
State/County Special Assistance	43.5%
Total	100.0%

As shown in the table above, the applicants project 43.5 percent of all residents will have services paid for by State/County Special Assistance with Medicaid and 56.5 percent of all residents will be private pay residents. In Sections VI.3(a)-(b), pages 24-25, 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.

However, the applicants state in Section VI.1, page 23, in response to a question about historical patient days by payor category:

*“Nana’s operator / tenant is un-cooperative. The facility will be closed. See letter in **Exhibit D**. Buncombe Propco, LLC will acquire 36 licensed beds in The Laurels of Summit Ridge which are underutilized. See Letter in **Exhibit D**.”* (emphasis in original)

The applicants provide no other information to demonstrate their projected payor mix is reasonable and adequately supported.

Publicly available information from the 2016 LRAs for Nana's and The Laurels showed that as of September 30, 2015, The Laurels had 35 ACH patients, and all 35 were private pay patients. As of July 31, 2015, Nana's had 32 ACH patients. 24 of those patients were receiving State/County Special Assistance/Basic Medicaid funding and four patients were private pay patients. In addition, the applicants could have used their experience at their local facilities as a basis for their payor mix projections.

The applicants do not adequately demonstrate that medically underserved populations will have access to the proposed ACH services. Therefore, the application is nonconforming 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.

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In Section VI.3, page 24, 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 21, 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 letters from the applicants to Asheville-Buncombe Technical Community College, 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 develop a replacement 60-bed ACH facility by relocating 24 ACH beds from Nana's and 36 ACH beds from The Laurels. Nana's is an existing ACH facility with 49 licensed ACH beds (25 of which are being relocated as part of Project I.D. #B-11047-15). The Laurels is a combination nursing facility with 63 licensed ACH beds. At the conclusion of this project and Project I.D. #B-11047-15, Nana's will have no remaining ACH beds and The Laurels will have 27 ACH beds remaining.

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 Buncombe County. Facilities may also serve residents of counties not included in their service area.

On pages 225-226 of the 2016 SMFP, Table 11A documents that there are currently a total of 32 existing facilities in Buncombe County that offer ACH services. The table below is a summary of those 13 facilities in Buncombe County, recreated from the 2016 SMFP, Chapter 11, Table 11A and Table 11B, page 251. There is a projected deficit of six ACH beds in 2019 for Buncombe County.

2016 ACH Inventory and 2019 Need Projections for Buncombe County	
# ACH Facilities	22
# Beds in ACH Facilities	885
# Beds in Nursing Facilities	290
Total # Licensed Beds	1,175
# CON Approved Beds (License Pending)	0
Total # ACH Beds Available	1,175
Total # ACH Beds in Planning Inventory	1,165
Projected Bed Utilization Summary	1,171
Projected Bed Surplus (Deficit)	(6)

The applicants do not propose to develop new ACH beds, but rather to relocate 60 ACH beds, 24 of which are located in an existing ACH facility and 36 of which are located in an existing combination nursing facility, to a proposed replacement facility. There will be no increase in the inventory of ACH beds in Buncombe County. As a result of this project and Project I.D. #B-11047-15, Nana's would close, so there would be no change in the number of ACH facilities in Buncombe County.

In Section VI.5, page 25, 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 discussion regarding financial feasibility found in Criterion (5) is 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 Section II.3, page 12, the applicants state that they are each single purpose entities that were formed for the sole purpose of development and operation of BSL. In Section I.10, page 7, the applicants state that the management company for the proposed replacement facility will be Affinity Living Group. The Agency has a list of all Affinity-related or Meridian-related facilities on file from Project I.D. #C-11244-16. A total of 77 affiliated facilities were identified either by the applicants or by information obtained from the Adult Care Licensure Section, DHRS. 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.