

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: February 28, 2020

Findings Date: February 28, 2020

Project Analyst: Gregory F. Yakaboski

Assistant Chief: Lisa Pittman

Project ID #: J-11803-19

Facility: Liberty Commons of Durham County

FID #: 190528

County: Durham

Applicant: Liberty Healthcare Properties of Durham County, LLC

Project: Relocate 49 NF beds from Liberty Commons of Silas Creek pursuant to Policy NH-6 to develop a new NF which is a change of scope for Project ID #G-10216-13 (Relocate 100 NF beds from Liberty Commons Springwood)

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

Liberty Healthcare Properties of Durham County, LLC (the applicant) proposes to develop a new 49 bed nursing facility (NF) in Durham to be known as Liberty Commons of Durham County (Liberty Commons), by relocating 49 existing but undeveloped NF beds, pursuant to Policy NH-6, from the approved but undeveloped Liberty Commons of Silas Creek facility (Project ID #G-10216-13: relocate 100 NF beds from Liberty Commons Springwood). This would be a change of scope for Project ID #G-10216-13.

Background:

- All Liberty applicants are ultimately controlled by John A. McNeill, Jr. and Ronald McNeill.
- Liberty controlled the 200 NF bed facility known as Liberty Commons Nursing and Rehabilitation Center (Springwood Care Center) in Forsyth County.
- In 2013 Liberty filed two applications to relocate all 200 NF beds from the Springwood Care Center by developing two new 100 bed facilities in Forsyth County:
 - Liberty Commons of Silas Creek (Project ID #G-10216-13); and
 - Summerstone Health and Rehabilitation Center (Project ID #G-10220-13).
- Both applications were conditionally approved in February 2014.
- Silas Creek has not yet been developed.
- Summerstone was developed and is operational.
- Liberty simultaneously filed three applications in the November 2019 application review cycle, including this application, to relocate all the 100 existing but undeveloped NF beds from Silas Creek as follows:
 - Relocate 49 NF bed from Silas Creek to a proposed new nursing facility in Durham County to be known as Liberty Commons of Durham County (This application).
 - Relocate 33 NF beds from Silas Creek to The Oaks (Project ID #G-11809-19). The Oaks is in Forsyth County; and
 - Relocate 18 NF beds from Silas Creek to Summerstone (Project ID #G-11802-19). Summerstone is in Forsyth County; and

Summary

	Current # of NF Beds	Proposed in 3 Filed Applications	# of NF beds upon projects being completed
Springwood Care Center	Closed in 2017	0	0
Silas Creek	100 NF Beds*	<100>	0
Summerstone	120	18	138
The Oaks	131**	33	151***
Liberty Commons of Durham County	0	49	49

*Undeveloped relocated NF beds from Springwood Care Center.

**In a separate application, Project ID#F-11462-18, 13 NF beds will be relocated from The Oaks to Mecklenburg County as of 10/1/2023. The applicant states that while these 13 NF beds are still licensed to The Oaks these beds are deliberately not utilized.

***The Oaks will be licensed for 164 beds upon completion of this project. However, the applicant plans to incorporate the 33 NF beds being relocated as part of this project in two phases: 20 NF beds will be incorporated

and licensed as of 10/1/2020 and the remaining 13 NF beds from this project will be incorporated and licensed as of 10/1/2023 at the same time as the 13 NF beds going to Mecklenburg as part of Project ID#F-11462-18 will be de-licensed from The Oaks keeping the maximum number of licensed NF beds at The Oaks at 151 at any one time.

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 2019 State Medical Facilities Plan (2019 SMFP). Therefore, there are no need determinations applicable to this review.

Policies

There are three policies in the 2019 SMFP applicable to this review: Policy NH-6: *Relocation of Nursing Facility Beds*; Policy NH-8: *Innovations in Nursing Facility Design*; and Policy GEN-4: *Energy Efficiency and Sustainability for Health Services Facilities*.

Policy NH-6: Relocation of Nursing Facility Beds, on page 23 of the 2019 SMFP, states:

Relocations of existing licensed nursing facility beds are allowed. Certificate of need applicants proposing to relocate licensed nursing facility beds shall:

- 1. Demonstrate that the proposal shall not result in a deficit, or increase an existing deficit in the number of licensed nursing facility beds in the county that would be losing nursing facility 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*
- 2. Demonstrate that the proposal shall not result in a surplus, or increase an existing surplus of licensed nursing facility beds in the county that would gain nursing facility 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.”*

In Section B, pages 11-12, the applicant explains why it believes the application is conforming to Policy NH-6. In the proposed project Forsyth County would be losing NF beds and Durham County would be gaining NF beds. As shown in the table below upon project completion Forsyth County would not have a deficit in NF beds and Durham County would not have a surplus in NF beds.

	NF Beds: Prior to Project Completion	NF Beds: After Project Completion
	Surplus/ -Deficit	Surplus/ -Deficit
Forsyth	+133	84
Durham	-49	0

Source: Table 10C: Nursing Care Bed Need Projections for 2022, pages 211-212.

Therefore, the proposed project is consistent with Policy NH-6.

Policy NH-8: Innovations in Nursing Facility Design, on page 23 of the 2019 SMFP, states:

“Certificate of need applicants proposing new nursing facilities and replacement nursing facilities shall pursue innovative approaches in environmental design that address quality of care and quality of life needs of the residents. These plans could include innovative design elements that encourage less institutional, more home-like settings, privacy, autonomy and resident choice, among others.”

In Section B, pages 12-14, the applicant explains why it believes its application is conforming to Policy NH-8. On page 12 the applicant states, *“The proposed new, state of the art facility will be designed to incorporate more home-like features, increased privacy, autonomy, resident choice, satisfaction, and convenience, among others.”*

Therefore, the proposed project is consistent with Policy NH-6.

Policy GEN-4: Energy Efficiency and Sustainability for Health Services Facilities, on page 31 of the 2019 SMFP, 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.”

The proposed capital expenditure for this project is greater than \$5 million. In Section B.10, pages 17-18, the applicant describes a plan to ensure energy efficiency and water conservation. The applicant adequately demonstrates that the application includes a written statement describing the applicant’s plans to assure improved energy efficiency and water conservation. Therefore, the application is consistent with Policy GEN-4.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately demonstrates that the proposal is consistent with Policy NH-6 because the county losing NF beds will not have a deficit nor will the county gaining NF beds have a surplus upon project completion.
- The applicant adequately demonstrates that the proposal is consistent with Policy NH-8 because the applicant demonstrated that the design of the proposed NF facility would incorporate innovative approaches in environmental design that address quality of care and quality of life needs of the residents.
- The applicant adequately demonstrates that the proposal is consistent with Policy GEN-4 because the applicant includes a written statement describing the project's plan to assure improved energy efficiency and water conservation.

(2) Repealed effective July 1, 1987.

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

C

The applicant proposes to develop a new 49 bed NF in Durham by relocating 49 existing but unutilized NF beds from the approved but undeveloped Liberty Commons of Silas Creek facility. The new facility will be known as Liberty Commons. The 49 NF beds are being relocated pursuant to Policy NH-6.

Patient Origin

On page 189, the 2019 SMFP defines the service area for nursing facility beds as “*A nursing care bed’s service area is the nursing bed care planning area in which the bed is located. Each of the 100 counties in the state is a separate nursing care bed planning area.*” The facility is proposed to be in Durham County. Thus, the service area for this facility is Durham County. Facilities may also serve residents of counties not included in their service area.

The following table illustrates projected patient origin.

County	Third Full FY of Operation following Project Completion (10/1/2025 to 9/30/2025)	
	Patients	% of Total
Durham	44	93.6%
Orange	3	6.4%
Total	47	100.0%

Source: Section C.3, page 20.

In Section C, page 20, the applicant provides the assumptions and methodology used to project its patient origin. The applicant’s assumptions are reasonable and adequately supported.

Analysis of Need

In Section C, pages 21-24, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services. The applicant states:

- Durham County’s growing senior population. (See application page 21)
- Triangle Township demand. (See application pages 22-23)
- Provide a full healthcare community for residents. (See application page 23)

The information is reasonable and adequately supported for the following reasons:

- The 2019 SMFP projects a 49 NF bed deficit for Durham County.
- North Carolina State Office of Budget and Management (NCSOBM) projects the Durham County population age 65+ to grow by 32,735 people, or 124%, between the 2010 Census and 2030.
- The Triangle Township of Durham County, the site of the proposed 49 bed NF, shows a need for NF beds.
- The proposed facility will be located on the same site as an approved “*assisted living/multi-unit assisted housing with services building*”. The addition of a NF on the same site will allow a resident to age in place, if needed.

Projected Utilization

In Section Q, the applicant provides projected utilization, as illustrated in the following table.

	1 st Full FFY (10/1/2023 to 9/30/2024)	2 nd Full FFY (10/1/2024 to 9/30/2025)	3 rd Full FFY (10/1/2025 to 9/30/2026)
# of NF Beds	49	49	49
Days of Care	15,192	17,155	17,155
Occupancy Rate	84.94%	95.92%	95.92%

Source: Section Q, Form C, page 67.

Projected utilization is reasonable and adequately supported for the following reasons:

- Projected utilization is based on the applicant’s experience with occupancy and relocation of beds through its operating experience of 27 NF’s throughout the state, and
- There is a projected 49 NF bed deficit for Durham County in the 2019 SMFP, and
- Projected utilization is based on future population and demographic data for Durham County.
- Letters of support from case managers for both UNC Hospital and Duke University Hospital.

Access

In Section C.8, pages 24-25, the applicant describes the access low-income persons, racial and ethnic minorities, women, disabled people, the elderly, and underserved groups will have to the proposed services, stating that services will be non-restrictive and available on a first-come, first-served basis. The applicant states, on page 25:

“Liberty Commons will admit residents based on the ability of the facility to satisfy the resident’s needs and based on bed availability. Therefore, minorities and low income persons will have access to skilled nursing now and in the future.”

In Section L, page 52, the applicant projects the following payor mix during the third full fiscal year of operation following completion of the project, as illustrated in the following table.

Payor Category	Services as Percent of Total
Medicaid	65.00%
Medicare	15.03%
Private Pay	19.97%
Total	100.00%

Source: Table on page 52 of the application.

The projected payor mix is reasonable and adequately supported.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately identifies the population to be served.
- The applicant adequately explains why the population to be served needs the services proposed in this application.

- Projected utilization is reasonable and adequately supported.
- The applicant projects the extent to which all residents, including underserved groups, will have access to the proposed services (payer mix) and adequately supports its assumptions.

(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.

C

The applicant proposes to develop a new 49 bed NF in Durham by relocating 49 existing but unutilized NF beds from the approved but undeveloped Liberty Commons of Silas Creek facility. The new facility will be known as Liberty Commons. The 49 NF beds are being relocated pursuant to Policy NH-6.

In Section D, page 28, the applicant explains why it believes the needs of the population presently utilizing the services to be reduced, eliminated or relocated will be adequately met following completion of the project. On page 28, the applicant states:

“The 49 NF beds being relocated from previously approved Liberty Commons of Silas Creek (Project ID G-10216-13) to Liberty Commons are not currently being utilized. The beds associated with Liberty Commons of Silas Creek (Project ID G-10216-13) were part of Springwood Care Center, which has been closed since 2017. The beds at Springwood were split between Summerstone (100 NF beds) and Silas Creek (100 NF beds).”

The 49 NF beds proposed to be relocated are not currently being utilized and thus not currently serving a patient population, therefore relocation of the service will have no impact 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.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the applicant adequately demonstrates that:

- The needs of the population currently using the services to be reduced, eliminated or relocated will be adequately met following project completion.

- The project will not adversely impact the ability of underserved groups to access these services following project completion.
- (4) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

CA

The applicant proposes to develop a new 49 bed NF in Durham by relocating 49 existing but unutilized NF beds from the approved but undeveloped Liberty Commons of Silas Creek facility. The new facility will be known as Liberty Commons. The 49 NF beds are being relocated pursuant to Policy NH-6.

In Section E, page 31, the applicant describes the alternatives it considered and explains why each alternative is either more costly or less effective than the alternative proposed in this application to meet the need. The alternatives considered were:

Maintain the Status Quo – the applicant states that this alternative would not address the need for nursing facility services in Durham County and that the proposed project is less costly. Therefore, this alternative is not the most effective alternative or least costly.

Relocate the NF Beds between Two Other Existing Facilities in Forsyth County – the applicant states that this would have not addressed the need for NF beds in Durham County. Further, this alternative would have necessitated both costly additions driving up costs for patients and converting private rooms into semi-private rooms. Therefore, this is not the least costly or most effective alternative.

On page 31, the applicant states that its proposal is the most effective alternative because it addresses the need for NF beds in Durham County, which showed a deficit of 49 NF beds in the 2019 SMFP, keeps more rooms as private rooms as opposed to semi-private rooms and is less costly.

The applicant adequately demonstrates that the alternative proposed in this application is the most effective alternative to meet the need for the following reasons:

- The application is conforming to all statutory and regulatory review criteria.
- The applicant provides credible information to explain why it believes the proposed project is the most effective alternative.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information which was publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above. Therefore, the application is approved subject to the following conditions:

- 1. Liberty Healthcare Properties of Durham County, LLC shall materially comply with all representations made in the certificate of need application.**
- 2. Liberty Healthcare Properties of Durham County, LLC shall relocate no more than 49 NF beds from Liberty Commons of Silas Creek pursuant to Policy NH-6 to develop a new NF which is a change of scope for Project ID #G-10216-13 (Relocate 100 NF beds from Liberty Commons Springwood)**
- 3. Upon completion of the project, Liberty Commons of Durham County shall be licensed for no more than 49 nursing facility beds. Liberty Commons of Silas Creek (Project ID#G-10216-13) will be licensed for no nursing facility beds upon completion of this project, Project ID# G-11802 (relocate 18 NF beds from Liberty Commons of Silas Creek to Summerstone Health and Rehabilitation Center) and Project ID# G-11809 (relocate 33 NF beds from Liberty Commons of Silas Creek to The Oaks).**
- 4. Liberty Healthcare Properties of Durham County, LLC shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.**
- 5. No later than three months after the last day of each of the first three full fiscal years of operation following initiation of the services authorized by this certificate of need, Liberty Healthcare Properties of Durham County, LLC shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:**
 - a. Payor mix for the services authorized in this certificate of need.**
 - b. Utilization of the services authorized in this certificate of need.**
 - c. Revenues and operating costs for the services authorized in this certificate of need.**
 - d. Average gross revenue per unit of service.**
 - e. Average net revenue per unit of service.**
 - f. Average operating cost per unit of service.**
- 6. For the first two years of operation following completion of the project, Liberty Healthcare Properties of Durham County, LLC shall not increase private pay charges more than 5% of the projected private pay charges provided in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.**

7. Liberty Healthcare Properties of Durham County, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

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

C

The applicant proposes to develop a new 49 bed NF in Durham by relocating 49 existing but unutilized NF beds from the approved but undeveloped Liberty Commons of Silas Creek facility. The new facility will be known as Liberty Commons. The 49 NF beds are being relocated pursuant to Policy NH-6.

Capital and Working Capital Costs

In Section Q, Form F.1a, page 69, the applicant projects the total capital cost of the project as shown in the table below.

Site Costs	\$737,855
Construction Costs	\$7,158,020
Miscellaneous Costs	\$1,025,000
Total	\$8,920,875

In Section Q, the applicant provides the assumptions used to project the capital cost.

In Section F, pages 34-35, the applicant projects that start-up costs will be \$159,872 and initial operating expenses will be \$397,356 for a total working capital of \$557,228. On pages 34-35, the applicant provides the assumptions and methodology used to project the working capital needs of the project.

Availability of Funds

In Section F, page 33, the applicant states that the capital cost will be funded as shown in the table below.

Sources of Capital Cost Financing

Type	Liberty Healthcare Properties of Durham County, LLC	Total
Loans	\$	\$
Accumulated reserves or OE *	\$8,920,875	\$8,920,875
Bonds	\$	\$
Other (Specify)	\$	\$
Total Financing	\$8,920,875	\$8,920,875

* OE = Owner's Equity

In Section F, page 35, the applicant states that the working capital needs of the project will be funded as shown in the table below.

Sources of Financing for Working Capital		Amount
(a)	Loans	\$
(b)	Cash or Cash Equivalents, Accumulated Reserves or Owner's Equity	\$557,228
(c)	Lines of credit	\$
(d)	Bonds	\$
(e)	Total	\$557,228

In Section F, page 33 and page 35, the applicant states that the capital costs and working capital costs for the project will be funded with accumulated reserves/owner's equity or cash and cash equivalent. Exhibit F.2 (Tab 4) contains letters from the Certified Public Accountant of the owners, John A. McNeill Jr. and Ronald McNeill, and the owners themselves, dated October 7, 2019 and October 4, 2019, respectively, attesting to the availability of funds for the proposed project.

Financial Feasibility

The applicant provided pro forma financial statements for the first three full fiscal years of operation following completion of the project. In Form &, the applicant projects that revenues will exceed operating expenses in the first three operating years of the project, as shown in the table below.

	1 st Full Fiscal Year	2 nd Full Fiscal Year	3 rd Full Fiscal Year
Total Patient Days	15,192	17,155	17,155
Total Gross Revenues (Charges)	\$4,417,465	\$5,043,484	\$5,098,305
Total Net Revenue	\$3,854,616	\$4,406,941	\$4,460,803
Average Net Revenue per Patient Days	\$254	\$257	\$260
Total Operating Expenses (Costs)	\$4,174,890	\$4,231,531	\$4,288,566
Average Operating Expense per Patient Days	\$275	\$247	\$250
Net Income	(\$320,274)	\$175,410	\$172,237

The assumptions used by the applicant in preparation of the pro forma financial statements are reasonable, including projected utilization, costs and charges. See Section Q of the application

for the assumptions used regarding costs and charges. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately demonstrates that the capital and working capital costs are based on reasonable and adequately supported assumptions.
 - The applicant adequately demonstrates availability of sufficient funds for the capital and working capital needs of the proposal.
 - The applicant adequately demonstrates sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of costs and charges.
- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

C

The applicant proposes to develop a new 49 bed NF in Durham by relocating 49 existing but unutilized NF beds from the approved but undeveloped Liberty Commons of Silas Creek facility. The new facility will be known as Liberty Commons. The 49 NF beds are being relocated pursuant to Policy NH-6.

On page 189, the 2019 SMFP defines the service area for nursing facility beds as “*A nursing care bed’s service area is the nursing bed care planning area in which the bed is located. Each of the 100 counties in the state is a separate nursing care bed planning area.*” The facility is proposed to be in Durham County. Thus, the service area for this facility is Durham County. Facilities may also serve residents of counties not included in their service area.

Based on data reported in Table 10A: Inventory of Nursing Home and Hospital Nursing Care Beds in the 2019 SMFP, pages 194-195, Durham County currently has 12 nursing facilities with a total of 1,312 licensed nursing care beds.

Durham County Nursing Facilities, 2019 SMFP

FACILITY	# LICENSED NURSING CARE BEDS
Brian Center Southpoint	140
Carver Living Center	232
Concordia Transitional Care & Rehabilitation- Rose Manor	111
Croasdaile Village	110
Durham Nursing & Rehabilitation Center	126
Hillcrest Convalescent Center Inc	120
Pettigrew Rehabilitation Center	96
PruittHealth-Carolina Point (Portions of facility in Durham and Orange Counties)	18
PruittHealth-Durham	125
The Cedars of Chapel Hill	44
The Forest at Duke	58
Treyburn Rehabilitation Center	132
Total Nursing Care Beds	1,312

In Section G, page 39, the applicant explains why it believes its proposal would not result in the unnecessary duplication of existing or approved NF bed services in Durham County. The applicant states: *“The Applicants [sic] do not propose to develop new NF beds, but rather relocate 49 existing unutilized beds from a county with a surplus (Forsyth) and place them in a county with a current deficit (Durham). The Applicants [sic] recognized a need in Durham County (2019 SMFP shows a deficit of 49 SNF beds).”*

The applicant adequately demonstrates that the proposal would not result in an unnecessary duplication of existing or approved services in the service area for the following reasons:

- The beds proposed to be relocated are currently licensed but unutilized, and the applicant proposes to relocate them to a nursing facility that will utilize the beds.
- The applicant adequately demonstrates that the proposed 49 NF beds are needed in addition to the existing or approved NF beds.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information which was publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (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

In Section Q, Form H, page 88, the applicant provides projected full-time equivalent (FTE) staffing for the proposed services, as illustrated in the following table.

Position	1 st FFY (FY2021) FTEs	2 nd FFY (FY2022) FTEs	3 rd FFY (FY2023) FTEs
RNs	4.2	4.2	4.2
Licensed Practical Nurses	6.3	6.3	6.3
Aides	13.1	13.1	13.1
Director of Nursing	1.0	1.0	1.0
MDS Nurse	1.0	1.0	1.0
Clerical (Nurse Secretary)	0.5	0.5	0.5
Medical Records	1.0	1.0	1.0
Physical Therapy	2.8	2.8	2.8
Speech Therapy*	0.5	0.5	0.5
Occupational Therapy	1.8	1.8	1.8
Social Services	1.0	1.0	1.0
Activities	1.0	1.0	1.0
Transportation	1.0	1.0	1.0
Laundry and Linen	2.0	1.5	1.5
Housekeeping	3.5	4.0	4.0
Plant Operation & Maintenance	1.0	1.0	1.0
Administration	1.0	1.0	1.0
Other (Business Office)	1.0	1.0	1.0
TOTAL	43.7	43.7	43.7

Source: Form H in Section Q of the application

The assumptions and methodology used to project staffing are provided in Section H and Section Q. Adequate costs for the health manpower and management positions proposed by the applicant are budgeted in Form F.4, which is found in Section Q. In Section H.2 and H.3, pages 40-41, the applicant describes the methods to be used to recruit or fill new positions and its proposed training and continuing education programs. In Exhibit H.4 (Tab 5), the applicant identifies the proposed medical director and includes a letter from the proposed medical director indicating an interest in serving as medical director for the proposed services.

The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (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 I.1, page 43, the applicant identifies the necessary ancillary and support services for the proposed services: Podiatry, Pharmacy, Laboratory, Dietary Services, Speech Therapy, Optometry, Rehab Services, Occupational Therapy, Barber/Beauty Services, Hospice/Respite Services, X-Ray/Radiology, Dialysis, Facility Van Service, Social Services, Housekeeping, Pastoral/Chaplaincy, and Personal Laundry.

On page 43, the applicant adequately explains how each ancillary and support service is or will be made available.

In Section I, page 44, the applicant describes its existing and proposed relationships with other local health care and social service providers and provides supporting documentation in Exhibit I.2.

The applicant adequately demonstrates that the proposed services will be coordinated with the existing health care system.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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

The applicant does not project to provide the proposed services to a substantial number of persons residing in Health Service Areas (HSAs) that are not adjacent to the HSA in which the services will be offered. Furthermore, the applicant does not project to provide the proposed services to a substantial number of persons residing in other states that are not adjacent to the North Carolina county in which the services will be offered. Therefore, Criterion (9) is not applicable to this review.

- (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

The applicant is not an HMO. Therefore, Criterion (10) is not applicable to this review.

- (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

In Section K, page 46, the applicant states that the project involves constructing 38,692 square feet of new space. Line drawings are provided in Exhibit K.1.

On page 46, the applicant adequately explains how the cost, design and means of construction represent the most reasonable alternative for the proposal and provides supporting documentation in Exhibit K.3.

On pages 46-47, the applicant adequately explains why the proposal will not unduly increase the costs to the applicant of providing the proposed services or the costs and charges to the public for the proposed services.

In Section B.10, pages 17-18, and Section K, page 47, the applicant identifies any applicable energy saving features that will be incorporated into the construction plans.

On pages 47-48, the applicant identifies the proposed site and provides information about the current owner, zoning and special use permits for the site, and the availability of water, sewer and waste disposal and power at the site.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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 proposed project is not an existing health service facility. Therefore, Criterion (13a) is not applicable to this review.

(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 proposed project is not an existing health service facility. Therefore, Criterion (13b) is not applicable to this review.

(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 L, page 52, the applicant projects the following payor mix for the proposed services during the third full fiscal year of operation following completion of the project, as shown in the table below.

Payor Category	Services as Percent of Total
Medicaid	65.00%
Medicare	15.03%
Private Pay	19.97%
Total	100.00%

Source: Table on page 52 of the application.

As shown in the table above, during the third full fiscal year of operation, the applicant projects that 15.03% of total services will be provided to Medicare patients and 65.00% to Medicaid patients.

On page 52, the applicant provides the assumptions and methodology used to project payor mix during the third full fiscal year of operation following completion of the project. The projected payor mix is reasonable and adequately supported based on the applicant's knowledge of the local area and market, extensive experience and payor mix at existing NF facilities.

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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 L, pages 52-53, the applicant adequately describes the range of means by which patients will have access to the proposed services.

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that 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 M, page 54, the applicant describes the extent to which health professional training programs in the area have will have access to the facility for training purposes and provides supporting documentation in Exhibit M.2.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the applicant adequately demonstrates that the proposed services will accommodate the clinical needs of area health professional training programs, and 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.

C

The applicant proposes to develop a new 49 bed NF in Durham by relocating 49 existing but unutilized NF beds from the approved but undeveloped Liberty Commons of Silas Creek facility. The new facility will be known as Liberty Commons. The 49 NF beds are being relocated pursuant to Policy NH-6.

On page 189, the 2019 SMFP defines the service area for nursing facility beds as “*A nursing care bed’s service area is the nursing bed care planning area in which the bed is located. Each of the 100 counties in the state is a separate nursing care bed planning area.*” The facility is

proposed to be in Durham County. Thus, the service area for this facility is Durham County. Facilities may also serve residents of counties not included in their service area.

Based on data reported in Table 10A: Inventory of Nursing Home and Hospital Nursing Care Beds in the 2019 SMFP, pages 194-195, Durham County currently has 12 nursing facilities with a total of 1,312 licensed nursing care beds.

Durham County Nursing Facilities, 2019 SMFP

FACILITY	# LICENSED NURSING CARE BEDS
Brian Center Southpoint	140
Carver Living Center	232
Concordia Transitional Care & Rehabilitation- Rose Manor	111
Croasdaile Village	110
Durham Nursing & Rehabilitation Center	126
Hillcrest Convalescent Center Inc	120
Pettigrew Rehabilitation Center	96
PruittHealth-Carolina Point (Portions of facility in Durham and Orange Counties)	18
PruittHealth-Durham	125
The Cedars of Chapel Hill	44
The Forest at Duke	58
Treyburn Rehabilitation Center	132
Total Nursing Care Beds	1,312

In Section N, page 55, the applicant describes the expected effects of the proposed services on competition in the service area and discusses how any enhanced competition in the service area will promote the cost-effectiveness, quality and access to the proposed services. On page 55, the applicant states, *“The proposed project will have a positive effect on competition in the area, as the demand for these 49 NF beds may encourage other facilities with poor utilization in Durham County to improve their current situations in order to compete with the proposed project. It will also allow for additional options within Durham County.”*

The applicant adequately describes the expected effects of the proposed services on competition in the service area and adequately demonstrates:

- The cost-effectiveness of the proposal (see Sections F and Q of the application and any exhibits)
- Quality services will be provided (see Section O of the application and any exhibits)
- Access will be provided to underserved groups (see Section L of the application and any exhibits)

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information which was publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (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 Exhibit A.7 (Tab 2), pages 94-95, the applicant identifies the skilled nursing and adult care home facilities located in North Carolina owned, operated or managed by the applicant or a related entity. The applicant identifies a total of 27 nursing facilities and 4 adult care home facilities located in North Carolina.

In Section O.3, pages 58-59, the applicant identifies seven nursing facilities that had received immediate jeopardy citations during the 18 months immediately preceding submission of this application. The applicant states, on page 59, that all these facilities are back in compliance. After reviewing and considering information provided by the applicant, the Nursing Home Licensure and Certification Section, the Adult Care Licensure Section and considering the quality of care provided at all 27 NF facilities and four ACH facilities, the applicant provides sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion.

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

C

The Criteria and Standards for Nursing Facility or Adult Care Home Services promulgated in 10A NCAC 14C .1100 are applicable to this review. 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 applicant does not propose 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.*
- C- In Section Q, on Form C, the applicant projects that the facility's nursing facility beds will have an occupancy rate of 90 percent by the end of the second operating year following project completion. The applicant provides the assumptions and methodology to project utilization in Section C, pages 19-23 and Section Q, pages 66-67. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.
- (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 applicant does not propose 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.*
- NA- The applicant does not propose to establish a new adult care home facility or add adult care home beds to an existing facility.