Lee Dobson, M.PA, CPHQ
Area Director, Government Affairs
5505 Creedmoor Road, Suite 220
Raleigh, NC 27612

Cell: 919-523-2992
ldobson@bayada.com
www.bayada.com

March 21, 2018

NC Division of Health Service Regulation
ATTN: NC State Health Coordinating Council
Healthcare Planning and Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699-2704

Submitted electronically
DHSR.SMFP.Petitions-Comments@dhhs.nc.gov

RE: Opposition to LeadingAge North Carolina's Petition for Exemption to Certificate of Need (CON)

Dear Dr. Ullrich and Members of the Council:

Thank you for the opportunity to provide comments on LeadingAge's petition submitted to the State Health Coordinating Council. BAYADA Home Health Care is celebrating its 43nd year and has a 29-year history of providing quality in-home and home health services across North Carolina. We serve 8,235 acute- and chronic-care disabled adults, medically fragile children, and seniors across North Carolina. With 53 offices (9 Medicare-certified), employing 5,502 staff -including registered nurses, licensed practical nurses, certified nursing assistants, nurse aides, habilitation technicians, social workers, therapists, and office personnel- we have a track record of providing quality home health care services which informs these comments:

BAYADA opposes LeadingAge's petition for an exemption to CON and provide the following comments:

1. **CON is an established process that is fair, equitable, and open to all**: CON was established to ensure a fair and equitable process in determining need while ensuring the practical and financial viability of the health care continuum. CCRC's have had equal opportunity to submit a bid. Any willing and interested party may submit an application either through the normal needs determination process or via a special need determination request. To our understanding, neither the Petitioner, nor its members, have undertaken the necessary steps to obtain approval for a home health agency, instead they seek a short-cut that undermines the established process. If approved, CCRCs would be given priority, which erodes the fair, equitable, data-driven CON process that has worked for NC for decades. No organization should be allowed to do this and be given an unfair advantage.

2. **CON utilizes data to determine need – Petitioner has not shown need.** NC has a process by which it evaluates patient need based on established criteria to ensure access to care and the viability of our healthcare continuum. The Petitioner failed to provide any data to support an unmet need within the CCRCs. In fact, during Petitioner's testimony, they indicated that there was no data to show an unmet need, only anecdotes. They further testified that there is no

access to care issues, rather they desire to directly provide the home health services for their residents, thereby eliminating patient choice. A decision this important should not be devoid of data.

3. **Carve-outs destabilizes our health care continuum.** All providers have had to compete in order to obtain the approval to deliver home health care. If the Petitioner's request is granted exempting CCRCs from abiding by established CON law, then it opens the door for other providers (and provider types) to do the same. It is a dangerous slippery slope that could destabilize our health care continuum. The methodology carefully looks at all the factors necessary to be successful in delivering high quality care in a cost-effective manner, while allowing for patient choice. Carve-outs weaken the established healthcare infrastructure and should not be allowed.

4. **Lack of continuity is but a perception**: We agree that continuity and care coordination is extremely important across our health care continuum. The assertion than a CCRC is not able to effectively support that coordination because they do not have an "in-house" home health agency is false. CCRCs are already coordinating care and services for their residents with physicians, internist, dentist, audiologist, etc. These practitioners and service lines all separately bill for their services. Home health care should not be any different. Unlike SNF services, where CCRCs are required under the facility license, home health care is not part of that facility license requirement. It should not be viewed any differently than any other separately billing provider.

5. **Patient experience with HHA currently ranks high:** The Petitioner shares anecdotal information that an 'in-house' HHA within a CCRC would increase the patient experience. However, there is no data to support that current patients are dissatisfied with the services. In fact, in each of the Wake and Mecklenburg areas there are more than 20 Medicare-certified HHAs with patient satisfaction scores of either a 4 or 5 on a 5 point scale according to publicly reported data on Medicare Home Health Compare (data pulled on March 20, 2018).

6. **Medicare's scope is not limited and would require adherence to all Conditions of Participation (COPs):** The Petitioner indicated that they will only provide care to their residents. The Medicare Conditions of Participation (COPs) do not allow for such a narrow approval of CCRC residents. Once approved, the Medicare Fiscal Intermediary (Palmetto Government Benefits Administrators) would allow services to any Medicare recipient in their services area. While the Petitioner may only wish to limit their targeted populate, they could serve anyone. This would undermine the CON process which looks at identified needs.

7. **Freedom of choice would be in jeopardy:** Currently all CCRC residents have choice of providers. BAYADA is concerned with the Petitioner's indication that they would limit choice for their residents (see page 10 of their petition). This limitation is contrary to federal requirements of mandating patient choice. There are no reports of CCRCs residents not having access to needed home health care. Further, Petitioner stated in their testimony that there is no access to care issues for their residents, drawing into question the need for an exemption.

8. **Financial viability is questionable with such a targeted population:** The Petitioner indicated that CCRCs would only provide services to their residents (a limitation that is not possible under Medicare). The regulatory burden to comply with all COPs and rules would make it financially impractical with such a small patient population. CCRCs would be required to adhere to the COPs, licensure rules, etc. regardless of whether they have one resident on service or more. The established need methodology calls for a 325-patient threshold in order to be financially viable. Serving less than the threshold is a sure way to operate at a loss. Financial viability is important to quality of care.

9. **Exemption could lead to unintended consequences:** The CON process calculates the need to ensure individuals have access to care, while ensuring the viability of the provider network to offer sufficient choice. Several non-CON states (Texas and Florida) have serious issues, (Medicare fraud), resulting in increased healthcare costs. Allowing an exemption to CON could open the doors to these types of unintended consequences.

10. **Medicare home health care is not a free-market:** Medicare HHAs do not set the reimbursement rates. The rates are set by the government, as are all the regulatory requirements. Unlike many other industries where consumers are enticed with lower costs, differing service options, warrantees, etc., Medicare sets the rates and the program guideline.

In closing, BAYADA opposes the Petitioner's exemption request to the established CON. We appreciate the opportunity to comment on this petition. Should you have any questions my direct line is 919-523-2992.

Health care services delivered in the home are cost effective and patient-preferred. While coping with serious illness, disability, or chronic disease, helping people have a safe home life with comfort, independence, and dignity is part of *The BAYADA Way, our company philosophy and mission*.

Sincerely,

Lee Dobson, M.PA, CPHQ
Area Director, Government Affairs