

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: October 27, 2017

Findings Date: October 27, 2017

Project Analyst: Gregory F. Yakaboski

Team Leader: Fatimah Wilson

Project ID #: F-11368-17

Facility: Cabarrus Senior Living

FID #: 170321

County: Cabarrus

Applicant(s): Cabarrus Propco, LLC

Cabarrus Opco, LLC

Project: Develop a new Adult Care Home facility, Cabarrus Senior Living, by relocating 66 ACH beds from Cabarrus Manor (Project I.D. #F-11101-15) leaving 67 ACH beds at Cabarrus Manor

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

N.C. Gen. Stat. §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

Two applicants, Cabarrus Propco, LLC (lessor) and Cabarrus Opco, LLC (lessee), known collectively as the applicants, propose to develop a new adult care home (ACH) facility, Cabarrus Senior Living, by relocating 66 existing ACH beds from Cabarrus Manor, an approved but undeveloped 133 bed ACH facility.

There are three previously approved projects that are related to this review:

Project I.D.#	Project Description	Date Certificate of Need Issued	Total # of ACH Beds
F-11101-15	Change of scope for Project ID# F-10311-14 (relocate and replace 48 ACH beds) and Project ID# F-10263-14 (relocate and replace 60 ACH beds) by relocating and replacing the 25 ACH beds at St. Andrews to Cabarrus Manor. Upon completion of all three projects Cabarrus Manor will be licensed for 133 ACH beds	March 29, 2016	133
F-10311-14	Change of scope and cost overrun for Project ID #F-10263-14 (replace and relocate 60 ACH beds from Kannapolis Village) and replace and relocate 48 ACH beds from the Concord House to a new combined replacement ACH facility for a total of 108 ACH beds	December 23, 2014	108
F-10263-14	Replace and relocate 60 ACH beds at Kannapolis Village to a new location within Cabarrus County and change the name of the facility to Cabarrus Manor	July 15, 2014	60

Upon completion of the proposed project, and the three previously approved projects, Cabarrus Senior Living will be licensed for a total of 66 ACH beds and Cabarrus Manor will be licensed for a total of 67 ACH beds (133-66 = 67). The location for the proposed Cabarrus Manor and Cabarrus Senior Living facilities is Cabarrus County.

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 2017 State Medical Facilities Plan (2017 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

“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.”

The applicants are proposing to relocate 66 existing ACH beds within Cabarrus County. The number of licensed ACH beds in Cabarrus County will not change with the proposed relocation of beds. Therefore, the application is consistent with Policy LTC-2.

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

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, pages 36-37, and Exhibit 22 the applicants provide a written statement describing the proposed project’s plan to assure improved energy efficiency and water conservation including energy efficient design utilizing latest technologies to assure maximum energy efficiency, appropriate building fenestration to enhance day lighting, programmable thermostats, individual HVAC units, energy recovery ventilators, compliance with the 2012 NC Energy Conservation Code, LED and fluorescent lighting, outside lighting utilizing photocells and programmed timers, water efficient plumbing fixtures, water heating utilizing recirculating pumps to maintain constant hot water temperatures and thermally insulated windows. The applicants adequately demonstrate the proposal includes a plan to assure improved energy efficiency and water conservation. Therefore, the application is consistent with Policy GEN-4.

Conclusion

In summary, the applicants adequately demonstrate that the proposal is consistent with all applicable policies in the 2017 SMFP. 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 a new ACH facility, Cabarrus Senior Living, by relocating 66 existing ACH beds from Cabarrus Manor, an approved but undeveloped 133 bed ACH facility, leaving 67 ACH beds at Cabarrus Manor. Affinity Living Group, LLC is the proposed management company for Cabarrus Senior Living

Patient Origin

On page 219, the 2017 SMFP defines the service area for adult care home 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 facility consists of Cabarrus County. Facilities may also serve residents of counties not included in their service area.

Cabarrus Senior Living is not an existing facility with no historical patient origin. In Section III.7, page 15, the applicants provide the projected patient origin for the first year of operation following completion of the project, as shown in the table below.

County	Projected % of Total ACH Admissions
Cabarrus	100.0%
Total	100.0%

Cabarrus Manor is an approved but undeveloped 133 bed ACH facility. The beds are approved to be relocated to develop Cabarrus Manor are currently empty, thus there is no historical data from Cabarrus Manor upon which to base projected patient origin for Cabarrus Senior Living.

In Section III, page 15, of the application the applicants identify the assumptions, including the methodology, used to project the patient origin as follows:

“The proposed site for the new facility is located centrally within Cabarrus County and in the Harrisburg, NC area.”

The project analyst notes that the assertion that the proposed location, 8601 Hickory Ridge Road in Harrisburg, is “*located centrally within Cabarrus County*” is incorrect. Per Map

Quest the proposed site is geographically located on the western edge of Cabarrus County, southeast of Harrisburg. However, according to the NC State Office of Budget and Management, the population of Harrisburg as of July 1, 2016 is 16,176 and the projected population of Cabarrus County as of July 1, 2016 is 200,663. Furthermore, both Concord and Kannapolis (part), located within Cabarrus County, have populations greater than Harrisburg. Therefore, it is not unreasonable for the applicants to project that 100% of the projected patient origin for the proposed facility to be Cabarrus County.

The applicants adequately identified the population to be served.

Analysis of Need

In Section III, pages 12-13, the applicants describe the need to develop a new ACH bed facility in Cabarrus County as follows:

- Cabarrus Manor (Project ID #F-11101-15) was approved to develop a 133 ACH bed facility at 4821 Kannapolis Pkwy, Kannapolis in Cabarrus County. The history of the Cabarrus Manor facility is set forth in the table below:

Project I.D.#	Project Description	Date Certificate of Need Issued	Total # of ACH Beds
F-11101-15	Change of scope for Project ID# F-10311-14 (relocate and replace 48 ACH beds) and Project ID# F-10263-14 (relocate and replace 60 ACH beds) by relocating and replacing the 25 ACH beds at St. Andrews to Cabarrus Manor. Upon completion of all three projects Cabarrus Manor will be licensed for 133 ACH beds	March 29, 2016	133
F-10311-14	Change of scope and cost overrun for Project ID #F-10263-14 (replace and relocate 60 ACH beds from Kannapolis Village) and replace and relocate 48 ACH beds from the Concord House to a new combined replacement ACH facility for a total of 108 ACH beds	December 23, 2014	108
F-10263-14	Replace and relocate 60 ACH beds at Kannapolis Village to a new location within Cabarrus County and change the name of the facility to Cabarrus Manor	July 15, 2014	60

- Cabarrus Manor was designed to be developed as a single story facility.
- An access easement for an adjoining piece of property was granted across the approved site. The granting of this access easement was unforeseen. The result of the access easement is that the buildable area of the approved site was reduced such that the proposed single story 133 ACH bed Cabarrus Manor facility cannot be developed as designed.
- It is cost prohibitive to redesign and develop a two story facility to house Cabarrus Manor on the approved site on Kannapolis Parkway.
- Relocating 66 of the 133 ACH beds to another location within Cabarrus County would permit the development of two ACH facilities approximately 20 miles apart within

Cabarrus County: Cabarrus Manor as a 67 bed ACH facility and Cabarrus Senior Living as a 66 bed ACH facility. This would also improve access to ACH beds within Cabarrus County “*since the proposed facility is located in the opposite end of the county (approximately 16 miles away)*” from the approved location of the proposed Cabarrus Manor facility.

The applicants demonstrate the need to reduce the number of ACH beds to be developed at the approved Cabarrus Manor facility due to site limitations.

However, the applicants do not demonstrate the need to develop another ACH facility within Cabarrus County, based on the following:

- There is a projected surplus of 296 ACH beds in Cabarrus County for 2020 (See Table 11:B Adult Care Home Need Projections for 2020, on page 247 of the 2017 SMFP). The applicants do not address this projected surplus of 296 ACH beds in Cabarrus County for 2020 in their analysis of projected utilization. The year 2020 would encompass portions of OY1 and OY2 of the applicants proposed project.
- On page 13, the applicants state, “*Additionally, this alternative increases the level of accessibility of care to residents of Cabarrus County since the proposed new facility is located in the opposite end of the county (approximately 16 miles away). Attached as Exhibit 6 are the current demographics for Cabarrus County.*” Exhibit 6 simply contains raw data with no analysis or statement on what the data demonstrates. The applicants do not adequately explain how the new proposed facility increases accessibility of care to residents of Cabarrus County in terms of having a need for more available ACH beds within the county or in terms of improved access to ACH services given that Cabarrus County is projected to have a surplus of 296 ACH beds.
- All 133 ACH beds approved for Cabarrus Manor are currently empty as Cabarrus Manor is not yet developed and the ACH beds which are being used to develop Cabarrus Manor are from three separate facilities where those beds are currently empty. In Section III, page 14, the applicants state, “*no persons currently served are proposed to be relocated. The 66 licensed beds proposed to be relocated are empty beds without residents.*”
- In Section III.6, page 14, the applicants state, “*With the proposed relocation of beds from the existing facility to the new facility on a new site, residents of Cabarrus County will have an improved ability to obtain the same assisted living services in the future. As described in response to item II (1), the new facility will offer superior quality of care driven by more efficient operations with modern systems. ...The fact that the new site is both centrally located within Cabarrus County and located in Harrisburg, one of the county’s primary population centers, will provide optimal access to services for residents of Cabarrus County.*” [The project analyst notes several issues with this statement: that the ACH beds are not being relocated from an existing facility but rather an approved but undeveloped facility; the applicants did not provide facts to support the assertion that a new facility will offer superior quality of care in relation to a facility which is approved but not yet developed; as discussed above, the proposed new site is not centrally located

within Cabarrus County; the applicants do not establish Harrisburg as a primary population center within Cabarrus County nor do the applicants establish that the population that lives in Harrisburg is in need of ACH beds.]

Based on review of the information provided by the applicants in Section III and referenced exhibits, the applicants did not adequately demonstrate the need to relocate 66 ACH beds from Cabarrus Manor to develop the proposed Cabarrus Senior Living facility.

Projected Utilization

In Section IV.2, pages, 17-18, and Exhibit 7, the applicants provide projected utilization for the proposed 66 ACH bed facility during the first two full federal fiscal years, FFY 2020 and FFY 2021. The following table illustrates projected utilization during the second full FFY (2021).

Projected Utilization					
Second Full Federal Fiscal Year					
October 1, 2020 through September 30, 2021					
	1st Quarter 10/1 to 12/31	2nd Quarter 1/1/ to 3/31	3rd Quarter 4/1 to 6/30	4th Quarter 7/1 to 9/30	Total
Patient Days	5,428	5,580	5,642	5,704	22,354
# of Days in Qtr	92	90	91	92	365
Occupancy Rate	89.4%	93.9%	93.9%	93.9%	92.8%
# of Beds	66	66	66	66	66

As shown in the table above, in the second full FFY of operation, the applicants project the 66 ACH beds will operate at 92.8% of capacity [$22,354/365/66 = 0.9279$, or 92.8%].

In projecting utilization the applicants do not address the projected surplus of 296 ACH beds in Cabarrus County for 2020 in their analysis of projected utilization (See Table 11:B Adult Care Home Need Projections for 2020, on page 247 of the 2017 SMFP). In addition, the ACH beds to be relocated from Cabarrus Manor are currently empty. The year 2020 would encompass portions of OY1 and OY2 of the applicants proposed project when there would be a projected surplus of ACH beds in the County.

In Exhibit 7 and Section IV, pages 17-18, the applicants provide the assumptions and methodology utilized to project utilization of the 66 ACH beds. However, in Section IV, page 18, the applicants reference both the “*Assumptions and Worksheets*” in Exhibit 7 for the descriptions of the assumptions and methodologies utilized for the projected utilization and a letter from the proposed Management Company supporting the assumptions. In Exhibit 7, pages 92-94, there is a document entitled Cabarrus Significant Assumptions 66 Adult Care Home Facility. On page 92, it states, “*Facility begins operations with 15 reserved beds on October 01, 2019 ... Fill-up at the rate of an average of 4 residents per month until ACH fills.*” However, the letter from the proposed Management Company which starts on page 111 of Exhibit 7, does not concur with those stated assumptions as follows “*For the [sic] your proposed facility Cabarrus Senior Living we support the projections of opening the facility with 10 reserved beds, adding 3 net move-ins per month...*” Furthermore, the letter starting on page 111 does not provide the basis

for the numbers of the reserved beds at opening and why the facilities listed are relevant to this application. In addition, it appears that for Franklin House an incorrect number of beds is cited.

Projected utilization is not based on reasonable and adequately supported assumptions.

Access

On Section VI.3a, page 22, “...all persons will be admitted to the facility without regard to their race, color, creed, age, national origin, handicap, sex, or source of payment. Also, all routine and specialized services will be available to persons regardless of their race, color, creed, age, national origin, handicap, sex, or source of payment.”

In Section VI.3c, page 22, the applicants state “Private-pay patients who spend down and become eligible for Medicaid will not be discharged from the facility. Source of payment will not affect the delivery of either routine services or specialized nursing care. ... Residents who spend down will not be discriminated against in room availability or services.”

In Section VI.2, page 21, the applicants project the following payor mix during the second fiscal year (FY2021):

Patient Days by Payor Category

Payor Source	Patient Days	% of Total Days
Private Pay	6,205	27.76%
Special Assistance with Basic Medicaid	16,149	72.24%
Total	22,354	100.0%

Source: Table IV.3, page 21 of the application.

As shown in the table above, the applicants project that 72.24% of the projected patient days will qualify for Special Assistance with Basic Medicaid. The applicants demonstrate that medically underserved populations would have adequate access to the proposed ACH services.

Conclusion

In summary, the applicants adequately identify the patient origin of the population to be served and adequately demonstrate the extent to which all residents, including the underserved, are likely to have access to the proposed services. However, the applicants did not demonstrate the need that this population has for the proposed project. Therefore, the application is not conforming to this criterion.

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

The applicants propose to develop a new ACH facility, Cabarrus Senior Living, by relocating 66 ACH beds from Cabarrus Manor, an approved but undeveloped 133 bed ACH facility, leaving 67 ACH beds at Cabarrus Manor.

On page 219, the 2017 SMFP defines the service area for adult care home 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 facility consists of Cabarrus County. Facilities may also serve residents of counties not included in their service area.

The applicants propose to relocate 66 licensed but not operational ACH beds from the previously approved Cabarrus Manor in Kannapolis. According to Map Quest, the proposed Cabarrus Senior Living facility will be located 20.5 miles (a 24 minute drive) from Cabarrus Manor. Therefore, the 66 ACH beds would be geographically accessible to the same population that will be served by Cabarrus Manor, once Cabarrus Manor is developed. Cabarrus Manor is not yet developed and the 133 ACH beds which currently comprise Cabarrus Manor all were originally approved for other facilities within Cabarrus County which were either not developed as planned or closed. Since Cabarrus Manor is not operational and is not currently serving residents, no residents will be impacted by the relocation of the 66 ACH beds from Cabarrus Manor to the proposed Cabarrus Senior Living facility. The applicants adequately demonstrated that the application is conforming to this criterion.

The applicants demonstrate that the needs of the population proposed to be served at Cabarrus Manor will be adequately met following the proposed relocation of 66 ACH beds and that the proposal will not adversely affect the ability of underserved groups to obtain needed health care. 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, pages 12-13, the applicants describe the alternatives considered prior to submitting the application, which include:

- Maintain the Status Quo- The applicants state the current site for the approved 133 ACH bed Cabarrus Manor facility can no longer accommodate the facility, designed and approved as a one story facility, due to the “unforeseen granting of an access easement to an adjoining parcel which reduced the size of the approved site. Therefore, maintaining the status quo is not the least costly or most effective alternative.
- Construct a two-story facility- Construction of a two-story facility on the approved site for Cabarrus Manor would expand the Cabarrus Manor Project ID#F-11101-15 beyond its approved capital costs and is prohibitively expensive. Therefore, constructing a two-story facility is not the least costly or most effective alternative.

- Propose relocating 66 of the 133 ACH beds from Cabarrus Manor- Construct a new 66 ACH bed facility within Cabarrus County by relocating 66 ACH beds from Cabarrus Manor and construct the approved Cabarrus Manor as a 67 ACH bed facility. The applicants state that this proposal is both cost effective and increases geographic access to ACH beds to residents of Cabarrus County with two smaller ACH facilities approximately 20 miles apart. The applicants found this proposal to be the least costly and most effective alternative.

However, the application is not conforming to all other applicable statutory and regulatory review criteria, and thus, is not approvable. An application that cannot be approved cannot be an effective alternative.

The applicants did not adequately demonstrate that the proposed alternative is the most effective or least costly alternative to meet the identified need. Therefore, the application is not conforming 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 develop a new ACH facility, Cabarrus Senior Living, by relocating 66 ACH beds from Cabarrus Manor, an approved but undeveloped 133 bed ACH facility, leaving 67 ACH beds at Cabarrus Manor.

Capital and Working Capital Costs

In Section VIII, page 28, of this application, the applicants project the total capital cost of the proposed project will be:

Site costs-	\$2,171,081
Construction costs-	\$4,881,800
Equipment-	\$ 650,000
Consultant Fees-	\$ 250,000
Financing Costs-	\$ 150,000
Interest during Construction	\$ 245,000
Contingency	<u>\$ 150,000</u>
Total:	\$8,497,881

In Exhibit 13 the applicants project the total working capital (start-up and initial operating expenses) costs will be \$431,391.

Availability of Funds

In Section VIII.2, page 29, and in Exhibit 13, the applicants state that the capital and working capital costs will be financed by two commercial loans.

In Exhibit 12, the applicants provide a letter dated June 13, 2017 from Dan Contardi of Locust Point Capital (Locust) which states that Locust will provide 100% financing for the capital costs for the Cabarrus Senior Living Project in the amount of \$8,497,881. The letter includes the proposed terms of the commercial loan.

In Exhibit 13, the applicants provide a letter dated June 13, 2017 from Dan Contardi of Locust Point Capital (Locust) which states that Locust will provide 100% financing for the working capital costs of the Cabarrus Senior Living project in the amount of \$431,391. The letter includes the proposed terms of the commercial loan.

The applicants adequately demonstrated that sufficient funds will be available for the capital and working capital needs of the proposed Cabarrus Senior Living project.

Financial Feasibility

The applicants provided pro forma financial statements for the first three full federal fiscal years of operation following completion of the project. In the pro forma financial statement (Form B), the applicants project that revenues will exceed operating expenses in the second and third operating years of the project, as shown in the table below.

	OY1 (FFY 2020)	OY2 (FFY 2021)	OY3 (FFY 2022)
Total Patient Days	12,807	22,354	22,630
Total Revenues	\$1,060,658	\$1,818,472	\$1,838,230
Average Net Revenue per patient day	\$82.82	\$81.35	\$81.23
Total Operating Expenses (Costs)	\$1,342,429	\$1,716,937	\$1,721,981
Average Operating Expense per patient day	\$104.82	\$76.81	\$76.09
Net Income	(\$281,771)	\$101,536	\$116,249

However, the applicants do not adequately demonstrate that the assumptions used by the applicants 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 proposed project. However, the applicants do not adequately demonstrate that the financial feasibility of the project 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 new ACH facility, Cabarrus Senior Living, by relocating 66 ACH beds from Cabarrus Manor, an approved but undeveloped 133 bed ACH facility, leaving 67 ACH beds at Cabarrus Manor.

On page 219, the 2017 SMFP defines the service area for adult care home 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 facility consists of Cabarrus County. Facilities may also serve residents of counties not included in their service area.

Table 11A in the 2017 SMFP lists a total of 16 ACH facilities in Cabarrus County and a total of 934 beds, 48 of which are in a nursing home. The table below is based on Table 11A, pages 222-223, and Table 11B, page 247, in the 2017 SMFP.

2017 SMFP ACH Inventory & 2020 Need Projections Cabarrus County	
# Facilities	16
# Beds in ACH Facilities	886
# Beds in Nursing Homes	48
Total Licensed Beds	934
# CON Approved	0
Total # Available	934
Total # in Planning Inventory	934
Projected Bed Utilization Summary 2020*	638
Projected Bed Surplus 2020*	296

*From Table 11B, page 247, 2017 SMFP

The applicants do not propose to develop new ACH beds, but rather to relocate 66 ACH beds from an approved, but undeveloped 133 bed ACH facility to a new 66 bed ACH facility within the same county. There will be no increase in the inventory of ACH beds in Cabarrus County.

However, the applicants do not adequately demonstrate that there is a need to relocate 66 ACH beds to develop a new ACH facility in Cabarrus County. The discussions regarding analysis of need 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 66 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 Cabarrus 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, page 42, the applicants state that by FFFY2021 (the second full federal fiscal year) the adult care home facility will be staffed by 22 full-time equivalent (FTE) positions. 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.2, pages 7-10, the applicants describe the ancillary and support services that will be provided by the facility or made available through agreements with other providers including dietary, medical transportation, dentistry, physician, therapy, recreation, personal care, housekeeping and laundry services. Exhibit 23 contains copies of letters for pharmacy and dietary services. Exhibit 3 contains a copy of the professional consulting and accounting services agreement for Affinity Living Group, LLC to provide such services for the proposed project. Affinity Living Group, LLC is the proposed management company for Cabarrus Senior Living. The applicants adequately demonstrate that the necessary ancillary and support services will be available and that the proposed services will be coordinated with the existing health care 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 are proposing to develop the Cabarrus Senior Living facility in a new 34,870 square foot building to be located at 8601 Hickory Ridge Road, Harrisburg.

In Section X.9, pages 36-37, and Exhibit 22 the applicants provide a written statement describing the proposed project's plan to assure improved energy efficiency and water conservation including energy efficient design utilizing latest technologies to assure maximum energy efficiency, appropriate building fenestration to enhance day lighting, programmable thermostats, individual HVAC units, energy recovery ventilators, compliance with the 2012 NC Energy Conservation Code, LED and Fluorescent lighting, outside lighting utilizing photocells and programmed timers, water efficient plumbing fixtures, water heating utilizing recirculating pumps to maintain constant hot water temperatures and thermally insulated windows. Exhibit 22 contains a letter from Vincent A. Myers, AIA, LEEP AP which confirms the estimated cost for building construction only would be \$140.00 per square foot which was the price quoted and verified by the selected general contractor which is consistent with the cost of construction estimate found in Table VIII.1 line B(7) on page 28 of the application.

The applicants adequately demonstrate that the cost, design and means of construction represent the most reasonable alternative for the proposed construction project. Furthermore, the applicants adequately demonstrate that the proposed construction project would not unduly increase the costs and charges of nursing facility services. The discussion regarding costs and charges found in Criterion (5) is incorporated herein by reference. The applicants adequately demonstrate that applicable energy saving features have been incorporated into the construction plans. Therefore, the application is conforming to this criterion.

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

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

C

Cabarrus Senior Living is not an existing facility. Cabarrus Manor is an approved but undeveloped facility. The 66 ACH beds being relocated to develop the facility proposed in this application are currently empty, therefore, no historical payor mix is available.

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

C

Cabarrus Senior Living is not an existing facility. Cabarrus Manor is an approved but undeveloped facility. The 66 ACH beds being relocated to develop the facility proposed in this application are currently empty, therefore, no historical payor mix is available. However, in a different application (Project ID# P-11334-17), ultimately involving the same principals as in this application, in clarifying information received from the applicants on September 15, 2017, the applicants state that there were two civil rights access complaints filed against two ACH facilities while the facilities were being managed by a different management company, but those complaints have been since been resolved.

- (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 Section VI.2, page 21, the applicants project the following payor mix during the second full FFFY (2021):

Patient Days by Payor Category

Payor Source	Patient Days	% of Total Days
Private Pay	6,205	27.76%
Special Assistance with Basic Medicaid	16,149	72.24%
Total	22,354	100.0%

Source: Table IV.3, page 21 of the application.

In VI.2, page 22 and in Exhibit 7, page 114, the applicants state that the projected payor mix is based on the historical payor mix of other ACH facilities that are comparable to

Cabarrus Senior Living, managed by the same management company and in the same HSA.

As shown in the table above, the applicants project that 72.24% of the patient days will qualify for Special Assistance with Basic Medicaid. The 66 ACH beds are presently unutilized and thus are not providing access to anyone. In Section VI.3c, page 22, the applicants state, *“Private-pay patients who spend down and become eligible for Medicaid will not be discharged from the facility. Source of payment will not affect the delivery of either routine services or specialized nursing care. ... Residents who spend down will not be discriminated against in room availability or services.”* In Section VI.3a, page 22, the applicants state *“...all persons will be admitted to the facility without regard to their race, color, creed, age, national origin, handicap, sex, or source of payment. Also, all routine and specialized services will be available to persons regardless of their race, color, creed, age, national origin, handicap, sex, or source of payment.”*

The applicants demonstrate that medically underserved populations would have adequate 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 V.4, pages 19-20, the applicants state patients will have access to the services offered at Cabarrus Senior Living through the following referral sources:

- Hospitals
- Department of Social Services
- Local churches
- Community Organizations

In Exhibit 8, the applicants provide a meeting schedule with various organizations. Exhibit 9 contains a letter to Novant Health regarding entering into a transfer agreement with Novant Health upon receiving a Certificate of Need.

The applicants adequately demonstrate they offer a range of means by which residents will have access to the facility. 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 19, the applicants state,

“...Steps have been taken to create agreements with the following health professional training programs... Rowan-Cabarrus Community College”

Exhibit 10 contains a copy of a letter from Rowan-Cabarrus Community College stating,

“I am writing to support the training needs for the new facility being planned for Cabarrus Propco ... Rowan-Cabarrus Community College can support the training needs for Nursing Assistants, Practical Nurses, and Associate Degree Nurses ...”

The applicants adequately demonstrate that the proposed health services would accommodate the clinical needs of area health professional training programs. Therefore, the application is conforming to this criterion.

- (15) Repealed effective July 1, 1987.
- (16) Repealed effective July 1, 1987.
- (17) Repealed effective July 1, 1987.
- (18) Repealed effective July 1, 1987.

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

NC

The applicants propose to develop a new ACH facility, Cabarrus Senior Living, by relocating 66 ACH beds from Cabarrus Manor, an approved but undeveloped 133 bed ACH facility, leaving 67 ACH beds at Cabarrus Manor.

On page 219, the 2017 SMFP defines the service area for adult care home 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 facility consists of Cabarrus County. Facilities may also serve residents of counties not included in their service area.

Table 11A in the 2017 SMFP lists a total of 16 ACH facilities in Cabarrus County and a total of 934 beds, 48 of which are in a nursing home. The table below is based on Table 11A, pages 222-223, and Table 11B, page 247, in the 2017 SMFP.

2017 SMFP ACH Inventory & 2020 Need Projections Cabarrus County	
# Facilities	16
# Beds in ACH Facilities	886
# Beds in Nursing Homes	48
Total Licensed Beds	934
# CON Approved	0
Total # Available	934
Total # in Planning Inventory	934
Projected Bed Utilization Summary 2020*	638
Projected Bed Surplus 2020*	296

*From Table 11B, page 247, 2017 SMFP

As shown in the table above, the 2017 SMFP projects a surplus of 296 ACH beds in Cabarrus County by 2020.

The applicants do not propose to develop new ACH beds, but rather to relocate 66 ACH beds from an approved, but undeveloped 133 bed ACH facility, to a new 66 bed ACH facility within the same county. There will be no increase in the inventory of ACH beds in Cabarrus County as a result of the proposed project.

In Section VI.5, page 23, the applicants discuss how any enhanced competition in the service area will promote the cost-effectiveness, quality and access to the proposed services. In Exhibit 11, the applicants include their Admissions Agreement which includes a non-discrimination policy and civil rights statement.

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 adequately demonstrate that they will provide quality services. The discussion regarding quality found in Criterion (20) is incorporated herein by reference.
- The applicants adequately demonstrate that they will provide access to medically underserved populations. The discussions regarding access found in Criterion (3), (3a) and (13) are incorporated herein by reference.

Therefore, 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 10, the applicants state that they, as co-applicants, are each a single purpose entity established for developing and operating the Cabarrus Senior Living facility. Affinity Living Group, LLC, the entity that will manage Cabarrus Senior Living facility, also manages along with 75 other ACH facilities in North Carolina, provided in a list in Exhibit 5. According to a September 19, 2017 Penalty Report from the Adult Care Licensure Section, DHRS, during the 18 months immediately preceding the submittal of the application through the date of the decision, five facilities were found to be out of compliance with one or more Medicare conditions of participation. At this time, 71 facilities are in compliance with all Medicare conditions of participation. After reviewing and considering information provided in the application, the written comments submitted during the 30-day written comment period, and by the Adult Care Licensure and Certification Section and considering the quality of care provided at all 75 facilities managed by Affinity Living Group, the applicants provided 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.

NC

The application is not conforming with all applicable Criteria and Standards for Nursing Facility or Adult Care Home Facility Services promulgated in 10A NCAC 14C .1100 . The specific criteria are discussed below.

SECTION .1100 – CRITERIA AND STANDARDS FOR NURSING FACILITY OR ADULT CARE HOME SERVICES

10A NCAC 14C .1102 PERFORMANCE STANDARDS

(a) An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.

-NA- The applicants are not proposing to add nursing facility beds to an existing facility.

(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

-NA- The applicants are not proposing to establish a new nursing facility or add nursing facility beds to an existing facility.

(c) An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.

-NA- The applicants are not proposing to add adult care home beds to an existing facility.

(d) An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.

-NC- The applicants are proposing to establish a new adult care home facility. In Section IV.2, page 17, the applicants project that the occupancy rate will be 92.8% at the end of operating year two (FFFY2021). The assumptions and methodology for the projections are provided in Section IV, pages 17-18 and Exhibit 7 (Assumptions and Worksheets). However, the applicants did not adequately demonstrate that projected utilization is based on reasonable and adequately supported assumptions. See the discussion regarding projected utilization found in Criterion (3) incorporated herein by reference.