

**Response to Petition for Adjusted Need Determination for
One Medicare-Certified Home Health Office in Buncombe County
On Behalf of CarePartners Home Health Services**

Petitioner: BAYADA Home Health Care, Inc.

Respondent:

CarePartners Home Health Services

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Summary of Response:

First and foremost, BAYADA Home Health Care’s (“BAYADA”) petition for an additional home health agency (“HHA”) in Buncombe County, North Carolina is clearly just a self-serving and opportunistic venture for BAYADA to attempt to expand into a desirable market where they currently have no presence. As will be shown, BAYADA’s arguments amount to a challenge to the SMFP need methodology that should have been filed in March and many of its general claims are either false or not unique to Buncombe County and could be made about multiple markets throughout the State. Bayada is taking advantage of the SHCC’s indicated willingness to entertain Special Summer Petitions for **segments of the health care industry that have been uniquely impacted by the Covid pandemic.** Moreover, BAYADA’s altered need calculation is flawed.

BAYADA presents no tangible evidence of any need in Buncombe County such as patients unable to receive home health care. In fact, many of the same claims could be made about markets that BAYADA already serves. This petition should be denied.

Detailed Response to BAYADA’s Petition:

Background on BAYADA

On pages 1-2 of its petition, BAYADA Home Health first presents an elaborate narrative about its experience in the home health realm. Regardless of BAYADA’s experience in this segment of the healthcare market, this section is completely irrelevant to the specific needs of the patients of Buncombe County. Because of BAYADA’s emphasis on their services, it is clear that this petition is not just for **any** new home health office in Buncombe County, but specifically a BAYADA office. Adjusting the need determination is a change that must have patient need and lack of access at the forefront; however, BAYADA’s extensive narrative about their services reveals that the petition is definitively a self-serving goal for BAYADA to expand its North Carolina footprint and is completely unrelated to any tangible patient need.

It is important to note that BAYADA Home Health Care has been aggressively moving to expand its reach in North Carolina, recently receiving multiple CON Section approvals for new home

health or hospice agencies. Despite these approvals, BAYADA's new North Carolina agencies have had a very slow start, but BAYADA aims with this petition to open yet another agency. Rather than making claims of false need in Buncombe County, it would be more beneficial to the patients of North Carolina for BAYADA to focus on addressing the markets for which they already are approved.

In addition, BAYADA's other recent approvals contribute to their arguments regarding the number of home health offices per 100,000 people. For example, earlier this year, BAYADA applied for a second home health agency office in Mecklenburg County, a county it already serves. BAYADA inconsistently claims there is a need for more agencies in Buncombe County while attempting to limit the number of choices of agencies in Mecklenburg County. By applying to fill the need its own Mecklenburg home health office generated, BAYADA is limiting healthy competition in the North Carolina Home Health market.

SMFP Need Calculation is Not Understated Due to COVID

One of BAYADA's primary arguments is that any deficit in Buncombe County patients is understated due to COVID-19. The reality is that COVID caused a minimal and temporary decline in the utilization of home health agencies. This argument has no basis because there is no evidence or quantitative analysis to support this claim. Moreover, this suggested issue would not be a problem solely affecting Buncombe County. As will be shown, home health utilization in Buncombe County actually increased during COVID as confirmed by the data in BAYADA's own petition (See pages 10 and 11).

BAYADA provides home care services in the Asheville area. With this local experience it is very telling that they do have any actual evidence of the impact of COVID-19 on health care utilization in Buncombe County. If BAYADA's theory about the COVID pandemic impacting specifically home health care utilization is true, the same arguments are likely applicable throughout the State, or at least in many markets. However, BAYADA only has filed a petition for one isolated county in the entire state.

BAYADA's theory about COVID-19's impact on home health is opportunistic and likely follows the SHCC's identification of COVID-19's impact on acute care beds. However, the same arguments and data for why COVID-19 has impacted acute care bed utilization are completely irrelevant to home healthcare. For example, acute care beds have capacity limits, and a home health agency has none. While acute care beds have had a marked drop in utilization for one quarter, this same trend has not been evident when it comes to home health. Finally, any suggested impact of COVID-19 on existing home health providers, such as the need for staff to quarantine would likewise impact any new provider, including BAYADA, so adding an additional home health agency to the county would do nothing to mitigate this problem, if it even existed.

The reality is that CarePartners Home Health Services ("CarePartners"), with the tremendous resources of and support from affiliated Mission Health and HCA, was immediately effective in responding to COVID. Any slight decline in volume was attributed either to access to congregate living that would impact any provider or the temporary limitation of home health for post-surgical patients delayed in receiving elective surgery. These issues are not a limitation of the existing

home health agencies but a healthcare system-wide impact that was temporary in nature and has since been resolved.

BAYADA's Suggestion That the Need in Buncombe County is Understated is Self-Serving

BAYADA suggests that a net patient need of 125 individuals for Buncombe County as shown in the 2022 draft SMFP is understated. They purport that this is one of the highest levels of need in the state. In actuality, Union County has a net need of 160 patients, but BAYADA did not argue for need in this county as they already serve the market in Union with their Mecklenburg County agency (HC0355). Cabarrus County, also already served by BAYADA, has a need of 144.59 patients. Forsyth County has a need of 299.54, and again, BAYADA already serves this county.

These examples go to show that BAYADA has singled out Buncombe County not to serve the needs of Buncombe County residents but rather to expand their reach into a county where they currently do not have a home health agency. There is no more need in Buncombe County than in the very counties BAYADA already serves. In addition to their claim being absolutely false, the threshold of need is clear at 325 patients. A net need of 125 patients is not even half of the threshold number. BAYADA is simply attempting to identify a need in a county where there is none to create an opportunity to expand.

BAYADA's Alternate Need Calculation is Inappropriate and Flawed

On page 5 of their petition, BAYADA recalculates the need for an additional home health agency in Buncombe County by changing the need methodology to substitute growth rates from a single county as opposed to the whole region. This recalculation amounts to a petition to change the SMFP methodology itself. Suggested changes to the methodology are not appropriate for a Summer Petition for a single county and rather, should be presented in the Spring Petitions. Therefore, this BAYADA petition to change the methodology is inappropriate at this time.

In every single county where the county use rate is growing faster than the regional rate, BAYADA could have made the same argument, which would result in a completely different methodology and different results across the state. As will be shown, BAYADA's calculations are simply based on picking and choosing numbers to manufacture a need.

Neither the Size of, nor Regional Patients Served by, Buncombe County Agencies is Unique

BAYADA suggests on page 4 of their petition that there is something unique about the two HHAs based in Buncombe County. None of BAYADA's suggestions are factually accurate nor is this line of inquiry relevant. Despite there being only two agencies located within Buncombe County, numerous other agencies actively serve patients in this county. These offices outside of the county that still serve Buncombe patients are not considered in BAYADA's analysis. It is the collective utilization of all of these agencies that is considered in the SMFP home health need methodology (See BAYADA Petition p. 10 -11). As discussed below, at least 8 existing home health agencies currently serve Buncombe County patients, not just 2 as Bayada intimates.

In addition, BAYADA suggests that CarePartners and Kindred At Home are serving too many patients, which is both false and has no bearing on the need for a new agency. Moreover, there are multiple home health offices in North Carolina serving just as many patients as CarePartners and Kindred At Home. In fact, multiple existing North Carolina home health agencies served more

patients than either CarePartners or Kindred At Home including Well Care Home Health and Total Home Health of North Carolina, for example.

It is not unusual, as suggested by BAYADA, for a home health agency to serve many patients from outside its home county when it is licensed in multiple counties. This is because home health agencies do not experience the same concrete capacity constraints as something like acute care beds, as discussed above. This is especially true of CarePartners due to its affiliation with Mission Health and Mission Hospital, which is a regional tertiary hospital provider serving all of western North Carolina. Therefore, CarePartners’ broad service area is not only reasonable, but it is expected as well. Even though Kindred’s overall regional volume went down between FY2019 and FY2020, CarePartners’ volume increased by more than Kindred’s decline.

Buncombe County Patients are Growing

BAYADA claims the methodology needs to be adjusted because Buncombe County’s Use Rates are growing faster than Region B in three of four age groups. BAYADA completely ignores the fact that Buncombe County’s home health patients are also growing faster than Region B in three of four age groups as shown below:

Comparison of Growth Rates for Buncombe County v. Region B

	Average Annual Rate of Change in Use Rate		Average Annual Rate of Change in # Patients	
	Buncombe	Region B	Buncombe	Region B
Under Age 18	3.0139%	1.0161%	2.3449%	0.2246%
Age 18-64	3.2904%	0.5146%	3.1518%	0.4452%
Age 65-74	4.0461%	4.8928%	6.9688%	7.1284%
Age75+	2.1146%	0.0912%	5.0651%	3.3117%
<i>Considered by BAYADA</i>				
<i>Ignored by BAYADA</i>				

BAYADA simply ignored one half of the growth rate factors that are incorporated into the home health need calculation. Even if it were appropriate to substitute a county growth rate instead of a region, which it is not, then the entire methodology should be run using Buncombe County specific growth rates instead of only adjusting half of the methodology. It is clearly unbalanced to adjust only the use rate for half of the methodology and not the patients served growth rate part of the methodology. When both halves are adjusted, the result is that there is not enough patient need to trigger a determination of need in Buncombe County, as shown below. It is clear that BAYADA created an unbalanced need calculation to manufacture a need to suit its purposes.

Buncombe County Need Methodology Adjusted for All Parts of the Calculation

A	B	C	D	E	F	G	H	I
County	Home Health Patients in 2020	COG's Average Annual Rate of Change in # Patients Served	Projected # of Patients Receiving Services in 2023	Geographic Unit's Use Rate per 1000 in 2020	COG's Average Annual Rate of Change in Use Rate	Projected Use Rate per 1000 in 2023	Projected 2023 Population	Projected Home Health Patients in 2023
Under Age 18	178	2.3449%	190.52	3.6241	3.0139%	3.9518	48,256	190.70
Age 18-64	1,879	3.1518%	2,056.67	11.7258	3.2904%	12.8833	161,643	2,082.49
Age 65-74	1,944	6.9688%	2,350.42	60.6174	4.0461%	67.9753	33,292	2,263.03
Age75+	3,559	5.0651%	4,099.80	154.8940	2.1146%	164.7202	26,152	4,307.76
Total	7,560		8,697.41	142.6523			269,343	8,843.98
Adjusted Total Patients Served	8,697.41	Based on 2022 SMFP Home Health Need Methodology with Buncombe County Use Rates instead of COG Use Rates						
Projected Home Health Utilization	8,843.98	Based on 2022 SMFP Home Health Need Methodology with Buncombe County Use Rates instead of COG Use Rates						
Projected Surplus or Deficit	-146.57	Projected Deficit for 2023 does NOT trigger a determination of need						
Considered by BAYADA								
Ignored by BAYADA								

A Regional Growth Rate is More Appropriate Than a Single County Use Rate

BAYADA’s adjustment using a single county growth rate does not make sense in the context of how home health services are delivered. The use of regional growth rate numbers makes more health planning sense from a home health provider perspective because a home health agency does not have a set capacity and serves patients in their place of living. This means that home health providers can and do easily serve more than one county. For example, Buncombe county-based agencies serve adjoining counties, and likewise, providers like Encompass serve patients in Buncombe. The 8 additional agencies that served Buncombe County in FY2020 were recognized by BAYADA in their own petition on page 11. The use of a regional rate aligns with the regional home health providers that serve Buncombe County.

There is no reason to change the methodology for need calculations in Buncombe other than to create a false conclusion of unmet need. Nothing is unique about Buncombe County itself to suggest a different methodology than other counties in the state that also have higher growth rates than the region. BAYADA presents no other evidence of unmet need in Buncombe County other than the proposed new need calculation/methodology. In fact, during a 2021 CON Section review of competing applications for a new hospice agency in Rowan County, one of the applicants substantially revised the standard SMFP need methodology and the CON Section found that such an approach was unwarranted and unreasonable, and it denied that CON application largely on that basis. All other arguments by Bayada are simply speculation about a market in which BAYADA has no presence.

The Actual Experience of Buncombe County Providers Undermines BAYADA’s Claims

BAYADA’s own petition demonstrates that its COVID impact claims are flawed. On pages 10-11, BAYADA shows that home health utilization for Buncombe County has increased from 2019 pre-COVID to 2020 during COVID, which is counter to BAYADA’s claims of understated need due to COVID. This trend does not support the claim of need in Buncombe County.

Data on prior year utilization of home health services show that pre-COVID Compounded Annual Growth Rates (“CAGRs”) are not meaningfully different from 2020 COVID-impacted rates. In fact, patient growth rates are actually higher through 2020 for all age groups under 75, showing a steady increase in use from year to year. It can be gleaned from the actual providers serving the market that growth rates for the 75+ population are slightly slower as patients in this age group

commonly live in congregate living situations like assisted living. These patients could have had a very short period in which home health providers could not enter the facility due to COVID-19, but this impact is not nearly as dramatic as BAYADA purports. In fact, CarePartners’ actual experience was only a very minimal and short disruption in care due to COVID, as will be discussed in detail below.

Analysis of Trend in Buncombe County Home Health Patient Utilization

County	Home Health Patients				% CAGR 2016-2019	Home Health Patients 2020	% CAGR 2016-2020
	2016	2017	2018	2019			
Under Age 18	222	219	189	132	-15.9%	178	-5.4%
Age 18-64	1,790	1,687	1,766	1,810	0.4%	1,879	1.2%
Age 65-74	1,550	1,636	1,699	1,808	5.3%	1,944	5.8%
Age 75+	2,962	3,081	3,235	3,596	6.7%	3,559	4.7%
Total	6,524	6,623	6,889	7,346	4.0%	7,560	3.8%

Source: 2018-Draft 2022 SMFPs

The 2021 data on home health care use in Buncombe County show that CarePartners’ volume is booming, which is inconsistent with the impact of COVID that BAYADA is suggesting. CarePartners has quickly and fully adapted to an ongoing COVID pandemic situation. Approval of a new agency is unnecessary and duplicative.

Even pediatric home health cases, which were down for a period of time across the state, have rebounded in FY 2020 during COVID. CarePartners is the main provider of specialty pediatric care in the area, including a neonatal abstinence program. Actual experience in the service area is that even utilization for this age group is growing.

There are Actually Multiple Choices of Home Health Agencies in Adjoining Counties (Page 12)

On page 4 of its petition, BAYADA claims that it is insufficient for only two agencies to be in Buncombe County, examining just the utilization of these home health offices, Kindred At Home and CarePartners. This analysis is flawed because there are many home health agencies outside of the county limits that are actively serving the residents of Buncombe County. In fact, BAYADA’s own tables show 7 total agencies serving Buncombe in 2019 and 8 in 2020 (see pages 10 and 11). If 7 and 8 agencies are serving Buncombe residents in 2019 and 2020, respectively, BAYADA’s point about county agencies per 100,000 people is inaccurate.

Moreover, the Agency’s need methodology does not consider the number of agencies located in a county. The need methodology considers access to care through patients served regardless of the location of the HHA providing such care. It has not previously been the Agency’s role to define the appropriate number of HHAs serving any given county.

BAYADA Ratio of Office to Population is Meaningless

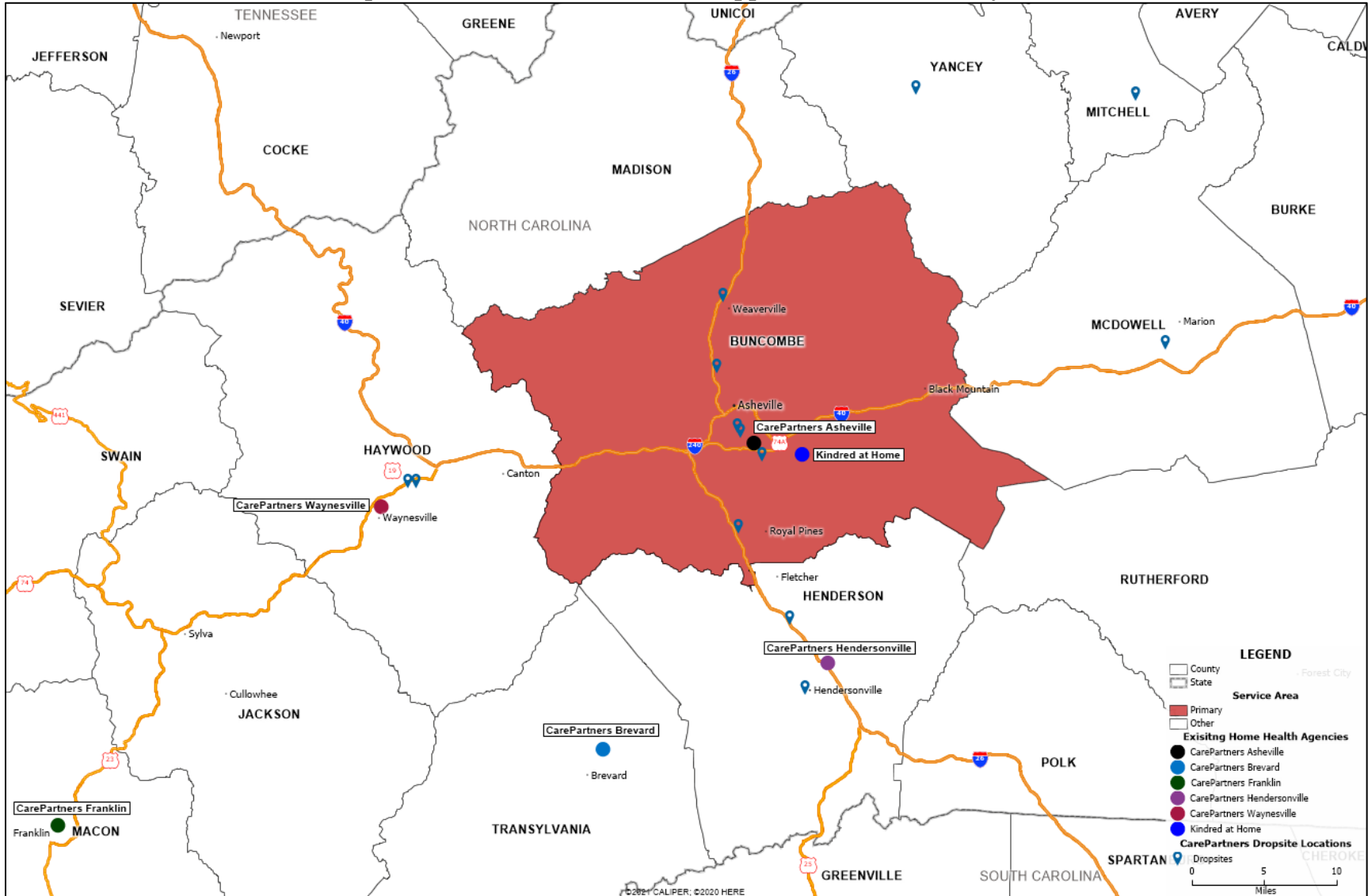
On page 8 of its petition, BAYADA conducts an analysis of the number of HHAs per population of the home county. This analysis is meaningless and irrelevant because the HHA need methodology must correctly reflect the utilization of all agencies serving the county, not just those with a primary license in this county. In fact, BAYADA’s analysis ignores the fact that its own petition identifies a total of 7 to 8 agencies actually serving patients in Buncombe County. Any

analysis about the number of home health offices physically located within a county is not reasonable because home health agencies do not have a capacity and are not limited by main office locations. Thus, any claims of limitations by just having 2 agencies in Buncombe County are false.

Existing Agencies Have Numerous Locations and Dropsites to Facilitate Provider Access

Another flaw in BAYADA's analysis is that the number of physical agencies does not equate to the number of service locations. The nature of home health is that patients are served in their home, not at the home health office. Therefore, the location of a given home health agency is unimportant as long as it is licensed in each county it purports to serve. For example, CarePartners has 5 offices in the region and numerous drop off locations so that staff do not have to travel unreasonable distances to serve patients (See map below). Staff also have access to other offices, and likewise multiple offices in different areas share staff. It is highly reasonable that a staff member might live in Henderson County and easily serve Buncombe County because they can go to these areas for offices and dropsites.

Map of CarePartners Locations to Support Buncombe County Home Health



CarePartners' Large Number of Patient Base in the Region Reflects Continuity of Care

One of BAYADA's concerns in their petition was the large and growing number of patients served by Buncombe's current HHAs. CarePartners serves a large number of patients in Buncombe County and the region as a whole because it is affiliated with Mission Health and Mission Hospital.

Mission Health affiliates include six acute care hospitals, including two disproportionate share hospitals and four critical access hospitals, and many home health cases may be discharged patients from any of these locations. Mission Hospital is the regional tertiary medical center supporting western NC. Therefore, because of the affiliation between CarePartners and Mission, Mission patients served by CarePartners have the advantage of continuity of care. This means that CarePartners' staff have the ability to see a patient's entire medical record of services within the Mission Health system. A new provider, and in particular BAYADA, could not offer this level of continuity of care.

In addition, Care Partners is also a part of a local Accountable Care Organization ("ACO") with approximately 125,000 attributed patients. CarePartners has access to all records and case management information for these patients in another fully integrated continuum of care. No other new home health agencies will be able to offer the continuity and quality of care already provided by CarePartners in Buncombe County.

Claims of Inclement Weather are Misplaced

The issue of inclement weather is not unique to Buncombe County. This further strengthens the point that BAYADA has just chosen Buncombe County because it is an area in which they currently do not have a market presence. BAYADA has no actual data or knowledge of the impact of inclement weather on Buncombe County. Severe weather systems like hurricanes have more of an impact on coastal regions and not necessarily Western North Carolina. BAYADA is simply manufacturing a claim to single out Buncombe County that could apply to literally any county in the state.

In reality, existing providers have been serving this area for years throughout all kinds of "inclement weather." BAYADA has no way to know about the very effective plans in place routinely deployed within Buncombe County and surrounding areas for issues like snow and ice prevention and removal. In fact, CarePartners' affiliation with Mission Health and HCA brings to the area multiple layers of disaster and emergency preparedness that can easily be deployed and have been. A timely example is CarePartners' response to the Colonial Pipeline shut down. HCA's resources provided for tanker trucks of fuel to be brought into the area to fuel CarePartners' fleet of home health providers, so that they could continue to serve patients. This action provided seamless patient care. Any new provider to this area could not possibly mitigate weather-related issues in any different or better way.

BAYADA's Claims of Cyber Security Are Overstated and Misplaced

BAYADA's petition also makes claims of potential cybersecurity issues. However, these are relevant to all healthcare facilities, not just home health in Buncombe County. A single county cannot be singled out as having a greater risk than others. This is yet another example of BAYADA

crafting extremely general arguments to try to break into the healthcare market in Buncombe County.

BAYADA has no specific knowledge of the actual capabilities of any provider in the market to mediate cybersecurity threats. Like any other healthcare provider, the existing Buncombe County providers would temporarily revert to paper charting and deploy emergency preparedness measures. In fact, like in all instances of emergency preparedness, CarePartners is more than ready to respond to a cyber-attack with backup plans in place and the resources of Mission Health and HCA (as noted in the Colonial Pipeline issue). BAYADA's implication of this argument regarding cybersecurity, when taken to its logical conclusion, is that we should create unnecessarily duplicative hospitals in case one is hit by a cybersecurity breach. BAYADA has not demonstrated any unique cybersecurity issues in Buncombe County, nor has BAYADA demonstrated a unique capability to avoid the risks associated with cybersecurity threats.

The Harmful Impact of BAYADA's Petition—Bayada's "Staffing-Based" Claims

Overall, BAYADA is clearly taking advantage of a situation that has arisen because of the impact of COVID on acute care utilization in order to get this petition approved. There is no evidence of any similar impact on home health generally and within Buncombe County. Adding unwarranted and duplicative services with no valid basis would be harmful to the healthcare delivery system. Therefore, this petition should not be approved.

The biggest challenge to CarePartners during the pandemic has been maintaining staff with high turnover as individuals choose to leave the healthcare profession. This is true universally across healthcare segments throughout the whole country. BAYADA claims that somehow it will be unique among all North Carolina health care providers and will be able to solve the chronic problem of attracting and retaining home health staff during a public health emergency. That's a ridiculous claim. To the contrary, the introduction of a new home health agency provider in a region where there is no need based on the SMFP standard need methodology would only exacerbate any existing staffing challenges. BAYADA would have no unique way of mediating this issue. Although CarePartners has successfully hired more staff recently, a new agency would only serve to drain an already limited staff, including front line workers providing patient visits and critical management and supervisory positions. Economies of scale created by serving a large base of patients with centralized administrative staff and resources would be eroded by the unwarranted entry of another provider.

Based on this information, CarePartners respectfully requests that SHCC deny BAYADA's petition for a special need determination for a new home health agency in Buncombe County.