

**3 THINGS TO KNOW
ABOUT BUYING, SELLING
AND RELOCATING
LONG-TERM CARE BEDS
IN NORTH CAROLINA**

Presented by Joy Heath & Anderson Shackelford | Nov. 7, 2018

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WELCOME



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BEFORE WE GET STARTED



> Q&As

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- We will answer your questions at the end of the program

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WHAT BRINGS YOU HERE TODAY?



- > Would you like to build a new facility?
- > Does your existing facility have an optimal number of beds?
- > Could your facility improve operations and efficiency with additional beds?
- > Are you interested in knowing your options for relocating beds either within a county or to another county?
- > Are you ready to sell your facility?
- > Would you benefit from selling some of your licensed bed capacity in 2019?

TODAY'S OBJECTIVES



- > Learn how the North Carolina Certificate of Need (CON) process can be used to facilitate the acquisition, sale, replacement or relocation of beds
- > Get the answers to your questions on when and how you can acquire, sell, or move beds within North Carolina
- > Hear about recent activity across North Carolina involving the sale and relocation of beds
- > Find out about the special care unit (SCU) moratorium

PATH # 1 - CON APPLICATION



- > “Traditional” approach – Filing a CON Application in response to a “Need Determination” on a specific date
- > Note: The CON Application Forms have been streamlined and the paperwork burden is somewhat reduced
- > Non-competitive Applications have a strong chance for approval
- > Denials can be challenged at OAH with potential for a negotiated resolution

PATH # 1 – VARIATIONS



- > CON Application filed in response to a Need Determination
 - Can be for the addition of beds to an Existing Facility
 - Can propose development of a New Facility



- > State Medical Facilities Plan (“SMFP” or “State Plan”)
- > Need Determinations are a “determinative limitation” on the # of new beds that can be CON-approved.

2019

STATE HEALTH COORDINATING COUNCIL

PROPOSED STATE MEDICAL FACILITIES PLAN



NC DEPARTMENT OF
HEALTH AND
HUMAN SERVICES
Division of Health Service Regulation

PROPOSED 2019 NURSING CARE BED NEED DETERMINATION



County	HSA	Nursing Care Bed Need Determination*	Certificate of Need Application Due Date**	Certificate of Need Beginning Review Date
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It is determined that there is no need for additional nursing care beds anywhere in the state and no other reviews are scheduled.

*Need determinations shown in this document may be increased or decreased during the year pursuant to Policy GEN-2.

**Application due dates are absolute deadlines. The filing deadline is 5:30 p.m. on the Application due date. The filing deadline is absolute (see Chapter 3).

Source: Proposed 2019 State Medical Facilities Plan.

PROPOSED 2019 ADULT CARE HOME BED NEED DETERMINATIONS



County	HSA	Adult Care Home Bed Need Determination*	Certificate of Need Application Due Date**	Certificate of Need Beginning Review Date
Macon	I	70	To be determined	To be determined
Mitchell	I	20	To be determined	To be determined
Pamlico	VI	50	To be determined	To be determined
Polk	I	50	To be determined	To be determined
Warren	IV	70	To be determined	To be determined

It is determined that there is no need for additional adult care home beds anywhere in the state and no other reviews are scheduled.

*Need determinations shown in this document may be increased or decreased during the year pursuant to Policy GEN-2.

**Application due dates are absolute deadlines. The filing deadline is 5:30 p.m. on the Application due date. The filing deadline is absolute.

Source: Proposed 2019 State Medical Facilities Plan.

2019 OPPORTUNITIES – LIMITED?



- > No nursing home reviews in 2019
- > Limited adult care home reviews (rural markets) in 2019

2019 OPPORTUNITIES – BROAD?



- > Despite the overall lack of need determinations in 2019, providers can still **acquire/sell, replace or relocate** adult care home or nursing facility beds within North Carolina.

PATH #2 – ACQUIRING A FACILITY



- > Proposals to acquire an existing health service facility are **exempt** from CON review under N.C. Gen. Stat. § 131E-184(a)(8)
- > Acquisitions of an ENTIRE facility – Any County
- > Prior Written Notice Requirement

EXEMPTION FOR ACQUISITIONS



> N.C. Gen. Stat. § 131E-184(a)(8):

- “To acquire an **existing health service facility**, including equipment owned by the health service facility at the time of acquisition. A facility not currently licensed as an adult care home that was licensed as an adult care home within the preceding 12 months **is considered an existing health service facility** for the purposes of this subdivision.”

> What is an “existing health service facility?”

PATH #2 VARIATIONS



- > Acquire **ENTIRE** Facility with an Exemption
 - Operate the Facility As-Is
- > Acquire with an Exemption and Renovate Under \$2M
 - Single Exemption / No CON Application

\$2 MILLION EXEMPTION



- > A capital expenditure over \$2 Million is **exempt** if the expenditure is solely for the purpose of renovating, replacing on the same site or expanding a nursing home or adult care home with no change in bed capacity for specific purposes

EXEMPTION SPECIFICS



- > Capital expenditure that exceeds \$2 Million is exempt if:
 - The sole purpose is to renovate, replace on the same site, or expand an existing nursing or adult care home facility
 - Expand?
 - No change in bed capacity / On-Site
 - Prior written notice to the Agency

NOTICE OF PURPOSE



- > Converting semi-private rooms to private
- > Providing innovative, home-like residential dining spaces
- > Renovating, replacing or expanding residential living or common areas to improve resident quality of life

PATH #2 – VARIATIONS



> Acquire an ENTIRE Facility →

» EXEMPT
Prior Written Notice

> Facility Renovation

On-site →

» \$2 M+ EXEMPT
Notice of Purpose

> Acquire an ENTIRE Facility →

» EXEMPT
Prior Written
Notice

> Tear-Down / New Facility

On-site →

» \$2 M+
EXEMPT
Notice of
Purpose



- > Path #1 – A CON Application Filing
- > Path #2 – An Exempt Acquisition of an **ENTIRE** Facility
- > Path # 3 – Buying Beds from an Existing Facility
- > Could Include a Second Exemption

Variations

PATH #3 – VARIATIONS



- > Acquire Beds from a **Single** Facility →
 - » NON-EXEMPT
CON Application
- > Add to Existing Facility or Develop a New Facility

- > Acquire Beds from **More than One** Facility →
 - » NON-EXEMPT
CON
Application
- > Add to Existing Facility or Develop a New Facility

PATH #3 – VARIATIONS



- > Relocation Options
- > Across County Lines
- > In-County

RELOCATION ACROSS COUNTY LINES



- > Buying beds and proposing to relocate those beds to another County, either to add to an Existing Facility or to develop a New Facility
 - Requires a CON Application
 - Buyer: Beds can be acquired from a single facility or from more than one facility
 - Seller: An Existing Facility can sell a portion of its beds and remain in operation with reduced bed capacity

POLICY NH-6: RELOCATION OF NURSING FACILITY BEDS



> Relocations of existing licensed nursing facility beds are allowed. Certificate of need applicants proposing to relocate licensed nursing facility beds shall:

1. Demonstrate that the proposal shall not result in a deficit, or increase an existing deficit in the number of licensed nursing facility beds in the county that would be losing nursing facility 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 nursing facility beds in the county that would gain nursing facility 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.

- > Relocations of existing licensed adult care home beds are allowed to another service area. 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.

CONTIGUOUS COUNTY LIMITATION REMOVED



- > Previously, relocation of nursing facility and adult care home beds was permitted only to contiguous counties “currently served” by the beds
- > Effective in 2017, the contiguous county limitation on the relocation of nursing facility beds was removed
- > Effective in 2019, the contiguous county limitation on the relocation of adult care home beds was removed

NURSING CARE BEDS 2019 RELOCATION OPTIONS



> Look at deficit and surplus numbers in Table 10C of the Proposed 2019 SMFP:

Counties with Largest Surpluses (Donor Counties)	
Guilford	280
Cumberland	156
Forsyth	146
Onslow	145
Brunswick	144

Counties with Largest Deficits (Recipient Counties)	
Mecklenburg	-72
Durham	-51
Scotland	-13
Polk	-11
Madison	-11

ADULT CARE HOME BEDS 2019 RELOCATION OPTIONS



> Look at deficit and surplus numbers in Table 11C of the SMFP:

Counties with Largest Surpluses (Donor Counties)	
Wake	900
Brunswick	460
Forsyth	447
Cumberland	410
Guilford	399

Counties with Largest Deficits (Recipient Counties)	
Macon	-73
Warren	-65
Gates	-57
Pamlico	-52
Polk	-51

RECENT EXAMPLE # 1



> CON Application

– To Relocate 89 Beds to Develop a New Facility including a 30-bed Special Care Unit (“SCU”)

- 49 Beds from one facility in County O
- 20 Beds from another facility in County R
- 20 Beds from a 3rd facility in County C

RECENT EXAMPLE #2



> CON Application

- To Relocate 110 Beds to Develop a New Facility with a 30-bed SCU
 - 80 Beds from one facility in County M
 - 30 Beds from another facility in County B

PROPOSALS UNDER POLICY NH-6 OR POLICY LTC-2



- > An existing facility can sell any # of its licensed beds.
- > The beds to be acquired from the seller can be:
 - Relocated to add to an existing facility.
 - Relocated and developed as a new facility.
 - Relocated to a replacement facility.
 - Added to a campus.

RECENT APPROVALS UNDER POLICY NH-6 OR POLICY LTC-2



Project Description

Relocate 134 NF beds to a new replacement facility pursuant to Policy NH-6

Relocate 29 ACH beds to an existing facility pursuant to Policy LTC-2

Acquire and relocate 26 ACH beds to an existing independent living facility pursuant to Policy LTC-2

Develop a new adult care facility by relocating 18 ACH beds pursuant to Policy LTC-2

Develop a new nursing facility by relocating NF beds from three different existing facilities pursuant to Policy NH-6

Note: Not all proposals under these policies are approved.

PROPOSALS MUST...



- > Satisfy relevant portions of Policy NH-6 and/or LTC-2
- > When adding beds to an existing facility:
 - Consider sizing of common spaces (dining room, living room, activity room, outdoor space, parking, etc.)
 - Conform with the applicable performance standards
 - Consider the facility's quality track record: Criterion 20
- > When developing a new facility:
 - Conform with the applicable performance standards



> 10A NCAC 13D .3201(b)

(b) A facility shall meet the following requirements for dining, activity, and common use areas:

- 1) nursing facilities and the nursing home portion of combination facilities shall have:
 - A. a separate area or areas set aside for dining, measuring not less than 10 square feet **per bed**;
 - B. a separate area or areas set aside for activities, measuring not less than 10 square feet **per bed**; and
 - C. an additional dining, activity and common use area or areas, measuring not less than five square feet **per bed**. This area may be in a separate area or combined with the separate dining and activity areas required by Part (A) and (B) of this Subparagraph.
- 2) the adult care home portion of combination facilities shall have:
 - A. a separate area or areas set aside for dining, measuring not less than 14 square feet **per bed**; and
 - B. a separate area or areas set aside for activities, measuring not less than 16 square feet **per bed**.

> Nursing Facility Beds, 10A NCAC 14C .1102(a) and (b):

- a) “An applicant proposing to add nursing facility 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 nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.”

- b) “An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing 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.”

> Adult Care Home Beds, 10A NCAC 14C .1102(c) and (d):

- 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.”

- 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.”



> Criterion 20 states that:

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

> *AH N.C. Owner v. N.C. Dep’t of Health & Human Servs.*, 240 N.C. App. 92, 771 S.E.2d 537 (2015)

- Applicable period is 18 months preceding the submission of the CON application through the date of the Agency’s decision
- Statewide analysis of quality record for all similar facilities
- “Meaningful” review

SPECIAL CARE UNIT (SCU) MORATORIUM EXCEPTION REQUEST PROCESS



- > For the period beginning July 1, 2017, and ending June 30, 2019, DHHS imposed a moratorium on SCU licenses. The moratorium does allow for exceptions.
- > There is a process to submit a request for an exception for a SCU license.
- > Requests may not be amended after they are submitted and will be reviewed in the order in which they are received.

IN-COUNTY RELOCATIONS



Remember –

- > Exemption for Acquisition does not authorize Relocation
- > Exemption for Expenditures \$2M+ is only for Renovations or Replacements On-Site

- > Relocation within the County
 - CON Application for New Facility
 - Can Apply Regardless of Bed Deficit or Surplus in the County

CONSIDERATIONS WHEN BUYING OR SELLING BEDS



- > Identifying potential seller and/or buyer
- > Defining the project & mutually acceptable terms
- > Exploring financing options

Acquisition Opportunity

86-bed Assisted Living Facility

North/Central North Carolina



Asking Price: \$2,200,000

86-bed assisted living facility, including 20-bed memory care unit

Consistent census with an opportunity for growth

Detached manager residence on site

Municipal water and sewer

+/- 12.35-acre site

Please contact me for additional details.

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TABLE 3A: 2019 CON REVIEW SCHEDULE

Nursing and Adult Care services fall into Category B:

CON Beginning Review Date	Category (All HSAs)									
February 1, 2019			C	D.2				H		
March 1, 2019	A	B			E	F	G		I	J
April 1, 2019			C	D.1						
May 1, 2019	A	B			E	F	G	H		J
June 1, 2019			C	D.2					I	
July 1, 2019	A				E	F	G	H		J
August 1, 2019		B	C	D.2						
September 1, 2019	A		C		E			H	I	J
October 1, 2019				D.1						
November 1, 2019	A	B			E	F		H		J
December 1, 2019				D.2				H	I	J

MOVING FORWARD



- > Developing a *Memorandum of Understanding* between the seller and buyer as to rights and responsibilities
- > Creating legal entities / structure
- > Applying for CON or exemption approval
- > Contracting with architects and others
- > Implementing the project – developing operational strategies

QUESTIONS?



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