

REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conforming as Conditioned

NC = Nonconforming

NA = Not Applicable

Decision Date: September 27, 2021
Findings Date: September 27, 2021

Project Analyst: Julie M. Faenza
Co-Signer: Fatimah Wilson

COMPETITIVE REVIEW

Project ID #: J-12055-21
Facility: Kempton of Chatham
FID #: 210259
County: Chatham
Applicants: Liberty Healthcare Properties of Chatham County, LLC
Liberty Commons Nursing and Rehabilitation Center of Chatham County, LLC
Project: Relocate no more than 30 ACH beds from Cross Creek Health Care and no more than 27 ACH beds from Liberty Commons of Nursing & Rehab Center of Johnston County as part of developing a new 69-bed ACH facility. The new 69-bed ACH facility will also include 12 ACH beds approved in Project ID #J-11656-19 in a change of scope for that project

Project ID #: J-12074-21
Facility: The Landings of Chatham Park
FID #: 210265
County: Chatham
Applicants: Chatham Propco, LLC
Chatham Opco, LLC
Project: Develop a new ACH facility by relocating 57 ACH beds from The Landings of Tarboro which is a change of scope for Project ID #L-11818-19 (develop a 66-bed ACH facility)

Each application was reviewed independently against the applicable statutory review criteria found in G.S. 131E-183(a) and the regulatory review criteria found in 10A NCAC 14C. After completing an independent analysis of each application, the Healthcare Planning and Certificate of Need Section (Agency) also conducted a comparative analysis of all the applications. The Decision, which can be found at the end of the Required State Agency Findings (Findings), is based on the independent analysis and the comparative analysis.

REVIEW CRITERIA

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

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

C – Both Applications

Need Determination

The 2021 State Medical Facilities Plan (SMFP) includes a need methodology for determining the need for additional adult care home (ACH) beds in North Carolina by service area. Application of the need methodology in the 2021 SMFP did not result in a need determination for new ACH beds in Chatham County. Therefore, there are no need determinations applicable to this review.

Policies

Two policies in Chapter 4 of the 2021 SMFP are applicable to the applications in this review.

Policy LTC-2: Relocations of Adult Care Home Beds, found on pages 24-25 of the 2021 SMFP, states:

“Relocations of existing licensed adult care home beds to another service area are allowed. Certificate of need applicants proposing to relocate licensed adult care home beds to another service area shall:

- 1. demonstrate that the proposal shall not result in a deficit, or increase an existing 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 or increase an existing 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.”*

Policy LTC-2 applies to both Project ID #s J-12055-21 and J-12074-21. Table 11C on page 208 of the 2021 SMFP shows that Chatham County has a deficit of 57 ACH beds. The two applications received by the Agency propose to relocate a combined total of 114 ACH beds

into Chatham County. However, pursuant to Policy LTC-2, only 57 ACH beds may be approved to be relocated to Chatham County in this review.

Policy GEN-4: Energy Efficiency and Sustainability for Health Services Facilities, on page 29 of the 2021 SMFP, states:

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

In approving a certificate of need proposing an expenditure greater than \$5 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178, Certificate of Need shall impose a condition requiring the applicant to develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN-4.

Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E- 184 is required to submit a plan for energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN-4. The plan shall not adversely affect patient or resident health, safety or infection control.”

Policy GEN-4 applies to both Project ID #s J-12055-21 and J-12074-21.

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

Liberty Healthcare Properties of Chatham County, LLC and Liberty Commons Nursing and Rehabilitation Center of Chatham County, LLC (hereinafter collectively referred to as “Liberty” or “the applicant”) propose to develop Kempton of Chatham, a new 69-bed ACH facility, by relocating existing ACH beds. The applicant proposes a change of scope for Project ID #J-11696-19 – instead of developing 36 ACH beds at Chatham County Rehabilitation Center (Chatham County Rehab), it will develop 24 ACH beds at Chatham County Rehab and develop the remaining 12 ACH beds at Kempton of Chatham. The applicant also proposes to relocate 30 existing ACH beds from Cross Creek Health Center (Cross Creek) in Hyde County and 27 ACH beds from Liberty Commons Nursing and Rehabilitation Center of Johnston County (LC Johnston) in Johnston County for a total of 69 ACH beds at Kempton of Chatham.

Policy LTC-2. The applicant proposes to relocate 30 ACH beds from Hyde County and 27 ACH beds from Johnston County for a combined total of 57 ACH beds proposed to be relocated to Chatham County.

Table 11C on pages 208-209 shows that Hyde County has a surplus of 30 ACH beds, Johnston County has a surplus of 326 ACH beds, and Chatham County has a deficit of 57 ACH beds. Relocating 30 ACH beds from Hyde County and 27 ACH beds from Johnston County would not create a deficit of ACH beds for either county. Relocating 57 ACH beds to Chatham County would not create a surplus of ACH beds in Chatham County.

Policy GEN-4. The proposed capital expenditure is greater than \$5 million. In Section B, pages 27-28, the applicant includes a written statement describing the project's plan to assure improved energy efficiency and water conservation. The applicant's statement lists numerous features it plans to include, such as solar thermal panels to assist with heating water, a rainwater reclamation system, and the use of energy efficient lighting and appliances.

Conclusion

The Agency reviewed the:

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

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

- The applicant adequately demonstrates that the proposal is consistent with Policy LTC-2 based on the following:
 - The applicant's proposal will not result in a deficit of ACH beds in Hyde County or in Johnston County.
 - The applicant's proposal will not result in a surplus of ACH beds in Chatham County.
- The applicant adequately demonstrates that the proposal is consistent with Policy GEN-4 because the application includes a written statement describing the project's plan to assure improved energy efficiency and water conservation.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

Chatham Propco, LLC and Chatham Opco, LLC (hereinafter collectively referred to as "ALG Senior" or "the applicant") propose to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop The Landings of Chatham Park (Landings of Chatham), a new ACH facility. This is a change of scope for Project ID #L-11818-19, which approved the relocation of 66 existing ACH beds within Edgecombe County to develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain where they are currently located instead of being relocated to develop a new facility.

Policy LTC-2. The applicant proposes to relocate 57 ACH beds from Edgecombe County to Chatham County.

Table 11C on pages 208-209 shows that Edgecombe County has a surplus of 202 ACH beds and Chatham County has a deficit of 57 ACH beds. Relocating 57 ACH beds from Edgecombe County would not create a deficit of ACH beds in Edgecombe County. Relocating 57 ACH beds to Chatham County would not create a surplus of ACH beds in Chatham County.

Policy GEN-4. The proposed capital expenditure is greater than \$5 million. In Section B, pages 33-34, the applicant includes a written statement describing the project's plan to assure improved energy efficiency and water conservation. The applicant's statement lists numerous features it plans to include, such as programmable thermostats to allow energy savings during times of low use of heating and cooling, recirculating pumps to maintain hot water temperatures, and the use of energy efficient lighting.

Conclusion

The Agency reviewed the:

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

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

- The applicant adequately demonstrates that the proposal is consistent with Policy LTC-2 based on the following:
 - The applicant's proposal will not result in a deficit of ACH beds in Edgecombe County.
 - The applicant's proposal will not result in a surplus of ACH beds in Chatham County.
- The applicant adequately demonstrates that the proposal is consistent with Policy GEN-4 because the application includes a written statement describing the project's plan to assure improved energy efficiency and water conservation.

(2) Repealed effective July 1, 1987.

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

NC – Kempton of Chatham

C – The Landings of Chatham Park

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, by relocating existing ACH beds. The applicant proposes a change of scope for Project ID #J-11696-19 – instead of developing 36 ACH beds at Chatham County Rehab, it will develop 24 ACH beds at Chatham County Rehab and develop the remaining 12 ACH beds at Kempton of Chatham. The applicant also proposes to relocate 30 ACH beds from Hyde County and 27 ACH beds from Johnston County for a total of 69 ACH beds at Kempton of Chatham.

Like many other companies in the senior living industry, the two companies that comprise the applicant in this review were created for business and operational reasons. One company was created to hold the ownership interest in the property itself (Liberty Healthcare Properties of Chatham County, LLC) and one company was created to handle the operational side of business (Liberty Commons Nursing and Rehabilitation Center of Chatham County, LLC). This is a common arrangement in the senior living industry. Ultimately, the two companies fall under the umbrella of Liberty and are owned by John A. McNeill, Jr., and Ronald B. McNeill. References to Liberty are used interchangeably with “the applicant” and refer to functionally the same entity.

As previously mentioned, this project proposes a change in scope to Project ID #J-11656-19. Project ID #J-11656-19 is itself a change of scope project. The history of that project and other related projects is summarized below.

The 2013 SMFP had a need determination for 90 nursing home facility (NF) beds in Chatham County. In the subsequent competitive review, Liberty submitted one of the five applications in the review, proposing to develop Chatham County Rehab. At the completion of the review, the 90 NF beds were awarded to Liberty. After an appeal, a certificate of need for Project ID #J-10168-13 was issued on July 30, 2014. Based on the progress reports submitted to the Agency, Liberty spent much of the next three years searching for land before notifying the Agency in November 2016 that it planned to use a site in Briar Chapel (in Chatham County).

On July 17, 2017, the applicant submitted Project ID #J-11378-17, proposing to relocate an additional 25 NF beds into Chatham County from Orange County. A certificate of need was issued for Project ID #J-11378-17 on November 16, 2017. On June 14, 2018, the applicant recorded a special warranty deed with the Chatham County Register of Deeds for the land purchased by the applicant. In a progress report submitted to the Agency after the certificate was issued, the applicant stated the market conditions in Chatham County were not “virtuous,” the applicant had put the project in a holding pattern, and the applicant requested an extension of the development timetable. On November 1, 2018, the Agency determined that a request to relocate only 15 of the 25 NF beds proposed in Project ID #J-11378-17 was in material compliance with the certificate of need. The request for the determination of material compliance stated the remaining 10 NF beds would instead be relocated to Mecklenburg County as part of Project ID #F-11461-18.

On February 15, 2019, the applicant submitted Project ID #J-11656-19, proposing to make the approved but not yet developed Chatham County Rehab a combination skilled nursing facility (SNF) by relocating 16 ACH beds from Halifax County and 20 ACH beds from Columbus County. A certificate of need was issued for Project ID #J-11656-19 on May 29, 2019, with the date of the first development milestone listed as March 1, 2022. On March 1, 2021, the Agency determined that a request to separate the 36 ACH beds and 105 NF beds and develop two separate facilities – one with only NF beds and one with only ACH beds – was in material compliance with the certificate of need. The request for the determination of material compliance stated the applicant planned to relocate an additional 57 ACH beds to Chatham County and develop a 93-bed ACH facility. On April 9, 2021, after a request from Liberty, the Agency determined that, rather than separating the 105 NF beds and 36 ACH beds into two separate facilities, developing a combination SNF with 105 NF beds and 24 ACH beds, and using the remaining 12 ACH beds as part of a plan to develop a separate ACH facility, was in material compliance with the certificate of need.

This application was submitted on April 14, 2021, proposing to develop a new 69-bed ACH facility by relocating 57 ACH beds into Chatham County and by using the remaining 12 ACH beds as described in the material compliance request approved by the Agency on April 9, 2021. Based on the records submitted to the Agency by the applicant, seven years after the original approval of the facility connecting all these applications, the only progress that has been made toward development of Chatham County Rehab is the acquisition of property.

Patient Origin

On page 175, the 2021 SMFP defines the service area for ACH beds as “... *the county in which the adult care home bed is located. Each of the 100 counties is a separate service area.*” Thus, the service area for this facility is Chatham County. Facilities may also serve residents of counties not included in their service area.

Kempton of Chatham is not an existing facility and has no historical patient origin. In Section C, page 31, the applicant states Cross Creek has not served any ACH patients since the 30 ACH beds were licensed at the end of 2019. The applicant provides the historical patient origin for LC Johnston, as shown in the table below.

LC Johnston Historical Patient Origin – FFY 2020		
County	# of Patients	% of Patients
Harnett	9	45%
Johnston	5	25%
Sampson	3	15%
Franklin	1	5%
Wake	1	5%
Wayne	1	5%
Total	20	100%

Source: Section C, page 30

In Section C, pages 31-32, the applicant provides the projected patient origin for Kempton of Chatham, as shown in the table below.

Kempton of Chatham Projected Patient Origin – FYs 1-3 (FFYs 2027-2029)						
County	FY 1 – FFY 2027		FY 2 – FFY 2028		FY 3 – FFY 2029	
	# of Patients	% of Patients	# of Patients	% of Patients	# of Patients	% of Patients
Chatham	24	92.0%	58	93.5%	60	94.0%
Orange	2	8.0%	4	6.5%	4	6.0%
Total	26	100.0%	62	100.0%	64	100.0%

In Section C, page 32, the applicant provides the assumptions and methodology used to project patient origin. The applicant states it assumes Kempton of Chatham will have a similar patient origin as it projected for Chatham County Rehab in Project ID #J-11656-19, which will be located across the street from the proposed Kempton of Chatham. The applicant projects most patients will originate in Chatham County due to the large population growth expected (discussed further below) and the location in Chatham County. The applicant states the location is close to Chapel Hill and the UNC Healthcare system has made referrals to Liberty facilities before, so it projects a small subset of patients to originate from Orange County.

The applicant’s assumptions are reasonable and adequately supported based on the following:

- The applicant relies on historical projections it made for a similar facility in the same location and the current application as submitted contains no information that would make reliance on the previous patient origin projections unreasonable.
- The applicant relies on historical referral patterns.
- The applicant relies on projections of population growth that are well-publicized.

Analysis of Need

In Section C, pages 33-36, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services, summarized as follows:

- Increasing Population of People Age 65 and Older in Chatham County: the applicant states the total population in Chatham County has increased by more than 17 percent between 2010 and 2021 and is projected to increase by an additional six percent between 2021 and 2026, based on data obtained from Spotlight Pop-Facts by Environics. The applicant states the population age 65 and older is projected to increase by more than 14 percent between 2021 and 2026. The applicant states the senior population tends to have the highest disability rates and greatest need for long term care.
- Unutilized Beds at Cross Creek/Population Decline in Hyde County: the 2019 SMFP had a need determination for 30 ACH beds in Hyde County. The applicant filed Project ID #R-11699-19, proposing to add the 30 ACH beds to Cross Creek. A certificate of need was issued on August 13, 2019 and the 30 ACH beds were licensed on December 3, 2019. The applicant states that, since the ACH beds were first licensed, it has been unable to serve any ACH patients despite referral requests and marketing.

The applicant further states that, according to the US Census Bureau, the population of Hyde County has decreased by more than 15 percent between 2010 and 2019. The applicant states that while Hyde County is the second-largest county in North Carolina by size, it is also the second-smallest county by population, and it expects the population decline to continue.

- Underutilized Beds at LC Johnston: the applicant states LC Johnston is licensed for 60 ACH beds, but its monthly census during CYs 2018-2020 has averaged below 20 patients, and there were no months where the patient census was higher than 22 patients.
- Development of Chatham Park: the applicant states the development of Chatham Park, a planned development of more than 7,000 acres in Chatham County that will be zoned for 22,000 new residences as well as retail and office spaces, schools, churches, and other business, will significantly increase the population of the area when it is completed in 2045. The applicant states that UNC Healthcare recently opened a large medical office building and a 10-bed hospice facility in Chatham Park.

The applicant's discussion of need for the proposed project can be broadly categorized into two groups: need based on historical and projected increases in population and need because it has existing ACH beds located elsewhere that are unutilized.

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

- The historical and projected population growth of Chatham County residents, by itself, does not demonstrate why residents of Chatham County need a new ACH facility. The population of Chatham County has been increasing since 2010. The applicant does not explain why the historical and projected population growth of Chatham County means that there is a need for an additional ACH facility, particularly since the population growth has not had any discernable impact on the delay in developing the 90 NF beds that were awarded to the applicant as the result of a need determination, the additional 15 NF beds the applicant has been approved to relocate to Chatham County, and the 36 ACH beds the applicant has been approved to relocate to Chatham County.

Further, the projected population increase due to the development of Chatham Park is projected to be due to the large number of new homes and properties that will be developed – not necessarily as the result of an increase in the population that will need ACH services.

Nothing in the application as submitted provides reasonable and adequately supported information to link historical and projected population growth with the need for more ACH beds in Chatham County.

- Underutilized ACH beds at other facilities in other counties does not demonstrate a need for additional ACH services in Chatham County. The applicant provides no information in the application as submitted to demonstrate why unutilized ACH beds in other counties demonstrates the need Chatham County residents have for ACH beds in Chatham County.

Projected Utilization

Kempton of Chatham is not an existing facility and thus has no historical utilization to report. On Form C.1b in Section Q, the applicant provides projected utilization, as illustrated in the table below.

Kempton of Chatham Projected Utilization – FYs 1-3			
	FY 1 – FFY 2027	FY 2 – FFY 2028	FY 3 – FFY 2029
# of Beds	69	69	69
# of Admissions	30	75	80
# of Patient Days	9,492	22,624	23,360
ALOS*	316.40	301.65	292.00
Occupancy Rate	37.7%	89.8%	92.8%

*ALOS = Average Length of Stay

On Form C.1b Assumptions, immediately following Form C.1b in Section Q, the applicant states the following with regard to the assumptions about projected utilization:

“Liberty provides management and support to not only the 4 ACH facilities included in Form O, but also 36 NF (most of which are combination which include ACH beds) facilities in North Carolina. The Applicants also utilized census data from other facilities currently operated outside of North Carolina by Liberty.

The Applicants also took into account current and future population and demographic data for Chatham County to project future utilization of the facility.

Furthermore, the Applicants also took into account the current deficit of 57 ACH beds as defined in the 2021 SMFP.

To conclude, the Applicants utilized their past experience, along with it’s [sic] the future demographic demand to project future utilization of the facility. Based on this information, the Applicants utilized a net average fill-up rate of one resident per week (4 per month) until stabilized.”

Based on publicly available information, the applicant or an affiliated entity owns, operates, and/or manages five ACH facilities in North Carolina, not four. According to Agency records, an affiliate of the applicant acquired what is now known as Liberty Commons Assisted Living of Franklin County in June 2020. This facility is not listed as a Liberty facility on Form O.

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

- The applicant states throughout the application that it owns, operates, and/or manages 36 SNFs. It states most of these are combination SNFs which also have ACH beds. The applicant states that projected utilization is based in part on management of these facilities. However, based on publicly available information, the applicant owns, operates, and/or manages 34 SNFs in North Carolina, now that Cross Creek has closed. Of those 34 SNFs

owned and/or managed by Liberty, 16 have only NF beds and 18 are combination SNFs. Of those 18, however:

- Three are continuing care retirement communities (CCRCs). While some of the ACH beds at these facilities are “open” – that is, open to the public – others are only open to members of the CCRC, which is a different population than the population proposed to be served at Kempton of Chatham.
- 10 of the combination SNFs were acquired by the applicant at some point in time after the facility (and any ACH beds) were already developed and operational, including seven since 2019:
 - Acquired around 1998: Mary Gran Nursing Center
 - Acquired around 2003: Three Rivers Health & Rehabilitation Center
 - Acquired around 2005: Liberty Commons Nursing & Rehabilitation Center of Halifax County
 - Acquired around 2014: Parkview Health & Rehabilitation Center
 - Acquired around 2015: Warren Hills Nursing Center, Woodlands Nursing & Rehabilitation Center
 - Acquired around 2019: The Foley Center at Chestnut Ridge
 - Acquired around 2020: Liberty Commons Nursing & Rehabilitation Center of Southport, Roxboro Healthcare & Rehabilitation Center, Yadkin Nursing Care Center (which originally consisted of one SNF and one ACH facility and which was subsequently relicensed as a combination SNF)

While it is true that Liberty provides management and support to 34 SNFs and a majority of them are combination SNFs, Liberty does not provide any information in the application as submitted to demonstrate how the development of combination SNFs as part of CCRCs and the acquisition of combination SNFs after ACH beds were already developed relates to the experience of developing a new ACH facility.

Further, while Liberty does own and operate five ACH facilities, four of the facilities were first licensed prior to 2000 – more than 20 years ago – and Liberty acquired one of the five facilities less than two years ago. The only ACH facility owned and/or operated by Liberty that has been licensed more recently is The Terrace at Brightmore of South Charlotte, which was first licensed in October of 2015. That ACH facility has 34 ACH beds – almost exactly half of the number of beds proposed for Kempton of Chatham. The applicant provides no information in the application as submitted to explain how the opening of facilities more than 20 years ago provides reasonable and adequate support for projected utilization of the proposed facility or how the experience at The Terrace at Brightmore of South Charlotte supports the utilization projections from the application in this review.

- The applicant provides no information in the application as submitted to explain how the projected deficit of 57 ACH beds in Chatham County is factored into projected utilization. The existence of a deficit of assets based on need methodology calculations is a projected deficit and an applicant must still demonstrate the need for a proposed project, including the projected utilization. The applicant provides no information in the application as

submitted to explain how it uses the projected deficit of 57 ACH beds or why the existence of a deficit supports the projected utilization.

In fact, in the Proposed 2022 SMFP, which was released after the applications in this review were submitted, Chatham County now shows a surplus of 170 ACH beds – a net change of 227 ACH beds. While the Proposed 2022 SMFP projected deficits and surpluses are not applicable to this review in terms of whether ACH beds can be relocated or not, it illustrates the point that projected deficits do not automatically represent unmet need and the existence of a projected deficit does not automatically support projected utilization.

- Comments submitted during the public comment period state that only one of the applicant's four ACH-only facilities listed in the application form has been well-utilized in recent years, even in counties with increasing population growth. The comments stated the data provided by the applicant on the 2016 – 2019 facility License Renewal Applications (LRAs) show that while The Terrace at Brightmore of South Charlotte filled to an occupancy rate of approximately 87 percent in three years and has not had any significant decrease in utilization, during that same time period The Commons at Brightmore had an average utilization rate of 43.27 percent, Kempton of Jacksonville had an average utilization rate of 70.25 percent, and The Kempton at Brightmore had an average utilization rate of 67.59 percent (based on 2018 and 2020 LRAs for The Kempton at Brightmore). The applicant's response to these comments states that due to market demand for private rooms, utilization at The Commons at Brightmore, The Kempton at Brightmore, and Kempton of Jacksonville appears artificially low as the result of using semi-private rooms as private rooms. The applicant states that even though the facilities are licensed for a certain number of ACH beds, because it has chosen not to fill those ACH beds due to the market demand for private rooms, the "true functional occupancy" is higher than it appears.

There are two problems with the notion that "true functional occupancy" should be considered with regard to utilization:

- The need methodology for ACH beds found in Chapter 11 of the SMFP does not consider the market demand for private rooms. Any surpluses or deficits calculated do not distinguish between ACH beds in private rooms and an unused ACH bed in a semi-private room. If an applicant wanted to make use of ACH beds by expanding the facility to develop private rooms, G.S. 131E-184(e) provides an exemption that permits SNFs and ACH facilities to renovate and expand without a certificate of need and specifically cites the conversion of semi-private to private rooms as a permissible reason to utilize that exemption. The applicant is not obligated to expand a facility using that exemption, but if the applicant makes the choice to continue to license ACH beds it is not using, the applicant cannot treat those licensed but unoccupied ACH beds as if they do not exist.
- The applicant projects utilization based on the number of licensed ACH beds it proposes to develop at the new facility. However, Exhibit K.2 of the application shows the applicant plans to develop 40 of the 69 ACH beds in semi-private rooms. The applicant does not explain in the application as submitted how the high market demand for private rooms means it cannot fully utilize all of its licensed ACH beds in semi-

private rooms at facilities in other counties but how it is reasonable to project to fully or almost fully utilize 40 ACH beds in semi-private rooms as part of this proposed project.

- The applicant may indeed have extensive experience on which it relies in projecting utilization that would explain why the projections seemingly conflict with other publicly available information; however, because the applicant did not provide anything in the application as submitted to support the projections it made or to provide information about the experiences it was relying upon in making these projections, the applicant does not demonstrate that projected utilization is based on reasonable and adequately supported assumptions.

Access to Medically Underserved Groups

In Section C, page 41, the applicant states:

“Services provided will be non-restrictive with respect to social, racial, ethnic, or gender related issues and will be provided on a first come, first served basis. It will be the policy [of] Kempton of Chatham to admit anyone over the age of 18 who qualifies for and is in need of care. Kempton of Chatham will not admit persons for whom the appropriate care cannot be provided by the facility. Kempton of Chatham will admit residents based on the ability of the facility to satisfy the resident’s needs and based on bed availability. Therefore, minorities and low income persons will have access to assisted living now and in the future.”

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

Medically Underserved Groups	% of Total Patients
Low income persons	25%
Racial and ethnic minorities	NA
Women	71%
Persons with disabilities	NA
Persons 65 and older	93%
Medicare beneficiaries	NA
Medicaid recipients	25%

On page 41, the applicant states the current license renewal process does not require statistics on race or disability and therefore the applicant cannot provide a correct estimate on the percentage of patients it projects will be served at Kempton of Chatham.

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

- The applicant states that the facility will provide care to any patient over age 18 that needs care and for whom the facility is appropriate on a first come first served basis.

- The applicant states that underserved groups will have the same access to the facility as all other residents of the service area.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Comments submitted during the public comment period
- Responses to comments
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is not conforming to this criterion for all the reasons described above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

Like many other companies in the senior living industry, the two companies that comprise the applicant in this review were created for business and operational reasons. One company was created to hold the ownership interest in the property itself (Chatham Propco, LLC) and one company was created to handle the operational side of business (Chatham Opco, LLC). This is a common arrangement in the senior living industry. Ultimately, the two companies fall under the umbrella of ALG Senior, LLC (ALG Senior) – formerly known as Affinity Living Group – and are owned by Charles Trefzger, Jr. References to ALG Senior are used interchangeably with “the applicant” and refer to functionally the same entity.

Open Fields Assisted Living was a 130-ACH bed facility in Edgecombe County that closed on August 17, 2018, after a number of regulatory issues that threatened the health and safety of the residents. ALG Senior purchased the facility and applied for a certificate of need to develop The Landings of Tarboro by relocating 66 ACH beds from Open Fields Assisted Living. ALG Senior also proposed to renovate the existing building to allow for mostly private rooms and to reopen as Tarboro Senior Living with 64 ACH beds. A certificate of need was issued for Project ID #L-11818-19 on August 27, 2020. According to the records of the Adult Care Licensure Section, DHSR, Tarboro Senior Living was licensed on August 8, 2021. ALG Senior plans to keep all 130 ACH beds at Tarboro Senior Living until a certificate of need is issued in this review.

While this is labeled as a change of scope application, it is more of a complete replacement for Project ID #L-11818-19. Rather than relocate 66 ACH beds from Tarboro Senior Living to The Landings of Tarboro, ALG Senior proposes to relocate 57 ACH beds to develop Landings

of Chatham and Tarboro Senior Living would have 73 ACH beds instead of 64 ACH beds. Project ID #L-11818-19 and The Landings of Tarboro would not be developed at all.

Patient Origin

On page 175, the 2021 SMFP defines the service area for ACH beds as “... *the county in which the adult care home bed is located. Each of the 100 counties is a separate service area.*” Thus, the service area for this facility is Chatham County. Facilities may also serve residents of counties not included in their service area.

In Section C, page 37, the applicant states no patients have been served at the existing facility since it closed on August 17, 2018; thus, there is no historical patient origin to report. In Section C, page 45, the applicant provides the projected patient origin for Landings of Chatham, as shown in the table below.

Landings of Chatham Projected Patient Origin – FYs 1-3 (FFYs 2026-2028)						
County	FY 1 – FFY 2026		FY 2 – FFY 2027		FY 3 – FFY 2028	
	# of Patients	% of Patients	# of Patients	% of Patients	# of Patients	% of Patients
Chatham	34	70%	39	70%	39	70%
Orange	6	12%	7	12%	7	12%
Lee	2	5%	3	5%	3	5%
Durham	2	5%	3	5%	3	5%
Wake	2	4%	2	4%	2	4%
Other	2	4%	2	4%	2	4%
Total	48	100%	55	100%	55	100%

In Section C, pages 39-45, the applicant provides the assumptions and methodology used to project patient origin. The applicant performed an analysis of historical patient origin of Chatham County ACH facilities based on 2020 and 2021 License Renewal Application (LRA) data and made assumptions about the shifts in historical patient origin from Chatham and other counties.

The applicant’s assumptions are reasonable and adequately supported based on the following:

- The applicant performed a detailed analysis of historical patient origin using publicly available and reliable sources.
- The applicant explains in detail its assumptions for choosing the counties and population from each county that would comprise the projected patient origin.
- The applicant analyzed changes in historical patient origin between the 2020 LRA and 2021 LRA and explained how those changes were applied to the projected patient origin.

Analysis of Need

In Section C, pages 47-54, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services, summarized as follows:

- **Increasing Population of People Age 65 and Older in Chatham County:** the applicant states that, despite Chatham County's rural setting, a confluence of other factors means its population is projected to increase in the upcoming years, with the greatest increase among those age 65 and older. The applicant states that, based on demographic projections from the North Carolina Office of State Budget and Management (NC OSBM), between 2021 and 2039 Chatham County's population of residents age 85 and older will increase by more than 169 percent; the population of residents ages 75-84 will increase by more than 96 percent; and the population of residents ages 65-74 will increase by more than 38 percent. The applicant states that between 2018-2020, 98.8 percent of ACH beds in Chatham County were utilized by people age 65 and older.
- **Need for Appealing ACH Beds:** the applicant states there are five facilities with ACH beds in Chatham County and four out of the five facilities have more than 85 ACH beds. The applicant states that while all the facilities have three or four stars in the Star Rating System, even a high-quality community can feel too large and lack the personal atmosphere that feels like home. The applicant states that the only smaller ACH facility in Chatham County – Pittsboro Christian Village, with 40 ACH beds – is now operating as part of a CCRC and thus cannot accept patients that are not part of the CCRC.

The applicant states 36 ACH beds will be relocated to Chatham County and developed at Chatham County Rehab, but Chatham County Rehab will have 105 NF beds and likely will use the ACH beds as transitional beds for step-down care. The applicant states these ACH beds will exist as a small part of a larger combination SNF.

The applicant further states that Coventry House of Siler City is in need of updates and is not appealing due to its outdated appearance, and that Carolina Meadows Fairways is part of a luxury golf community and may not be appealing to people seeking more affordable options.

- **Need for Affordable ACH Beds:** the applicant states that almost 90 percent of Chatham County's ACH beds are filled by private payors and only 10 percent serve Medicaid and State/County Special Assistance (Medicaid) recipients. The applicant states that while the ACH beds at Carolina Meadows Fairways are "open" beds – that is, not reserved for residents of a CCRC – it is located on the campus of a CCRC and may not be affordable for Medicaid recipients. The applicant further states that ACH bed utilization at the two CCRCs with ACH beds is low likely due of the cost of the facilities.

The applicant states that Cambridge Hills of Pittsboro, with 90 ACH beds and an occupancy rate of more than 88 percent, is the only well-utilized ACH facility in Chatham County based on the data provided in its 2021 LRA. More than 30 percent of its total days of care went to Medicaid recipients. The applicant states it believes there is a greater need for affordable facilities that will accept Medicaid recipients and it intends to provide 12 of the 57 ACH beds it proposes to relocate, or 21.1 percent, for Medicaid. The applicant states that even though 14.1 percent of Chatham County's population is eligible for Medicaid, according to DHHS, only 10 percent of ACH days of care were for Medicaid recipients, while 35 percent of total possible ACH days of care were vacant.

- Community Support: the applicant states it has ample community support for the development of the proposed ACH facility.

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

- The applicant provides documentation of the projected population increase of people age 65 and older in Chatham County and how many Chatham County ACH patients are over age 65.
- The applicant uses data provided to the Agency by each individual facility as part of the annual license renewal process to support its assertions.
- The applicant uses data and information from reliable sources and provides the sources it relies upon.

Projected Utilization

On Form C.1b in Section Q, the applicant provides projected utilization, as illustrated in the table below.

Landings of Chatham Projected Utilization – FYs 1-3			
	FY 1 – FFY 2026	FY 2 – FFY 2027	FY 3 – FFY 2028
# of Beds	57	57	57
# of Admissions*	48	7	0
# of Patient Days	11,041.25	19,922.92	20,130.00
Occupancy Rate	53.1%	95.8%	96.8%

Note: Average Length of Stay is not displayed; it appears the calculations are skewed due to the use of spreadsheets and formulas. This does not affect the outcome of this review.

*Form C.1b projects 38 admissions during FY 1; however, the applicant assumes the facility will open with 10 residents.

In the Assumptions and Methodology for Form C.1b discussion, immediately following Form C.1b in Section Q, the applicant provides the assumptions and methodology used to project utilization, which are summarized below.

- The applicant assumes the facility will start with 10 residents when it opens. The applicant states that most brand new facilities opened by ALG Senior have historically started with residents that have reserved a space with a pre-opening deposit.
- Based on the applicant’s historical experience, the applicant projects it will add four residents per month for the second through six months after the facility opens; it will add three residents per month during the remaining six months of the first full fiscal year and for the first two months in the second full fiscal year; and it will add one resident during the third month of the second full fiscal year. The applicant states it made those projections based on the following historical experience:

- Based on the fill rate of 14 ACH facilities opened by ALG Senior in North Carolina between 2013 and 2020, the applicant states the average monthly fill rate for all 14 ACH facilities, from the time the facility opened until the time the census stabilized, was 4.4 residents per month.
- The applicant states that most new facilities have higher fill rates during the first several months after opening, due to excitement about an affordable new community and due to intensive marketing in the area.
- The applicant states that, historically, fill rates slow following the first several months after opening.
- The applicant states that while the projections reflect relatively rapid growth, the projections are lower than the applicant’s historical experience with opening new ACH facilities. The applicant states that, due to challenging market conditions as a result of the global pandemic, it chose a more conservative growth rate than its historical experience to account for uncertainty.

The table below summarizes the applicant’s projected utilization. Please note the table below is reproduced with the same data provided by the applicant in Section Q.

Landings at Chatham – Summary of Projected Utilization					
Month	Census by Type of Bed		Total Census	Occupancy %	Census Increase
	Private Pay	Medicaid			
Oct 2025	5	5	10	17.5%	--
Nov 2025	9	6	14	24.6%	4
Dec 2025	12	6	18	31.6%	4
Jan 2026	16	7	22	38.6%	4
Feb 2026	19	7	26	45.6%	4
Mar 2026	23	8	30	52.6%	4
Apr 2026	25	8	33	57.9%	3
May 2026	28	9	36	63.2%	3
Jun 2026	30	9	39	68.4%	3
Jul 2026	33	10	42	73.7%	3
Aug 2026	35	10	45	78.9%	3
Sep 2026	38	11	48	84.2%	3
Oct 2026	40	11	51	89.5%	3
Nov 2026	43	12	54	94.7%	3
Dec 2026	43	12	55	96.5%	1

In the table above, the sum of the number of private pay and Medicaid beds occupied each month often does not equal the number in the Total Census column. The Project Analyst believes this to be the result of using spreadsheets with rounding. The occupancy rate is based on the number in the “Total Census” column, regardless of whether the sum of the number of private pay and Medicaid beds is correct or not. The rounding and mathematical errors do not impact the outcome of these findings in any way.

Projected utilization is reasonable and adequately supported based on the following:

- The applicant provides the data about the net number of new residents per month for each of the 14 facilities it uses to obtain the average fill rate in Section Q.
- The data provided by the applicant about the net number of new residents per month for each of the 14 facilities opened by ALG Senior between 2013 and 2020 supports the applicant's statements that:
 - The average fill rate across the 14 facilities is consistent with the applicant's representations.
 - Fill rates are higher during the first several months following a facility's opening and then slow down.
- The data provided by the applicant about the net number of new residents per month for each of the 14 facilities opened by ALG Senior between 2013 and 2020 shows that the applicant's projected fill rate for Landings of Chatham is lower than most of the listed facilities in their first 15 months of operation.
- The applicant accounts for current market conditions and uncertainties due to the global pandemic in its assumptions.

Access to Medically Underserved Groups

In Section C, pages 58-59, the applicant states:

"All persons will be admitted to The Landings of Chatham Park upon the written order of a physician without regard to their race, color, creed, age, national origin, handicap, sex, or source of payment. As a general rule, the Applicants expect The Landings of Chatham Park to serve members of all underserved groups at rates similar to or greater than those at which members of these groups appear in Chatham County, to the extent that members of each group qualify for ACH bed placement.

Based on the broad experience of ALG Senior LLC, the proposed consultant for the Project, the Applicants also expect The Landings of Chatham Park to serve racial and ethnic minorities and women at rates that meet or exceed those at which these groups appear in the larger community, especially to the extent that the need for services is greater among these groups."

On page 60, the applicant provides the estimated percentage for each medically underserved group, as shown in the following table.

Medically Underserved Groups	% of Total Patients
Low income persons	21%
Racial and ethnic minorities	27.9%
Women	77%
Persons with disabilities	100%
Persons 65 and older	99%
Medicare beneficiaries	NA
Medicaid recipients	21%

On pages 59-60, the applicant explains how it calculated each of the projections above and states it does not project to serve any Medicare beneficiaries because ACH facilities are not reimbursed by Medicare.

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

- The applicant states that the facility will provide care to any patient upon the written order of a physician without regard to whether the person is a member of an underserved group or not.
- The applicant states that, based on its overall experience, it expects to serve members of underserved groups at rates that meet or exceed their representation in the community.

Conclusion

The Agency reviewed the:

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

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

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

C – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

Cross Creek is currently licensed for 50 NF beds and 30 ACH beds. The 30 ACH beds are the result of a need determination in the 2019 SMFP. The applicant applied to develop the 30 ACH beds as part of Cross Creek, a certificate of need was issued for the project on August 13, 2019, and the 30 ACH beds were licensed on December 3, 2019. In the current application, the applicant proposes to relocate all 30 ACH beds from Cross Creek to the proposed Kempton of Chatham. Separately, in Project ID #B-12054-21, the applicant proposes to relocate 14 of the NF beds at Cross Creek to Pisgah Manor in Buncombe County instead. Upon completion of this project and Project ID #B-12054-21, Cross Creek would theoretically be licensed for 36 NF beds.

In Section D, page 50, the applicant explains why it believes the needs of the population presently utilizing the services to be relocated will be adequately met following completion of the project. The applicant states that the beds to be relocated are not currently in use and that, despite the efforts of the applicant to market the beds and get referrals, the facility has not served a single ACH patient since the beds were first licensed. The applicant states the remaining 36 NF beds will be available to area residents.

However, on May 7, 2021, Liberty submitted a letter to the Nursing Home Licensure and Certification Section, DHSR, providing a closure plan for Cross Creek. The closure plan included details about why the facility was closing as well as the processes and plans being put in place to relocate the existing patients of the facility. The closure plan states Cross Creek is slated to close on July 15, 2021. Research by the Project Analyst, found in the Working Papers, indicates that Cross Creek is no longer listed as a facility on Liberty's website.

It is unclear why the applicant chose to represent that the facility would still be open and operational and able to serve area residents in its application. However, as of the date of these findings, the facility is closed. No matter the outcome of this review, the facility is not serving any current patients and no Hyde County residents will have access to these services. The ability of underserved groups to access these services in Hyde County does not change.

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

- In Exhibit C.4, the applicant provides a letter from the administrator of Cross Creek, which states that the facility has not served any ACH patients since the beds became licensed.
- There is not a population presently utilizing the services to be relocated.

- As of the date of these findings, the facility is closed, and publicly available information demonstrates the applicant did attempt to find placement for all patients at Cross Creek as it was closing.

LC Johnston is currently licensed for 100 NF beds and 60 ACH beds. In the current application, the applicant proposes to relocate 27 ACH beds from LC Johnston to Kempton of Chatham. Upon completion of this project, LC Johnston would be licensed for 100 NF beds and 33 ACH beds.

In Section D, page 50, the applicant explains why it believes the needs of the population presently utilizing the services to be relocated will be adequately met following completion of the project. The applicant states that the beds to be relocated are not currently in use and that the current ACH patient census is 16 patients. In Section C, pages 35-36, the applicant provided the monthly patient census for the last three calendar years, and there was no month where there was a patient census any higher than 22 patients.

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

- In Exhibit C.4, the applicant provides a letter from the administrator of LC Johnston, which states that the current patient census is 16 patients, and that the functional capacity of the building is 100 NF beds and 33 ACH beds.
- There is not a population presently utilizing the services to be relocated.

On Form D.1 in Section Q, the applicant provides projected utilization for LC Johnston, as illustrated in the following table.

LC Johnston Projected Utilization – FFYs 2020-2027								
	Prior FY	Interim FYs						FY 1
	FFY 2020	FFY 2021	FFY 2022	FFY 2023	FFY 2024	FFY 2025	FFY 2026	FFY 2027
# of Beds	60	60	60	60	60	60	60	33
# of Admissions	20	23	23	23	23	23	23	23
# of Patient Days	6,123	6,647	6,647	6,647	6,647	6,647	6,647	6,647
ALOS*	306.15	289	289	289	289	289	289	289
Occupancy Rate**	27.96%	30.35%	30.35%	30.35%	30.35%	30.35%	30.35%	55.18%

*ALOS = Average Length of Stay

**Based on patient days

On Form D.1 Assumptions, immediately following Form D.1 in Section Q, the applicant states the following with regard to the assumptions about projected utilization at LC Johnston:

“Please see Exhibit C.4 for a letter from the Administrator of LC Johnston. LC Johnston's functional capacity is 33 ACH beds. The Applicants utilized previous census and admissions for the last 3 years from the facility to project interim and FFY 1 utilization for the ACH beds. Please see census tables listed in Section C.4 of the Application.”

The projected utilization has some calculation errors and other missing details, as discussed below:

- The applicant appears to have made a calculation error, and it is unclear as to how that would affect projected utilization. The applicant calculated utilization in all tables and average number of patients in every other table in the application by dividing the annual days of care by 365 days per year. On Form D.1, the applicant lists the number of patients as 23; however, 6,647 days of care is only 11 days less than the days of care the applicant reported for CY 2018 (see page 35) and the average number of patients for CY 2018 was 18, not 23. Dividing 6,647 days of care by 365 days per year results in a rounded average of 18 patients, not 23.
- It is unclear how that affects projected utilization because the applicant projects a lower average length of stay (ALOS) for the interim fiscal years. It is not clear how the applicant calculated the different ALOS, which is more than two weeks shorter than it was during FFY 2020.

However, despite the concerns with calculation and missing information in the projected utilization for LC Johnston, it is clear that the needs of the population presently served will still be adequately met. Whether the applicant projects to serve an average of 23 patients per year or 18 patients per year, and whether the ALOS is closer to FFY 2020 ALOS versus the shorter projected ALOS, the applicant will have 33 ACH beds remaining at LC Johnston, and that is more than adequate for the population presently served.

Access to Medically Underserved Groups

Cross Creek

In Section D, page 51, the applicant states:

“The 30 AL beds from Cross Creek and 27 SNF beds from LC Johnston proposed to be transferred are all currently underutilized and not in service, and therefore the this [sic] relocation of beds will have no ill effect on the groups listed above.

*The 30 AL beds proposed to be transferred from Cross Creek are currently unutilized. Cross Creek has been unable to serve even 1 AL resident in the 16+ months of operating the beds despite referral requests and marketing efforts. Cross Creek has exhausted all efforts to fill any of these AL beds. ... Please see **Exhibit C.4** ..., which documents the lack of fill-up for these AL beds at Cross Creek.”*

LC Johnston

In Section D, page 51, the applicant states:

“The 30 AL beds from Cross Creek and 27 SNF beds from LC Johnston proposed to be transferred are all currently underutilized and not in service, and therefore the this [sic] relocation of beds will have no ill effect on the groups listed above.

*The 27 beds proposed to be transferred from LC Johnston are currently underutilized. Currently, LC Johnston is licensed for 60 adult care home beds. LC Johnston is proposing to transfer 27 adult care home beds from LC Johnston to Kempton of Chatham. These 27 beds are currently underutilized, with LC Johnston current AL bed census being 16 residents. Please see **Exhibit C.4** ..., which documents the current census as well as the functional capacity from the Administrator at LC Johnston.*

The remaining...33 AL beds at LC Johnston will continue to support access to the groups listed above.” (emphasis in original)

The applicant adequately demonstrates that the needs of medically underserved groups who will continue to use ACH beds at LC Johnston will be adequately met following completion of the project for the following reasons:

- The ACH beds being relocated are not currently being used at LC Johnston and will have no impact on the applicant’s ability to serve existing and future residents in medically underserved groups.
- The applicant will continue to have a more than adequate supply of ACH beds to serve both current and future patients at LC Johnston.

Conclusion

The Agency reviewed the:

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

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

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

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

The 57 ACH beds are being relocated from Edgecombe County, where they are currently housed in a 130-bed ACH facility that has been closed since 2018. In Project ID #L-11818-19, ALG Senior was approved to relocate 66 ACH beds to a different location in Edgecombe County and develop The Landings of Tarboro, and planned to renovate the existing facility and keep the remaining 64 ACH beds at the newly renovated facility (Tarboro Senior Living).

In Section D, page 65, the applicant explains why it believes the needs of the population presently utilizing the services to be relocated will be adequately met following completion of the project. The applicant states that the beds to be relocated are not currently in use and have not been in use since the former facility closed in 2018.

Regarding the need for the ACH beds in Edgecombe County as represented in Project ID #L-11818-19, in Section B, page 27, the applicant states:

“At the time the CON application was submitted to relocate 64 ACH beds away from Tarboro Senior Living to The Landings of Tarboro in 2019, Edgecombe Opco, LLC and Edgecombe Propco, LLC believed that they would be able to successfully fill and operate The Landings of Tarboro in close proximity to the existing Tarboro Senior Living (the communities are approximately 2 miles away from each other). However, Edgecombe Opco, LLC and Edgecombe Propco, LLC did not anticipate a pandemic-type event like COVID-19 in the projections submitted to the CON Section, nor the severe consequences of the virus on the ability to finance, construct, and eventually operate the project. Edgecombe Opco, LLC and Edgecombe Propco, LLC, as well as the owners of Tarboro Senior Living, now face the stark reality of trying to achieve high utilization not only in one community, but two communities in the same location. The prospect of doing so in this extremely challenging operational environment—not to mention, the difficulty of securing financing for such a project in very restricted capital markets for long-term care—caused the Applicants to think of a new alternative for development of the beds associated with The Landings of Tarboro.”

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

- The ACH beds being relocated away from Edgecombe County have not been in use since 2018.
- The applicant provides a reasonable explanation for the change in the need it represented in Project ID #L-11818-19.

On Form D.1 in Section Q, the applicant provides projected utilization for Tarboro Senior Living, as illustrated in the following table.

Tarboro Senior Living – Projected Utilization		
	Partial FY	FY 1
	5/1/2021 – 7/31/2021	8/1/2021 – 7/31/2022
# of Beds	73	73
# of Admissions	16	36
# of Patient Days	4,746	12,958.92
ALOS*	296.625	359.97
Occupancy Rate	17.8%	48.6%

* ALOS = Average Length of Stay

The Project Analyst notes that this application was submitted to the Agency on April 15, 2021 and the facility was first licensed on August 8, 2021.

In the Assumptions and Methodology for Form D.1 discussion, immediately following Form D.1 in Section Q, the applicant provides the assumptions and methodology used to project utilization, which are summarized below.

- The applicant assumes the facility will start with 10 residents when it opens. The applicant states that most brand new facilities opened by ALG Senior have historically started with residents that have reserved a space with a pre-opening deposit.
- Based on the applicant’s historical experience, the applicant projects it will add three residents per month through stabilization. The applicant states it made those projections based on the following historical experience:
 - Based on the applicant’s fill rate of 14 ACH facilities opened by ALG Senior in North Carolina between 2013 and 2020, the applicant states the average monthly fill rate from the time the facility opened until the time the census stabilized was 4.4 residents per month.
 - The applicant states that the facility that had the lowest average monthly fill rate still averaged growth of more than two residents per month.
- The applicant states that while the projections reflect relatively rapid growth, the projections are lower than the applicant’s historical experience with opening new ACH facilities. The applicant states that, due to challenging market conditions as a result of the global pandemic, it chose a more conservative growth rate than its historical experience to account for uncertainty.

Projected utilization is reasonable and adequately supported based on the following:

- The applicant provides the data about the net number of new residents per month for each of the 14 facilities it uses to obtain the average fill rate in Section Q.
- The data provided by the applicant about the net number of new residents per month for each of the 14 facilities opened by ALG Senior between 2013 and 2020 supports the applicant’s statements that the lowest average monthly fill rate of any facility was higher

than two residents per month and the average monthly fill rate for all 14 facilities was 4.4 residents per month.

- The applicant accounts for current market conditions and uncertainties due to the global pandemic in its assumptions.

Access to Medically Underserved Groups

In Section D, page 67, the applicant states:

“...the licensed ACH beds at Tarboro Senior Living have not been serving residents of Edgecombe County since Open Fields Assisted Living ceased operations on August 17, 2018. As a result, all 130 of the licensed ACH beds at Tarboro Senior Living are unavailable and unutilized as of the submission of this application. Tarboro Senior Living will make many of its beds available to Medicaid and Special Assistance residents. Also, by definition, most of the residents served by Tarboro Senior Living are the elderly (65 and above) and persons with disabilities, many of whom suffer from memory impairment conditions such as Alzheimer’s and dementia. Further, this application seeks to revert to Tarboro Senior Living 9 of the ACH beds originally slated to be developed at The Landings of Tarboro, therefore increasing the bed capacity of The Landings of Tarboro from 64 ACH beds to 73 ACH beds.”

The applicant adequately demonstrates that the needs of medically underserved groups who will continue to use ACH beds in Edgecombe County will be adequately met following completion of the project for the following reasons:

- The ACH beds that are being relocated were not operational and not currently serving any residents; therefore, it cannot have an impact on the needs of medically underserved groups currently seeking healthcare at ACH facilities.
- The applicant will be adding nine more ACH beds than originally planned to Tarboro Senior Living, which will increase the number of residents it can serve when it opens.

Conclusion

The Agency reviewed the:

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

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

- The applicant adequately demonstrates that the needs of the population currently using the services to be relocated will be adequately met following project completion for all the reasons described above.

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

NC – Kempton of Chatham

C – The Landings of Chatham Park

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

In Section E, page 54, the applicant describes the alternatives considered and explains why each alternative is either more costly or less effective than the alternative proposed in this application to meet the need. The alternatives considered were:

- Maintain the Status Quo: the applicant states the ACH beds being relocated are not currently in use and failing to relocate them would not allow Cross Creek and LC Johnston to operate as efficiently. Additionally, the applicant states maintaining the status quo would not meet the need in Chatham County for additional ACH beds; therefore, this was not an effective alternative.
- Develop the ACH Beds in Another County/Location: the applicant states that, of the four NC counties with an ACH bed deficit of 57 or more, the other three counties (Gates, Hoke, and Pamlico) have need determinations for ACH beds already; therefore, this was not an effective alternative.

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

- The applicant does not adequately demonstrate the need the population proposed to be served has for the proposed services or that projected utilization is based on reasonable and adequately supported assumptions. The discussions regarding need and projected utilization found in Criterion (3) are incorporated herein by reference. An application that cannot demonstrate the need the population proposed to be served has for the proposed services cannot be an effective alternative to meet the need.
- The applicant does not adequately demonstrate that the proposed project would not be an unnecessary duplication of existing or approved ACH services in Chatham County. The discussion regarding unnecessary duplication found in Criterion (6) is incorporated herein by reference. An application proposing a project that is unnecessarily duplicative cannot be an effective alternative to meet the need.

- The applicant does not demonstrate that the proposed facility can be developed on the site identified by the applicant, based on the following analysis:
 - The applicant proposes to develop the facility in the Briar Chapel community. Located in northern Chatham County with a Chapel Hill address, the planned community features numerous neighborhoods with planned amenities, multiple types of homes, shopping, schools, and other types of businesses.
 - Briar Chapel has restrictive covenants for both residential and commercial properties. The Declaration of Covenants, Conditions and Restrictions for Briar Chapel Commercial Properties (Declaration) is filed with the register of deeds for Chatham County.
 - The Declaration has a provision reserving the right to restrict the development of commercial properties in the Briar Chapel community. According to the provision, some types of businesses are banned outright; other types cannot be developed without the express written consent of the community developer. In Exhibit E of the Declaration, there is a list of types of facilities which cannot be developed in the Briar Chapel community without the express written consent of the community developer. That exhibit lists the following types of facilities, among others:
 - “...*(j) a housing facility which is operated primarily as housing for persons age 55 or older, whether offering independent living, assisted living, personal care, or nursing care;*”
 - *...(o) any of the following health care facilities or services:*
 - ...
 - vii. a facility offering any services or conducting any activity requiring the issuance of a certificate of need under the laws of the State of North Carolina...*”
 - Special warranty deeds on file with the register of deeds for Chatham County for properties which are subject to the Declaration explicitly state that the property is conveyed subject to the restrictive covenants in the Declaration and may also list other restrictive covenants for the property.
 - For example, the special warranty deed for the property where Liberty proposes to develop Chatham County Rehab states that the property is conveyed subject to the Declaration as well as the terms in Exhibit A. Exhibit A states that the property owner agrees to begin construction of a senior living facility and the property shall only be used for an ACH facility or SNF for the first five years after the special warranty deed is recorded. Thus, while ACH facilities or SNFs are not permitted to be developed in Briar Chapel without the express written consent of the community developer, the special warranty deed does contain express written consent to develop an ACH facility or SNF.

- Briar Chapel has publicized the development of Chatham County Rehab; both the Triangle Business Journal¹ and the Raleigh News & Observer² published articles discussing the development of Chatham County Rehab.
- The properties for Chatham County Rehab and the proposed ACH facility are adjacent to each other. They share a common boundary at some parts and are only separated by a “Commercial Common Area” in other parts.
- Exhibit K.4 contains documentation of the availability of water, sewer and waste disposal, and power at the proposed site for the ACH facility. However, the documentation cites a project name of Liberty Senior Apartments:
 - The Department of Environmental Quality form documenting the availability of sewer service at the property lists a project name of “Liberty Senior Apartments.”
 - The Duke Energy Residential Development form shows the following information about the proposed property:
 - Project Name: Liberty Senior Apartments
 - Number of Lots: 1/150 units
 - Type of Project: Apartment
 - Maximum apartment/condo unit size: 1,201-2,000 square feet
 - Number of units per building: 71/79
 - Number of buildings: 1 building, 2 services
 - Planned commercial services: Clubhouse, Pools
- The special warranty deed for the property where the proposed ACH facility will be located states that the property is conveyed subject to the Declaration as well as the terms in Exhibit A, much like the special warranty deed for the property where Chatham County Rehab will be located.
- However, for the property where Kempton of Chatham is proposed to be located, Exhibit A of the special warranty deed states that the property owner agrees to begin construction of “Senior Apartments” and that the property owner cannot construct any more than 150 “Senior Apartments” on the property.
- In the same articles where Briar Chapel publicized the upcoming Chatham County Rehab, Briar Chapel also publicized that Liberty would be constructing senior apartments next to Chatham County Rehab. Both articles have pictures of a rendering of what the apartments will look like. The article from the Raleigh News & Observer states that the apartments will one day feature a wellness facility, art and social programming, an onsite chef, and that the land itself has permits to develop up to 350 apartments.

¹<https://www.bizjournals.com/triangle/news/2019/06/04/massive-chapel-hill-development-adding-senior.html>, accessed August 4, 2021.

²<https://www.newsobserver.com/news/business/article231467328.html>, accessed August 4, 2021.

- Unlike the special warranty deed for Chatham County Rehab, the special warranty deed for the proposed ACH facility does not provide express written consent allowing the development of an ACH facility on that property.
- Based on the filings with the Chatham County register of deeds office as of the date of these findings, it does not appear as though an ACH facility can be developed on the property the applicant proposes to use.
- Proposing to develop an ACH facility on a site where available documentation states that an ACH facility cannot be developed is not an effective alternative to meet the need.
- The applicant does not demonstrate that any enhanced competition in the service area includes a positive impact on the cost-effectiveness of the proposed services. The discussion regarding 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, found in Criterion (18a) is incorporated herein by reference. An application that does not demonstrate the need for the proposed project cannot demonstrate the cost-effectiveness of the proposed project. A project that is not cost-effective cannot show a positive impact on the cost-effectiveness of the proposed services as the result of any enhanced competition and therefore cannot be an effective alternative to meet the need.
- Liberty has a history of filing multiple overlapping applications that split up relocations authorized in previously approved applications or which change the scope of a project that was recently approved, and has a history of filing numerous material compliance requests to change the number of beds it proposes to relocate in approved projects. Liberty has a facility under development in this same location with such a history. A timetable of the progress in developing that facility is listed below.
 - July 30, 2014: Liberty is issued a certificate of need to develop Chatham County Rehab, a new 90-bed SNF in Chatham County pursuant to a need determination in the 2013 SMFP (and subsequent competitive review and appeal).
 - July 19, 2015; October 1, 2015; and March 31, 2016: Liberty submits documentation to the Agency stating it is searching for appropriate land for the project.
 - November 9, 2016: Liberty communicates to the Agency that the site will be in Briar Chapel.
 - July 17, 2017: Liberty submits Project ID #J-11378-17, a change of scope application proposing to relocate 25 additional NF beds from Orange County to Chatham County.
 - November 16, 2017: A certificate of need is issued for Project ID #J-11378-17.
 - June 1, 2018: Liberty submits a progress report to the Agency which states:

“The Applicants have been working diligently to finalize drawings. However, the current market condition in Chatham County is not virtuous which has put the project in a holding pattern.”

- June 14, 2018: A special warranty deed is recorded in Chatham County for the site for the facility approved by Project ID #s J-10168-13 and J-11378-17 in Briar Chapel.
- October 24, 2018: Liberty requests a material compliance determination from the Agency permitting it to relocate only 15 NF beds pursuant to J-11378-17 and to relocate the remaining 10 NF beds to Mecklenburg County (pursuant to Project ID #F-11461-18). The Agency approves the request on November 1, 2018.
- February 15, 2019: Liberty submits another change of scope application, Project ID #J-11656-19, proposing to relocate 36 ACH beds from Halifax and Columbus counties to Chatham County.
- May 29, 2019: A certificate of need is issued for Project ID #J-11656-19. There are no development milestones until March 1, 2022.
- February 23, 2021: Liberty requests a material compliance determination permitting it to develop the 105 NF beds approved pursuant to Project ID #s J-10168-13 and J-11378-17 and modified by the material compliance request on October 24, 2018 as one standalone building and to develop the 36 ACH beds approved pursuant to Project ID #J-11656-19 as a separate standalone building. The Agency approves the request on March 1, 2021.
- March 30, 2021: Liberty requests another material compliance determination, permitting it to develop the 105 NF beds approved pursuant to Project ID #s J-10168-13 and J-11378-17 and as modified by the material compliance requested on October 24, 2018 in the same building as 24 of the ACH beds approved pursuant to Project ID #J-11656-19, and to develop the remaining 12 ACH beds as part of a different project it would propose in an upcoming application. The Agency approved the request on April 9, 2021.
- April 14, 2021: Liberty files this application to develop a 69-bed ACH facility by developing 12 of the ACH beds approved pursuant to Project ID #J-11656-19 and relocating 57 ACH beds from Hyde and Johnston counties.
- As of the date of these findings, the only documentation of any progress in developing Chatham County Rehab is the purchase of property for the facility. The certificate of need to develop Chatham County Rehab based on a need determination for 90 NF beds in Chatham County was issued more than seven years ago.
- Further, it’s unclear as to the development future of the property where Chatham County Rehab is proposed to be located. The special warranty deed for that site originally contained a provision requiring commencement of construction to begin within 12 months of the recording date of the deed and to have completed much of the construction within 24 months after the deadline to begin construction; failure to meet the original commencement of construction deadline would potentially result in the property owner

being required to resell the property back to the original owner. Commencement of construction is defined as completion of the concrete slab or foundation. That deed was recorded on June 14, 2018.

On May 20, 2020, an amendment to the special warranty deed was recorded with the register of deeds for Chatham County. The amendment set the commencement of construction deadline for the senior apartments as November 30, 2020, and stated that if construction had commenced on the senior apartments as of that deadline, the deadline for commencement of construction of Chatham County Rehab would be extended to March 1, 2023.

The applicant proposes to develop an ACH facility on the land where the senior apartments are to be built. There is no documentation that the applicant has secured approval via the appropriate channels to have the restrictive covenants on the property changed to allow the development of an ACH facility on the property. It is unclear how the applicant would develop senior apartments and an ACH facility on the same property, and it is unclear what progress has been made toward development of the senior apartments. Therefore, it is unclear as to whether Chatham County Rehab will be developed on this property or what other delays will arise in the future.

Based on the development history of the 90 NF beds approved pursuant to a need determination in the 2013 SMFP at the same location, the Agency cannot determine whether this project will be delayed repeatedly for years like Chatham County Rehab, and the applicant does not demonstrate that developing this project which may be repeatedly delayed is a more effective alternative than maintaining the status quo.

- The application is not conforming to all statutory and regulatory review criteria. An application that cannot be approved cannot be an effective alternative to meet the need.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Comments submitted during the public comment period
- Responses to comments
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is not conforming to this criterion for the reasons stated above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

In Section E, pages 70-75, the applicant describes the alternatives considered and explains why each alternative is either more costly or less effective than the alternative proposed in this application to meet the need. The alternatives considered were:

- Maintain the Status Quo (develop The Landings of Tarboro): the applicant states that due to the changed environment as a result of the global pandemic, there are lower resident censuses at ACH facilities; construction costs are higher; and financing is more difficult to obtain. The applicant states that the combination of those three factors combined with a large projected surplus of ACH beds in Edgecombe County means it would be difficult to get financing to develop ACH beds in Edgecombe County and to fill those ACH beds; therefore, this was not an effective alternative.
- Keep the 66 ACH Beds at Tarboro Senior Living: the applicant states it proposed to develop The Landings of Tarboro to lower the number of ACH beds at Tarboro Senior Living so that it could offer mostly private rooms after renovating the facility. The applicant states keeping the 66 ACH beds at Tarboro Senior Living would defeat the purpose of having a floorplan with mostly private rooms; therefore, this was not an effective alternative.
- Develop the ACH Beds in Another County with a Deficit: the applicant states that 57 ACH beds is the minimum number of beds it can develop in a new facility because in its experience the best operational efficiencies are achieved at ACH facilities with 60-70 beds. The applicant states that of the counties with ACH bed deficits in the 2021 SMFP:
 - Several counties with need determinations due to deficits could have deficits reduced by relocating a small number of ACH beds, but it would not be feasible to make small-scale changes to facilities in those counties to accommodate the addition of 10 ACH beds.
 - Several counties with need determinations for higher numbers of ACH beds are more feasible options in terms of the number of beds to be relocated, but the applicant states it does not believe the current market conditions in those counties could support additions to existing facilities.
 - The applicant states it wishes to develop a facility in a county that has the potential for significant growth. The applicant states that, of the counties with a deficit of 57 ACH beds or more, only Chatham County is projected to have a population growth rate higher than the state average, and some of the other counties are projected to have a population decrease.

The applicant states that based on the reasons above, this is not an effective alternative.

On page 75, the applicant states that its proposal is the most effective alternative because it will reduce the surplus of ACH beds in Edgecombe County, it will develop a new facility with increased access for Medicaid recipients in a county poised to have strong growth, and it will achieve economies of scale in both construction and future costs.

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

- The applicant provides reasonable information to explain why it believes the proposed project is the most effective alternative.
- The application is conforming to all other statutory and regulatory review criteria. Therefore, the application can be approved.

Conclusion

The Agency reviewed the:

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

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

- (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 – Kempton of Chatham
C – The Landings of Chatham Park

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

Capital and Working Capital Costs

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

Projected Capital Cost	
Land	\$2,500,000
Closing Costs/Site Prep/Landscaping	\$2,372,350
Construction/Renovation Contract	\$12,637,350
Architect/Engineering Fees	\$500,000
Furniture	\$930,000
Consultant Fees	\$150,000
Total	\$18,689,700

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

- The applicant explains how it projected the cost of items such as furniture.
- In Exhibit K.3, the applicant provides a letter signed by an architect which supports the cost projections for construction, site preparation, and architect and engineering fees.

In Section F, pages 56-57, the applicant projects start-up costs will be \$232,629 and the initial operating period will be 10 months with estimated initial operating costs of \$909,266 for a total working capital cost of \$1,141,895. On page 57, the applicant states it projected the working capital cost based on its experience operating multiple ACH facilities, SNFs, and other long-term care services. The applicant adequately demonstrates that the projected working capital needs of the project are based on reasonable and adequately supported assumptions because the applicant has extensive experience in the cost of developing and operating similar types of facilities.

Availability of Funds

In Section F, pages 55-59, the applicant states the entire capital cost and working capital cost will be funded by the accumulated reserves of Liberty Healthcare Properties of Chatham County, LLC.

In Exhibit F.5, the applicant provides a letter dated March 30, 2021, which is signed by John A. McNeill, Jr., and Ronald B. McNeill. The letter states, in part:

“We have both agreed and are both committed to personally funding the proposed project, the construction and operation of the proposed facility, including any working capital, start-up and capital expenditures associated with the project. We personally have sufficient funds to provide for the required equity and start up operating capital for the development of the proposed project if it is approved.”

Exhibit F.5 also contains a letter dated March 30, 2021 from the CPA of John A. McNeill, Jr. and Ronald B. McNeill, which states:

“I am aware of the McNeill’s [sic] financial status, including current liabilities and debt obligations and I will attest that John A. McNeill Jr. and Ronald B. McNeill each

have in excess of \$15,000,000 in cash, stocks, or short term investments in order to fund any construction and operation of the proposed relocation, including any working capital, start-up and capital expenditures associated with the project.”

Liberty has a number of projects under development which project to spend more than the \$30 million in cash, stocks, or short-term investments documented in the letter from the CPA for the McNeill brothers.

Publicly available information submitted to the Agency as part of Project ID #J-12056-21 and available to the Agency during this review documents that the applicant provided a letter dated June 28, 2021 that was signed by the Chief Financial Officer (CFO) of Liberty Healthcare Management, Inc. The letter states the CFO has been with Liberty since November 2003 and outlines the CFO’s education and experience. The letter states that in the latest Liberty combined financial balance sheet, Liberty has in excess of \$450,000,000 in total cash and assets available to fund any capital costs associated with the project.

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

- The applicant provides documentation of the commitment to use the necessary funding toward development of the proposed project.
- The applicant provides documentation of the availability of sufficient financial resources to fund the proposed changes to capital and working capital costs.
- Other publicly available information documents the availability of sufficient financial resources to for Liberty to develop this proposed project in addition to other projects under development

Financial Feasibility

The applicant provided pro forma financial statements for the first three full fiscal years of operation following completion of the project. On Form F.2b in Section Q, the applicant projects that revenues will exceed operating expenses in the second and third full fiscal years following completion of the project, as shown in the table below.

Kempton of Chatham Projected Revenue & Expenses – FYs 1-3 (FFYs 2027-2029)			
	FY 1 (FFY 2027)	FY 2 (FFY 2028)	FY 3 (FFY 2029)
# of Patient Days	9,492	22,624	23,360
Gross Revenue	\$1,851,605	\$4,633,848	\$5,012,355
Net Revenue	\$1,849,774	\$4,629,263	\$5,007,393
Average Net Revenue per Patient Day	\$195	\$205	\$214
Operating Costs	\$2,705,003	\$3,654,710	\$3,749,312
Average Operating Costs per Patient Day	\$285	\$162	\$161
Profit/(Loss)	(\$855,229)	\$974,552	\$1,258,081

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

Conclusion

The Agency reviewed the:

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

Based on that review, the Agency concludes that the application is not conforming to this criterion because the applicant does not adequately demonstrate that the financial feasibility of the proposal is based upon reasonable projections of revenues and operating expenses for all the reasons described above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

Capital and Working Capital Costs

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

Projected Capital Cost	
Land	\$1,500,000
Closing Costs/Site Prep/Landscaping	\$955,000
Construction/Renovation Contract	\$5,400,000
Architect/Engineering Fees	\$250,000
Furniture	\$750,000
Financing/Interest During Construction	\$1,384,000
Total	\$10,239,000

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

- The applicant explains how it projected the site costs and the analysis it undertook to make those projections.

- The applicant states other costs were projected based on estimates involving current market conditions and in consultation with the project architect.
- The applicant provides supporting documentation in Exhibits E.2 and K.3.

In Section F, page 78, the applicant projects start-up costs will be \$135,500 and the initial operating period will be 11 months with estimated initial operating costs of \$640,760 for a total working capital cost of \$776,260. On page 78, the applicant states it projected the working capital cost based on its experience developing new ACH facilities. The applicant provides supporting documentation in Exhibit F.3. The applicant adequately demonstrates that the projected working capital needs of the project are based on reasonable and adequately supported assumptions based on the following:

- The applicant has extensive experience in developing new ACH facilities.
- The applicant provides the details about monthly expenses and revenue during the initial operating period as well as the assumptions used to calculate the initial operating costs.

Availability of Funds

In Section F, page 76, the applicant states the capital cost will be financed via a loan to Chatham Propco, LLC. Exhibit F.2 contains a letter dated April 6, 2021, signed by the Managing Director of Integrated Asset Advisors, LLC, which offers to provide a loan in the amount of \$10,239,000 to finance the development of the proposed 57-bed ACH facility and outlines the terms of the potential loan. Exhibit F.2 also contains an amortization schedule for the loan.

In Section F, page 79, the applicant states the working capital costs will be financed via a loan to Chatham Opco, LLC. Exhibit F.3 contains a letter dated April 6, 2021, signed by the Managing Director of Integrated Asset Advisors, LLC, which offers to provide a loan in the amount of \$776,260 to finance the working capital costs of the proposed 57-bed ACH facility and outlines the terms of the potential loan. Exhibit F.3 also contains an amortization schedule for the loan.

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

- The applicant provides documentation of its ability to obtain financing, the terms of the financing, and the amortization schedule of the loan for the projected capital cost.
- The applicant provides documentation of its ability to obtain financing, the terms of the financing, and the amortization schedule of the loan for the working capital costs.

Financial Feasibility

The applicant provided pro forma financial statements for the first three full fiscal years of operation following completion of the project. On Form F.2b in Section Q, the applicant

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

Landings of Chatham Projected Revenue & Expenses – FYs 1-3 (FFYs 2026-2028)			
	FY 1 (FFY 2026)	FY 2 (FFY 2027)	FY 3 (FFY 2028)
# of Patient Days	11,041	19,923	20,130
Gross Revenue	\$1,459,144	\$2,680,341	\$2,700,029
Net Revenue	\$1,444,552	\$2,653,538	\$2,673,029
Average Net Revenue per Patient Day	\$131	\$133	\$133
Operating Costs	\$2,081,151	\$2,379,639	\$2,384,325
Average Operating Costs per Patient Day	\$188	\$119	\$118
Income/(Loss)	(\$636,599)	\$273,898	\$288,703

The assumptions used by the applicant in preparation of the pro forma financial statements are provided immediately following Form F.2b in Section Q. The applicant adequately demonstrates that the financial feasibility of the proposal is reasonable and adequately supported based on the following:

- The applicant provides appropriate funding for line items such as salaries on Form F.3b and includes the assumptions and methodology used in projecting the operating expenses found on Form F.3b.
- The applicant provides the details of projected rates for future ACH residents on Form F.4 and includes the assumptions and methodology used in calculating the resident rates found on Form F.4.
- Projected utilization is based on reasonable and adequately supported assumptions. See the discussion regarding projected utilization in Criterion (3) which is incorporated herein by reference.

Conclusion

The Agency reviewed the:

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

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

- The applicant adequately demonstrates that the capital and working capital costs are based on reasonable and adequately supported assumptions for all the reasons described above.
- The applicant adequately demonstrates availability of sufficient funds for the capital and working capital needs of the proposal for all the reasons described above.

- The applicant adequately demonstrates sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of revenues and operating expenses for all the reasons described above.
- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

NC – Kempton of Chatham
 C – The Landings of Chatham Park

On page 175, the 2021 SMFP defines the service area for ACH beds as “... *the county in which the adult care home bed is located. Each of the 100 counties is a separate service area.*” Thus, the service area for this facility is Chatham County. Facilities may also serve residents of counties not included in their service area.

Table 11A on page 183 and Table 11E on page 213 of the 2021 SMFP show a total of 453 existing and approved ACH beds in five existing and approved ACH facilities and two existing and approved combination SNFs in Chatham County. There are 91 ACH beds which are excluded from the planning inventory because they are part of CCRCs. The table below summarizes the existing and approved facilities and ACH beds as shown in the 2021 SMFP.

Chatham County Inventory of Existing/Approved ACH Beds				
Facility	# of Beds	CON Adjustments	CCRC Exclusions	Planning Inventory
Cambridge Hills of Pittsboro	90	0	0	90
Carolina Meadows Fairways	95	0	0	95
Chatham County Rehabilitation Center	0	36	0	36
Chatham Ridge Assisted Living	91	0	0	91
Coventry House of Siler City	86	0	0	86
Pittsboro Christian Village	40	0	40	0
The Arbor	51	0	51	0
Total	453	36	91	398

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

In Section G, page 64, the applicant explains why the proposal would not result in the unnecessary duplication of existing or approved ACH bed services in Chatham County. The applicant states:

“The Applicants’ proposed project will not result in an unnecessary duplication of the existing or approved service component. Rather, the Applicants propose to relocate already existing ACH beds in the SMFP inventory that are currently not being utilized in 2 over-bedded counties (Hyde & Johnston) to one which currently has a bed deficit. The 2021 SMFP has identified Chatham County as having a 57-bed deficit, which this

application seeks to eliminate. Therefore, the proposed project will not result in unnecessary duplication.”

However, the applicant does not adequately demonstrate that the proposal would not result in an unnecessary duplication of existing or approved services in the service area because the applicant does not adequately demonstrate the need for the proposed project, or that projected utilization is reasonable and adequately supported. The discussions regarding need and projected utilization found in Criterion (3) are incorporated herein by reference. A proposal that cannot demonstrate the need it has to serve the population it proposes to serve cannot demonstrate that the proposal will not result in an unnecessary duplication of existing or approved services in the service area.

Conclusion

The Agency reviewed the:

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

Based on that review, the Agency concludes that the application is not conforming to this criterion for the reasons stated above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

In Section G, page 85, the applicant explains why the proposal would not result in the unnecessary duplication of existing or approved ACH bed services in Chatham County. The applicant states:

“The Applicants’ proposed relocation of 57 ACH beds from Edgecombe County to Chatham County will not result in the unnecessary duplication of ACH services in Chatham County. In fact, it is the opposite. Chatham County has an existing ACH bed deficit of 57 ACH beds per the 2021 SMFP. The proposed Project seeks to cure that deficiency by relocating 57 ACH beds from Edgecombe County into Chatham County.

...

Chatham County, even in the absence of an ACH bed need determination in the 2021 SMFP, requires additional ACH beds to serve the needs of residents in the county. In particular, Chatham County needs affordable ACH beds, and appealing communities that welcome Medicaid recipients. Furthermore, no new beds will be added to the overall adult care home bed inventory in the 2021 SMFP in North Carolina. Rather, ACH beds are being relocated from one county with a surplus to another county with a deficiency. In other words, there is no net gain of ACH beds or unnecessary

duplication of services contemplated by the application. Rather, it is maximizing the utilization of ACH beds that are not being currently utilized.”

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

- The applicant adequately demonstrates the need the population of Chatham County has for a new ACH facility that will commit to serving Medicaid recipients.
- The applicant adequately demonstrates the proposed 57-bed ACH facility is needed in addition to the existing and approved ACH beds in Chatham County.

Conclusion

The Agency reviewed the:

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

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

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

C – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

On Form H in Section Q, the applicant provides the projected full-time equivalent (FTE) staffing for the proposed services, as summarized below.

Kempton of Chatham – Projected Staffing – FYs 1-3 (FFYs 2027-2029)			
	FY 1 – FFY 2027	FY 2 – FFY 2028	FY 3 – FFY 2029
Registered Nurses (RNs)	2.0	2.0	2.0
Licensed Practical Nurses (LPNs)	4.2	4.2	4.2
Certified Nurse Aides/Assistants	15.4	28.0	28.0
MDS Nurse	0.5	0.5	0.5
Activities Director	1.0	1.0	1.0
Laundry & Linen	2.8	2.8	2.8
Housekeeping	6.6	6.6	6.6
Maintenance/Engineering	1.0	1.0	1.0
Administrator/CEO	1.0	1.0	1.0
Business Office	1.0	1.0	1.0
Med Tech	7.5	12.0	12.0
Total	43.0	60.1	60.1

The assumptions and methodology used to project staffing are provided in Section Q on Form H Assumptions, immediately following Form H. Adequate operating expenses for the health manpower and management positions proposed by the applicant are budgeted in Form F.3b. In Section H, pages 65-66, the applicant describes the methods to be used to recruit or fill new positions and its proposed training and continuing education programs.

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

- The applicant projects the staffing needs and salary costs based on its experience operating other facilities.
- The applicant describes its experience with recruiting and training staff at other facilities it operates.

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.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

On Form H in Section Q, the applicant provides the projected full-time equivalent (FTE) staffing for the proposed services, as summarized below.

Landings of Chatham – Projected Staffing – FYs 1-3 (FFYs 2026-2028)			
	FY 1 – FFY 2026	FY 2 – FFY 2027	FY 3 – FFY 2028
Registered Nurses (RNs)	0.5	0.5	0.5
Certified Nurse Aides/Assistants	10.1	14.1	14.2
Staff Development Coordinator	1.0	1.0	1.0
Cooks	4.8	5.1	5.1
Activities Director	0.8	1.0	1.0
Laundry & Linen	0.6	0.6	0.6
Housekeeping	1.6	1.8	1.8
Maintenance/Engineering	0.8	0.9	0.9
Administrator/CEO	1.0	1.0	1.0
Business Office	1.3	1.4	1.4
Transportation	0.6	0.9	0.9
Total	23.2	28.2	28.3

The assumptions and methodology used to project staffing are provided in the Assumptions and Methodology for Form H – Staffing subsection of Section Q, immediately following Form H. Adequate operating expenses for the health manpower and management positions proposed by the applicant are budgeted in Form F.3b. In Section H, pages 86-87, the applicant describes the methods to be used to recruit or fill new positions and its proposed training and continuing education programs.

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

- The applicant provides extensive information about the data, assumptions, and methodology used to calculate staffing costs and provides appropriate funding for staffing on Form F.3b.
- The applicant describes steps it has taken to implement plans to recruit staff and discusses the resources it will use to recruit personnel as well as provide staff training.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support

services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

C – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

Ancillary and Support Services

In Section I, page 67, the applicant identifies the necessary ancillary and support services for the proposed services. On pages 67-68, the applicant explains how each ancillary and support service is or will be made available. The applicant adequately demonstrates that the necessary ancillary and support services will be made available based on the following:

- The applicant discusses its experience in the provision of similar ancillary and support services at other facilities it owns and operates.
- The applicant provides the details of how the ancillary and support services will be provided based on how the company is structured.

Coordination

In Section I, page 68, the applicant describes its efforts to develop relationships with other local health care and social service providers and provides supporting documentation in Exhibit I-2. The applicant adequately demonstrates that the proposed services will be coordinated with the existing health care system based on the following:

- The applicant states other affiliated companies have an established presence in the area.
- The applicant provides letters of support from local physicians in Exhibit I-2.

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 all the reasons described above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

Ancillary and Support Services

In Section I, page 88, the applicant identifies the necessary ancillary and support services for the proposed services. On page 88, the applicant explains how each ancillary and support service will be made available and provides supporting documentation in Exhibit I.1. The applicant adequately demonstrates that the necessary ancillary and support services will be made available based on the following:

- The applicant identifies the necessary ancillary and support services.
- The applicant provides a proposed consulting contract that addresses how the necessary ancillary and support services will be provided.

Coordination

In Section I, pages 89-91, the applicant describes its efforts to develop relationships with other local health care and social service providers and provides supporting documentation in Exhibit I.2. The applicant adequately demonstrates that the proposed services will be coordinated with the existing health care system based on the following:

- The applicant provides details of the numerous attempts it has already made to develop relationships in the community.
- Documentation provided by the applicant shows the attempt to develop relationships with a wide variety of providers in the community.

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 all the reasons described above.

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

NA – Both Applications

Neither of the applicants 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, neither of the applicants 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 – Both Applications

- Neither of the applicants are an HMO. Therefore, Criterion (10) is not applicable to this review.
- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

C – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

In Section K, page 71, the applicant states the project involves construction of 62,100 square feet of new space in a two-story building. Floor plans are provided in Exhibit K.2.

On pages 73-74, the applicant identifies the proposed site and provides information about the current owner, zoning and special use permits for the site, and the availability of water, sewer and waste disposal, and power at the site. Supporting documentation is provided in Exhibit K.4. The site appears to be suitable for the proposed ACH facility based on the applicant's representations and supporting documentation.

On pages 71-72, the applicant adequately explains how the cost, design, and means of construction represent the most reasonable alternative for the proposal based on the following:

- The applicant states the proposed design of the facility will provide ample activity spaces for residents and to create a home-like and residential atmosphere for the patients.
- The applicant states it chose these factors to produce a high-quality facility that is cost-conscious and operationally efficient.
- The applicant states the cost to develop the facility is based on the architect's experience in designing similar facilities. Supporting documentation is provided in Exhibit K.3.

On page 72, the applicant adequately explains why the proposal will not unduly increase the costs to the applicant of providing the proposed services or the costs and charges to the public for the proposed services based on the following:

- The applicant states it chose certain design factors of the facility specifically because they will be cost-conscious and operationally efficient.
- The applicant states the projected charges are in line with similarly sized facilities owned and operated by affiliates of the applicant and that it has accounted for the period of development by inflating the charges to align with when the facility is projected to open.

On pages 72-73, the applicant identifies any applicable energy saving features that will be incorporated into the construction plans.

Conclusion

The Agency reviewed the:

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

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

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

In Section K, page 93, the applicant states that the proposed project involves constructing a new building with 30,000 square feet of space. Line drawings are provided in Exhibit K.1.

On pages 98-99, the applicant identifies the proposed site and provides information about the current owner, zoning and special use permits for the site, and the availability of water, sewer and waste disposal, and power at the site. Supporting documentation is provided in Exhibit K.4. The site appears to be suitable for the proposed ACH facility based on the applicant's representations and supporting documentation.

In Section K, pages 93-94, the applicant adequately explains how the cost, design, and means of construction represent the most reasonable alternative for the proposal based on the following:

- The applicant states the architect it chose to work with has extensive experience in designing and efficiently constructing affordable ACH facilities.
- The applicant states the architect it chose to work with is aware of fluctuating costs in construction materials and can adapt designs or make recommendations on substitutions that would keep costs low while still constructing a functional and attractive building.

In Section K, pages 94-97, the applicant adequately explains why the proposal will not unduly increase the costs to the applicant of providing the proposed services or the costs and charges to the public for the proposed services based on the following:

- The applicant states it committed to providing approximately 21 percent of its beds to Medicaid recipients. The applicant cannot control the reimbursement amount from Medicaid and thus the proposal would not increase costs to Medicaid recipients.
- The applicant states using affordable construction and energy efficient materials will allow operational efficiencies and the resulting savings will be passed along to residents.

On page 97, the applicant identifies any applicable energy saving features that will be incorporated into the construction plans.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

- Information publicly available during the review and used by the Agency

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

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

NA – Both Applications

Neither of 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 – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

Regarding any obligation to provide uncompensated care, community service, or access by minorities and persons with disabilities, in Section L, page 77, the applicant states that it has no such obligation.

In Section L, page 78, the applicant states that during the 18 months immediately preceding the application deadline, no patient civil rights access complaints have been filed against the facility or any similar facilities owned by the applicant or a related entity and located in North Carolina.

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.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

Regarding any obligation to provide uncompensated care, community service, or access by minorities and persons with disabilities, in Section L, page 103, the applicant states that it has no such obligation.

In Section L, page 103, the applicant states that there cannot have been any patient civil rights claims filed against it from the proposed facility, since it is not yet developed, and the facility where the ACH beds are originating from has been closed since 2018.

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.

- (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

NC – Kempton of Chatham
C – The Landings of Chatham Park

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

In Section L, pages 78-79, the applicant projects the following payor mix for the proposed services during the third full fiscal year of operation following completion of the project, as shown in the table below.

Kempton of Chatham – Projected Payor Mix – 3rd FY (FFY 2029)	
Payor Source	% of Patients
Self-Pay	75%
Medicaid	25%
Total	100%

As shown in the table above, during the third full fiscal year of operation, the applicant projects that 75 percent of total services will be provided to self-pay patients and 25 percent to Medicaid patients.

On page 78, the applicant provides the assumptions and methodology used to project payor mix during the third full fiscal year of operation following completion of the project. The applicant states:

“The Applicants utilized their prior experience operating the 4 stand-alone ACH facilities listed in Form O, but also their affiliated experience operating 36 NF’s (which include many combination facilities that also operate [ACH] beds) to estimate the projected payor sources during their third full FFY at Kempton of Chatham.”

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

- Comments submitted during the public comment period state that the projected payor mix is not reasonable or adequately supported because the applicant’s existing ACH facilities (excluding Louisburg Manor, which was not addressed) serve few to no Medicaid patients, based on data provided by the applicant to the Agency on annual LRAs.

In its response to those comments, the applicant states that its projections are based not only on those four ACH facilities, “...but also 36 NF (most of which are combination which include ACH beds) facilities in North Carolina.” The applicant further states that during FFY 2020, it provided 24,335 days of care to Medicaid patients, which was 16 percent of the total ACH days of care at all Liberty facilities with ACH beds.

As discussed previously, the applicant owns, operates, or manages 34 SNFs in North Carolina, and 18 of those are combination SNFs, many of which were acquired in recent years. The discussion regarding which facilities the applicant or an affiliate of the applicant owns, operates, and/or manages and when they were acquired, found in Criterion (3), is incorporated herein by reference. Publicly available information provided to the Agency by the applicant shows that, of those 18 combination SNFs:

- Two facilities (Briar Creek Health Center and Swift Creek Health Center) are extremely new with limited data.
- Two other facilities (Bermuda Commons Nursing & Rehabilitation Center in Davie County and Parkview Health & Rehabilitation Center in Orange County) did not report providing any days of care to any ACH patients on their 2019 - 2021 LRAs.

- Four other facilities that did serve ACH patients did not provide any days of care to Medicaid recipients in the three years covered by their 2019 – 2021 LRAs. A fifth facility reported providing no days of care to Medicaid recipients on its 2019 and 2021 LRA and reported providing 0.2 percent of days of care to Medicaid recipients on its 2020 LRA.
- Almost all of the days of care the applicant provided to ACH patients that were Medicaid recipients were provided at eight facilities and almost none of the days of care provided to Medicaid recipients were provided at the remaining facilities.
- Facilities that were part of CCRCs or “life plan communities” provided the least amount of days of care to ACH patients that were paid for by Medicaid. Other senior retirement communities, such as The Terrace at Brightmore of South Charlotte, which are not CCRCs but cater to more affluent seniors, also provided very few days of care to Medicaid recipients. The proposed facility seems to be potentially part of either a CCRC or a senior retirement community being developed. The discussion regarding the site plans for the property and adjacent properties found in Criterion (4) is incorporated herein by reference. The applicant plans senior apartments and a combination SNF on an adjacent property. The applicant’s own data provided to the Agency on the number of days of care paid for by Medicaid that it provides to ACH patients living at CCRCs or in “life plan communities” calls into question the applicant’s projected payor mix.

The applicant may indeed have extensive experience on which it relies in making projections about the future payor mix that would explain why the projections differ from publicly available historical data; however, because the applicant did not provide anything in the application as submitted to support the projections it made or to provide information about the experiences it was relying upon in making these projections, the applicant does not demonstrate that the projected payor mix is based on reasonable and adequately supported assumptions.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Comments submitted during the public comment period
- Responses to comments
- Information publicly available during the review and used by the Agency

Based on that review, the Agency concludes that the application is not conforming to this criterion for all the reasons described above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In Section L, pages 103-104, the applicant projects the following payor mix for the proposed services during the third full fiscal year of operation following completion of the project, as shown in the table below.

Landings of Chatham – Projected Payor Mix – 3rd FY (FFY 2028)	
Payor Source	% of Patients
Self-Pay	78.9%
Medicaid	21.1%
Total	100.0%

As shown in the table above, during the third full fiscal year of operation, the applicant projects that 78.9 percent of total services will be provided to self-pay patients and 21.1 percent to Medicaid patients.

On page 104, the applicant provides the assumptions and methodology used to project payor mix during the third full fiscal year of operation following completion of the project. The projected payor mix is reasonable and adequately supported based on the following:

- The applicant states it will offer 12 of the 57 ACH beds to Medicaid recipients and 45 ACH beds to self-pay residents.
- The applicant states it calculated the percentages for the payor mix by dividing the number of beds in each category by the total number of beds.

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 all the reasons described above.

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

C – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

In Section L, page 80, the applicant adequately describes the range of means by which patients will have access to the proposed services.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In Section L, page 105, the applicant adequately describes the range of means by which patients will have access to the proposed services.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

- (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 – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

In Section M, page 81, the applicant describes the extent to which health professional training programs in the area will have access to the facility for training purposes and provides supporting documentation in Exhibit M.1. The applicant adequately demonstrates that health professional training programs in the area will have access to the facility for training purposes based on the following:

- The applicant states that it is an established organization with healthcare facilities located around North Carolina and has an extensive network of connections with health professional training programs.
- In Exhibit M.1, the applicant provides documentation of its outreach to local health professional training programs.

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 all the reasons described above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

In Section M, page 106, the applicant describes the extent to which health professional training programs in the area will have access to the facility for training purposes and provides supporting documentation in Exhibit M.1. The applicant adequately demonstrates that health professional training programs in the area will have access to the facility for training purposes based on the following:

- The applicant states that it encourages partnerships with local health professional training programs and plans to continue to build collaborative relationships with such programs because they offer benefits to both the training programs and the residents of the facility.
- The applicant has identified Central Carolina Community College as a potential local health professional training program to collaborate with and explains why the courses offered at Central Carolina Community College would be well-suited for collaboration.
- In Exhibit M.1, the applicant provides documentation of its outreach to and discussions with Central Carolina Community College.

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 all the reasons described above.

- (15) Repealed effective July 1, 1987.
- (16) Repealed effective July 1, 1987.
- (17) Repealed effective July 1, 1987.
- (18) Repealed effective July 1, 1987.

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

NC – Kempton of Chatham
 C – The Landings of Chatham Park

On page 175, the 2021 SMFP defines the service area for ACH beds as “... *the county in which the adult care home bed is located. Each of the 100 counties is a separate service area.*” Thus, the service area for this facility is Chatham County. Facilities may also serve residents of counties not included in their service area.

Table 11A on page 183 and Table 11E on page 213 of the 2021 SMFP show a total of 453 existing and approved ACH beds in five existing and approved ACH facilities and two existing and approved combination SNFs in Chatham County. There are 91 ACH beds which are excluded from the planning inventory because they are part of CCRCs. The table below summarizes the existing and approved facilities and ACH beds as shown in the 2021 SMFP.

Chatham County Inventory of Existing/Approved ACH Beds				
Facility	# of Beds	CON Adjustments	CCRC Exclusions	Planning Inventory
Cambridge Hills of Pittsboro	90	0	0	90
Carolina Meadows Fairways	95	0	0	95
Chatham County Rehabilitation Center	0	36	0	36
Chatham Ridge Assisted Living	91	0	0	91
Coventry House of Siler City	86	0	0	86
Pittsboro Christian Village	40	0	40	0
The Arbor	51	0	51	0
Total	453	36	91	398

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

Regarding the expected effects of the proposal on competition in the service area, in Section N, page 82, the applicant states:

“The proposed project will have a positive effect on competition in the area, as the demand for these 69 ACH beds may encourage other facilities with poor utilization in Chatham County to improve their current situations in order to compete with the proposed project. It will also allow for additional options within Chatham County.”

Regarding the impact of the proposal on cost effectiveness, in Section N, page 82, the applicant states it considered factors in developing the design of the facility that will result in a high-quality facility while being cost-conscious and operationally efficient.

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

Regarding the impact of the proposal on quality, in Section N, page 82, the applicant states:

“Approval of this CON would allow Kempton of Chatham to develop a state-of-the-art AL facility for the current and future residents of Chatham County. The safety and quality policies and procedures currently followed by Liberty would continue at the proposed Kempton of Chatham. Liberty places a strong focus on the performance improvement and patient safety and makes every effort to ensure safe, positive patient outcomes and process standardization across the organization.”

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

Regarding the impact of the proposal on access by medically underserved groups, in Section N, page 83, the applicant states:

“Kempton of Chatham will afford equal treatment and access to its services for all persons, without discrimination due to race, color, religion, sex, age, marital status, national origin, sexual orientation, ancestry, or disability, or any other factor that would classify a resident as underserved. Additionally, Kempton of Chatham has projected serving 25% State-County Special Assistance/Medicaid days of care.”

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

However, the applicant does not adequately demonstrate the proposal would have a positive impact on cost-effectiveness because the applicant does not adequately demonstrate:

- The need the population to be served has for the proposal. The discussions regarding need and projected utilization found in Criterion (3) are incorporated herein by reference. A proposal

that does not demonstrate the need the population to be served has for the proposal cannot demonstrate that the proposal would have a positive impact on cost-effectiveness.

- That the proposal would not result in an unnecessary duplication of existing and approved health services. The discussion regarding unnecessary duplication found in Criterion (6) is incorporated herein by reference. A proposal that does not demonstrate that it is not unnecessarily duplicative cannot demonstrate that the proposal would have a positive impact on cost-effectiveness.
- That projected revenues and operating costs are reasonable. The discussions regarding projected utilization and projected revenues and operating costs found in Criterion (3) and Criterion (5), respectively, are incorporated herein by reference. A proposal that cannot demonstrate that its projected revenues and operating costs are reasonable cannot demonstrate that the proposal would have a positive impact on cost-effectiveness.

Conclusion

The Agency reviewed the:

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

Based on that review, the Agency concludes that the application is not conforming to this criterion based on all the reasons described above.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

Regarding the expected effects of the proposal on competition in the service area, in Section N, page 107, the applicant states:

“The proposed Project will have a positive effect on competition in the area, as the demand for these 57 ACH beds may encourage other facilities with poor utilization in Chatham County to improve their current situations to compete with the proposed Project, thereby encouraging greater efficiencies and better quality of care all around. It will also allow for a truly distinctive ACH placement option within Chatham County especially for Medicaid/Special Assistance recipients—and increase choices for area seniors in a county with few existing options.”

Regarding the impact of the proposal on cost effectiveness, in Section N, pages 107-108, the applicant states:

“The proposed Project anticipates offering rates that are very competitive to those surrounding facilities, while still offering reasonable rates for private pay residents, allowing the facility to maintain excellent utilization.

...

The Applicants and ALG Senior LLC share a commitment to providing affordable housing options for seniors in need of assisted living services, while maintaining a [sic] excellent care and quality offerings. ..., the Applicants expect that their minimum and maximum rates for an assisted living studio will outperform the 2019 market averages by \$376.56 and \$1,109.89, respectively. ...

...

The proposed Project has been designed to minimize construction costs in an effort to keep rates low while still offering premium services. While the costs may be higher for this project than for other projects on which ALG Senior LLC has collaborated in the past, much of this increased cost relates to the increased cost of building materials and labor due to COVID-19. The Applicants were careful to ensure that cost overruns can be avoided in future by taking the higher current costs of construction into account.

..., the Project proposes to offer a portion of its ACH beds (approximately 21% of the 57 ACH beds, or 12 beds) to Medicaid/Special Assistance residents at Medicaid/Special Assistance room and board rates. The Medicaid/Special Assistance beds are expected to be in high demand given that they will all be in private rooms in a brand new, state of the art facility (it is more typical to find Medicaid beds in semi-private rooms). Full bed utilization, achieved through reasonable private payor rates and high demand Medicaid placements, will contribute to the overall cost effectiveness of the Project. The affordable rates at The Landings of Chatham Park will encourage competitors to examine their rates to keep them competitive.”

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

Regarding the impact of the proposal on quality, in Section N, pages 108-109, the applicant states:

“A commitment to ‘best practices’ in the areas of Personal Care Services, Pharmacy Services & Medication Administration, as well as overall resident care, will be overseen by an experienced Quality Assurance (“QA”) team within ALG Senior LLC, The QA team is overseen by ALG’s Senior Vice President of Clinical Services and performs a comprehensive review of all operating systems at ALG-supported communities, including Administrative, Clinical, Dining, Environmental, Human Resources (Personnel) and Programming. QA staff will make regular monthly visits to the Facility to assure compliance with State regulations, and to check delivery systems to ensure ongoing safety and quality of care. QA staff will provide consultation and staff training on a continuous basis.

..., clinical and care operations of the Facility will be overseen by a Divisional Vice President of Operations (DVPO) and a Divisional Director of Clinical Services (DDCS) to ensure consistent delivery of care and services. Furthermore, the Facility will hire a Director of Resident Care (DRC), to oversee the clinical components of daily operations, ...; and a Resident Care Coordinator (RCC), to oversee scheduling and direct care staff in the community.”

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

Regarding the impact of the proposal on access by medically underserved groups, in Section N, page 109, the applicant states:

“.... Persons whose health, habilitative, or rehabilitative needs cannot be met by the services offered in the facility will not be admitted.

Otherwise, all persons will be admitted to the facility without regard to their race, color, creed, age, national origin, [disability], sex, or source of payment. The Applicants propose to provide Medicaid/Special Assistance to approximately 12 of the 57 ACH beds proposed in the Project.

The Applicants intend that The Landings of Chatham Park will provide excellent service to many residents who are members of underprivileged or minority groups that are traditionally underserved.”

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

The applicant adequately describes the expected effects of the proposed services on competition in the service area and adequately demonstrates the proposal would have a positive impact on cost-effectiveness, quality, and access because the applicant adequately demonstrates that:

- 1) The proposal is cost effective because the applicant adequately demonstrated: a) the need the population to be served has for the proposal; b) that the proposal would not result in an unnecessary duplication of existing and approved health services; and c) that projected revenues and operating costs are reasonable.
- 2) Quality care would be provided based on the applicant’s representations about how it will ensure the quality of the proposed services and the applicant’s record of providing quality care in the past.
- 3) Medically underserved groups will have access to the proposed services based on the applicant’s representations about access by medically underserved groups and the projected payor mix.

Conclusion

The Agency reviewed the:

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

Based on that review, the Agency concludes that the application is conforming to this criterion based on all the reasons described above.

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

C – Both Applications

Project ID #J-12055-21/Kempton of Chatham/Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility

The applicant proposes to develop Kempton of Chatham, a new 69-bed ACH facility, via a change in scope for Project ID #J-11656-19 (12 ACH beds), by relocating 30 ACH beds from Hyde County, and by relocating 27 ACH beds from Johnston County.

On Form O in Section Q, the applicant identifies the ACH facilities located in North Carolina that are owned, operated, or managed by the applicant or a related entity. The applicant identifies a total of four ACH facilities located in North Carolina. A fifth ACH facility in Franklin County was not listed on Form O.

In Section O, pages 85-86, the applicant states that, during the 18 months immediately preceding the submittal of the application, no facility received a state administrative action that included the imposition of a Type A or an unabated violation, the summary suspension of a license, or the revocation of a license. After reviewing and considering information provided by the applicant and considering the quality of care provided at all five ACH facilities, the applicant provided sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion.

Project ID #J-12074-21/The Landings of Chatham Park/Relocate 57 ACH beds to Chatham County and develop a new ACH facility

In a change of scope for Project ID #L-11818-19, the applicant proposes to relocate 57 existing ACH beds from Edgecombe County to Chatham County and develop a new ACH facility. The remaining 9 ACH beds from Project ID #L-11818-19 will remain in Edgecombe County.

In Exhibits A.6 and O.7, the applicant identifies the ACH facilities located in North Carolina that are owned, operated, or managed by the applicant or a related entity. The applicant identifies a total of 85 operational ACH facilities located in North Carolina.

In Section O, page 112, and in Exhibit O.7, the applicant states that, during the 18 months immediately preceding the submittal of the application, 16 facilities received a state administrative action that included the imposition of a Type A or an unabated violation, the

summary suspension of a license, or the revocation of a license. On page 112 and in Exhibit O.7, the applicant states all facilities are fully back in compliance. After reviewing and considering information provided by the applicant and considering the quality of care provided at all 85 ACH facilities, the applicant provided sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion.

(21) Repealed effective July 1, 1987.

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

C – Both Applications

The Criteria and Standards for Nursing Facility or Adult Care Home Services promulgated in 10A NCAC 14C .1100 are applicable to both applicants in this review. The specific criteria are discussed below.

SECTION .1100 – CRITERIA AND STANDARDS FOR NURSING FACILITY OR ADULT CARE HOME SERVICES

10A NCAC 14C .1102 PERFORMANCE STANDARDS

(a) *An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.*

-NA- **Both Applicants.** Neither applicant is proposing to add NF 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- **Both Applicants.** Neither applicant is proposing to establish a new SNF or add NF 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- **Both Applicants.** Neither applicant is proposing to add ACH 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.*
- C- **Kempton of Chatham.** On Form C in Section Q, the applicant projects that the proposed ACH facility will have an occupancy rate of at least 85 percent by the end of the second operating year following project completion. The applicant provides the assumptions and methodology to project utilization in Section Q. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.
- C- **Landings of Chatham Park.** On Form C in Section Q, the applicant projects that the proposed ACH facility will have an occupancy rate of at least 85 percent by the end of the second operating year following project completion. The applicant provides the assumptions and methodology to project utilization in Section Q. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

COMPARATIVE ANALYSIS

Pursuant to Policy LTC-2 in the 2021 SMFP, no more than 57 ACH beds may be relocated to Chatham County from other North Carolina counties in this review. Because the two applications in this review propose to relocate a combined total of 114 ACH beds to Chatham County, both applications cannot be approved as submitted. Therefore, after considering all the information in each application and reviewing each application individually against all applicable statutory and regulatory review criteria, the Project Analyst conducted a comparative analysis of the proposals to decide which proposal should be approved.

Below is a brief description of each project included in this review.

- Project I.D. #J-12055-21 /**Kempton of Chatham** / Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility
- Project I.D. #J-12074-21 /**The Landings of Chatham Park** / Relocate 57 ACH beds to Chatham County and develop a new 57-bed ACH facility

Conformity with Statutory and Regulatory Review Criteria

An application that is not conforming or conforming as conditioned with all applicable statutory and regulatory review criteria cannot be approved.

The application submitted by **The Landings of Chatham Park** is conforming to all applicable statutory and regulatory review criteria. However, the application submitted by **Kempton of Chatham** is not conforming to all applicable statutory and regulatory review criteria. Therefore, regarding this comparative factor, the application submitted by **The Landings of Chatham Park** is a more effective alternative.

Scope of Services

Generally, the application offering the greater scope of services is the more effective alternative for this comparative factor.

Kempton of Chatham proposes to develop a new 69-bed ACH facility and does not propose to develop any of the beds as Special Care Unit (SCU) beds. **The Landings of Chatham Park** proposes to develop a new 57-bed ACH facility and does not propose to develop any of the beds as SCU beds.

Both applicants propose to offer the same scope of services. Therefore, regarding this comparative factor, both applications are equally effective alternatives.

Historical Utilization

Generally, regarding this comparative factor, an existing provider with higher historical utilization rates is the more effective alternative based on an assumption that that provider has a greater need for the proposed ACH beds in order to serve its projected patients.

Kempton of Chatham is not an existing facility and neither the applicant nor any affiliated entities have any other existing ACH beds in Chatham County. The applicant was previously approved to develop 36 ACH beds as part of a combination SNF; however, that facility has not been developed as of the date of these findings.

The Landings of Chatham is not an existing facility and neither the applicant nor any affiliated entities have any other existing ACH beds in Chatham County.

Neither of the facilities in this application are existing facilities and neither of the applicants nor any of their affiliates have existing ACH beds in Chatham County. Therefore, regarding this comparative factor, both applications are equally effective alternatives.

Geographic Accessibility (Location within the Service Area)

Chatham County has four incorporated towns and many unincorporated communities. The vast majority of Chatham County is unincorporated. Chatham County is divided into 13 townships. Please see the Working Papers for a map of Chatham County townships.

The following table illustrates where in the service area the existing and approved ACH beds are or will be located.

Chatham County Existing and Approved ACH Beds				
Facility	Township	# ACH Beds	CCRC?	Combination NF?
Cambridge of Pittsboro	Center	90	No	No
Carolina Meadows Fairways	Williams	95	No	No
Chatham County Rehabilitation Center	Williams	36	?	Yes
Chatham Ridge Assisted Living	Baldwin	91	No	No
Coventry House of Siler City	Matthews	86	No	No
Pittsboro Christian Village	Baldwin	40	Yes	No
The Arbor	Williams	51	Yes	Yes

Sources: Tables 11A and 11E, 2021 SMFP; Chatham County Land Records Viewer (ARCGIS)

As illustrated in the table above, there are only four townships in Chatham County that have ACH beds. Williams Township has three facilities with ACH beds and a total of 182 existing and approved ACH beds. Baldwin Township has two facilities with ACH beds and a total of 131 existing and approved ACH beds. Center Township has one facility 90 existing and approved ACH beds. Finally, Matthews Township has one facility with 86 existing and approved ACH beds.

The following table has the same information as the table above but is sorted by township and includes the location of where each application proposes to develop ACH beds.

Chatham County Existing and Approved ACH Beds (including proposed ACH beds)				
Facility	Township	# ACH Beds	CCRC?	Combination NF?
Carolina Meadows Fairways	Williams	95	No	No
Chatham County Rehabilitation Center*	Williams	24	?	Yes
The Arbor	Williams	51	Yes	Yes
Kempton of Chatham*	Williams	69	?	No
Chatham Ridge Assisted Living	Baldwin	91	No	No
Pittsboro Christian Village	Baldwin	40	Yes	No
Cambridge of Pittsboro	Center	90	No	No
The Landings of Chatham Park	Center	57	No	No
Coventry House of Siler City	Matthews	86	No	No

Sources: Project ID #s J-12055-21 and J-12074-21; Tables 11A and 11E, 2021 SMFP; Chatham County Land Records Viewer (ARCGIS)

*The previous table listed the 36 ACH beds approved to be developed at Chatham County Rehabilitation Center; because Kempton of Chatham proposes to develop 12 of those 36 approved ACH beds, this table moves the 12 ACH beds to Kempton of Chatham instead of keeping them with Chatham County Rehabilitation Center.

As shown in the table above, **Kempton of Chatham** proposes to develop a 69-bed ACH facility in Williams Township (and immediately adjacent to Chatham County Rehab). This would result in four existing and approved facilities with ACH beds in Williams Township and a total of 239 existing and approved ACH beds in Williams Township.

As shown in the table above, **The Landings of Chatham Park** proposes to develop a 57-bed ACH facility in Center Township. This would result in two existing and approved facilities with ACH beds in Center Township and a total of 147 existing and approved ACH beds in Center Township.

Kempton of Chatham proposes to develop a 69-bed ACH facility in a township which already has three other existing and approved facilities with ACH beds and proposes to develop the facility immediately adjacent to an approved facility with ACH beds. **The Landings of Chatham Park** proposes to develop a 57-bed ACH facility in a township which currently has only one existing and approved ACH facility.

Therefore, regarding this comparative factor, the application submitted by **The Landings of Chatham Park** is a more effective alternative.

Access by Service Area Residents

The 2021 SMFP defines the service area for ACH beds as “... *the county in which the adult care home bed is located. Each of the 100 counties is a separate service area.*” Thus, the service area for this review is Chatham County. Facilities may also serve residents of counties not included in their service area. Generally, regarding this comparative factor, the application projecting to serve the largest number of service area residents is the more effective alternative based on the assumption that residents of a service area should be able to derive a benefit from a need determination for additional ACH beds in the service area where they live.

The following table illustrates access by service area residents during the third full fiscal year following project completion.

Number & Percentage of Service Area Residents Projected to be Served – FY 3			
Facility	# of Chatham County Residents	Total # of Residents	% of Total Residents
Kempton of Chatham	60	64	93.8%
The Landings of Chatham Park	39	55	70.9%

Sources: Project ID #J-12055-21, Section C, pages 31-32; Project ID #J-12074-21, Section C, page 45

As shown in the table above, **Kempton of Chatham** projects to serve both the highest number of service area residents and the highest percentage of service area residents during the third full fiscal year following project completion. Therefore, regarding this comparative factor, the application submitted by **Kempton of Chatham** is a more effective alternative.

Access by Underserved Groups

Underserved groups are defined in G.S. 131E-183(a)(13) as follows:

“Medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and ... persons [with disabilities], which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority.”

Medicare does not cover ACH services and will not be discussed in the comparative analysis.

Projected Charity Care

Neither **Kempton of Chatham** nor **The Landings of Chatham Park** project to provide any charity care to any of the ACH patients they propose to serve. Therefore, regarding this comparative factor, both applications are equally effective alternatives.

Projected Medicaid

The following table compares projected access by Medicaid recipients in the third full fiscal year following project completion for each facility using the following metrics: number of Medicaid recipients served, and Medicaid recipients served as a percentage of total patients served.

Chatham County ACH Review – Projected Medicaid - # of Patients & % of Total Patients		
Facility	# of Projected Medicaid Patients	% of Total Patients
Kempton of Chatham	16	25.0%
The Landings of Chatham Park	12	21.1%

Sources: Project ID #J-12055-21, Section L, pages 78-79; Project ID #J-12074-21, Section L, pages 103-104

As shown in the table above, **Kempton of Chatham** projects to serve a higher number of Medicaid recipients and a higher percentage of Medicaid recipients than **The Landings of Chatham Park**. Generally, the application projecting to serve a larger number of Medicaid recipients is the more effective alternative for this comparative factor. However, it appears that the applicants did not perform the calculations in a way that makes them directly comparable. For example, **The Landings of Chatham Park** states that it calculated its projected payor mix percentages by dividing the number of ACH beds it

projects to reserve for Medicaid recipients – 12 – by the total number of ACH beds. However, it appears **Kempton of Chatham** did not calculate its projected payor mix percentages served in the same way, because dividing the number of Medicaid recipients projected to be served by **Kempton of Chatham** – 16 – by the total number of ACH beds – 69 – does not equal 25 percent (16 Medicaid recipients / 69 ACH beds = 23.2%). Further, the payor mix projected by **Kempton of Chatham** in its application was questionable.

Because of the apparent differences in calculation methods used by the different applicants and because of the questions about the projections made by **Kempton of Chatham**, this comparative factor is of little value.

Competition (Access to a New or Alternate Provider)

The following table illustrates the existing and approved providers located in the service area. Generally, the introduction of a new provider in the service area would be the most effective alternative based on the assumption that increased patient choice would encourage all providers in the service area to improve quality or lower costs in order to compete for patients. However, the expansion of an existing provider that currently controls fewer ACH beds than another provider would also presumably encourage all providers in the service area to improve quality or lower costs in order to compete for patients.

Chatham County Inventory of Existing/Approved ACH Beds				
Facility	# of Beds	CON Adjustments	CCRC Exclusions	Planning Inventory
Cambridge Hills of Pittsboro	90	0	0	90
Carolina Meadows Fairways	95	0	0	95
Chatham County Rehabilitation Center	0	36	0	36
Chatham Ridge Assisted Living	91	0	0	91
Coventry House of Siler City	86	0	0	86
Pittsboro Christian Village	40	0	40	0
The Arbor	51	0	51	0
Total	453	36	91	398

Kempton of Chatham and Chatham County Rehabilitation Center are both Liberty facilities. While Chatham County Rehabilitation Center is not yet operational, it has been approved to develop ACH beds in Chatham County since 2019.

The Landings of Chatham Park does not have any common ownership interests with any other existing and approved facility with ACH beds in Chatham County and no affiliated entities of the applicant for **The Landings of Chatham Park** have any ownership or operational interest in any other existing and approved facility with ACH beds in Chatham County.

Therefore, regarding this comparative factor, **The Landings of Chatham Park** is a more effective alternative.

Projected Average Net Revenue per Patient Day

The following table compares projected average net revenue per patient day in the third full fiscal year following project completion for each facility. Generally, regarding this factor, the application

proposing the lowest average net revenue per patient day is the more effective alternative since a lower average may indicate a lower cost to the patient or third-party payor.

Average Net Revenue per Patient Day – 3rd Full FY			
Applicant	Total # of Patient Days	Net Revenue	Average Net Revenue per Patient Day
Kempton of Chatham	23,360	\$5,007,393	\$214
The Landings of Chatham Park	20,130	\$2,673,029	\$133

Sources: Project ID #s J-12055-21 and J-12074-21, Forms C.1b and F.2b

As shown in the table above, **The Landings of Chatham Park** projects the lowest average net revenue per patient day in the third full fiscal year following project completion. Therefore, regarding this comparative factor, the application submitted by **The Landings of Chatham Park** is a more effective alternative.

Projected Average Operating Expense per Patient Day

The following table compares projected average operating expense per patient day in the third full fiscal year following project completion for each facility. Generally, regarding this factor, the application proposing the lowest average operating expense per patient day is the more effective alternative since a lower average may indicate a lower cost to the patient or third-party payor or a more cost-effective service.

Average Operating Expense per Patient Day – 3rd Full FY			
Applicant	Total # of Patient Days	Operating Expense	Average Operating Expense per Patient Day
Kempton of Chatham	23,360	\$3,749,312	\$161
The Landings of Chatham Park	20,130	\$2,384,325	\$118

Sources: Project ID #s J-12055-21 and J-12074-21, Forms C.1b and F.2b

As shown in the table above, **The Landings of Chatham Park** projects the lowest average operating expense per patient day in the third full fiscal year following project completion. Therefore, regarding this comparative factor, the application submitted by **The Landings of Chatham Park** is a more effective alternative.

Number of Private Beds as a Percentage of Total Beds

Even before the global pandemic, the ACH facility market was shifting away from the use of semi-private rooms and moving toward more private rooms. Project ID #L-11818-19, the ALG Senior application proposed to undergo a change of scope as part of this review, was undertaken to create two facilities with mostly private rooms rather than to keep all the ACH beds at a newly renovated facility with mostly semi-private rooms. Further, in responses to comments received during the public comment period, Liberty stated that there is a high demand for private rooms in the current market. The ongoing global pandemic has only increased the need for more private rooms for senior residents.

The following table compares the number of private beds as a percentage of total beds. Generally, the applicant proposing the highest number of private beds as a percentage of total beds is the more effective alternative to the extent that it reflects the changes in the market as desired by consumers.

Number of Private Beds as a Percentage of Total Beds			
Applicant	Total # of Beds	# of Private Beds	Private Beds as % of Total Beds
Kempton of Chatham	69	29	42%
The Landings of Chatham Park	57	57	100%

Sources: Project ID #J-12055-21, Section K, page 71, and Exhibit K.2; Project ID #J-12074-21, Section K, page 93, and Exhibit K.1

As shown in the table above, **The Landings of Chatham Park** projects to offer the highest number of private beds as a percentage of total beds. Therefore, regarding this comparative factor, the application submitted by **The Landings of Chatham Park** is a more effective alternative.

History of Project Development

The parent entities of both **Kempton of Chatham** and **The Landings of Chatham Park** have histories of issues with project development, and both applicants suggested in public comments or responses to public comments that the history of issues with project development for the opposing applicant was a problem in this review.

Liberty

Liberty has a history of being approved to develop a proposed project, only to later change the scope by adding or reducing the number of beds, either via a new application or a request for material compliance. While it does develop many of the facilities it applies to develop, other facilities take significant amounts of time with little documentation or reason to explain the delays. Below are some examples.

Project ID #G-10216-13

A certificate of need was issued for Project ID #G-10216-13 on March 28, 2014, to relocate 100 NF beds from one facility to develop a new facility in Forsyth County. According to progress reports submitted to the Agency, there had been no progress toward the development of this project beyond the purchase of land for several years, and Liberty stated repeatedly that it had put the project on hold to focus on a different project. After the Agency initiated procedures to withdraw the certificate of need, Liberty admitted to the Agency it had too many projects under development at once and needed to put this one on hold for a bit. The Agency approved a timetable extension; however, in November 2019, Liberty submitted three applications proposing to relocate the beds again:

- G-11802-19 proposed to relocate 18 NF beds to Summerstone in Forsyth County
- J-11803-19 proposed to relocate 49 NF beds to develop a new SNF in Durham County
- G-11809-19 proposed to relocate 33 NF beds to The Oaks in Forsyth County

All three applications were issued certificates of need on March 31, 2020 and are on hold due to the global pandemic.

Despite that, Liberty submitted Project ID #J-12056-21 to relocate eight additional NF beds from Alamance County to the approved but not yet developed SNF in Durham County. Project ID #J-12056-21 is itself a change of scope for Project ID #G-11854-20, which proposed to relocate 32 NF beds

from a facility unrelated to Liberty to Liberty Commons Nursing & Rehabilitation of Alamance County. Another application, B-12054-21, further proposed to change the scope of G-11854-20, by relocating 14 NF beds to Pisgah Manor Health Care Center in Buncombe County.

F-11461-18

As discussed in the findings for Liberty's application, Project ID #F-11461-18 was a change of scope for Project ID #J-11378-17. Project ID #J-11378-17 was originally approved to relocate 25 NF beds to the approved but not yet developed Chatham County Rehab. Shortly after that certificate of need was issued, Liberty requested a material compliance determination that would allow it to relocate only 15 NF beds to Chatham County and the remaining 10 NF beds to Mecklenburg County. A certificate of need was issued for Project ID #F-11461-18 on June 22, 2018.

Shortly after, Liberty filed Project ID #F-11607-18, proposing to relocate 12 ACH beds to the approved but not yet developed facility. A certificate of need was issued for Project ID #F-11607-18 on April 30, 2019. On July 11, 2019 – just over two months later – Liberty filed Project ID #s F-11729-19 and F-11730-19, proposing to relocate the 12 ACH beds to two different facilities. Certificates of need for those projects were issued on October 29, 2019.

There had been no documented progress made toward development of this facility when the global pandemic put everything on hold. Despite that, Liberty filed Project ID #F-12022-21, proposing to relocate an additional 17 NF beds to the approved but not yet developed facility in Mecklenburg County, and a certificate of need was issued on June 29, 2021.

O-11069-15 and O-11187-16

A certificate of need was issued for Project ID #O-11069-15 on July 1, 2016, approving the development of a new 110-bed ACH facility in Brunswick County. Based on progress reports submitted by Liberty to the Agency, the only progress that had been made prior to the global pandemic was submitting construction drawings for review.

A certificate of need was issued for Project ID #O-11187-16 on January 6, 2017, approving the development of a combination SNF with 64 NF beds and 32 ACH beds in Brunswick County. Based on progress reports submitted by Liberty to the Agency, as with Project ID #O-11069-15, the only progress that had been made prior to the global pandemic involved construction drawings.

The global pandemic brought everything to a standstill. Despite that, on July 15, 2021, Liberty filed Project ID #O-12095-21, proposing to combine the two facilities approved in Project ID #s O-11069-15 and O-11187-16 into a single facility.

O-10366-14

A certificate of need was issued for Project ID #O-10366-14 on October 22, 2015, approving the relocation of NF beds in New Hanover County to another existing facility in New Hanover County. Based on progress reports submitted by Liberty to the Agency, there was no documented progress toward development through 2017 and then "poor market conditions" were the reason for further requests for extensions. In June 2018, Liberty requested a five-year extension on the development

timetable for this project; only a three-year extension was approved.

On July 16, 2018, Liberty filed Project ID #O-11542-18, proposing to take the NF beds approved to be relocated in Project ID #O-10366-14 and combine them with other NF beds to be relocated to create an entirely new facility. A certificate of need was issued on January 29, 2019, and the timetable projects development will be complete in October 2023 – in other words, the five-year extension Liberty had previously sought and was denied. Prior to the global pandemic, the only documented progress was a search for an architect.

J-10316-14

A certificate of need was issued on March 5, 2015 for Project ID #J-10316-14, proposing to relocate 20 ACH beds to an existing facility in Lee County. Progress reports submitted by Liberty to the Agency show requested extensions for delays due to marketing considerations and repeated attempts by the Agency to obtain required progress reports with no response from Liberty. Based on the most recent progress report submitted to the Agency on July 1, 2021 – more than two years after the last progress report – delays were caused by HUD approval and management changes and Liberty is now reassessing the viability of the project.

Despite the history of issues with project development, Liberty has developed and licensed facilities and projects along the way as well. In recent years, Liberty has licensed the following brand-new facilities:

- Briar Creek Health Center
- Swift Creek Health Center
- Bradley Creek Health Center
- The Terrace at Brightmore of South Charlotte
- Summerstone Health & Rehabilitation Center (replacement facility)

Liberty has also licensed projects that added onto the following existing facilities in recent years:

- Bradley Creek Health Center (after originally licensed)
- Summerstone Health & Rehabilitation Center (after originally licensed)
- Cross Creek Health Care

ALG Senior

ALG Senior's history of issues with project development are well-documented.

ALG Senior has been the subject of 10 withdrawals of certificates of need. In some cases, certificates were withdrawn for the same project multiple times. Project ID #A-8084-08 had its certificate withdrawn and rescinded twice before the final time the certificate was withdrawn.

In other cases, certificates were withdrawn after ALG Senior failed to communicate with the Agency about project development (or lack thereof) and the Agency discovered through publicly available information that ALG Senior was not in material compliance with the conditions imposed by the certificates of need. In one example, ALG Senior repeatedly failed to provide the Agency with

progress reports for Project ID #E-10289-14, despite multiple requests from the Agency. The certificate was eventually withdrawn after the Agency became aware through a news article that ALG Senior was attempting to sell the facility it was proposing to renovate and develop and the related property.

Liberty's response to comments submitted by ALG Senior noted that Project ID #L-11818-19 had originally been denied due to the history of failure to develop projects. In fact, numerous applications filed by ALG Senior were denied because of ALG Senior's failure to develop previous projects and the failure to demonstrate that a project that may or may not be developed was an effective alternative.

After ALG Senior had multiple applications denied due to its failure to develop projects, it entered into a settlement agreement with the Agency that covered multiple applications and projects. As part of that settlement agreement, ALG Senior withdrew several applications it had submitted for review and has been providing information to the Agency on an ongoing basis about the status of its projects under development.

Despite the history of issues with project development, ALG Senior is actively developing the following facilities that were the subject of potential adverse actions in recent years:

- The Landings of Reidsville (anticipated completion date in 2022)
- The Landings of Chestnut Grove (has certificate of occupancy from the county)

ALG Senior has also licensed the following new facilities since the beginning of 2020:

- The Landings of Cabarrus
- The Landings at Smithfield
- The Landings of Swansboro
- The Landings of Lake Gaston
- The Landings of Albemarle
- The Landings of Oak Island

Conclusion

Both **Kempton of Chatham** and **The Landings of Chatham Park** have histories of issues with timely project development and communication with the Agency. However, both **Kempton of Chatham** and **The Landings of Chatham Park** have a record of successfully completing and licensing facilities and projects in recent years. Therefore, with regard to this comparative factor, both applications are equally effective alternatives.

Summary

The following table lists the comparative factors and indicates whether each application was more effective, less effective or equally effective for each factor. The comparative factors are listed in the same order they are discussed in the Comparative Analysis which should not be construed to indicate an order of importance.

Comparative Factor	Kempton of Chatham	The Landings of Chatham Park
Conformity with Statutory and Regulatory Review Criteria	No	Yes
Scope of Services	Not Approvable	Equally Effective
Historical Utilization	Not Approvable	Equally Effective
Geographic Accessibility (Location within the Service Area)	Not Approvable	More Effective
Access by Service Area Residents	Not Approvable	Less Effective
Access by Charity Care Patients	Not Approvable	Equally Effective
Access by Medicaid Patients	Inconclusive	Inconclusive
Competition (Access to a New or Alternate Provider)	Not Approvable	More Effective
Projected Average Net Revenue per Patient Day	Not Approvable	More Effective
Projected Average Operating Expense per Patient Day	Not Approvable	More Effective
Number of Private Beds as a Percentage of Total Beds	Not Approvable	More Effective
History of Project Development	Not Approvable	Equally Effective

The **Kempton of Chatham** application is not an effective alternative with respect to Conformity with Review Criteria; therefore, it is not approvable and will not be further discussed in the comparative evaluation below.

As shown in the table above, **The Landings of Chatham** was determined to be a more effective alternative for the following factors:

- Geographic Accessibility (Location within the Service Area)
- Competition (Access to a New or Alternate Provider)
- Projected Average Net Revenue per Patient Day
- Projected Average Operating Expense per Patient Day
- Number of Private Beds as a Percentage of Total Beds

As shown in the table above, **The Landings of Chatham** was determined to be an equally effective alternative for the following factors:

- Scope of Services
- Historical Utilization
- Access by Charity Care Patients
- History of Project Development

As shown in the table above, **The Landings of Chatham** was determined to be a less effective alternative for the following factor:

- Access by Service Area Residents

DECISION

Policy LTC-2: Relocation of Adult Care Home Beds states that ACH beds relocated to other counties under this policy cannot result in a surplus of licensed ACH beds in the county that would gain ACH beds as a result of relocation, as reflected in the SMFP in effect at the time the certificate of need review begins. In Table 11C on page 208 of the 2021 SMFP, Chatham County has a deficit of 57 ACH beds. Approval of both applications in this review would result in a surplus of ACH bed in Chatham County and a violation of Policy LTC-2. However, the application submitted by **Kempton of Chatham** is not approvable and therefore cannot be considered an effective alternative.

Based upon the independent review of each application and the Comparative Analysis, the following application is approved as submitted:

- **Project I.D. #J-12074-21 /The Landings of Chatham Park / Relocate 57 ACH beds to Chatham County and develop a new 57-bed ACH facility**

And the following application is denied:

- **Project I.D. #J-12055-21 /Kempton of Chatham / Relocate 57 ACH beds to Chatham County as part of developing a new 69-bed ACH facility**

Project I.D. #J-12074-21 is approved subject to the following conditions.

1. **Chatham Propco, LLC and Chatham Opco, LLC (hereinafter certificate holder) shall materially comply with all representations made in the certificate of need application.**
2. **In a change of scope for Project I.D. #L-11818-19, the certificate holder shall relocate no more than 57 adult care home beds to Chatham County and develop a new 57-bed adult care home facility.**
3. **Upon completion of this project, The Landings of Chatham Park shall be licensed for no more than 57 adult care home beds.**
4. **Within five days of the issuance of a certificate of need for this project, Edgecombe Opco, LLC and Edgecombe Propco, LLC shall relinquish the certificate of need for Project I.D. #L-11818-19.**
5. **The certificate holder shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.**
6. **The certificate holder shall certify at least 12 licensed adult care home beds in the facility for recipients of State/County Special Assistance with Medicaid and provide care to those recipients commensurate with representations made in the application.**
7. **For the first two years of operation following completion of the project, the certificate holder shall not increase private pay charges more than 5% of the projected private pay charges**

provided in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.

8. Progress Reports:

- a. **The certificate holder shall complete the Progress Report form provided by the Healthcare Planning and Certificate of Need Section.**
 - b. **Progress reports will be due on the first day of every third month. The first progress report shall be due on February 1, 2022. The second progress report shall be due on May 1, 2022 and so forth.**
 - c. **Each progress report shall describe in detail all steps taken to develop the project since the last progress report and shall include documentation to substantiate each step taken.**
 - d. **Progress reports should be received by the due date but in no case shall they be received more than one week after the due date.**
 - e. **Timetable milestones shall be completed no later than three months after the projected date on the timetable subject to reasonable extensions due to conditions completely beyond the control of the certificate holder.**
 - f. **There will be no extensions of the timetable milestone dates except for reasonable extensions based on conditions completely beyond the control of the certificate holder.**
 - g. **In the event that the project is not developed in accordance with the timetable, including any reasonable extensions, the Healthcare Planning and Certificate of Need Section may impose a civil monetary penalty of \$1,000 per day for each day the project is delayed beyond the 90th day following the milestone date on the timetable.**
- 9. The certificate holder shall not acquire as part of this project any equipment that is not included in the project's proposed capital expenditures in Section Q of the application and that would otherwise require a certificate of need.**
- 10. No later than three months after the last day of each of the first three full years of operation following initiation of the services authorized by this certificate of need, the certificate holder shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:**
- a. **Payor mix for the services authorized in this certificate of need.**
 - b. **Utilization of the services authorized in this certificate of need.**
 - c. **Revenues and operating costs for the services authorized in this certificate of need.**
 - d. **Average gross revenue per unit of service.**

- e. Average net revenue per unit of service.**
- f. Average operating cost per unit of service.**

11. The certificate holder shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.