

## REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conforming as Conditioned

NC = Nonconforming

NA = Not Applicable

Decision Date: July 3, 2023

Findings Date: July 3, 2023

Project Analyst: Julie M. Faenza

Co-Signer: Micheala Mitchell

Project ID #: C-12337-23

Facility: Peak Resources-Shelby

FID #: 923377

County: Cleveland

Applicants: Century Care of Shelby, Inc.

Peak Realty Cleveland, LLC

Project: Develop a replacement nursing facility by relocating no more than 100 nursing facility beds

### REVIEW CRITERIA

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

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

C

Century Care of Shelby, Inc. and Peak Realty Cleveland, LLC (hereinafter referred to “the applicant”) propose to relocate and replace their existing 100-bed nursing home facility (NF) within the same county. The existing facility is located at 1101 North Morgan Street, Shelby, in Cleveland County. The applicant proposes to develop the replacement facility at 708 South Battleground Avenue, Grover, in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

## **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 2023 State Medical Facilities Plan (SMFP). Therefore, there are no need determinations applicable to this review.

## **Policies**

There are two policies in the 2023 SMFP which are applicable to this review: *Policy NH-8: Innovations in Nursing Home Facility Design* and *Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities*.

**Policy NH-8: Innovations in Nursing Home Facility Design**, on page 24 of the 2023 SMFP, states:

*“Certificate of need applicants proposing new nursing home facilities and replacement nursing home 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 25-26, and Exhibit B.10, the applicant describes the innovative approaches in environmental design that it plans to incorporate into the proposed project.

**Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities**, on page 30 of the 2023 SMFP, states:

*“Any person proposing a capital expenditure greater than \$4 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 of the project is greater \$4 million dollars. In Section B, page 27, the applicant describes its plan to assure improved energy efficiency and water conservation.

### **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 based on the following:

- The applicant does not propose to develop any beds, services, or equipment for which there is a need determination in the 2023 SMFP.
- The applicant adequately demonstrates that the proposal is consistent with Policy NH-8 because it adequately documents its innovative approaches in environmental design to 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 application 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, ... persons [with disabilities], the elderly, and other underserved groups are likely to have access to the services proposed.

NC

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

**Patient Origin**

On page 139, the 2023 SMFP defines the service area for nursing home facility beds as “... the county in which the bed is located. Each of the 100 counties in the state is a separate service area.” The applicant has an existing NF in Cleveland County and proposes to replace and relocate that facility to a different location within Cleveland County. Thus, the service area for this facility is Cleveland County. Facilities may also serve residents of counties not included in their service area.

The following table illustrates current and projected patient origin.

Peak Resources-Shelby Current and Projected Patient Origin								
County	Current (FFY 2022)		FY 1 (FFY 2025)		FY 2 (FFY 2026)		FY 3 (FFY 2027)	
	Patients	% of Total	Patients	% of Total	Patients	% of Total	Patients	% of Total
Burke	1	0.4%	1	0.4%	1	0.4%	1	0.4%
Catawba	3	1.2%	4	1.2%	4	1.2%	4	1.2%
Cleveland	209	86.0%	268	86.0%	296	86.0%	296	86.0%
Gaston	21	8.6%	27	8.6%	30	8.6%	30	8.6%
Lincoln	7	2.9%	9	2.9%	10	2.9%	10	2.9%
Mecklenburg	2	0.8%	3	0.8%	3	0.8%	3	0.8%
<b>Total</b>	<b>243</b>	<b>100.0%</b>	<b>312</b>	<b>100.0%</b>	<b>344</b>	<b>100.0%</b>	<b>344</b>	<b>100.0%</b>

Source: Section C, pages 29-30

Note: FFY = Federal Fiscal Year (October 1 – September 30)

In Section C, pages 29-30, the applicant provides the assumptions and methodology used to project its patient origin. The applicant’s assumptions are reasonable and adequately supported based on the following:

- The applicant projected patient origin based on its historical and current patient origin and the replacement facility will be located in the same county as the existing facility.
- The applicant estimated the number of patients by county based on projections that the majority of patients would be Cleveland County residents, particularly in light of the projected population growth in the 65+ age cohort in Cleveland County over the next five years. The other counties identified as sources of patient origin are all contiguous to Cleveland County and have larger municipalities.

**Analysis of Need**

In Section C, pages 31-32, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services, summarized as follows:

- The age of the existing physical plant at Peak Resources-Shelby and the age of all existing NFs in Cleveland County.

- The need for a new building design to reflect changes demanded by consumers following the COVID-19 pandemic, such as increased need for single rooms and infection prevention.
- The percentage of, and projected growth in, the 65+ age cohort in Cleveland County’s population.
- The need for placement of indigent/underserved/Medicaid beneficiaries in Cleveland County and surrounding areas.
- An expected rebound in need for NF beds as the industry recovers from the impact of COVID-19.

The information is reasonable and adequately supported based on the following:

- According to the American Community Survey from the US Census Bureau, the 2021 population of Cleveland County aged 65 and older was 25.8% of the total population of Cleveland County.
- According to Claritas, the population of Cleveland County aged 65 and older will increase by 12.9% over the next five years, or at a compound annual growth rate of 2.9%.
- The applicant’s facility was first constructed in 1982, over 40 years ago, and has an “adjusted facility age” of 33.5 years.
- In FY 2022, nearly two-thirds of the applicant’s days of care were provided to Medicare and/or Medicaid patients, with most of the days of care in that subset going to Medicaid patients.
- The applicant provides supporting documentation in Exhibits C.3, C.4, and C.6.

Projected Utilization

On Forms C.1a and C.1b in Section Q, the applicant provides historical and projected utilization, as illustrated in the following table.

<b>Peak Resources-Shelby Historical and Projected Utilization</b>				
	<b>Historical (FFY 2022)</b>	<b>FY 1 (FFY 2025)</b>	<b>FY 2 (FFY 2026)</b>	<b>FY 3 (FFY 2027)</b>
Total # of NF beds	100	100	100	100
# of Admissions	300	312	344	344
# of Patient Days	24,184	30,743	32,851	32,851
Average Length of Stay (in days)	80.6	99	95	95
Occupancy Rate	66.3%	84.2%	90.0%	90.0%

**Note:** FFY = Federal Fiscal Year (October 1 – September 30)

In Section C, page 32, and in Exhibits C.3 and C.7, the applicant provides the assumptions and methodology used to project utilization, which is summarized below.

- The applicant assumed all the existing patients at the existing facility would transfer to the new facility upon opening.
- The applicant utilized a net average fill-up rate of four patients per month during the fill-up period. The applicant projects it will reach a stable occupancy of 90% approximately six months after the new facility opens.
- The applicant states that its fill-up rate is assumed to be “...consistent with previous CON applications for newly constructed facilities that offer enhanced amenities compared to the area nursing facilities.”
- The 90% occupancy rate is “...assumed realized and maintained based on operational experience, and the recovery of the nursing facility industry from COVID-19 which will greatly increase nursing facility occupancy due to pent-up demand.”
- The facility will be brand-new with enhanced amenities compared to other nursing facilities.

However, projected utilization is not reasonable and adequately supported based on the following:

- The applicant provides no information to support its experience of maintaining the projected occupancy of the facility, particularly given that there is not a comparable experience to the projected post-COVID era. The applicant provides no documentation of any historical experience regarding fill-up rates or achieving projected occupancy rates, and no information to explain why its historical experience is reasonable to use in a post-COVID-19 pandemic environment.
- The applicant’s current average length of stay for patients is 80.6 days but increases to 99 days – an increase of nearly 25% - during the first year of operation, and then declines to 95 days for the second and third year of operation. The applicant provides no information to explain how it calculated the projected average length of stay that is significantly different from its current length of stay.
- The applicant states on page 32, regarding its projected fill-up rate, that it is “...assumed as it is consistent with previous CON applications for newly constructed nursing facilities that offer enhanced amenities compared to the area nursing facilities.” However, the applicant does not explain why historical applications in different counties for different facilities provide a reasonable and adequately supported fill-up rate for this specific proposal in this specific location, or whether those historical projections are appropriate in a post-COVID era.

Further, a search of recent similar applications provides no support for the applicant's assumptions. Since January 2018, the Agency has received a total of 10 applications (not including the current application) to either develop a new NF or to replace an existing NF. The applications received are listed below.

- Project ID #F-11461-18 (Liberty Commons Nursing & Rehabilitation Center of Mint Hill, Mecklenburg County)
- Project ID #F-11462-18 (Liberty Commons of Mecklenburg [County] Health & Rehabilitation Center)
- Project ID #A-11499-18 (Murphy Rehabilitation & Nursing, Cherokee County)
- Project ID #F-11549-18 (Rowan County Health & Rehabilitation)
- Project ID #F-11550-18 (Western Mecklenburg [County] Health & Rehabilitation)
- Project ID #P-11941-18 (PruittHealth – Sea Level, Carteret County)
- Project ID #G-11954-20 (PruittHealth – High Point, Forsyth County)
- Project ID #P-11958-20 (The Embassy of Morehead City, Carteret County)
- Project ID #P-12179-22 (Liberty Commons of Carteret County)
- Project ID #H-12290-22 (Sandhills Health & Rehabilitation, Moore County)

Of those 10 applications, only one included a fill-up rate of four patients per month. Three were in a county on the coast of North Carolina and three were in one of the most highly populated counties in North Carolina (Mecklenburg County). Six of the applications were submitted prior to the COVID-19 pandemic. All of the applications relied on additional quantifiable historical data that was provided to the Agency or on information that was publicly available and reviewed by the Agency in addition to its historical experience in operating similar facilities.

### **Access to Medically Underserved Groups**

In Section C, pages 37-38, the applicant discusses how it will provide access to medically underserved groups. The applicant states it will serve direct-admit Medicaid patients as well as Medicare patients that transition to Medicaid, and other low-income persons; its facility will be fully accessible for persons with disabilities; it primarily serves patients aged 65 and older; and the current facility has a strict non-discrimination policy allowing full facility access regardless of gender, race, religion, or country of origin that will also apply to the proposed replacement facility.

On page 38, the applicant provides the estimated percentage for each medically underserved group, as shown in the following table.

<b>Medically Underserved Groups</b>	<b>Percentage of Total Patients</b>
Low-income persons	71.0%
Racial and ethnic minorities	29.0%
Women	44.3%
Persons 65 and older	90.0%
Medicare beneficiaries	18.0%
Medicaid recipients	71.0%

On pages 38 and 39, the applicant states it assumes Medicaid patients are low-income patients, and that while it cannot estimate the percentage of persons with disabilities, the facility will be fully accessible for persons with disabilities.

The applicant adequately describes the extent to which all residents of the service area, including underserved groups, are likely to have access to the proposed services based on the following:

- The applicant provides statements saying it will serve all residents of the service area, including underserved groups.
- The applicant provides a copy of its Non-Discrimination Policy in Exhibit C.6.

### **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 not conforming to this criterion for all the reasons described above.

- (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, ... persons [with disabilities], and other underserved groups and the elderly to obtain needed health care.

### C

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

In Section D, page 43, the applicant explains why it believes the needs of the population presently utilizing the services to be relocated will be adequately met following completion of the project. On page 43, the applicant states:

*“All patients residing in the existing facility will be offered placement in the new, state-of-the-art facility once completed. There will be no resident disruption or displacement of any existing resident of the current facility. Obviously, if an existing resident chooses not to relocate to the newly constructed facility, the applicants will find an alternative placement.”*



*There will be no negative impact on residents as a result of this proposed replacement facility.”*

The information is reasonable and adequately supported based on the following:

- The applicant states that it will provide placements for all existing residents at the new facility or at a different facility if they so choose.
- In Section C, page 32, the applicant’s projected utilization assumes that all existing residents of the facility will relocate to the new facility.

### **Access to Medically Underserved Groups**

In Section D, pages 44-45, the applicant discusses the effect the relocation of the facility will have on access for medically underserved groups. The applicant states it will transfer all existing residents to the new facility, regardless of payor type, if they so choose; they will serve direct-admit Medicaid patients as well as Medicare patients that transition to Medicaid, and other low-income persons; the facility will be fully accessible for persons with disabilities; it primarily serves patients aged 65 and older, and the proposed facility will have a strict non-discrimination policy allowing full facility access regardless of gender, race, religion, or country of origin.

The applicant adequately demonstrates that the needs of medically underserved groups that will continue to use NF bed services will be adequately met following completion of the project for the following reasons:

- The applicant provides statements saying it will serve all residents of the service area, including underserved groups.
- The applicant provides a copy of its Non-Discrimination Policy in Exhibit C.6.
- The applicant states it will transfer all existing residents, regardless of payor category, to the new facility.
- The proposed site of the new facility is located within the same county, approximately 14 miles away from the existing facility, and is located adjacent to a major state road and interstate highway.

### **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 needs of the population currently using the services to be relocated will be adequately met following project completion for all the reasons described above.
  - The applicant adequately demonstrates that the project will not adversely impact the ability of underserved groups to access these services following project completion for all the reasons described above.
- (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

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

In Section E, pages 48-49, 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 the existing facility is not a marketable option, is over 40 years old, and is not representative of the type of facility the applicant wants to operate; therefore, this was not the most effective alternative.
- Major Renovation: The applicant states there is a need for more modern amenities and privacy options and the existing structure would not allow for that type of renovation. The applicant also states renovation can cause major disruption to operations and can be more costly with less return on investment; therefore, this was not the most effective alternative.
- Replacement on Existing Site: The applicant states this would involve significant disruption and would require residents to relocate to other facilities during construction; therefore, this was not the most effective alternative.
- More Traditional Construction: The applicant states it wants to be a leader in NF innovation in the service area and has the opportunity to construct an innovative facility with enhanced infection controls and more modern amenities; therefore, this was not an effective alternative.

However, the applicant does not adequately demonstrate that the alternative proposed in this application is the most effective alternative to meet the need based on the following:

- The applicant did not adequately demonstrate the need it has for the proposed project because it does not demonstrate that projected utilization is based on reasonable and adequately supported assumptions. The discussion regarding analysis of need including projected utilization found in Criterion (3) is incorporated herein by reference. A proposal that is not needed by the population proposed to be served cannot be an effective alternative to meet the need.
- The applicant does not demonstrate that working capital costs are based on reasonable and adequately supported assumptions or demonstrate sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of revenues and operating expenses for all the reasons described above. The discussions regarding working capital costs and financial feasibility found in Criterion (5) are incorporated herein by reference. A proposal that cannot demonstrate it will be financially feasible cannot be an effective alternative to meet the need.
- The applicant does not demonstrate that the proposed project is not an unnecessary duplication of existing and approved services in Cleveland County. The discussion regarding unnecessary duplication found in Criterion (6) is incorporated herein by reference. A proposal that cannot demonstrate it is not an unnecessary duplication of existing and approved services in the service area cannot be an effective alternative to meet the need.
- The applicant does not demonstrate that any enhanced competition from the proposed project will have a positive impact on cost-effectiveness. The discussion regarding enhanced competition and the impact on cost-effectiveness found in Criterion (18a) is incorporated herein by reference. A proposal that cannot demonstrate how any enhanced competition will have a positive impact on cost-effectiveness cannot be an effective alternative to meet the need.
- The application is not conforming to all other statutory and regulatory review criteria. An application that cannot be approved cannot be an effective alternative to meet the need.

### **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 not conforming to this criterion for the reasons stated above. Therefore, the application is denied.

- (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 applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

### **Capital and Working Capital Costs**

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

Purchase Price of Land/Closing Costs/Site Costs	\$2,140,000
Construction Contract	\$14,000,000
Landscaping	\$100,000
Architect/Engineering Fees	\$350,000
Medical Equipment	\$400,000
Non-Medical Equipment/Furniture	\$650,000
Consultant Fees	\$45,000
Contingency	\$100,000
<b>Total</b>	<b>\$17,785,000</b>

In Exhibits F.1 and Q, the applicant provides the assumptions used to project the capital cost. The applicant adequately demonstrates that the projected capital cost is based on reasonable and adequately supported assumptions based on the following:

- The applicant states it relies on extensive planning from architects, outside consultants, and developers.
- The applicant states it relies on industry averages for some projections and provides supporting documentation in Exhibit F.1.

In Section F, pages 52-53, the applicant projects there will be no start-up costs and initial operating expenses will be \$344,365 with an initial operating period of three months for a total working capital of \$344,365. On pages 52-53, the applicant provides the assumptions and methodology used to project the working capital needs of the project. However, the applicant does not adequately demonstrate that the projected working capital needs of the project are based on reasonable and adequately supported assumptions based on the following:

- The applicant states its initial operating period is assumed to be the first quarter of the first year of operation. On page 53, the applicant states:

*“As the newly constructed facility transfers existing residents and admits new residents during the fill-up period, the facility will be fully staffed and operational with all of the*

*necessary services and staffing to provide care to the residents, which will create a financial loss for the first three months. It is expected that the facility will fill up at a rate averaging 4 new admissions per month. With this fill-up pattern, it is expected that the facility will begin to turn a profit during the 2<sup>nd</sup> quarter of the first fiscal year.”*

However, the applicant does not demonstrate that its projected utilization is reasonable and adequately supported. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

- Since the initial operating period and expenses are based in part on projected utilization, the projection of initial operating period and initial operating expenses are also questionable.

### **Availability of Funds**

In Section F, page 50, the applicant states the \$17,785,000 in projected capital costs will be funded entirely by Peak Realty Cleveland, LLC, via \$5,785,000 in accumulated reserves and \$12,000,000 in loans. In Section F, page 53, the applicant states the \$344,365 in projected working capital costs will be funded entirely by Century Care of Shelby, Inc.

In Exhibit F.2, the applicant provides a letter dated February 3, 2023, from a Senior Vice President of Pinnacle Financial Partners, stating they will consider providing a loan in the amount of \$12,000,000 to the applicant for purposes of developing the proposed project. The applicant provides a projected amortization schedule in Exhibit F.2.

Exhibit F.2 also contains a letter dated February 13, 2023 from the executor of the Estate of Harold P. Nunn, stating the estate has liquid net assets greater than \$6 million, and committing a portion of that funding to the capital costs of the project. In Section F, page 51, the applicant states both entities are majority owned by the estate of Harold P. Nunn and that he and his wife were the owners and operators of Peak Resources, Inc.

Finally, Exhibit F.2 contains a number of what appear to be bank account statements showing current balances in different accounts on February 13, 2023. The total amount shown appears to be \$6,198,223.31.

The applicant adequately demonstrates the availability of sufficient funds for the capital and working capital needs of the project based on the following:

- The applicant provides documentation of the commitment to use the necessary funding toward development of the proposed project.
- The applicant provides documentation of the availability of sufficient financial resources to fund the proposed capital and working capital costs.

### **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 F.2b, the applicant projects that revenues will exceed operating expenses in the second and third full fiscal years following completion of the project, as shown in the table below.

<b>Peak Resources-Shelby Projected Revenues and Operating Expenses</b>			
	<b>FY 1 (FFY 2025)</b>	<b>FY 2 (FFY 2026)</b>	<b>FY 3 (FFY 2027)</b>
Total Patient Days	30,743	32,851	32,851
Total Gross Revenues (Charges)	\$10,139,434	\$10,729,165	\$10,729,165
Total Net Revenue	\$10,139,434	\$10,729,165	\$10,729,165
Average Net Revenue per Patient Days	\$330	\$327	\$327
Total Operating Expenses (Costs)	\$10,075,282	\$10,534,229	\$10,534,229
Average Operating Expense per Patient Days	\$328	\$321	\$321
<b>Net Income/(Loss)</b>	<b>\$64,152</b>	<b>\$194,936</b>	<b>\$194,936</b>

**Note:** FFY = Federal Fiscal Year (October 1 – September 30)

The assumptions used by the applicant in preparation of the pro forma financial statements are provided in Section Q. However, the applicant does not adequately demonstrate that the financial feasibility of the proposal is reasonable and adequately supported because projected utilization is not based on reasonable and adequately supported assumptions. See the discussion regarding projected utilization in Criterion (3) which is incorporated herein by reference. Therefore, projected revenues and operating expenses, which are based in part on projected utilization, are also questionable.

### **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 not conforming to this criterion for the following reasons:

- The applicant does not adequately demonstrate that the working capital costs are based on reasonable and adequately supported assumptions for all the reasons described above.
  - The applicant does not adequately demonstrate sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of revenues and operating expenses for all the reasons described above.
- (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 applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

On page 139, the 2023 SMFP defines the service area for nursing home facility beds as “... the county in which the bed is located. Each of the 100 counties in the state is a separate service area.” The applicant has an existing NF in Cleveland County and proposes to replace and relocate that facility to a different location within Cleveland County. Thus, the service area for this facility is Cleveland County. Facilities may also serve residents of counties not included in their service area.

Table 10A on page 146 of the 2023 SMFP shows a total of 534 existing and approved NF beds in Cleveland County. The table below summarizes the existing and approved NFs and beds as shown in the 2023 SMFP.

<b>Cleveland County Inventory of Existing/Approved NF Beds</b>				
<b>Facility</b>	<b>Total Licensed Beds</b>	<b>Approved NF Beds</b>	<b>Total Available Beds</b>	<b>Total Planning Inventory</b>
Cleveland Pines	120	0	120	120
Peak Resources-Shelby	100	0	100	100
White Oak Manor – Kings Mountain	154	0	154	154
White Oak Manor – Shelby	160	0	160	160
<b>Total</b>	<b>534</b>	<b>0</b>	<b>534</b>	<b>534</b>

In Section G, page 59, the applicant explains why it believes its proposal would not result in the unnecessary duplication of existing or approved NF bed services in Cleveland County. The applicant states:

*“The existing 100 NF beds are located at Peak Resources-Shelby Inc., in Cleveland County. These beds are currently licensed as NF beds per the NC State Medical Facilities Plan. The relocation of beds from the existing facility to the newly constructed replacement facility will have no effect on the inventory of available beds within Cleveland County.”*

However, the applicant adequately demonstrates that the proposal would not result in an unnecessary duplication of existing or approved services in the service area because the applicant does not demonstrate the need the population proposed to be served has for the proposed services. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference. An application that cannot demonstrate that the population proposed to be served needs the proposed services cannot demonstrate that the project will not be an unnecessary duplication of existing or approved services.

**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 not conforming to this criterion for all the reasons described 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

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

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

<b>Peak Resources-Shelby Current and Projected Staffing (in FTEs)</b>				
	<b>Current (1/1/2023)</b>	<b>FY 1 (FFY 2025)</b>	<b>FY 2 (FFY 2026)</b>	<b>FY 3 (FFY 2027)</b>
Registered Nurses	2.54	3.00	3.50	3.50
Licensed Practical Nurses	21.20	21.00	21.00	21.00
Certified Nurse Aides/Nursing Assistants	34.43	34.00	37.00	37.00
Director of Nursing	1.00	1.00	1.00	1.00
MDS Nurse	1.00	2.00	2.00	2.00
Ward Clerk	1.00	1.00	1.00	1.00
Staff Development Coordinator	1.36	1.00	1.00	1.00
Social Workers	1.08	1.61	1.61	1.61
Activities Director	0.40	1.00	1.00	1.00
Activities Assistance	1.00	1.00	1.00	1.00
Recreational Therapist	0.52	1.00	1.00	1.00
Medical Records	1.00	2.00	2.00	2.00
Maintenance/Engineering	0.77	2.00	2.00	2.00
Administrator/CEO	1.00	1.00	1.00	1.00
Marketing Director	0.00	1.00	1.00	1.00
Clerical	2.32	2.00	2.00	2.00
<b>TOTAL</b>	<b>70.62</b>	<b>75.61</b>	<b>79.11</b>	<b>79.11</b>

**Note:** FFY = Federal Fiscal Year (October 1 – September 30)

The assumptions and methodology used to project staffing are provided in Exhibit Q. Adequate operating expenses for the health manpower and management positions proposed by the applicant are budgeted in Form F.3b. In Section H, pages 61-62, the applicant describes the methods to be used to recruit or fill new positions and its proposed training and continuing education programs. The applicant provides supporting documentation in Exhibit H.2.

The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services based on the following:



- The applicant has historical experience with staffing NFs because it operates eight other NFs in North Carolina.
- The applicant states it plans to form a relationship with Cleveland Community College as well as local churches and places of worship to promote open positions.
- The applicant states it is always committed to providing necessary training to meet the needs of its residents.

### **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 all the reasons described 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

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

### **Ancillary and Support Services**

In Section I, page 63, the applicant identifies the necessary ancillary and support services for the proposed services. On pages 63-64, the applicant explains how each ancillary and support service is or will be made available and provides supporting documentation in Exhibit I.1. The applicant adequately demonstrates that the necessary ancillary and support services will be made available based on the following:

- The applicant has historical experience in providing the necessary ancillary and support services and contracting for the necessary ancillary and support services because of its history operating the existing facility and other facilities in North Carolina.
- In Exhibit I.1, the applicant provides letters from local providers of necessary ancillary and support services, offering to provide services to the relocated facility.

### **Coordination**

In Section I, page 64, the applicant describes its efforts to develop relationships with other local health care and social service providers and provides supporting documentation in Exhibits I.1 and I.2. The applicant adequately demonstrates that the proposed services will be coordinated with the existing health care system based on the following:

- The applicant has an existing facility in Cleveland County.
- In Exhibit I.1, the applicant provides letters from other local health care providers offering to provide services at Peak Resources-Shelby.
- In Exhibit I.2, the applicant provides a letter sent to the Cleveland County Department of Social Services, inviting them to contact the applicant with questions.

### **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 all the reasons described above.

- (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

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

In Section K, page 67, the applicant states that the project involves constructing 58,600 square feet of new space. Line drawings are provided in Exhibit K.1.

In Section K, pages 68-70, 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. Supporting documentation is provided in Exhibit K.4. The site appears to be suitable for the proposed NF based on the applicant's representations and supporting documentation.

In Section K, page 67, the applicant adequately explains how the cost, design, and means of construction represent the most reasonable alternative for the proposal based on the following:

- The applicant states the design provides modern amenities like private rooms and private bathrooms and upgraded technology.
- The applicant states the “new normal” for NFs is to provide more common space and more privacy for residents and that the new design will be a significant upgrade.

In Section K, page 68, 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 based on the following:

- The applicant states that economies of scale based on its history in operating NFs, including other NFs in North Carolina, allow it to reduce the operating costs of the facility.
- The applicant states that the majority of the projected patients will be Medicaid and/or Medicare beneficiaries. The applicant states that benefits are provided at the same costs to the patient, regardless of the setting of care, and will not impact costs and charges to the public.

In Section K, page 68, the applicant identifies any applicable energy saving features that will be incorporated into the construction plans.

### **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 all the reasons described above.

- (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 ... persons [with disabilities], which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:
- (a) The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;

C

In Section L, page 71, the applicant provides the historical payor mix during FFY 2022 for the proposed services, as shown in the table below.

<b>Peak Resources-Shelby – Historical Payor Mix (FFY 2022)</b>	
<b>Payor Category</b>	<b>% of Total Patients</b>
Self-Pay	11.3%
Medicare*	15.6%
Medicaid*	70.8%
Other (hospice)	2.3%
<b>Total</b>	<b>100.0%</b>

**Note:** FFY = Federal Fiscal Year (October 1 – September 30)

In Section L, page 72, the applicant provides the following comparison.

	<b>% of Total Patients Served by Peak Resources-Shelby During the Last Full Fiscal Year</b>	<b>% of the Population of Cleveland County</b>
Female	44.3%	51.7%
Male	55.7%	48.3%
Unknown	0.0%	0.0%
64 and Younger	71.4%	81.3%
65 and Older	28.6%	18.7%
American Indian	0.0%	0.4%
Asian	0.0%	1.2%
Black or African-American	26.4%	21.0%
Native Hawaiian or Pacific Islander	0.0%	0.0%
White or Caucasian	73.6%	71.9%
Other Race	0.0%	0.0%
Declined / Unavailable	0.0%	0.0%

**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 applicant adequately documents 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. Therefore, the application is conforming to this criterion.

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

C

Regarding any obligation to provide uncompensated care, community service or access by minorities and persons with disabilities, in Section L, page 73, the applicant states it has no such obligation; however, the applicant says it will provide services to the entire resident population without regard to payor, gender, race, or ethnicity.

In Section L, page 73, the applicant states that during the 18 months immediately preceding the application deadline, no patient civil rights access complaints have been filed against the facility.

**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.

- (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 74, 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.

<b>Peak Resources-Shelby – Historical Payor Mix (FFY 2027)</b>	
<b>Payor Category</b>	<b>% of Total Patients</b>
Self-Pay	10.0%
Medicare*	18.0%
Medicaid*	71.0%
Other (hospice)	1.0%
<b>Total</b>	<b>100.0%</b>

**Note:** FFY = Federal Fiscal Year (October 1 – September 30)

As shown in the table above, during the third full fiscal year of operation, the applicant projects that 10% of total services will be provided to self-pay patients, 18% to Medicare patients, and 71% to Medicaid patients.

On page 74, and in Exhibit Q, 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 because it is based on the applicant's historical experience operating the existing facility.

**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 based on the reasons stated above.

- (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, page 75, the applicant adequately describes the range of means by which patients will have access to the proposed services.

**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.

- (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

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

In Section M, page 77, the applicant describes the extent to which health professional training programs in the area will have access to the facility for training purposes and provides

supporting documentation in Exhibit M.1. The applicant adequately demonstrates that health professional training programs in the area will have access to the facility for training purposes based on the following:

- The applicant states that the facility will be available as a training site for local training programs and community colleges.
- In Exhibit M.1, the applicant provides a letter sent to Cleveland Community College offering the facility as a clinical training site.

### **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 all the reasons described above.

- (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 applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

On page 139, the 2023 SMFP defines the service area for nursing home facility beds as “... *the county in which the bed is located. Each of the 100 counties in the state is a separate service area.*” The applicant has an existing NF in Cleveland County and proposes to replace and relocate that facility to a different location within Cleveland County. Thus, the service area for this facility is Cleveland County. Facilities may also serve residents of counties not included in their service area.



Table 10A on page 146 of the 2023 SMFP shows a total of 534 existing and approved NF beds in Cleveland County. The table below summarizes the existing and approved NFs and beds as shown in the 2023 SMFP.

<b>Cleveland County Inventory of Existing/Approved NF Beds</b>				
<b>Facility</b>	<b>Total Licensed Beds</b>	<b>Approved NF Beds</b>	<b>Total Available Beds</b>	<b>Total Planning Inventory</b>
Cleveland Pines	120	0	120	120
Peak Resources-Shelby	100	0	100	100
White Oak Manor – Kings Mountain	154	0	154	154
White Oak Manor – Shelby	160	0	160	160
<b>Total</b>	<b>534</b>	<b>0</b>	<b>534</b>	<b>534</b>

Regarding the expected effects of the proposal on competition in the service area, in Section N, page 78, the applicant states:

*“The proposed project does not increase the number of NF beds in Cleveland County because the proposal is a newly constructed replacement facility. However, the state-of-the-art facility planned by the applicants is sure to have a competitive advantage in the service area when attracting patients. The majority of NF residents are covered by third party government payer sources (Medicare, Medicare Advantage, Medicaid). Therefore, a new facility on the forefront of innovation will surely create some competition in the service area.”*

Regarding the impact of the proposal on cost effectiveness, in Section N, page 78, the applicant states:

*“As an established operator in NC, the applicant has the benefit of scale when driving efficient operations. The new facility will have access to a seasoned management company which provides oversight and infrastructure support. This cost efficiency will help Peak Resources-Shelby provide a much-needed service to the community at reasonable cost.”*

See also Sections C, F, K, and Q of the application and any exhibits.

Regarding the impact of the proposal on quality, in Section N, page 78, the applicant states:

*“The related facilities of Peak Resources-Shelby (under the management of Peak Resources) all have a reputation for delivering quality care. ... The facility will be equipped with the latest point of care patient delivery technology and medical equipment. The innovative design and state-of-the-art technology will certainly enhance the quality of care....”*

See also Sections C and O of the application and any exhibits.

Regarding the impact of the proposal on access by medically underserved groups, in Section N, page 79, the applicant states:

*“The construction of Peak Resources-Shelby will open up services to the underserved and indigent population of Cleveland County through the Medicaid benefits programs. The facility anticipates a majority of its residents as Medicaid beneficiaries and will serve a proportionate share of Medicaid beneficiaries (as a percentage of total patients) as other nursing facilities in the service area of Cleveland County.”*

See also Sections C, D, and L of the application and any exhibits.

However, the applicant does not adequately demonstrate the proposal would have a positive impact on cost-effectiveness because the applicant did not adequately demonstrate: a) the need the population to be served has for the proposal; b) that projected revenues and operating costs are reasonable; and c) that the proposal would not result in an unnecessary duplication of existing and approved health services. The discussions regarding demonstration of need, projected revenues and operating costs, and unnecessary duplication found in Criterion (3), Criterion (5), and Criterion (6), respectively, are incorporated herein by reference. A proposal that cannot demonstrate need, cannot demonstrate that projected revenues and operating costs are based on reasonable and adequately supported assumptions, and cannot demonstrate that the proposed project is not an unnecessary duplication cannot have a positive impact on cost-effectiveness.

### **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 based on all the reasons described 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

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

On Form O in Section Q, the applicant identifies the NFs located in North Carolina owned, operated, or managed by the applicant or a related entity. The applicant identifies a total of nine NFs located in North Carolina.

In Section O, pages 81-82, the applicant states that, during the 18 months immediately preceding the submittal of the application, none of the NFs identified in Form O had any surveys or situations resulting in a finding of substandard quality of care (Level 4) where a facility did not challenge the determination or where the challenged determination was upheld. The applicant states all of its facilities are in good standing and provides supporting documentation in Exhibit O.4.

According to the files in the Nursing Home Licensure and Certification Section, DHSR, during the 18 months immediately preceding submission of the application through the date of this decision, incidents related to quality of care occurred in one of these facilities (Peak Resources-Shelby, the facility that is the subject of this review); however, the facility is back in compliance. After reviewing and considering information provided by the applicant and by the Nursing Home Licensure and Certification Section and considering the quality of care provided at all nine facilities, the applicant 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.

G.S. 131E-183 (b): The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

NA

The applicant proposes to relocate and replace its existing 100-bed NF from its current location in Cleveland County to a different location in Cleveland County. The replacement facility will also be licensed for 100 NF beds upon project completion.

The Criteria and Standards for Nursing Facility or Adult Care Home Services, which are promulgated in 10A NCAC 14C .1102, are not applicable to this review because the applicant is not proposing to develop a new NF or adult care home and is not proposing to add beds to an existing NF or adult care home.