Fiscal Impact Analysis for
Permanent Rule Readoption without Substantial Economic Impact

Agency Proposing Rule Change

Department of Health and Human Services, Division of Health Service Regulation

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Impact Summary

Federal Government Impact	No
Local Government Impact	Possible
Private Sector Impact	Possible
State Government Impact	Possible
Substantial Economic Impact	No

Statutory Authority

G.S. 131E-177
G.S. 131E-183(b)

Rule Citations

10A NCAC 14C – Certificate of Need

- .1102 Performance Standards
- .2001 Definitions
- .2003 Performance Standards
- .2801 Definitions
- .2803 Performance Standards
- .3801 Definitions
- .3803 Performance Standards
- .4001 Definitions
- .4003 Performance Standards

See proposed rule text in Appendix A.

BACKGROUND AND PURPOSE

Article 9 of Chapter 131E of the North Carolina General Statutes (CON Law) requires that a person obtain a certificate of need (CON) from the Department of Health and Human Services (Department) before developing or offering a "new institutional health service." The term "new institutional health service" is defined in G.S. 131E-176(16). The new institutional health services relevant to this fiscal impact analysis include:

- Nursing Facility and Adult Care Home Services
- Home Health Services
- Rehabilitation Services
- Acute Care Beds
- Hospice Inpatient Facilities and Hospice Residential Care Facilities

The Department delegated the authority to enforce the CON Law to the Healthcare Planning and Certificate of Need Section (Section) in the Division of Health Service Regulation (Division).

In order to obtain a CON, a person must submit a completed application form and be approved by the Section to develop the proposed project. The average time that it takes an analyst to analyze each CON application varies by complexity. Non-complex applications average approximately 40 hours to analyze while complex/competitive applications can take between 48-64 hours to review. The CON cannot be issued until all appeals are resolved.

The Section is required to review all CON applications using the review criteria found in G.S. 131E-183(a). In addition, pursuant to G.S. 131E-183(b), the Division is authorized to adopt rules for the review of proposals which may vary based on the type of health service.

The CON Law authorizes the Department to develop the State Medical Facilities Plan (SMFP), which is prepared annually by the Department and the North Carolina State Health Coordinating Council (SHCC), a 25-member advisory body appointed by the Governor. The SMFP is approved by the Governor each year. Pursuant to G.S. 150B-2(8a)k, the SMFP is **not** a rule. Session Law 2003-229 amended the Administrative Procedure Act to state that the State Medical Facilities Plan is exempt from the Act and its procedural and analytical requirements for rulemaking.

In 2018, the Division reviewed 63 CON rules to determine if each rule was:

- Unnecessary;
- Necessary with substantive public interest; or
- Necessary without substantive public interest.

Twenty-one rules were determined to be unnecessary and they expired February 1, 2019 pursuant to G.S. 150B-21.3A. Three rules were determined to be necessary without substantive public interest effective January 19, 2019. In 2018, 39 rules were determined to be necessary with substantive public interest. These rules must be readopted by 2024 and they will be readopted in four groups. The first group (Group 1) consisting of 10 rules was readopted, effective January 1, 2021. The second group (Group 2) consisting of 8 rules was readopted, effective January 1, 2022. The third group (Group 3) consists of 9 rules that are proposed to be readopted and are the subject of this fiscal impact analysis.

IMPACT ANALYSIS

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

10A NCAC 14C .1102 Performance Standards - The Division proposes to delete paragraphs (a)-(d). The proposed text of the new paragraphs (a)-(c) add and define 5 terms and use those terms to describe what an applicant must include in its CON application if proposing to develop nursing home beds or adult care home beds pursuant to a need determination in the annual SMFP. The proposed text sets forth a standard calculation by which applicants can consistently project their occupancy rate but does not change the projected utilization thresholds that each applicant must demonstrate to meet the performance standards. The proposed text also eliminates the historical utilization requirements since the SMFP methodologies direct the determination of need.

Background

A CON is required before any person may develop nursing home or adult care home beds. The SMFP includes methodologies to project the need for additional nursing home and adult care home beds. The proposed language eliminates the requirement that an applicant seeking to develop nursing home or adult care beds must demonstrate certain historical utilization rates in the nine months preceding submittal of its CON application as these rates do not impact whether the SMFP includes a need determination for the development of these beds. The existing language in the performance standards requires applicants to project the occupancy for new beds but does not define the term "occupancy." The proposed language adds and defines the term "occupancy rate" but does not change the projected occupancy thresholds that applicants must demonstrate following completion of the project. Independent and small adult care home facility providers often face challenges related to municipal zoning laws and construction requirements when developing these projects. It also takes time for these providers to ramp up services to meet the current occupancy thresholds. The new language extends the time by which an applicant must meet the required thresholds from two years to three full fiscal years.

Summary of Expected Costs and Benefits

Federal Government Impact	No impact as the Federal Government is not subject to the NC CON Law.
Local Government Impact	The workload for the local government sector may be minimally impacted as a result of the proposed text.
Private Sector Impact	The workload for the private sector will be minimally impacted as a result of the proposed text. The private sector may receive a modest benefit as a result of the extension of the timeframe to meet the required threshold projections by one year.
State Government Impact	The workload for State Government will not change as a result of the proposed text.

Federal Government Impact

Health service facilities owned by the Federal Government and located in North Carolina are not subject to the North Carolina CON Law. Thus, they are not required to file a CON application and are not impacted by the proposed text.

Local Government Impact

Most CON applications are submitted by the private sector but there are health service facilities in North Carolina owned by a local government entity, such as a county or hospital authority. The workload for the local government may be minimally impacted as a result of the proposed text for reasons like those described in the Private Sector Impact section below.

Private Sector Impact

The workload for the private sector will be minimally impacted a result of the proposed text. While the SMFP need methodology has not triggered a need for nursing home beds in the last five years, the need determinations for adult care home beds has steadily increased during the same period. Despite the increased need, the number of CON applications received-with the exception of 2019- have declined. Whether this ongoing decline is entirely attributable to the COVID-19 pandemic, the Section received no CON applications to develop new ACH beds in 2021. Other contributing factors in declining applications probably include construction costs and ongoing staffing shortages.

Historically, nursing facility and adult care home bed CONs are two of a small group of services that take longer to develop than other services (e.g. operating rooms) because many of these facilities are run by small entities and individual operators with limited financial means. The existing language in the performance standards requires applicants to project specified occupancy thresholds within the second year of operations. The proposed language requires applicants to provide three full fiscal years of utilization projections rather than two. This change may afford approved applicants a modest benefit by allowing them to meet the projected thresholds over a longer period of time; however, it is likely that the facility's individual financial situation will still drive financial decisions.

State Government Impact

The issue is whether the proposed text of 10A NCAC 14C .1102 would significantly change the number of applications received by the Section in a given year which propose to develop nursing home or adult care home beds pursuant to a need determination in the SMFP.

As shown in Table 1, there were 2 need determinations for nursing home beds in calendar years 2018 and 2019. The Section averaged 3 CON applications per year in years when there was no need determination in the SMFP (2017, 2020 and 2021), all of which were applications to relocate existing nursing home beds.[1]

Table 1: Nursing Home Bed CON Applications

Calendar Year	Number of Need Determinations in the SMFP	Number of CON Applications Received
2017**	0	3**
2018	21*	9
2019	15*	1
2020**	0	5**
2021**	0	2**

*This need determination resulted from a petition that was submitted to and approved by the State Health Coordinating Council

**All CON applications received in this year were to relocate beds and were not submitted to develop new beds pursuant to a need determination in the SMFP

Table 2 reflects the need determinations for nursing home beds in each of the last five years. The Section averaged 9 applications per year during that period. The lowest number of adult care home CON applications- received in 2021- occurred when the need determination in that year's SMFP was the highest. Additionally, all CON applications submitted to the Section in 2021 were to relocate existing beds.

[1] There is no methodology in the SMFP that determines the need to relocate adult care or nursing facility beds.

Table 2: Adult Care Home Bed CON Applications

Calendar Year	Number of Need Determinations in the SMFP	Number of CON Applications Received
2017	110	12
2018	140	8
2019	240	14
2020	320	5
2021*	410	4
Average**		9

*All CON applications received in this year were to relocate beds and were not submitted to develop beds pursuant to a need determination in the SMFP

** Rounded up from 8.6

There is no evidence that eliminating the historical utilization requirements for adult care and nursing home beds will result in the submission of more CON applications to the Section, especially since the pre-requisite to the submission of an application is a need determination in the SMFP. The highest need projections within the five-year period between 2017 and 2021 were in the 2021 SMFP. Despite those projections, the Section received only four CON applications and none of those applications were to develop new beds. Although the COVID-19 pandemic may be attributable to the reduction in the number of applications submitted to the Section, there is no data nor any basis to conclude that the submission of CON applications will substantially increase as a result of the proposed changes to the text.

SECTION .2000 – CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES

10A NCAC 14C .2001 Definitions - The Division proposes to delete the 2 existing terms and replace them with 2 terms used in this section.

10A NCAC 14C .2003 Performance Standards - The Division proposes to delete the existing paragraph and to replace it with the proposed paragraph. The proposed text describes what an applicant must include in its certificate of need application if proposing to develop a new Medicare-certified home health agency pursuant to a need determination in the SMFP. The projection to serve 325 residents is already in the SMFP and is not a new requirement. The proposed text clarifies that an applicant must provide projected utilization for **each** of the first three fiscal years rather than just the third year of operations in order to give the Agency insight into its ramp up and how it derived its final, third year projections. It also removes superfluous language stating that the performance standards do not apply to CON applications submitted pursuant to SMFP Policy HH rather than a standard need determination.[2]

Background

A CON is required before any person may develop a Medicare-certified home health agency. The SMFP includes a need methodology for Medicare-certified home health agency.

Summary of Expected Costs and Benefits

Federal Government Impact No impact as the Federal Government is not subject to the NC CON Law.

[2] This language is not necessary because the SMFP standard methodology for Home Health Services is inapplicable to CON applications submitted pursuant to Policy HH.

Local Government Impact	The proposed text will not have a measurable impact on local government.
Private Sector Impact	The proposed text will not have a measurable impact on the private sector.
State Government Impact	The workload for State Government will not change as a result of the proposed text.

Federal Government Impact

Health service facilities owned by the Federal Government and located in North Carolina are not subject to the North Carolina CON Law. Thus, they are not required to file a CON application and are not impacted by the proposed text.

Local Government Impact

Most CON applications are submitted by the private sector but there are health service facilities in North Carolina owned by a local government entity, such as a county or hospital authority.

The proposed text of 10A NCAC 14C .2001 and .2003 would not have any measurable impact on the workload of local government or private sector applicants proposing to develop a Medicare-certified home health agency pursuant to a need determination in the SMFP.

Private Sector Impact

The proposed text of 10A NCAC 14C .2001 and .2003 would not have any measurable impact on the workload of local government or private sector applicants proposing to develop a Medicare-certified home health agency pursuant to a need determination in the SMFP.

State Government Impact

The issue is whether the proposed text of 10A NCAC 14C .2001 and 2003 would significantly change the number of applications received by the Section in a given year which propose to develop a Medicare-certified home health agency.

As shown in Table 5, the SMFP included need determinations in three of the last five years.

Table 5: Home Health Agency CON Applications

Calendar Year	Number of Need Determinations in the SMFP	Number of Home Health Agency Applications Received
2017*	1	3
2018	2	2
2019	0	0
2020	0	0
2021*	1	5

*All CON applications received for this need were competitive

The changes to this section are minimal in nature and intended to enhance clarity. It is reasonable to assume that the number of Medicare-certified home health agency applications received in a year will not vary significantly from the number received in previous years as a result of the proposed text of the rule.

SECTION .2800 – CRITERIA AND STANDARDS FOR REHABILITATION SERVICES

10A NCAC 14C .2801 Definitions - The Division proposes to delete the 8 existing terms and replace them with 5 terms used in this section. The proposed text sets forth a standard calculation by which applicants can consistently project their rehabilitation services unit occupancy rates.

10A NCAC 14C .2803 Performance Standards - The Division proposes to delete paragraphs (a) and (b). The proposed text eliminates the historical utilization requirement, which has no bearing on the need determination for these services in the SMFP, adds and defines the term "occupancy rate" and reduces the occupancy rate threshold for the third full fiscal year of operation from 80 to 70 percent.

Background

A CON is required before any person may develop new rehabilitation beds. The SMFP includes a need methodology for rehabilitation beds. Eliminating the historical utilization requirement would have no impact on whether the SMFP includes a need determination for rehabilitation beds. The existing language requires an applicant to project "occupancy" in the amount of 80% for the total number of rehabilitation beds to be operated in the facility upon completion of the second year of operations. There is no definition of occupancy in the existing rule. The proposed language adds and defines the term "occupancy rate" to ensure a consistent calculation of the term, extends the timeframe within which applicants must meet the occupancy threshold by one year, and reduces the overall threshold requirement by 10%. The threshold requirement was reduced because some stakeholders had previously mentioned that it was difficult to reach the threshold requirement in the past; however, upon surveying the current stakeholders, no responses were noted.

Summary of Expected Costs and Benefits

Federal Government Impact	No impact as the Federal Government is not subject to the NC CON Law.
Local Government Impact	The workload for the local government sector will be minimally impacted as a result of the proposed text.
Private Sector Impact	The workload for the private sector will be minimally impacted result of the proposed text.
State Government Impact	The workload for State Government will not change as a result of the proposed text.

Federal Government Impact

Health service facilities owned by the Federal Government and located in North Carolina are not subject to the North Carolina CON Law. Thus, they are not required to file a CON application and are not impacted by the proposed text.

Local Government Impact

Most CON applications are submitted by the private sector but there are health service facilities in North Carolina owned by a local government entity, such as a county or hospital authority.

The proposed text of 10A NCAC 14C .2801 and .2803 will have a minimal impact, if any, on the workload of local government applicants proposing to develop new rehabilitation beds pursuant to a need determination in the SMFP. Applicants will need to provide three years of utilization projections rather than two. However, the proposed language may afford approved applicants a modest benefit by allowing them to meet the projected thresholds in three years rather than two and to meet a lower threshold.

Private Sector Impact

The proposed text of 10A NCAC 14C .2801 and .2803 will have a minimal impact, if any, on the workload of private sector applicants proposing to develop new rehabilitation beds pursuant to a need determination in the SMFP. Specifically, applicants will need to provide three years of utilization projections rather than two. The proposed language may also afford approved applicants a modest benefit by allowing them to meet the projected thresholds in three years and to meet a lower occupancy threshold.

State Government Impact

The issue is whether the proposed text of 10A NCAC 14C .2801 and .2803 would significantly change the number of applications received by the Section in a given year which propose to develop new rehabilitation beds pursuant to a need determination in the SMFP.

As shown in Table 6, applicants submitted a total of 4 CON applications during the last five years. During that period, there was a need determination for 8 beds in the 2018 SMFP. Only 2 applicants applied to meet those needs.

Table 6: Rehabilitation Services CON Applications

Calendar Year	Number of Need Determinations in the SMFP	Number of CON Applications Received
2017	0	0
2018*	8	2
2019	0	0
2020**	0	1
2021^	0	1

*The 2018 SMFP identified a need for 8 beds in the 2018 SMFP in Health Service Area III. All CON applications submitted for this need determination were competitive

** This CON was submitted pursuant to Policy AC-3 and not in response to a need determination in the SMFP

^This CON application was submitted to relocate existing beds and was not submitted pursuant to a need determination in the SMFP

Decreasing the projected utilization threshold by 10 percent may result in an increase in these types of CON applications. However, the Agency believes that the increase will be insignificant due to the lack of petitions filed to add beds in lieu of need determinations in the last 5 years. It is reasonable to assume, given the low number of need determinations and applications historically received by the Section, that the number of rehab bed applications received in a year will not vary significantly from the number received in previous years as a result of the proposed text. Determining the amount of the potential increase in applications and when they might be submitted, would be highly speculative and based upon the need determinations in the SMFP.

SECTION .3800 – CRITERIA AND STANDARDS FOR ACUTE CARE HOSPITAL BEDS

10A NCAC 14C .3801 Definitions - The Division proposes to delete the 4 existing terms and replace them with 10 terms used in this section. The definitions of target occupancy are moved from .3803 to .3801 for clarity.

10A NCAC 14C .3803 Performance Standards - The Division proposes to delete paragraphs (a) and (b). The proposed text of the new paragraph describes what an applicant must include in its CON application if proposing to develop new acute care beds in a hospital pursuant to a need determination in the SMFP. The proposed text does not change the requirements regarding projected utilization but clarifies the calculations that are already required in the CON application.

Background

A CON is required before any person may develop acute care beds. The SMFP includes a need methodology for the development of acute care beds. The proposed text does not change the existing utilization projections that an applicant must demonstrate in its application.

Summary of Expected Costs and Benefits

Federal Government Impact	No impact as the Federal Government is not subject to the NC CON Law.
Local Government Impact	The workload for the local government sector will not change as a result of the proposed text.
Private Sector Impact	The workload for the private sector will not change as a result of the proposed text.
State Government Impact	The workload for State Government will not change as a result of the proposed text.

Federal Government Impact

Health service facilities owned by the Federal Government and located in North Carolina are not subject to the North Carolina CON Law. Thus, they are not required to file a CON application and are not impacted by the proposed text.

Local Government Impact

Most CON applications are submitted by the private sector but there are health service facilities in North Carolina owned by a local government entity, such as a county or hospital authority. However, the expected impact on both sectors is expected to be identical.

The proposed text of 10A NCAC 14C .3801 and .3803 would not have any measurable impact on the workload of the local government proposing to develop acute care beds pursuant to a need determination in the SMFP as the new rules clarify the calculations and applications requirements as they already exist for the CON application. The target occupancy rates are already defined and required in the SMFP, so adding the additional definition for the target occupancy rate for hospital systems with ADCs greater than 400 does not present a real change – the new rule text simply clarifies the definition.

Private Sector Impact

The workload for the private sector will not change as a result of the proposed text.

State Government Impact

The issue is whether the proposed text of 10A NCAC 14C .3801 and .3803 would significantly change the number of applications received by the Section in a given year which propose to develop acute care beds pursuant to a need determination in the SMFP.

As shown in Table 7, there were need determinations for acute care beds in each of the last five years. The average number of applications received was 8 per year.

Table 7: Acute Care Bed CON Applications

Calendar Year	Number of Need Determinations in the SMFP	Number of CON Applications Received
2017	197	9
2018	72	5
2019	143	7
2020	319	10
2021	283	11
Average**		**8**

** Average of 8.4 rounded down to 8

The changes to this section are intended to enhance clarity and do not alter the target occupancy projections that are in the existing rules. It is reasonable to assume that the number of acute care bed applications received in a year will not vary significantly from the number received in previous years as a result of the proposed text of the rule.

SECTION .4000 – CRITERIA AND STANDARDS FOR HOSPICE INPATIENT FACILITIES AND HOSPICE RESIDENTIAL CARE FACILITIES

10A NCAC 14C .4001 Definitions - The Division proposes to delete the 10 existing terms and replace them with 7 terms used in this section.

10A NCAC 14C .4003 Performance Standards - The Division proposes to delete paragraphs (a) - (c). The proposed text of the new paragraphs (a) and (b)clarify what an applicant must include in its certificate of need application if proposing to develop new hospice Inpatient beds pursuant to a need determination in the SMFP or develop new hospice residential beds. The proposed language adds and defines the term "occupancy rate."

Background

A CON is required before any person develops new hospice inpatient beds or hospice residential care beds. The SMFP includes a need methodology for hospice inpatient beds. There is no need methodology for hospice residential care beds. The proposed text deletes the unnecessary historical utilization requirements to develop these beds. The existing language requires applicants proposing to develop hospice inpatient beds or hospice residential care beds to project the occupancy rate for the facility after the second year of operations. The Rule, however, does not define occupancy rate. The proposed text includes a standard occupancy rate calculation. The proposed text does not change the projected utilization thresholds but extends the timeframe to meet those requirements from two to three full fiscal years.

Summary of Expected Costs and Benefits

Federal Government Impact No impact as the Federal Government is not subject to the NC CON Law.

Local Government Impact	The workload for the local government sector will be minimally impacted as a result of the proposed text.
Private Sector Impact	The workload for the private sector will be minimally impacted a result of the proposed text.
State Government Impact	The workload for State Government will not change as a result of the proposed text.

Federal Government Impact

Health service facilities owned by the Federal Government and located in North Carolina are not subject to the North Carolina CON Law. Thus, they are not required to file a CON application and are not impacted by the proposed text.

Local Government Impact

Most CON applications are submitted by the private sector but there are health service facilities in North Carolina owned by a local government entity, such as a county or hospital authority.

The proposed text of 10A NCAC 14C .4001 and .4003 would not have any measurable impact on the workload of local government applicants proposing to develop hospice inpatient or hospice residential beds pursuant to a need determination in the SMFP. The proposed language sets forth a standard and straightforward calculation that all applicants must use to uniformly project occupancy. The proposed language also affords approved applicants a modest benefit by giving them an additional year to meet the thresholds while they ramp up services.

Private Sector Impact

The workload for the private sector will be minimally impacted as a result of the proposed text as discussed in the local government impact section above.

State Government Impact

The issue is whether the proposed text of 10A NCAC 14C. 4001 and .4003 would significantly change the number of applications received by the Section in a given year which propose to develop hospice inpatient beds pursuant to a need determination in the SMFP or to develop hospice residential beds.

As shown in Table 8, there were need determinations for hospice inpatient beds in four of the last five years. The average number of CON applications received for that service was 3 per year.

Table 8: Hospice Inpatient Bed CON Applications

Calendar Year	Number of Need Determinations in the SMFP	Number of CON Applications Received
2017	9	2
2018	20	4
2019	0	0
2020	1	8
2021	16	0
Average*		3

* Average of 2.8 rounded up to 3

Table 9 shows that there were no CON applications for hospice residential care beds in the last five years.

Table 9: Hospice Residential Care Bed CON Applications*

Calendar Year	Number of CON Applications Received
2017	0
2018	0
2019	0
2020	0
2021	0

*There is no need methodology for hospice residential care beds in the SMFP

Despite the publication of need determinations in the SMFP in four of the last five years, the Section averaged only 3 applications per year for this service. Notably, the Section received no applications to develop hospice residential facility beds in the last five years.

While eliminating the historical utilization requirement to develop these services may result in an increase in CON applications, it is unlikely that providing historical utilization is the principal deterrent to providers given the low historical volume of applications for these services. Even if applicants are no longer required to provide historical utilization, they will still be required to project the same level of utilization as is currently specified in the performance standards by the third full calendar year of operations. Accordingly, there is no basis to conclude that the submission of CON applications will substantially increase as a result of the proposed changes to the text and it would be an unsupported guess as to how many and when they might be submitted. It is more reasonable to assume that the number of hospice inpatient and hospice residential bed applications received in a year will not vary significantly from the number received in previous years as a result of the proposed text of the rule.

Summary

The intent of these rule changes is to enhance clarity and ensure appropriate uniformness across the different CON application processes for adult care/nursing home beds, acute care beds, rehabilitation beds, and hospice beds. The historical utilization requirements have been eliminated because State Medical Facilities Plan already directs the determination of need calculation. While the required occupancy rate thresholds have been extended for some types of beds, this is not expected to have an impact on the number of CON applications received by the state because it is more likely that an operator's individual financial situation and projections will be the determining factor in whether they decide to pursue a CON application. This is especially evident in the applications for nursing home and adult care home beds – even though the need determinations have increased, the applications have not due to a number of other factors.

Appendix A

10A NCAC 14C .1102 is proposed for readoption with substantive changes as follows:

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.~~

~~(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.~~

~~(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. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.~~

(a) For the purposes of this Rule the following definitions shall apply:

(1) "Approved beds" means nursing home or adult care home beds that were issued a certificate of need but are not being used to provide services as of the application deadline for the review period.

(2) "Existing beds" means nursing home or adult care home beds that are being used to provide services as of the application deadline for the review period.

(3) "Maximum capacity" means the total number of existing, approved, and proposed nursing home or adult care home beds times 365 days.

(4) "Occupancy rate" means the total number of patient days of care provided in the nursing home or adult care home beds during a full fiscal year of operation divided by maximum capacity expressed as a percentage.

(5) "Proposed beds" means the nursing home or adult care home beds proposed in the application under review.

(b) An applicant proposing to develop nursing home beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of the existing, approved, and proposed beds during each of the first three full fiscal years of operation following completion of the project;

(2) project an occupancy rate for the existing, approved, and proposed beds of at least 90% of maximum capacity during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to project the utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

(c) An applicant proposing to develop adult care home beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of the existing, approved, and proposed beds during each of the first three full fiscal years of operation following completion of the project;

(2) project an occupancy rate for the existing, approved, and proposed beds of at least 85% of maximum capacity during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to project the utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

History Note: *Authority G.S. ~~131E-175; 131E-176;~~ 131E-177(1); 131E-183(b); ~~S.L. 2001, c. 234;~~*
Eff. November 1, 1996;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, ~~2003.~~ 2003;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2001 is proposed for readoption with substantive changes as follows:

SECTION .2000 – CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES

10A NCAC 14C .2001 DEFINITIONS

~~The following definitions in this Rule shall apply to all rules in this Section:~~

~~(1) "Home Health Agency" shall have the same meaning as defined in G.S. 131E-176(12).~~

~~(2) "Home Health Services" shall have the same meaning as defined in G.S. 131E-176(12).~~

The following definitions shall apply to this Section:

(1) "Home health agency" shall have the same meaning as defined in G.S. 131E-176(12).

(2) "Service area" shall have the same meaning as defined in the annual State Medical Facilities Plan in effect as of the first day of the review period.

History Note: *Authority G.S. 131E-177(1); 131E-183(b);*
Eff. September 1, 1980;
Amended Eff. March 1, 1996; July 1, 1995; July 1, 1991; February 1, 1985; May 1, ~~1983.~~ 1983;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2003 is proposed for readoption with substantive changes as follows:

10A NCAC 14C .2003 PERFORMANCE STANDARDS

~~An applicant shall project, in the third year of operation, an annual unduplicated patient caseload for the county in which the facility will be located that meets or exceeds the minimum need used in the applicable State Medical Facilities Plan to justify the establishment of a new home health agency office in that county. An applicant shall not be required to meet this performance standard if the home health agency office need determination in the applicable State Medical Facilities Plan was not based on application of the standard methodology for a Medicare-certified home health agency office.~~

An applicant proposing to develop a new Medicare-certified home health agency pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization for each of the first three full fiscal years of operation following completion of the project;

(2) project to serve at least 325 residents of the proposed service area during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization required in Item (1) of this Rule.

History Note: *Authority G.S. 131E-177(1); 131E-183(b);*
Eff. March 1, 1996;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, ~~2003.~~ 2003;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2801 is proposed for readoption with substantive changes as follows:

SECTION .2800 - CRITERIA AND STANDARDS FOR REHABILITATION SERVICES

10A NCAC 14C .2801 DEFINITIONS

~~The definitions in this Rule will apply to all rules in this Section.~~

~~(1) "Rehabilitation Facility" means a facility as defined in G.S. 131E-176.~~

~~(2) "Rehabilitation" means the process to maintain, restore or increase the function of disabled individuals so that an individual can live in the least restrictive environment, consistent with his or her objective.~~

~~(3) "Outpatient Rehabilitation Clinic" is defined as a program of coordinated and integrated outpatient services, evaluation, or treatment with emphasis on improving the functional level of the person in coordination with the patient's family.~~

~~(4) "Rehabilitation Beds" means inpatient beds for which a need determination is set forth in the current State Medical Facilities Plan and which are located in a hospital licensed pursuant to G.S. 131E-77.~~

~~(5) "Traumatic Brain Injury" is defined as an insult to the brain that may produce a diminished or altered state of consciousness which results in impairment of cognitive abilities or physical functioning. It can also result in the disturbance of behavioral or emotional functioning. These impairments may be either temporary or permanent and cause partial or total functional disability or psychological maladjustment.~~

~~(6) "Stroke" (cerebral infarction, hemorrhage) is defined as the sudden onset of a focal neurologic deficit due to a local disturbance in the blood supply to the brain.~~

~~(7) "Spinal Cord Injury" is defined as an injury to the spinal cord that results in the loss of motor or sensory function.~~

~~(8) "Pediatric Rehabilitation" is defined as inpatient rehabilitation services provided to persons 14 years of age or younger.~~

The following definitions shall apply to this Section:

(1) "Approved rehabilitation (rehab) beds" means rehab beds that were issued a certificate of need but are not licensed as rehab beds as of the application deadline for the review period.

(2) "Average daily census (ADC)" means the total number of inpatient rehab days of care provided during a full fiscal year of operation divided by 365 days.

(3) "Existing rehab beds" means rehab beds that are licensed as rehab beds as of the application deadline for the review period.

(4) "Occupancy rate" means the ADC divided by the total number of existing, approved, and proposed rehab beds expressed as a percentage.

(5) "Proposed rehab beds" means the rehab beds proposed in the application under review.

History Note: *Authority G.S. 131E-177; 131E-183(b);*
Eff. May 1, 1991;
Amended Eff. February 1, 1993;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, ~~2006.~~ 2006;
Readopted Eff. January 1, 2023.

10A NCAC 14C .2803 is proposed for readoption with substantive changes as follows:

10A NCAC 14C .2803 PERFORMANCE STANDARDS

~~(a) An applicant proposing to establish new rehabilitation beds 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 rehabilitation beds within the facility in which the new beds are to be operated was at least 80 percent.~~

~~(b) An applicant proposing to establish new rehabilitation beds shall not be approved unless occupancy is projected to be 80 percent for the total number of rehabilitation beds to be operated in the facility no later than two years following completion of the proposed project.~~

An applicant proposing to develop rehab beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of all existing, approved, and proposed rehab beds on the hospital license during each of the first three full fiscal years of operation following completion of the project;

(2) document that the occupancy rate for all existing, approved, and proposed rehab beds on the hospital license shall be at least 70% during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization and occupancy rate required in Items (1) and (2) of this Rule.

History Note: *Authority G.S. 131E-177; ~~131E-183;~~ 131E-183(b);*
Eff. November 1, ~~1996.~~ 1996;
Readopted Eff. January 1, 2023.

10A NCAC 14C .3801 is proposed for readoption with substantive changes as follows:

SECTION .3800 - CRITERIA AND STANDARDS FOR ACUTE CARE HOSPITAL BEDS

10A NCAC 14C .3801 DEFINITIONS

~~The following definitions shall apply to all Rules in this Section:~~

~~(1) "Acute care beds" means acute care beds licensed by the Division of Health Service Regulation in accordance with standards in 10A NCAC 13B .6200, and located in hospitals licensed pursuant to G.S. 131E-79.~~

~~(2) "Average daily census" means the number of days of inpatient acute care provided in licensed acute care beds in a given year divided by 365 days.~~

~~(3) "Campus" shall have the same meaning as defined in G.S. 131E-176(2c).~~

~~(4) "Service Area" means the single or multi-county area as used in the development of the acute care bed need determination in the applicable State Medical Facilities Plan.~~

The following definitions shall apply to this Section:

(1) “Applicant hospital” means the hospital where the applicant proposes to develop the new acute care beds and includes all campuses on one license.

(2) “Approved beds” means acute care beds in a hospital that were issued a certificate of need but are not licensed as of the application deadline for the review period.

(3) “Average daily census (ADC)” means the total number of acute care days of care provided during a full fiscal year of operation divided by 365 days.

(4) "Existing beds" means acute care beds in a hospital that are licensed as of the application deadline for the review period.

(5) "Hospital system" means all hospitals in the proposed service area owned or operated by the applicant or a related entity.

(6) "Occupancy rate" means the ADC divided by the total number of existing, approved and proposed acute care hospital beds.

(7) "Proposed beds" means the acute care beds proposed to be developed in a hospital in the application under review.

(8) "Qualified applicant" shall have the same meaning as defined in the annual State Medical Facilities Plan in effect as of the first day of the review period.

(9) "Service area" shall have the same meaning as defined in the annual State Medical Facilities Plan in effect as of the first day of the review period.

(10) "Target occupancy percentage" means:

(a) 66.7% if the ADC is less than 100;

(b) 71.4% if the ADC is 100 to 200;

(c) 75.2% if the ADC is 201 to 399; or

(d) 78.0% if the ADC is greater than 400.

History Note: *Authority G.S. 131E-177(1); ~~131E-183;~~ 131E-183(b);*
Temporary Adoption Eff. January 1, 2004;
Eff. August 1, ~~2004.~~ 2004;
Readopted Eff. January 1, 2023.

10A NCAC 14C .3803 is proposed for readoption with substantive changes as follows:

10A NCAC 14C .3803 PERFORMANCE STANDARDS

~~(a) An applicant proposing to develop new acute care beds shall demonstrate that the projected average daily census (ADC) of the total number of licensed acute care beds proposed to be licensed within the service area, under common ownership with the applicant, divided by the total number of those licensed acute care beds is reasonably projected to be at least 66.7 percent when the projected ADC is less than 100 patients, 71.4 percent when the projected ADC is 100 to 200 patients, and 75.2 percent when the projected ADC is greater than 200 patients, in the third operating year following completion of the proposed project or in the year for which the need determination is identified in the State Medical Facilities Plan, whichever is later.~~

~~(b) An applicant proposing to develop new acute care beds shall provide all assumptions and data used to develop the projections required in this rule and demonstrate that they support the projected inpatient utilization and average daily census.~~ An applicant proposing to develop new acute care beds in a hospital pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) document that it is a qualified applicant;

(2) provide projected utilization of the existing, approved, and proposed acute care beds for the applicant hospital during each of the first three full fiscal years of operation following completion of the project;

(3) project an occupancy rate of the existing, approved, and proposed acute care beds for the applicant hospital during the third full fiscal year of operation following completion of the project that equals or exceeds the target occupancy percentage;

(4) provide projected utilization of the existing, approved, and proposed acute care beds for the hospital system during each of the first three full fiscal years of operation following completion of the project;

(5) project an average occupancy rate of the existing, approved, and proposed acute care beds for the hospital system during the third full fiscal year of operation following completion of the project that equals or exceeds the target occupancy percentage; and

(6) provide the assumptions and methodology used to project the utilization and occupancy rates required in Items (2), (3), (4), and (5) of this Rule.

History Note: *Authority G.S. 131E-177(1); ~~131E-183;~~ 131E-183(b);*
Temporary Adoption Eff. January 1, 2004;
Eff. August 1, ~~2004.~~ 2004;
Readopted Eff. January 1, 2023.

10A NCAC 14C .4001 is proposed for readoption with substantive changes as follows:

SECTION .4000 - CRITERIA AND STANDARDS FOR HOSPICE INPATIENT FACILITIES AND HOSPICE RESIDENTIAL CARE FACILITIES

10A NCAC 14C .4001 DEFINITIONS

~~The following definitions shall apply to all rules in this Section:~~

~~(1) "Bereavement counseling" means counseling provided to a hospice patient's family or significant others to assist them in dealing with issues of grief and loss.~~

~~(2) "Caregiver" means the person whom the patient designates to provide the patient with emotional support, physical care, or both.~~

~~(3) "Care plan" means a plan as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.~~

~~(4) "Home-like" means furnishings of a hospice inpatient facility or a hospice residential care facility as defined in 10A NCAC 13K .1110 or .1204 of the Hospice Licensing Rules.~~

~~(5) "Hospice" means any coordinated program of home care as defined in G.S. 131E-176(13a).~~

~~(6) "Hospice inpatient facility" means a facility as defined in G.S. 131E-176(13b).~~

~~(7) "Hospice residential care facility" means a facility as defined in G.S. 131E-176(13c).~~

~~(8) "Hospice service area" means for residential care facilities, the county in which the hospice residential care facility will be located and the contiguous counties for which the hospice residential care facility will provide services.~~

~~(9) "Hospice services" means services as defined in G.S. 131E-201(5b).~~

~~(10) "Hospice staff" means personnel as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.~~

The following definitions shall apply to this Section:

(1) "Approved beds" means HI or HR beds that were issued a certificate of need but are not licensed as of the application deadline for the review period.

(2) "Average daily census (ADC)" means the total number of days of care provided in the HI or HR beds during a full fiscal year of operation divided by 365 days.

(3) "Existing beds" means HI or HR beds that are licensed as of the application deadline for the review period.

(4) "Hospice inpatient facility (HI) beds" means HI beds licensed to provide palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients in an inpatient setting.

(5) "Hospice residential facility (HR) beds" means HR beds licensed to provide palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients in a group residential setting.

(6) "Occupancy rate" means the ADC divided by the total number of existing, approved, and proposed HI or HR beds expressed as a percentage.

(7) "Proposed beds" means the HI or HR beds proposed in the application under review.

History Note: *Authority G.S. 131E-177(1); 131E-183(b);*
Temporary Adoption Eff. February 1, 2006;
Eff. November 1, ~~2006.~~ 2006;
Readopted Eff. January 1, 2023.

10A NCAC 14C .4003 is proposed for readoption with substantive changes as follows:

10A NCAC 14C .4003 PERFORMANCE STANDARDS

~~(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:~~

~~(1) the average occupancy rate of the licensed hospice beds, for each level of care, in the facility is projected to be at least 50 percent for the last six months of the first operating year following completion of the project;~~

~~(2) the average occupancy rate for the licensed hospice beds, for each level of care, in the facility is projected to be at least 65 percent for the second operating year following completion of the project; and~~

~~(3) if the application is submitted to address the need for hospice residential care beds, each existing hospice residential care facility which is located in the hospice service area operated at an occupancy rate of at least 65 percent for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.~~

~~(b) An applicant proposing to add hospice inpatient facility beds to an existing hospice inpatient facility shall document that the average occupancy of the licensed hospice inpatient facility beds in its existing facility was at least 65 percent for the nine months immediately preceding the submittal of the proposal.~~

~~(c) An applicant proposing to add residential care beds to an existing hospice residential care facility shall document that the average occupancy of the licensed hospice residential care beds in its existing facility was at least 65 percent for the nine months immediately preceding the submittal of the proposal.~~

(a) An applicant proposing to develop new HI beds pursuant to a need determination in the annual State Medical Facilities Plan in effect as of the first day of the review period shall:

(1) provide projected utilization of all existing approved, and proposed HI beds on the license during each of the first three full fiscal years of operation following completion of the project;

(2) document that the occupancy rate for all existing, approved, and proposed HI beds on the license shall be at least 65% during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

(b) An applicant proposing to develop new HR beds shall:

(1) provide projected utilization of all existing, approved, and proposed HR beds on the license during each of the first three full fiscal years of operation following completion of the project;

(2) document that the occupancy rate for all existing, approved, and proposed HR beds on the license shall be at least 65% during the third full fiscal year of operation following completion of the project; and

(3) provide the assumptions and methodology used to provide the projected utilization and occupancy rate required by Subparagraphs (1) and (2) of this Paragraph.

History Note: *Authority G.S. 131E-177(1); 131E-183(b);*
Temporary Adoption Eff. February 1, 2006;
Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, ~~2008.~~ 2008;
Readopted Eff. January 1, 2023.