

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: March 26, 2020

Findings Date: March 26, 2020

Project Analyst: Tanya M. Saporito

Team Leader: Gloria C. Hale

Project ID #: O-11817-19

Facility: The Landings of Brunswick

FID #: 150395

County: Brunswick

Applicants: Brunswick Opco Holdings, LLC

Brunswick Propco Holdings, LLC

Project: Change of scope for Project ID #O-11065-15 (develop a new 80-bed ACH facility), which consists of a change of site and change of name

### REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

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

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

C

The applicants, Brunswick Opco Holdings, LLC and Brunswick Propco Holdings, LLC, collectively referred to hereinafter as the “applicants”, propose a change of scope (COS) application for the previously approved Project ID #O-11065-15, which was an application submitted as part of a competitive batch of applications for 340 adult care home (ACH) beds in Brunswick County pursuant to a need determination in the 2015 State Medical Facilities Plan (SMFP).

A certificate of need was issued on July 1, 2016 for Project ID# O-11065-15 and authorized a capital cost of \$8,630,188. The original application proposed to develop a new 80-bed ACH facility, Calabash Manor, in Calabash, Brunswick County. The current application is

submitted as a COS because the applicants propose to develop the facility a significant distance away from either of the original sites. The applicants propose to change the name for the facility to The Landings of Brunswick. The original name, Calabash Manor, will no longer be the facility name. The applicants state in Section C, page 24 that the original two sites identified in the application submitted in 2015 are no longer financially feasible because neither quote included the cost of sewer, water and road extensions to the site. The site proposed in this COS application is therefore a third site not originally identified in the 2015 application, and is approximately 31 miles away from the originally approved location. In Exhibit C.10, the applicants provide maps to show the proposed new location. There is no other change in scope from the originally approved project in this application, however, the proposed date for services to be offered is December 31, 2020 instead of October 1, 2017.

### **Need Determination**

The applicants do not propose to increase the number of licensed beds in any category, add any new health services or acquire equipment for which there is a need determination in the 2019 State Medical Facilities Plan (SMFP). Therefore, there are no need determinations applicable to this review.

### **Policies**

Policy GEN-4, on page 31 of the 2019 SMFP, is applicable to this review. Project ID# O-11065-15 was found to be consistent with Policy GEN-4 in the 2015 SMFP in the original review. The applicants propose no changes in the current application that would affect that determination. There are no other policies in the 2019 SMFP that are applicable to this review.

### **Conclusion**

The applicants were previously approved to construct a new 80-bed ACH facility in Brunswick County. In the original review, the application was conforming to this Criterion. The applicants propose no changes in the current application that would affect that determination. The application is conforming to this Criterion.

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

NC

The applicants propose a COS application for the previously approved Project ID #O-11065-15, which was an application to develop a new 80-bed ACH facility, Calabash Manor, in Brunswick County submitted pursuant to a need determination in the 2015 State Medical Facilities Plan (SMFP). The applicants propose a new site and a new name for the facility.

**Patient Origin**

On page 219, the 2019 SMFP defines the service area for adult care home beds as “...*the county in which the adult care home bed is located.*” The facility is proposed to be located in Brunswick County. Thus, the service area for this facility is Brunswick County. Facilities may also serve residents of counties not included in their service area.

In Section C, pages 23 – 29, the applicants provide assumptions used to project patient origin at the new proposed location, which is approximately 31 miles to the west of the originally approved location. The applicants state that, as part of a competitive batch of applications submitted in response to the need for 340 ACH beds in the 2015 SMFP, their application proposed a new facility in the Shallotte Township of Brunswick County. Five applications were submitted as part of that review, four of which were approved. The following table summarizes the certificates of need that were issued, the ACH beds and the proposed locations following all settlement agreements in that review:

FACILITY	# ACH BEDS	# SCU BEDS	LOCATION	CHANGES SINCE APPROVAL
Calabash Manor	80	0	Shallotte Township, Calabash	Lockwoods Folly Township, Oak Island. New Name
The Brunswick Community	62	48	Shallotte Township, Sunset Beach	No Change
Arbor Landing at Ocean Isle	16	24	Shallotte Township, Shallotte	No Change
Liberty Commons Assisted Living	110	0	Leland	No Change

In this application, the applicants propose to locate the facility in Bolivia, in the Lockwoods Folly Township. In Section C, page 28, the applicants state the proposed location will be more centrally located in Brunswick County and thus, will serve Brunswick County residents.

The applicants’ assumptions are reasonable and adequately supported.

**Analysis of Need**

In Section C, pages 23 - 29, the applicants explain why they believe the population projected to utilize the proposed services needs the proposed services. The applicants state:

- The original site identified in Project ID #O-11065-15 became unfeasible when the applicants discovered that the quoted price did not include the cost of sewer, water, and a road extension to service the project (page 23).
- A second site identified in Project ID #O-11065-15 became unfeasible for the same reason (page 23).
- A third site was identified subsequent to the approval of Project ID #O-11065-15; however, the cost per acre for that site was likewise financially unfeasible for the applicants (page 23).

- The site chosen in this application is affordable for the applicants, and includes sewer, water and road access. (pages 23 - 24).
- The applicants compared the five originally submitted applications and determined that, following settlement agreements, three of the four approved applications proposed ACH beds to be located in the Shallotte Township area of Brunswick County (pages 25 – 26).
- The applicants compared the 2015 SMFP and the 2019 SMFP with regard to ACH beds and need, and determined that they could better serve a population in the Lockwoods Folly Township and still serve Brunswick County residents as proposed in the originally approved application (pages 26 – 29).
- The applicants demonstrated that the Lockwoods Folly Township has the greatest deficit of ACH beds of all the townships in Brunswick County using 2020 population estimates, thereby demonstrating a deficit of 100 ACH beds.

The information is reasonable and adequately supported because the applicants demonstrated that there is a need for the ACH beds in the proposed location by demonstrating that the deficit of ACH beds will be reduced.

#### *Projected Utilization*

The applicants did not provide any utilization projections in Section C or in Section Q, Form C, nor did they state why no change in projected utilization would be reasonable given the location change of 31 miles. For that reason, projected utilization is not reasonable or adequately supported.

#### **Access**

The applicants state in Section L, page 49, that they propose no changes in the projected payor mix from the original application. In Section D, page 32, the applicants state: “*Currently, the payor mix of 41% Medicaid recipients is consistent with the needs of Brunswick County as a whole. The projected percentage will not change, and it will remain in place at the New Site.*” Therefore, the projected payor mix is reasonable and adequately supported.

#### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is not conforming to this criterion because projected utilization is not reasonable and adequately supported.

- (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.

NA

The applicants do not propose to reduce a service, eliminate a service or relocate a facility or service. Therefore, Criterion (3a) is not applicable to this review.

- (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 applicants propose a COS application for the previously approved Project ID #O-11065-15, which was an application to develop a new 80-bed ACH facility, Calabash Manor, in Brunswick County submitted pursuant to a need determination in the 2015 State Medical Facilities Plan (SMFP). The applicants propose a new site and a new name for the facility.

In Section E, page 33, the applicants state there is no alternative that is either less costly or more effective than the alternative proposed in this application to meet the need for 80 ACH beds in Brunswick County. The applicants state the original sites proposed in the original application are cost prohibitive and would not meet the need for service to ACH residents in the service area.

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 applicants do not 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.
- Projected utilization is not reasonable or adequately supported; therefore, the applicants do not demonstrate a need for the project.
- The application is not conforming to all statutory and regulatory review criteria. An application that cannot be approved cannot be the most effective alternative.

### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

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 applicants propose a COS application for the previously approved Project ID #O-11065-15, which was an application to develop a new 80-bed ACH facility, Calabash Manor, in Brunswick County submitted pursuant to a need determination in the 2015 State Medical Facilities Plan (SMFP). The applicants propose a new site and a new name for the facility.

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

In Section F.6, page 38, the applicants state: *“The total capital cost, revenues or operating costs stated in the original CON application submitted to the Agency on October 15, 2015 are not different.”* In the beginning of the application, the applicants provided a letter that stated in part:

*“Other than the change in site and the proposed name for the Facility, all other representations in the Original Application remain unchanged.*

*...there is no increase in the proposed capital expenditure for the project other than what has already been approved by the Department when the CON for the project was granted on July 1, 2016.”*

However, the applicants submitted a check in the amount of \$27,891 as a fee for the capital cost of the project. On the Fee Sheet submitted with the application, the applicants indicated that the capital cost of this project is \$8,630,188. There is nothing in the application to further explain the proposed capital cost of this project. In addition, the applicants’ original application was submitted to the Agency over four years ago. The applicants provide no reasons as to why they believe the capital or working capital costs will remain unchanged given the amount of time that has lapsed. Therefore, the applicants do not adequately demonstrate that the capital cost or the working capital is reasonable and adequately supported.

In Section Q, the applicants failed to provide the assumptions used to project the capital cost or the working capital costs. Therefore, the applicant does not adequately demonstrate that the projected capital cost is reasonable and adequately supported.

### **Availability of Funds**

There is no information provided in Section F; therefore, the applicants do not adequately demonstrate the availability of sufficient funds for the capital and working capital needs of the

project because they provide no information with regard to the capital cost indicated on the Fee Sheet submitted with the application fee.

### **Financial Feasibility**

The application does not contain any pro forma financial statements, capital cost information, or utilization projections that would be used to calculate pro forma financial statements. Therefore, it is not possible to determine the financial feasibility of the proposed COS application as submitted.

### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is not conforming to this criterion for the following reasons:

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

### C

The applicants propose a COS application for the previously approved Project ID #O-11065-15, which was an application to develop a new 80-bed ACH facility, Calabash Manor, in Brunswick County submitted pursuant to a need determination in the 2015 State Medical Facilities Plan (SMFP). The applicants propose a new site and a new name for the facility.

On page 219, the 2019 SMFP defines the service area for ACH beds as “*the county in which the adult care home bed is located.*” The facility is proposed to be located in Brunswick County. Thus, the service area for this facility is Brunswick County. Facilities may also serve residents of counties not included in their service area.

Based on data reported in Table 11A: Inventory of Adult Care Home (Assisted Living) Beds in the 2019 SMFP, page 221, Brunswick County currently has 11 ACH facilities with a total of 361 licensed ACH beds, 300 ACH Beds that are CON approved but not yet licensed, and

32 ACH beds that were approved to be relocated, for a total Brunswick County inventory of 693 ACH beds.

**Brunswick County ACH Facilities, 2019 SMFP**

FACILITY	# LICENSED ACH BEDS	CON APPROVED/LICENSE PENDING	CON BED TRANSFER
Arbor Landing at Ocean Isle	40	0	0
Autumn Care of Shallotte	10	0	0
Brunswick Cove Nursing Center	40	0	0
Calabash Manor (The Retreat at Oak Island)	0	80	0
Carillon Assisted Living of Southport	96	0	0
Leland House	78	0	0
Liberty Commons Assisted Living of Brunswick County	0	110	0
Liberty Commons of Brunswick County	0	0	32
Ocean Trail Healthcare & Rehabilitation Center	17	0	0
Shallotte Assisted Living	80	0	0
The Brunswick Community	0	110	0
<b>Total ACH Beds</b>	<b>361</b>	<b>300</b>	<b>32</b>

In Section G, page 39, the applicants state that the only change in this application is a new proposed location for the previously approved 80-bed ACH facility.

In Section C, pages 23 – 29, the applicants provide information to demonstrate the need for the project at the proposed location. Included in that information are three tables that illustrate the number and location by township of ACH beds in Brunswick County, and an explanation by the applicants regarding why they believe this proposal would not result in the unnecessary duplication of existing or approved ACH bed services in Brunswick County. The applicants state that the proposed new location would actually better serve the residents of Brunswick County and avoid unnecessary duplication of existing services, because all of the applications approved in the 2015 review were approved to be developed in and around the Shallotte Township. By changing the proposed location of this facility to the Lockwoods Folly Township, the applicants state they will still serve residents of Brunswick County and avoid duplication of existing and approved ACH services in the Shallotte Township.

The applicants adequately demonstrate that the proposal would not result in an unnecessary duplication of existing or approved services in the service area because the applicants propose to develop the facility in a township area that is not currently served by existing ACH services.

**Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

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

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

C

In Project ID #O-11065-15, the applicants projected sufficient staffing for the proposed 80 ACH beds. Changing the location of the facility as proposed in this application does not affect that determination. In Section H, page 41, the applicants state: *“None of the information provided in Section H, Questions 1 through 4 would be different from what was in the previously approved application.”*

Project ID# O-11065-15 was found to be consistent with this Criterion in the original review. The applicants propose no changes in the current application that would affect that determination.

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

### **Conclusion**

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

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

C

In Section I.1, page 42, the applicants state that the ancillary and support services identified in the originally approved application, Project ID #O-11065-15, have not changed in this COS application. The applicants provide nine letters of support in Exhibit C.10 as more recent demonstration of the availability of ancillary and support services.

The applicants adequately demonstrate that the proposed services will be coordinated with the existing health care system.

### **Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion.

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

NA

The applicants do 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 applicants do 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 applicants are not HMOs. 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 applicants propose a COS application for the previously approved Project ID #O-11065-15, which was an application to develop a new 80-bed ACH facility, Calabash Manor, in Brunswick County submitted pursuant to a need determination in the 2015 State Medical Facilities Plan (SMFP). The applicants propose a new site and a new name for the facility.

In Project ID# O-11065-15, the applicants were found conforming to this Criterion and there is nothing proposed in this application that would affect that determination. The only change to the facility proposed in this application is a new site. Line drawings are provided in Exhibit K.5.

The Agency viewed the

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion.

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

NA

Neither the applicants nor any related entities own, operate or manage an existing health service facility located in the service area. Therefore, Criterion (13a) is not applicable to this review.

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

C

In Project ID #O-11065-15 the application was found conforming to this Criterion. This application proposes no changes in the current COS application that would affect that determination. Therefore, 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 Project ID #O-11065-15 the application was found conforming to this Criterion. In this application, the applicants propose to serve a population that is 31 miles west of the originally approved location. The applicants state in Section L, page 49, that they propose no changes in the projected payor mix from the original application. In Section D, page 32, the applicants state: *“Currently, the payor mix of 41% Medicaid recipients is consistent with the needs of Brunswick County as a whole. The projected percentage will not change, and it will remain in place at the New Site.”* Therefore, the projected payor mix is reasonable and adequately supported.

The Agency reviewed the following:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion.

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

C

In Project ID #O-11065-15, the application was found conforming to this Criterion. The applicants propose no changes in the current COS application that would affect that determination.

The Agency reviewed the:

- Application
- Exhibits to the application

Based on that review, the Agency concludes that the application is conforming to this criterion.

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

C

In Project ID #O-11065-15, the application was found conforming to this Criterion. The applicants propose no changes in this application that would affect that determination.

Therefore, the application is conforming to this criterion.

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

C

The applicants propose a COS application for the previously approved Project ID #O-11065-15, which was an application to develop a new 80-bed ACH facility, Calabash Manor, in Brunswick County submitted pursuant to a need determination in the 2015 State Medical Facilities Plan (SMFP). The applicants propose a new site and a new name for the facility.

On page 219, the 2019 SMFP defines the service area for ACH beds as “*the county in which the adult care home bed is located.*” The facility is proposed to be located in Brunswick County. Thus, the service area for this facility is Brunswick County. Facilities may also serve residents of counties not included in their service area.

Based on data reported in Table 11A: Inventory of Adult Care Home (Assisted Living) Beds in the 2019 SMFP, page 221, Brunswick County currently has 11 ACH facilities with a total of 361 licensed ACH beds, 300 ACH Beds that are CON approved but not yet licensed, and 32 ACH beds that were approved to be relocated, for a total Brunswick County inventory of 693 ACH beds.

**Brunswick County ACH Facilities, 2019 SMFP**

FACILITY	# LICENSED ACH BEDS	CON APPROVED/LICENSE PENDING	CON BED TRANSFER
Arbor Landing at Ocean Isle	40	0	0
Autumn Care of Shallotte	10	0	0
Brunswick Cove Nursing Center	40	0	0
Calabash Manor (The Retreat at Oak Island)	0	80	0
Carillon Assisted Living of Southport	96	0	0
Leland House	78	0	0
Liberty Commons Assisted Living of Brunswick County	0	110	0
Liberty Commons of Brunswick County	0	0	32
Ocean Trail Healthcare & Rehabilitation Center	17	0	0
Shallotte Assisted Living	80	0	0
The Brunswick Community	0	110	0
<b>Total ACH Beds</b>	<b>361</b>	<b>300</b>	<b>32</b>

In Section N, page 51, the applicants state that the only change in this application is a new proposed location for the previously approved 80-bed ACH facility.

In Project ID #O-11065-15 the application was found conforming to this Criterion, and the applicants propose no changes in the current COS application that would affect that determination.

**Conclusion**

The Agency reviewed the:

- Application
- Exhibits to the application

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

- (19) Repealed effective July 1, 1987.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

**C**

In Exhibit O.3, pages 97 - 99, the applicants identify the skilled nursing and adult care home facilities located in North Carolina owned, operated or managed by the applicants or a related entity. The applicants identify a total of 85 facilities located in North Carolina, as well as a list

of violations and penalties associated with 19 of those facilities. Two of the 19 violations occurred in 2019, one in January and one in February.

In supplemental information, the applicants identify seven nursing facilities that had received immediate jeopardy citations during the 18 months immediately preceding submission of this application. The applicants state, on page 54, that all these facilities are back in compliance. After reviewing and considering information provided by the applicants, the Nursing Home Licensure and Certification Section, the Adult Care Licensure Section and considering the quality of care provided at all Affinity Living Group, LLC facilities, the applicants provide sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion.

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

NC

The *Criteria and Standards for Nursing Facility or Adult Care Home Services promulgated in 10A NCAC 14C .1100* are applicable to this review.

**10A NCAC 14C .1102      PERFORMANCE STANDARDS**

- a. An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.*
- NA- The applicants do not propose to add nursing facility beds to an existing facility.
- b. An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.*

- NA- The applicants do not propose to establish a new nursing facility or add nursing facility beds to an existing facility.
- c. An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.*
- NA- The applicants do not propose to add nursing facility beds to an existing facility.
- d. An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.*
- NC- The applicants did not provide utilization projections that would demonstrate that the occupancy is projected to be at least 85% for the total number of ACH beds proposed to be operated, no later than two years following project completion.