

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

DECISION DATE: June 27, 2014
PROJECT ANALYST: Julie Halatek
TEAM LEADER: Lisa Pittman

PROJECT I.D. NUMBER: B-10237-14 / Buncombe AL Investors, LLC and Buncombe Operations, LLC / Replace and relocate 99 adult care home beds at Canterbury Hills to a new location within Buncombe County / Buncombe County

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

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

Buncombe AL Investors, LLC (Buncombe AL) and Buncombe Operations, LLC (Buncombe LLC) propose to relocate 99 existing, but not currently operational, adult care home (ACH) beds from the former Canterbury Hills ACH facility to a new facility within Buncombe County.

The applicants plan to include a secure, dedicated wing as a 24-bed memory care unit for those with Alzheimer's or dementia. However, the applicants state that, due to the current special care unit (SCU) moratorium in North Carolina, the memory care unit will not be a licensed SCU.

The 99 existing but not operational ACH beds are currently located at 18 Horsebarn Road, Candler, at the former Canterbury Hills facility. The applicants determined the primary location identified in the application would not be suitable for development due to community concerns and covenants involved in a land sale. Therefore, in supplemental information, the applicants identify the proposed location of the replacement facility (to be called The Crossings at Beaverdam) as a parcel of land on Cobblers Way, off Reynolds Mountain Boulevard, in Asheville. Buncombe AL will own the land, buildings, and beds.

The facility will be leased by Buncombe LLC and managed by Harmony Senior Services (Harmony).

The applicants state in Section II.1, page 9, that Canterbury Hills' 99 existing ACH beds have not been operational since the last patients transferred to other facilities as of August 1, 2013. 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 2014 State Medical Facilities Plan (SMFP). However, Policy LTC-2: Relocation of Adult Care Home Beds and Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities apply to this application.

POLICY LTC-2: RELOCATION OF ADULT CARE HOME BEDS states:

“Relocations of existing licensed adult care home beds are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate licensed adult care home beds to contiguous counties shall:

- 1. Demonstrate that the proposal shall not result in a deficit in the number of licensed adult care home beds in the county that would be losing adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins; and*
- 2. Demonstrate that the proposal shall not result in a surplus of licensed adult care home beds in the county that would gain adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins.”*

Both the existing and proposed locations are in Buncombe County. Therefore, the application is consistent with Policy LTC-2.

POLICY GEN-4: ENERGY EFFICIENCY AND SUSTAINABILITY FOR HEALTH SERVICE FACILITIES states:

“Any person proposing a capital expenditure greater than \$2 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178 shall include in its certificate of need application a written statement describing the project's plan to assure improved energy efficiency and water conservation.

In approving a certificate of need proposing an expenditure greater than \$5 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178, the Certificate of Need Section 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 are required to submit a plan for energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant's representation in the written statement as described in paragraph one of Policy-GEN 4. The plan shall not adversely affect patient or resident health, safety or infection control."

In Exhibit 21, the applicants provide a written statement from their architectural firm describing the proposed project's plan to assure improved energy efficiency and water conservation:

"This project will comply with all energy and water conservation standards, rules, and codes as implemented by the Construction Section of the Division of Health Service Regulation, and as established in the latest editions of the North Carolina States [sic] Building codes."

Therefore, the application is consistent with Policy GEN-4.

In summary, the application is conforming to all applicable policies in the 2014 SMFP. Therefore, the application is conforming to this criterion.

- (2) Repealed effective July 1, 1987.
- (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

C

Buncombe AL and Buncombe LLC propose to relocate 99 existing, but not currently operational, ACH beds from the former Canterbury Hills ACH facility to a new facility within Buncombe County.

The applicants plan to include a secure, dedicated wing as a 24-bed memory care unit for those with Alzheimer's or dementia. However, the applicants state that due to the current SCU moratorium in North Carolina, the memory care unit will not be a licensed SCU.

The 99 existing but not operational ACH beds are currently located at 18 Horsebarn Road, Candler, at the former Canterbury Hills facility. In supplemental information, the applicants

identify the proposed location of the replacement facility (to be called The Crossings at Beaverdam) as a parcel of land on Cobblers Way, off Reynolds Mountain Boulevard, in Asheville. Buncombe AL will own the land, buildings, and beds. The facility will be leased by Buncombe LLC and managed by Harmony.

Population to be Served

In supplemental information, the applicants provide the projected patient origin for the ACH beds as shown in the table below:

County	Projected % of Total ACH Residents
Buncombe	88%
Madison	8%
Haywood	1%
Henderson	1%
McDowell	1%
Yancey	1%
Total	100%

In Section III.7, page 31, the applicants state:

“The applicants believe the large majority of residents will come from Buncombe County. Madison County, which is only a 17-minute drive North of the proposed facility, will also be a source of residents. Madison County only has one adult care home: Mars Hill Retirement Community. According to its 2013 License Renewal Application (See Exhibit __) [sic], Mars Hill Retirement Community had a census of 84%, with 93% of their residents being private pay. Also, 19% of their residents had a diagnosis of Alzheimer’s, yet Madison County does not have any special care units.”

In supplemental information, the applicants state:

“...Although, the applicants believe there will be residents originating from Mecklenburg County in the independent living portion of the proposed facility, contiguous counties are more likely to be represented in the adult care home portion of the proposed facility. As such, the four closest counties (by travel time) were chosen to project the remaining 4% of patient origin.”

The applicants adequately identify the population to be served.

Demonstration of Need

In Section III.1, pages 19-20, and Section III.3, pages 27-28, the applicants state the need to relocate and replace the 99 ACH beds is based on the following:

- The existing building is old and will not meet current construction requirements for ACH facilities.

- The existing building can only accommodate 99 ACH beds if wards are used instead of private or semi-private rooms.
- The existing lot, which is four acres, is not large enough to accommodate an ACH facility and an adjoining independent living community under current construction requirements.
- Because multiple rule violations occurred at the previously licensed ACH facility that existed at the site, a negative reputation of the facility exists in the community. This would keep prospective residents from selecting the proposed facility as a residence.
- The proposed site will move the ACH beds to a part of the county with fewer ACH facilities and therefore provide enhanced access.

Although the applicants discuss the need for the entire 99-bed relocation, they also discuss the need for the proposed memory care unit specifically. The applicants state in Section II.2(a), pages 12-13, that they intend to include a 24-bed memory care unit as part of the 99-bed ACH. The applicants state that they intend for this memory care unit to be eventually licensed as a SCU; however, because of the current moratorium on SCU licenses, the applicants state they are aware that the beds may not be licensed as a SCU in the near future. The applicants state that they will inform prospective memory care unit residents that the memory care unit is not a licensed SCU.

Using data from the Alzheimer's Association; the North Carolina Office of State Budget and Management; and a study published in the *Archives of Neurology* in 2003, the applicants project that more SCU beds are needed than are available. In Section III.2(b), pages 21-28, using data from the sources above, the applicants project that by 2015, 768 of Buncombe County residents would be expected to utilize SCU services. According to the Long Term Care Initiative database, there are currently 72 SCU beds in Buncombe County (Arbor Terrace of Asheville has 21 SCU beds; Aston Park Health Care Center has 13 SCU beds in the ACH portion of the dually licensed facility; and Clare Bridge of Asheville has 38 SCU beds). The applicants note the utilization rate of these SCU beds is high—in Section II.2(a), page 21, the applicants state that, according to the 2013 License Renewal Applications (LRAs), Arbor Terrace of Asheville's SCU census is 81% and Clare Bridge of Asheville's SCU census is 100%.

The applicants further note that the two ACH facilities with SCU beds—Arbor Terrace of Asheville and Clare Bridge of Asheville—are private pay facilities and accept no Medicaid patients. In Section III.2(a), page 21, the applicants state:

“...According to their 2013 License Renewal Applications, Clare Bridge's SCU census was 100% and Arbor Terrace's SCU census was 81%. Both facilities are private pay only facilities, and do not accept Medicaid. Once the SCU moratorium is lifted, The Crossings at Beaverdam plans to be the only SCU in Buncombe County to accept Medicaid. ...”

Projected Utilization

In supplemental materials, the applicants provide projected utilization of the 99 ACH beds for the first two full operating years as illustrated in the table below:

Projected Utilization – First Two Operating Years		
	1st Full FFY 10/1/15 to 9/30/16	2nd Full FFY 10/1/16 to 9/30/17
Patient Days	17,833	30,353
Occupancy Rate	49.35%	84.00%
# of Beds	99	99

As shown in the table above, in the second year of operation, The Crossings at Beaverdam projects the 99 ACH beds will operate at 84% of capacity [30,353 / 365 / 99 = 0.8399].

The applicants state that projections were based on average occupancy rates for facilities deemed similar to the proposed facility as documented in the 2014 LRAs. In supplemental information, the applicants state:

“... ‘similar’ facilities were determined by excluding Buncombe County facilities that were built more than 20 years ago and serve mental health residents under the age of 55. The applicants believe that the remaining facilities attract a population similar to the proposed facility. The applicants believe that potential residents of the proposed facility would not be interested in living in a facility with young mental health residents. Rather, the proposed facility will serve only residents 55 years of age and older. Additionally, the proposed facility will be too dissimilar to facilities built more than 20 years ago to base projected occupancy on them. In this analysis, the average occupancy was determined to be 84%.”

The applicants provide information in supplemental information to calculate projections:

Occupancy of Similar Facilities in Buncombe County				
Facility	Beds	Approx. Age	2013 Occupancy	% Private Pay
Arbor Terrace of Asheville	70	16	92%**	100%
Clare Bridge of Asheville	38	16	92%	100%
Deerfield Episcopal Retirement Community*	62	15	94%	100%

Heather Glen at Ardenwoods	60	13	74%	100%
Richard A. Wood, Jr. Assisted Living Center	56	14	81%	100%
Trinity View	24	15	78%	100%
Totals/Averages	310	15	85%**	100%

*Denotes a dually licensed nursing home/adult care home facility; bed count is for ACH beds only

Note: Occupancy rates were calculated using reported bed days in 2014 LRAs, with the exception of Arbor Terrace, where the reported days were incorrect, and year-end census was used instead.

**According to the LTI database, the year-end census occupancy for Arbor Terrace of Asheville was 84.3%; if the correct year-end census occupancy is used, the average occupancy rate becomes 84%—still in line with the applicants’ projections.

The applicants were unable to utilize past occupancy rates for the Canterbury Hills facility to make projections for future utilization for several reasons. First, the previous owners provided very limited information on the most recent LRA for Canterbury Hills. Second, the facility census dropped significantly in the last two years of operation. Finally, many of the ACH beds at the Canterbury Hills facility were used for mental health patients under the age of 55 (an audience the applicants are not targeting). In Section III.1(a), page 19, the applicants state:

“...rule violations in the current building that have led to a multitude of penalties from Licensure Section have fostered a negative reputation in the community. Prospective elderly residents looking for a community would almost certainly steer clear of a facility with a negative reputation for quality of care and a reputation for being a facility that primarily serves younger people with mental illness.”

In Section III.1(b), pages 19-20, the applicants state:

“Over the course of the last two years of operation, the facility realized a census drop from 96% (August 1, 2011), to 64% (August 1, 2012), to 0% (August 1, 2013). The census reduction during the first year is assumed to be due to Adult Care Licensure Section penalties that, along with other factors, hurt the reputation of the facility, making it a less desirable choice for prospective residents. The combination of the aforementioned penalties levied by the Adult Care Licensure Section and a final discharge of all residents before ceasing operations caused the precipitous reduction in census over the course of the last year.”

In Section IV.1, page 32, in discussing utilization projections, the applicants state:

“The applicants are unable to provide specific monthly information because the former licensee and operator of the facility has only provided total patient days for the last 12 months of operations (which ended on July 31, 2013). ...”

In the 2013 LRA for Canterbury Hills, the former licensee/operator of the facility documented that 40 residents had a primary diagnosis of some type of mental illness (with 24 of those patients under the age of 55) and 17 patients had a primary diagnosis of some type of intellectual or developmental disability (with all but five patients under the age of 55).

Furthermore, the utilization rate for all licensed ACH beds in Buncombe County is 79%. Subtracting the beds in Canterbury Hills, as it is unoccupied, utilization rises to 80%. The applicants also plan to include an adjoining large independent living facility. It is reasonable

to anticipate that some residents of the independent living portion of the facility will eventually transition to being patients in the ACH portion of the facility.

Projected utilization of the proposed facility is based on reasonable, credible, and supported assumptions, which is based on overall Buncombe County utilization and utilization of similar facilities. The applicants adequately demonstrate the need to replace the 99-bed ACH facility in Buncombe County.

Access

In supplemental information, the applicants project 31% of patient days will come from patients receiving Medicaid. In Section VI.5, page 38, the applicants state:

“The applicants propose a new facility that will allow for the highest quality of care available. Underserved groups, such as those relying on Medicaid, will be served by the new facility without regard to payor source. Potential residents will not be discriminated against with regard to their age, racial background, ethnic background, gender, handicap, sex, or medical diagnosis. ... The applicants project that the majority of residents will be private pay. However, the facility will be able to leverage the higher private pay rates to provide residents relying on Medicaid with a much higher quality of care than they would experience in the many other facilities in Buncombe County that do not appeal to private pay residents. ...”

In summary, the applicants adequately identify the population to be served and demonstrate the need the population has for the project and the extent to which all residents of the area, in particular underserved groups, are likely to access the services provided. See Criterion (13c) for discussion regarding access by medically underserved groups which is incorporated hereby by reference as if set forth fully herein. Therefore, the application is conforming to this criterion.

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

C

The applicants propose to relocate 99 existing, but not currently operational, ACH beds from the former Canterbury Hills ACH facility to a new facility within Buncombe County. According to Google Maps, the distance from the current site to the proposed site is approximately 15 miles and 22 minutes driving time. Thus, the replacement facility would be geographically accessible to the same population formerly served. Because the beds to be relocated are not currently occupied, no patients will be displaced as a result of the proposed project. The applicants state that the Canterbury Hills building is not current with building codes and standards and would need to be replaced anyway.

Furthermore, in the replacement ACH facility, the applicants project 31% of all resident days for the facility will be provided to Medicaid recipients. The proposed memory care unit will be private pay only until the SCU bed moratorium is lifted; however, the applicants plan to accept Medicaid recipients after the moratorium is lifted. At present, no medically underserved residents are served by the 99 ACH beds to be replaced and relocated, since it is not operational.

The application is conforming to this criterion.

- (4) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

CA

In Section III.3, pages 27-28, the applicants state:

“In addition to the route chosen and proposed in this application, the applicants considered renovating the existing facility and constructing a new building on the same site. However, neither alternative would work, because the current site (only four acres) would not allow for a building large enough to accommodate the 99 adult care home beds under the current construction requirements regarding square footage per resident. Also, the current site would not accommodate the shape of the building that would be necessary to include an adjoining independent living community.

Furthermore, the proposed site for the facility will move the beds to an area of the county that is less saturated with existing adult care home, and, therefore, would provide an enhanced access to care for Buncombe County residents.”

The applicants propose to construct a 99-bed replacement facility in the same county. The applicants do not propose to add new beds. Furthermore, the application is conforming or conditionally conforming to all applicable statutory and regulatory review criteria, and thus, the application is approvable. An application that cannot be approved is not an effective alternative.

The applicants adequately demonstrate that the proposal is its least costly or most effective alternative to meet the need to relocate the 99 ACH beds. Consequently, the application is conforming to this criterion and is approved subject to the following conditions.

- 1. Buncombe AL Investors, LLC and Buncombe Operations, LLC shall materially comply with all representations made in the certificate of need application and in the supplemental information materials submitted during the review. In those instances where representations conflict, Buncombe AL Investors, LLC and Buncombe Operations, LLC shall materially comply with the last made representation.**

- 2. Buncombe AL Investors, LLC and Buncombe Operations, LLC shall construct a replacement adult care home facility (ACH) which shall be licensed for no more than 99 ACH beds upon project completion.**
 - 3. For the first two years of operation following completion of the project, Buncombe AL Investors, LLC and Buncombe Operations, LLC shall not increase actual private pay charges more than 5% of the projected private pay charges provided in Section X of the application, without first obtaining a determination from the Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.**
 - 4. Buncombe AL Investors, LLC and Buncombe Operations, LLC shall provide care to recipients of State/County Special Assistance with Medicaid for the facility, commensurate with representations made in Section VI.2, Exhibit 23, and supplemental materials.**
 - 5. Buncombe AL Investors, LLC and Buncombe Operations, LLC shall submit all patient charges and patient admissions for each source of patient payment to the CON Section at year end for each of the first three operating years following licensure of the beds in the facility.**
 - 6. Buncombe AL Investors, LLC and Buncombe Operations, LLC shall develop and implement an Energy Efficiency and Sustainability plan for the replacement facility that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.**
 - 7. Prior to the issuance of a certificate of need, Buncombe AL Investors, LLC and Buncombe Operations, LLC shall provide, to the Certificate of Need Section, written documentation of available funding to provide for the start-up expenses projected in supplemental information.**
 - 8. Buncombe AL Investors, LLC and Buncombe Operations, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section 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.

In Section VIII.1, page 44, and supplemental information, the applicants project the total capital expenditure for the proposal will be \$11,094,430, which includes:

Purchase price of land	\$ 686,200
Other site costs	\$ 932,130
Construction contract	\$ 7,145,500
Other construction costs	\$ 515,800
Equipment and Furniture	\$ 680,000
Consultant Fees	\$ 833,400
Financing Costs	\$ 83,700
Interest during Construction	\$ 217,700
Total:	\$11,094,430

In supplemental materials, the applicants project that the total working capital needs for this project will be \$1,034,607, which includes the start-up expenses for eight months prior to the facility opening, as well as a ten month initial operating period. In Section VIII.2, page 45, the applicants document the capital cost of the project will be financed with a commercial loan and owner's equity.

Exhibit 12 contains a copy of a letter from Synovus Bank, which states:

“Synovus Bank hereby expresses its interest in providing construction and permanent financing for your proposed adult care facility in Buncombe County, NC. Synovus also expresses interest in financing the entire facility, including the independent living portion. The following is a summary of the terms and conditions that would apply to this transaction:

<i>Borrower:</i>	<i>Buncombe County AL Investors, LLC</i>
<i>Purpose:</i>	<i>Finance the construction of a 99-bed adult care facility in Buncombe County, NC</i>
<i>Amount:</i>	<i>\$8,372,347.94 or 75% of the appraised value of the facility, whichever is less.</i>
<i>Interest Rate:</i>	<i>LIBOR + 3.5%</i>
<i>Term/Repayment:</i>	<i>36 interest only payments shall be made monthly during the construction phase, followed by 24 payments of principal and interest based on a twenty-five year amortization, with all accrued interest and principal due at maturity.</i>
<i>Guarantors:</i>	<i>James R. Smith and Hunter D. Smith</i>
<i>Collateral:</i>	<i>First Deed of Trust on the proposed facilities, located on property selected in Buncombe County.”</i>

Exhibit 14 contains a letter dated January 10, 2014, signed by Michael O. Meeks, Certified Public Accountant, which states:

“I am Mr. James R. Smith’s and Mr. Hunter D. Smith’s personal accountant, and have worked on the Smiths’ behalf for over twenty years. In my capacity, I am fully aware of all of the Smiths’ current business interests, and of all presently planned future projects.

It is my understanding that Buncombe County AL Investors, LLC, of which Mr. James R. Smith is the majority member, is intending to file a Certificate of Need (“CON”) Application relating to a 99 bed adult care home in Buncombe County, North Carolina. I further understand that the project is expected to involve a total capital cost for the adult care facility of approximately \$11,163,131 of which the Smiths’ equity contribution will be approximately \$2,790,783.

Over the past fifteen years, Mr. Smith, through Smith/Packett Med-Com, LLC, has initiated and completed or acquired at least 25 adult care homes in North Carolina. Based on the Smiths’ and Smith/Packett’s past performance in North Carolina, I have every belief that Buncombe County AL Investors, LLC, if issued a CON, will be fully funded and developed according to the representations made in the CON Application.

Based on my familiarity with Mr. Smith’s personal financial statements, it is clear that Mr. James R. Smith has liquid financial assets in more than sufficient amounts to fund all of the equity requirements necessary to develop the Buncombe County adult care home. In addition, the Smiths’ have sufficient funds to finance the equity portion of the entire facility, including the independent living section.”

In supplemental materials, the applicants provide a similar letter as the one above, dated June 17, 2014, also signed by Michael O. Meeks, Certified Public Accountant, which verifies the availability of sufficient amounts of funds for the initial operating expenses.

The applicants adequately demonstrate the availability of sufficient funds for the capital and initial operating expenses for this project, however the applicants do not provide documentation of the availability of sufficient funds for the start-up expenses.

In Section IX, pages 48-49, the applicants project charges and rates for the first two operating years following completion of the project. The private pay charge for a private room is projected to be \$152.94 for an ACH bed outside the memory care unit and \$188.33 for a bed in the memory care unit in each of the first two full federal fiscal years.

In Form B of the pro formas (found in supplemental information), the applicants project that revenues will exceed operating costs in the second operating year following completion of the proposed project, as shown in the table below.

Net Income	ACH (excluding memory care units)	Memory Care Units	Total Facility
1 st Full FFY (2016)	(\$736,104)	(\$81,555)	(\$817,659)
2 nd Full FFY	\$75,298	\$361,168	\$436,466

(2017)			
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The applicants adequately demonstrate that projected revenues and operating costs are based on reasonable, credible and supported assumptions, including projected utilization.

In summary, the applicants adequately demonstrate the availability of sufficient funds for the capital and working capital needs of the project and adequately demonstrate that the financial feasibility of the proposal is based upon reasonable projections of operating costs and revenues. Therefore, the application is conforming to this criterion, subject to the applicants' providing documentation of sufficient funds for start-up expenses. See Criterion (4) Condition 7.

- (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 applicants propose to replace and relocate 99 existing but not operational ACH beds within Buncombe County. The applicants state in Section II.1, page 9, that the current facility was unable to operate without incurring significant penalties from the Acute and Home Care Licensure and Certification Section. The proposed location is 15 miles from the current location.

According to the Adult Care Licensure Section, there are 32 facilities with licensed ACH beds in Buncombe County. Currently, only one of the facilities—Canterbury Hills, the facility involved in this application—is unoccupied. Based on data in the Long Term Care Safety Initiative database, the facilities in Buncombe County average almost 27 years old. A majority of facilities—25 out of the 31 operating facilities, or 81 percent—are at least 20 years old. Five facilities are 15-19 years old, and only one facility is less than 15 years old.

The 32 facilities, their utilization rates, and facility age are summarized in the table below. The utilization rate for all licensed ACH beds in Buncombe County is 79%. Subtracting the beds in Canterbury Hills, as it is unoccupied, utilization rises to 80%.

Facility	City	Total ACH Beds	Current census	SCU Beds in ACH Facilities	Residents Receiving Medicaid	Occupancy Rate FFY 2013	Medicaid population ratio	Age of Facility in Years**
Arbor Terrace of Asheville	Asheville	70	59	21	0	84.3%	0.0%	16
Asheville Manor	Asheville	79	61	0	32	77.2%	52.5%	21
Aston Park Health Care Center*	Asheville	23	13	13	7	56.5%	53.8%	34
Becky's Rest Home #1	Fletcher	15	12	0	7	80.0%	58.3%	31
Becky's Rest Home #2	Fletcher	15	11	0	6	73.3%	54.5%	30
Brian Center Health & Rehabilitation/Weaverville*	Weaverville	10	9	0	0	90.0%	0.0%	21
Candler Living Center	Candler	29	28	0	26	96.6%	92.9%	37
Canterbury Hills Adult Care Home	Candler	99	63	0	57	63.6%	90.5%	41
Chase Samaritan Assisted Living	Asheville	54	53	0	35	98.1%	66.0%	40

Chunn's Cove Assisted Living	Asheville	67	57	0	36	85.1%	63.2%	17
Clare Bridge of Asheville	Asheville	38	35	38	0	92.1%	0.0%	25
Deerfield Episcopal Retirement Community*	Asheville	62	56	0	0	90.3%	0.0%	48
Emerald Ridge Rehabilitation & Care Center*	Asheville	14	7	0	0	50.0%	0.0%	20
Flesher's Fairview Health Care Center*	Fairview	14	7	0	0	50.0%	0.0%	22
Flesher's Fairview Rest Home	Fairview	64	25	0	0	39.1%	0.0%	50
Givens Health Center*	Asheville	14	13	0	0	92.9%	0.0%	23
Heather Glen At Ardenwoods	Arden	60	43	0	0	71.7%	0.0%	15
Highland Farms*	Black Mountain	30	25	0	0	83.3%	0.0%	42
Hominy Valley Retirement Center	Candler	30	28	0	0	93.3%	0.0%	25
Marjorie McCune Memorial Center	Black Mountain	64	59	0	46	92.2%	80.0%	35
Nana's Assisted Living	Black Mountain	49	45	0	45	91.8%	100.0%	17
Richard A. Wood, Jr. Assisted Living Center	Asheville	56	48	0	0	85.7%	0.0%	13
Richmond Hill Rest Home #1	Asheville	12	12	0	11	100.0%	91.7%	25
Richmond Hill Rest Home #2	Asheville	12	11	0	9	91.7%	81.8%	25
Richmond Hill Rest Home #3	Asheville	12	12	0	11	100.0%	91.7%	25
Richmond Hill Rest Home #4	Asheville	12	12	0	9	100.0%	75.0%	24
Richmond Hill Rest Home #5	Asheville	12	12	0	9	100.0%	75.0%	24
The Laurels of Summit Ridge*	Asheville	63	40	0	0	63.5%	0.0%	21
The Oaks at Sweeten Creek*	Arden	14	9	0	0	64.3%	0.0%	18
Trinity View	Arden	24	17	0	0	70.8%	0.0%	22
Western North Carolina Baptist Home*	Asheville	50	35	0	0	70.0%	0.0%	21
Windwood Assisted Living	Candler	12	11	0	7	91.7%	63.6%	26
Totals, including all licensed beds		1,179	928	72	353	78.7%	38.0%	26.7 Avg Age
Totals, not including Canterbury Hills Facility		1,080	865	72	296	80.1%	34.2%	26.2 Avg Age

Source: 2014 SMFP, 2014 Nursing Home License Renewal Applications, LTI Database, and 2014 Adult Care Home License Renewal Applications. All numbers are current as of July 31, 2013.

*Indicates a nursing home that has adult care homes within the facility. The number of beds listed for these facilities are the adult care beds only.

**If a facility was licensed prior to June 30 of the year they opened, that year was used to calculate age; if after July 1, the following year was used.

The applicants adequately demonstrate the need to replace and relocate the 99 ACH beds from the Canterbury Hills facility in Candler to a new facility in Asheville. See Criterion (3) for discussion which is incorporated hereby by reference as if set forth fully herein. Consequently, the applicants adequately demonstrate that the proposed project will not result in the unnecessary duplication of existing or approved ACH beds in Buncombe County. Therefore, the application is conforming to this criterion.

- (7) The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided.

The applicants propose to provide personal care staff twenty-four hours per day, seven days per week. In Section VII.2, page 41, the applicants document that the proposed replacement ACH facility will be staffed by 34.7 personal care service FTEs and a total of 47.5 total FTEs. The applicants adequately demonstrate the availability of sufficient health manpower and management personnel to provide the proposed services. Therefore, the application is conforming to this criterion.

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

C

In Section II.1, pages 10-12, the applicants describe the ancillary and support services that will be provided by the facility or made available through agreements with other providers, including dietary, transportation, dentistry, physician, respite, medication administration, personal care, and beauty and barber services. In Exhibits 9 and 10 the applicants provide copies of letters sent to area physicians and a hospital system regarding their proposed project. The applicants adequately demonstrate they will provide or make arrangements for the necessary ancillary and support services and the proposed services will be coordinated with the existing health care community. Therefore, the application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
 - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
 - (iii) would cost no more than if the services were provided by the HMO; and
 - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

C

The applicants propose to construct a 176,816 square foot building at the proposed site in Asheville to house an independent living center along with the proposed replacement ACH. The ACH portion of the building will have 67,410 square feet. On Line 7 of Table VIII.1, in Section VIII.1, page 44, and supplemental information, the “*Cost of construction contract(s)*” is listed as \$7,145,500. This is consistent with a statement by the applicants’ architectural firm, in Exhibit 21, that construction costs are \$106 per square foot ($\$106 \times 67,410 = \$7,145,460$).

In Exhibit 21, the applicants provide a written statement from its architectural firm describing the proposed project’s plan to assure improved energy efficiency and water conservation:

“This project will comply with all energy and water conservation standards, rules, and codes as implemented by the Construction Section of the Division of Health Service Regulation, and as established in the latest editions of the North Carolina States [sic] Building codes.”

The applicants adequately demonstrate that the cost, design, and means of construction represent the most reasonable alternative and that the construction costs will not unduly increase costs and charges for health services. See Criterion (5) for discussion of costs and charges which is incorporated hereby by reference as if set forth fully herein. Therefore, the application is conforming to this criterion.

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

NA

In Section II.1, page 9, the applicants state the facility has not housed patients since August 1, 2013; the applicants have never operated the facility.

- (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

In Section II.1, page 9, the applicants state the facility has not housed patients since August 1, 2013; the applicants have never operated the facility.

- (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 supplemental information, the applicants project the following payor mix for the second operating year:

Payor Category	ACH (excluding memory care units)	Memory Care Units	Total ACH
Private Pay	59%	100%	69%
Medicaid	41%	0%	31%

The 31 operating facilities in Buncombe County report serving a total of 296 residents who receive Medicaid reimbursement for enhanced personal care services. This represents 34% of the currently available beds; the entire census of one facility; and 80% or more of the census at six other facilities. The applicants adequately demonstrate that the elderly and underserved will have access to the proposed facility.

The Division of Medical Assistance (DMA) maintains a website which offers information regarding the number of persons eligible for Medicaid assistance and estimates of the percentage of uninsured for each county in North Carolina. The following table illustrates those percentages for Buncombe County and statewide.

	2010 Total # of Medicaid Eligibles as % of Total Population*	2010 Total # of Medicaid Eligibles Age 21 and older as % of Total Population*	CY2008-2009 % Uninsured (Estimate by Cecil G. Sheps Center)*
Buncombe	36%	16.1%	18.3%
Statewide	17%	6.7%	19.7%

*More current data, particularly with regard to the estimated uninsured percentages, was not available.

The majority of Medicaid eligibles are children under the age of 21. This age group does not utilize the same health services at the same rate as older segments of the population, particularly adult care home services.

Moreover, the number of persons eligible for Medicaid assistance may be greater than the number of Medicaid eligibles who actually utilize health services. The DMA website includes information regarding dental services which illustrates this point. For dental services only, DMA provides a comparison of the number of persons eligible for dental services with the number actually receiving services. The statewide percentage of persons eligible to receive dental services who actually received dental services was 48.6% for those age 20 and younger and 31.6% for those age 21 and older. Similar information is not provided on the website for other types of services covered by Medicaid. However, it is reasonable to assume that the percentage of those actually receiving other types of health services covered by Medicaid is less than the percentage that is eligible for those services.

The Office of State Budget & Management (OSBM) maintains a website which provides historical and projected population data for each county in North Carolina. In addition, data is available by age, race or gender. However, a direct comparison to the applicants' current payor mix would be of little value. The population data by age, race or gender does not include information on the number of elderly, minorities or women utilizing health services. Furthermore, OSBM's website does not include information on the number of handicapped persons.

The applicants demonstrate that medically underserved populations will have adequate access to the proposed services. Therefore, the application is conforming to this criterion.

- (d) That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

C

In Section I.10, page 8, the applicants state that the proposed ACH facility will be managed by Harmony, which currently manages six ACH facilities located in Virginia. In Section V.4, page 34, the applicants state:

“Given the previous experience of Harmony Senior Services opening and managing new facilities, the applicants anticipate that relationships and referral agreements will be created with local agencies and persons in the position to refer residents. Additionally, the facility will reach out to local authorities, such as the Buncombe County Adult Care Coordinator, to streamline the process of referring residents, especially those relying on Medicaid and County Special Assistance.”

The applicants adequately demonstrate they will offer a range of means by which patients will have access to the proposed adult care home beds. Therefore, the application is conforming to this criterion.

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

C

In Section V.1, page 34, the applicants state:

“There are no current agreements with health professional training programs. However, applicants are attempting to acquire such relationships.

See Exhibit 8.”

Exhibit 8 contains a copy of a letter from the applicants to Asheville-Buncombe Technical Community College offering to provide clinical training to nursing assistant students.

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

- (15) Repealed effective July 1, 1987.
(16) Repealed effective July 1, 1987.
(17) Repealed effective July 1, 1987.
(18) Repealed effective July 1, 1987.
(18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

C

Canterbury Hills is not currently operational. Based on data in the Long Term Care Safety Initiative database, the facilities in Buncombe County average almost 27 years old. A majority of facilities—25 out of the 31 operating facilities, or 81 percent—are at least 20 years old. Five facilities are 15-19 years old, and only one facility is less than 15 years old. The utilization rate for all licensed ACH beds in Buncombe County is 79%. Subtracting the beds in Canterbury Hills, as it is unoccupied, utilization rises to 80%. See Criterion (3) for a table documenting the facility age and utilization rates for Buncombe County, which is incorporated hereby by reference as if set forth fully herein.

In Section VI.5, page 38, and supplemental materials, the applicants discuss how any enhanced competition in the service area will have a positive impact upon the cost-effectiveness, quality, and access to the proposed services. The applicants state:

“The applicants propose a new facility that will allow for the highest quality of care available. Underserved groups, such as those relying on Medicaid, will be served by the new facility without regard to payor source. Potential residents will not be discriminated against with regard to their age, racial background, ethnic background, gender, handicap, sex, or medical diagnosis. This new facility would bring more choice to the residents of Buncombe County. The applicants project that the majority of residents will be private pay. However, the facility will be able to leverage the higher private pay rates to provide residents relying on Medicaid with a much higher quality of care than they would experience in the many other facilities in Buncombe County that do not appeal to private pay residents. Additionally, the proposed facility will prove more cost effective because it will provide a higher quality of care in exchange for the same Medicaid rates the other facilities are receiving.”

See also Sections II, III, V, VI, and VII where the applicants discuss the impact of the project on cost-effectiveness, quality, and access. The information provided by the applicants in those sections is reasonable and credible and adequately demonstrates that any enhanced competition in the service area includes a positive impact on the cost-effectiveness, quality and access to the proposed services. This determination is based on the information in the application and the following analysis:

- The applicants adequately demonstrate the need to replace and relocate 99 ACH beds within Buncombe County and that it is a cost-effective alternative;
- The applicants adequately demonstrate that The Crossings at Beaverdam will provide quality services; and
- The applicants adequately demonstrate that The Crossings at Beaverdam will provide adequate access to medically underserved populations.

The application is conforming to this criterion.

(19) Repealed effective July 1, 1987.

- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

NA

In Section II.1, page 9, the applicants state the facility has not housed patients since August 1, 2013; the applicants have never operated the facility.

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

NA

The Criteria and Standards for Nursing Facility or Adult Care Home Facility Services, promulgated in 10A NCAC 14C .1100, are not applicable because the applicants do not propose to establish new adult care home facility beds.