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

Petitioner: BAYADA Home Health Care, Inc.

Respondent: Kindred At Home

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Summary of Response:

Kindred At Home appreciates the opportunity to respond to the petition filed by BAYADA Home Health Care ("BAYADA"). We also fully trust the competence of the Agency staff and the SHCC and their history of using appropriate need methodology to determine the need for an additional home health agency ("HHA"). With this background, we believe that the Agency staff and the SHCC will see that the BAYADA petition for an additional home health agency ("HHA") in Buncombe County, North Carolina is not needed, but instead, is just a self-serving and opportunistic venture for BAYADA to attempt to expand into a desirable market.

Kindred At Home will show that BAYADA's assumptions are incorrect, and that there is no deficit of HHAs for 2022. As will be shown, BAYADA's arguments amount to a challenge to the SMFP need methodology that should have been filed in March, and many of its general claims are either false or not unique to Buncombe County and could be made about multiple markets throughout the State. Thus, BAYADA's altered need calculation is flawed.

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

Detailed Response to BAYADA's Petition:

<u>Background on BAYADA</u>

On pages 1-2 of its petition, BAYADA Home Health first presents an elaborate narrative about its experience in the home health realm. Regardless of BAYADA's experience in this segment of the healthcare market, this section is completely irrelevant to the specific needs of the patients of

Buncombe County. Because of BAYADA's emphasis on their services, it is clear that this petition is not just for **any** new home health office in Buncombe County, but specifically a BAYADA office. Adjusting the need determination is a change that must have patient need and lack of access at the forefront, however, BAYADA's extensive narrative about its services reveals that the petition is a self-serving attempt by BAYADA to expand its North Carolina footprint and is completely unsupported by any tangible patient need.

It is important to note that BAYADA Home Health Care has been aggressively moving to expand their reach in North Carolina, recently receiving multiple approvals. Despite these approvals, BAYADA's new North Carolina agencies have had a very slow start, but BAYADA aims with this petition to open yet another agency. Rather than making claims of false need in Buncombe County, it would be more beneficial to the patients of North Carolina for BAYADA to focus on addressing the markets for which it is already approved to serve.

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

SMFP Need Calculation is Not Understated Due to COVID

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

BAYADA provides home health care services in the Asheville area. Despite this local experience, BAYADA fails to provide any actual evidence of the impact of COVID-19 on health care utilization in Buncombe County. If any such evidence actually existed, which it does not, surely BAYADA would have provided it in support of its application. Furthermore, if BAYADA's theory about the COVID pandemic impacting specifically home health care utilization is true, the same arguments are likely applicable throughout the State, or at least in many markets. Is the State ready to accept this argument potentially open all markets in North Carolina to additional home health agencies?

BAYADA's theory about COVID-19's impact on home health is opportunistic and likely follows the SHCC's identification of COVID-19's impact on acute care beds. However, the same arguments

and data for why COVID-19 has impacted acute care bed utilization are completely irrelevant to home health care. For example, acute care beds have capacity limits, and a home health agency has none. While acute care beds had a marked drop in utilization for one quarter, this same trend has not been evident when it comes to home health in Buncombe County nor the rest of North Carolina, as will be shown. Finally, any suggested impact of COVID-19 on existing home health providers, such as the need for staff to quarantine, would likewise impact any provider, including BAYADA, so adding an additional home health agency to the county would do nothing to mitigate this problem, if it even existed. In fact, adding a competing home health agency (requiring the hiring of nurses and other direct care staff) would add to staffing issues for all healthcare providers in the area, including hospitals, SNFs, existing home health agencies, and hospices.

The reality is that Kindred At Home, with its tremendous national resources and support, was immediately effective in responding to COVID. In fact, Kindred At Home was recognized during the height of the pandemic for their heroic efforts as an integral part of Buncombe County's COVID Task Force. Kindred At Home's long-standing relationship with Mission Hospital's executive leadership and the community leadership allowed a tight, effective collaboration during the worst health crisis in recent Buncombe County history.

Any slight decline in volume was attributed to either access to congregate living that would impact any HHA, or the temporary reduction of home health patients needing home care after elective surgeries, which were all briefly delayed due to COVID. Kindred At Home has strong referral relationships with skilled nursing facilities ("SNFs") in Buncombe County, which temporarily halted new admissions and therefore resultant discharges to HHAs. Kindred At Home also serves a large number of patients in assisted living or adult care homes ("ACHs"), which temporarily suspended access to HHAs due to COVID. This suspended access would have impacted any home health agency, including BAYADA if it were a part of this market. Kindred At Home worked closely with ACHs as they began to reopen their doors to clinicians and with SNFs as they began to admit new patients who would ultimately be discharged to home health. These issues are not a limitation of the existing home health agencies but a healthcare system-wide impact that was temporary in nature and has since been resolved. Year to date utilization for Kindred At Home has more than recovered with expectations to exceed FY 2020 utilization. Therefore, BAYADAs arguments about fulfilling a need due to COVID have no merit.

<u>BAYADA's Suggestion That the Need in Buncombe County is Understated is Self-Serving</u>

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

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

BAYADA's Alternate Need Calculation is Inappropriate and Flawed

As the famous saying goes, "If you don't like the result, change the formula." Instead of accepting that there is no need for another home health agency, BAYADA attacks the formula. On page 5 of their petition, BAYADA recalculates the need for an additional home health agency in Buncombe County by changing the need methodology to substitute growth rates from a single county as opposed to the whole region. This recalculation amounts to a petition to change the SMFP methodology itself. Suggested changes to the methodology are not appropriate for a Summer Petition for a single county and rather, should be presented in the Spring Petitions. Therefore, BAYADA's petition to change the methodology is inappropriate at this time.

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

Buncombe County Patients are Growing

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

Comparison of Growth Rates for Buncombe County v. Region B

	Average Annual Rate of		Average Annual Rate of	
	Buncombe	**Region B**	**Buncombe**	**Region B**
Under Age 18	3.0139%	1.0161%	2.3449%	0.2246%
Age 18-64	3.2904%	0.5146%	3.1518%	0.4452%
Age 65-74	4.0461%	4.8928%	6.9688%	7.1284%
Age75+	2.1146%	0.0912%	5.0651%	3.3117%

Considered by BAYADA

Ignored by BAYADA

BAYADA also ignored one half of the growth rate factors that are incorporated into the home health need calculation. Even if it were appropriate to substitute a county growth rate instead of a region, which it is not, then the entire methodology should be run using Buncombe County

specific growth rates instead of only adjusting half of the methodology. It is clearly unbalanced to adjust only the use rate for half of the methodology and not the patients-served growth rate part of the methodology. When both halves are adjusted, the result is that there is not enough patient need to trigger a determination of need in Buncombe County, as shown below. It is clear that BAYADA created an unbalanced need calculation to manufacture a need to suit its purposes.

Buncombe County Need Methodology Adjusted for All Parts of the Calculation

A	B	C	D	E	F	G	H	I
County	Home Health Patients in 2020	COG's Average Annual Rate of Change in # Patients Served	Projected # of Patients Receiving Services in 2023	Geographic Unit's Use Rate per 1000 in 2020	COG's Average Annual Rate of Change in Use Rate	Projected Use Rate per 1000 in 2023	Projected 2023 Population	Projected Home Health Patients in 2023
Under Age 18	178	2.3449%	190.52	3.6241	3.0139%	3.9518	48,256	190.70
Age 18-64	1,879	3.1518%	2,056.67	11.7258	3.2904%	12.8833	161,643	2,082.49
Age 65-74	1,944	6.9688%	2,350.42	60.6174	4.0461%	67.9753	33,292	2,263.03
Age75+	3,559	5.0651%	4,099.80	154.8940	2.1146%	164.7202	26,152	4,307.76
Total	7,560		8,697.41	142.6523			269,343	8,843.98

Adjusted Total Patients Served	8,697.41	**Based on 2022 SMFP Home Health Need Methodology with Buncombe County Use Rates instead of COG Use Rates**
Projected Home Health Utilization	8,843.98	**Based on 2022 SMFP Home Health Need Methodology with Buncombe County Use Rates instead of COG Use Rates**
Projected Surplus or Deficit	-146.57	**Projected Deficit for 2023 does NOT trigger a determination of need**

Considered by BAYADA

Ignored by BAYADA

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

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

There is no reason to change the methodology for need calculations in Buncombe other than to create a false conclusion of unmet need. Nothing is unique about Buncombe County itself to suggest a different methodology than other counties in the state that also have higher growth rates than the region as a whole. BAYADA presents no other evidence of unmet need in Buncombe County other than the proposed new need calculation/methodology. All other arguments are simply speculation about a market in which BAYADA has no presence.

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

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

Data on prior year utilization of home health services show that pre-COVID Compounded Annual Growth Rates ("CAGRs") are not meaningfully different from 2020 COVID-impacted rates. In fact, patient growth rates are actually higher through 2020 for all age groups under 75, showing a steady increase in use from year to year. It can be gleaned from the actual providers serving the market that growth rates for the 75+ population are slightly slower as patients in this age group commonly live in congregate living situations like assisted living. These patients could have had a very short period in which home health providers could not enter the facility due to COVID-19, but this impact is not nearly as dramatic as BAYADA purports. In fact, Kindred At Home's actual experience was only a very minimal and short disruption in care due to COVID as discussed above.

Analysis of Trend in Buncombe County Home Health Patient Utilization

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

Source: 2018-Draft 2022 SMFPs

Kindred At Home has quickly and fully adapted to an ongoing COVID pandemic situation, and its patient volume continues to grow. Approval of a new agency is unnecessary and duplicative.

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

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

BAYADA suggests on page 4 of its petition that there is something unique about only two HHAs being based in Buncombe County. None of BAYADA's suggestions are factually accurate nor is this argument relevant to a need analysis. Despite there being only two agencies "located" within Buncombe County, numerous other agencies actively serve patients in this county. These offices outside of the county that still serve Buncombe patients are conveniently left out of BAYADA's

analysis. By contrast, the collective utilization of all these agencies is considered in the SMFP home health need methodology (See BAYADA Petition p. 10 -11).

In addition, BAYADA suggests that Kindred At Home and CarePartners are serving too many patients, which is both false and has no bearing on the need for a new agency. Kindred At Home's census does not impede its quality of care. Kindred At Home has consistently performed above state and national averages in terms of CMS's Quality of Care Star Rating and Patient Survey. Based on data provided by a third-party vendor, SHP, Kindred At Home's timely initiation of care for 2020 is above the state and national average and its 60-day acute care rehospitalization rate is below state and national averages (based on calendar year 2020 per SHP data). Moreover, there are multiple home health offices in North Carolina serving just as many patients as Kindred At Home. In fact, multiple existing North Carolina home health agencies have historically served more patients than Kindred At Home, including Well Care Home Health and Total Home Health of North Carolina for example. At this time, the State does not cap the number of patients that can be served by a home health agency. If the State thought this was important to the analysis of need, then it could have instituted such cap.

It is not unusual, as suggested by BAYADA, for a home health agency to serve many patients from outside its home county when it is licensed in multiple counties. Kindred At Home's regional care is consistent with its close collaboration with Mission Health as the major system serving Buncombe County and western North Carolina. According to Trella Health data, 50% of those patients served at Mission Hospital reside outside of Buncombe County. Kindred At Home has the privilege of serving those patients in and out of Buncombe County.
This is because home health agencies do not experience the same concrete capacity constraints as something like acute care beds, as discussed above. This is especially true of Kindred At Home due to its available resources through affiliation with an extensive national home health provider. Therefore, Kindred At Home's broad service area is reasonable. Even though Kindred's overall regional volume went down between FY2019 and FY2020, CarePartners' volume increased by more than Kindred's volume declined. As noted above, Kindred At Home had a temporary decline in referrals from SNFs and limitation on services to patients in congregate living. During this same period, CarePartners' acute care discharges increased through their affiliation with Mission Health and its peak in care for COVID patients. Patient trends have returned to normal and home health utilization continues to grow. As a result, there is correctly no unmet need.

<u>There are Actually Multiple Choices of Home Health Agencies in Adjoining Counties (Page 12)</u>
On page 4 of its petition, BAYADA claims that it is insufficient for only two agencies to be in Buncombe County, examining just the utilization of these home health offices, Kindred At Home and CarePartners. This analysis is flawed because there are truly many home health agencies outside of the county limits that are actively serving the residents of Buncombe County. In fact, BAYADA's own tables show 7 total agencies serving Buncombe in 2019 and 8 in 2020 (see pages

10 and 11). If 7 and 8 agencies are serving Buncombe residents in 2019 and 2020, respectively, BAYADA's point about county agencies per 100,000 people is inaccurate.

BAYADA Ratio of Office to Population is Meaningless

On page 8 of its petition, BAYADA conducts an analysis of the number of HHAs per population of Buncombe County. This analysis is meaningless and irrelevant because the HHA need methodology must correctly reflect the utilization of all agencies serving the county, not just those with a primary license in this county. In fact, BAYADA's analysis ignores the fact that its own petition identifies a total of 7 to 8 agencies actually serving patients in Buncombe County. Any analysis about the number of home health offices physically located within a county is not reasonable because home health agencies do not have a capacity and are not limited by main office locations. Thus, any claims of limitations by just having 2 agencies in Buncombe County are false.

Kindred At Home's Large Number of Patients in the Region Reflects Quality and Continuity of Care
One of BAYADA's concerns in their petition was the large and growing number of patients served by Buncombe's current HHAs. Kindred At Home serves a large number of patients in Buncombe County and the region as a whole because of its longstanding presence in the area and its commitment to a continuum of care. Kindred At Home has relationships with Mission Health as well as numerous SNFs and ACHs in Buncombe County and the broader region.

Claims of Inclement Weather are Misplaced
One of BAYADA's claims regarding lack of access is about inclement weather. However, the SHCC has heard similar claims before and disregarded them. It is the responsibility of the SHCC to act consistently with respect to this issue. Respectfully, other petitions have identified many of the same weather-related issues for access to western North Carolina. The SHCC disregarded such issues. Therefore, inclement weather is certainly not a consideration for a basic outpatient service like home health.

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

In reality, existing providers have been serving this area for years throughout all kinds of "inclement weather." BAYADA has no way to know about the very effective plans in place routinely deployed within Buncombe County and surrounding areas for issues like snow and ice prevention and removal. In fact, Kindred At Home's clinical team is fully acclimated to the weather of WNC and admissions during snowy months have not declined. Kindred At Home has an emergency preparedness plan to be able to serve all patients during inclement weather. Kindred At Home has communication pathways to report any patient or clinician concerns. Adding another HH agency does not reduce the risk of inclement weather or Natural disasters.
BAYADA's Claims of Cyber Security Are Overstated and Misplaced
BAYADA's petition also makes claims of potential cybersecurity issues. However, these are relevant to all healthcare facilities, not just home health in Buncombe County. A single county cannot be singled out as having a greater risk than others. This is yet another example of BAYADA crafting extremely general arguments to try to break into the healthcare market in Buncombe County.

BAYADA has no specific knowledge of the actual capabilities of any provider in the market to mediate cybersecurity threats. Like any other healthcare provider, the Buncombe County providers would temporarily revert to paper charting and deploy emergency preparedness

measures. In fact, like in all instances of emergency preparedness, Kindred At Home is more than ready to respond to a cyber-attack with backup plans in place and the resources of a national organization. Kindred At Home is at no greater risk to endure a cyber-attack than any other home health agency, but as the nation's largest home health provider, Kindred At Home has many more resources to combat such an attack. BAYADA's implication of this argument regarding cybersecurity, when taken to its logical conclusion, is that we should create unnecessarily duplicative hospitals in case one is hit by a cybersecurity breach. BAYADA has not demonstrated any unique cybersecurity issues in Buncombe County.

BAYADA's Staffing Arguments are Inaccurate and Harmful

One of the biggest challenges during the pandemic has been maintaining staff with high turnover as individuals choose to leave the healthcare profession. This is true universally across healthcare segments throughout the whole country. BAYADA would have no unique way of mediating this issue. A new agency would only serve to drain already limited staff, including front line workers providing patient visits and critical management and supervisory positions. Economies of scale created by serving a large base of patients with centralized administrative staff and resources would be eroded by the unwarranted entry of another provider.

Bayada's Claims About Kindred At Home's Acquisition by Humana

At page 11 of its petition, Bayada makes baseless claims about the acquisition of Kindred At Home by Humana. Contrary to Bayada's claims, Kindred At Home's affiliation with Humana actually affords Kindred much greater opportunity regarding healthcare innovation and greater analytics and better care for Kindred's homebound seniors. Hiring since the announcement of the acquisition has not been a concern as Kindred At Home has hired 34 team members in Buncombe County, who are very excited for the opportunities this offers them in the future. Finally, the Humana acquisition will not impact Kindred At Home's acceptance of other payors. Kindred At Home will continue to operate in a payor agnostic manner.

Bayada also makes unfounded claims about the relative benefits of nonprofit versus for-profit home health agencies. This is simply absurd. Bayada presents no quantitative data, and indeed there is none, to suggest that nonprofit agencies, who often pay enormous salaries to their executives, fare any better in terms of patient quality of care and related metrics than nonprofit agencies.

Kindred At Home respectfully requests that SHCC deny BAYADA's petition for a special need determination for a new home health agency in Buncombe County.