MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215
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MEMORANDUM

TO: Commissioners

Adventist Home Health Services, Inc. (Maryland license HH7032)
Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Maryland license HH7048)
Bayada Home Health Care, Inc. (Maryland license HH7158)

FROM: Marcus L. Wang, Esquire
Commissioner/Reviewer

RE: Recommended Decision
Western Maryland Home Health Agency Review:
Adventist Home Health Services, Inc. (Docket No. 17-R2-2397)
Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Docket No. 17-R2-2398)
Bayada Home Health Care, Inc. (Docket No. 17-R2-2399)

DATE: January 9, 2019

Enclosed is my Recommended Decision in my review of Certificate of Need ("CON") applications by Adventist Home Health Services, Inc. (Maryland license HH7032) ("Adventist"), Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Maryland license HH7048) ("Amedisys-Westminster"), and Bayada Home Health Care, Inc. (Maryland license HH7158) ("Bayada-Gaithersburg") to expand their home health agency ("HHA") services into certain jurisdictions in the Western Maryland region, which, for the purposes of this review, consists of Allegany, Frederick, Garrett, and Washington Counties. Each of these applicants is an established, Medicare-certified HHA currently operating in Maryland.

Adventist proposes to extend its service area to Frederick County, one of four counties in the Western Maryland region, using its existing Rockville branch office. Adventist estimates its cost to implement the project at $75,000, which includes legal and application-related consulting expenses, equipment costs, and project-related staff transportation and start-up costs. Adventist will use cash to cover these costs, and anticipates that its project will be fully operational in Frederick County within one month of CON approval.

Amedisys-Westminster also proposes to expand its existing service area to Frederick County, using a new branch office to be located in Frederick that is estimated to have an annual rental cost of $36,000. Amedisys-Westminster projects spending $40,000 for CON-related legal fees, funded with cash, and expects to be fully operational within nine months of the CON approval date.

Bayada-Gaithersburg is the only applicant that proposes to expand its existing service area to all four counties of the Western Maryland region, using its existing Gaithersburg office. It plans to begin serving clients in Frederick and Washington Counties, and expand into Allegany and Garrett Counties about a year later. Bayada-Gaithersburg projects that no capital expenditure is required to implement this project.

I have considered the entire record in this review and conducted a Project Status Conference to identify and facilitate changes that each applicant needed to make to arrive at an approvable project. The applicants responded as needed, and I have determined that each of these three applications complies with the standards in COMAR 10.24.16 ("HHA Chapter"), the applicable chapter of the State Health Plan for Facilities and Services ("State Health Plan") and with CON review criteria.

For these reasons, I recommend that the Commission **APPROVE** the applications of Adventist, Amedisys-Westminster, and Bayada-Gaithersburg with conditions that each:

1. Maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding fee scale, and reduced fee services;

2 Provide an amount of charity care equivalent to or greater than the average amount of charity care provided by home health agencies [in Frederick County, for Adventist and Amedisys-Westminster; in the Western Maryland region (Allegany, Frederick, Garrett, and Washington Counties) for Bayada-Gaithersburg]; and

3. Provide documentation regarding its links with hospitals, nursing homes, continuing care retirement communities, hospice programs, assisted living providers, Adult Evaluation and Review Services, adult day care programs, the local Department of Social Services, and home-delivered meal programs located within its proposed service area when it requests first use approval.

For reasons noted in this memorandum and in my Recommended Decision, I recommend that the following additional conditions be placed on any Certificate of Need issued to Bayada-Gaithersburg:

4. Prior to partial or final first use approval, Bayada-Gaithersburg shall develop separate forms, acceptable to Commission staff, to implement its determinations of probable and final eligibility for charity or reduced fee care.

5. Prior to partial or final first use approval, Bayada-Gaithersburg shall provide information regarding additional steps, acceptable to Commission staff, that it has taken to assure that it will provide an amount of charity care that is equivalent to or greater than the average amount of charity care provided by home health agencies in the Western Maryland region.

Interested Party

Only Amedisys-Westminster filed comments as an interested party in the review. It did not oppose any application, noting that, under the provisions of COMAR 10.24.16.10, the Commission could approve all three applicants in this review. Amedisys-Westminster stated its belief that its application was the strongest of the three.

Background

The HHA Chapter, COMAR 10.24.16, reflects the Commission's policy position that consumers need a choice of high quality HHA providers and more competitive markets for this service. Under the provisions of the HHA Chapter, Allegany, Frederick, Garrett, and Washington Counties each shows a need for additional HHA services, and were characterized as constituting the Western Maryland region. Allegany and Garrett counties had both: (1) insufficient consumer choice because only two or fewer Medicare-certified HHAs served a minimum number of clients each year during the most recent three-year period in the jurisdictions; and (2) highly concentrated HHA markets, as defined by the Herfindahl-Hirschman Index, a measure of the competitiveness exhibited in a market served by competing firms.[1] Frederick and Washington Counties – despite having a sufficient number of competing HHAs – qualified as highly concentrated markets for home health agency services under the HHA Chapter. Thus, these two jurisdictions qualified for consideration of entry by additional HHAs as a way to increase the competitiveness of the jurisdictional market.

Each of the three applicants was among the 18 Maryland HHAs that met the required performance-related qualifications levels, allowing each to apply for a CON to expand its current authorized service area. I note that the number of applicants in this review does not exceed the permitted number of additional HHAs that can be approved for the Western Maryland region under the provision of the HHA Chapter, which is designed to promote gradual growth in the number of HHAs in a jurisdiction so as to avoid excessive disruption or destabilization of existing HHA operations.

Recommendation

My review of the applications and the entire record resulted in my finding that each applicant met all applicable State Health Plan standards and CON review criteria, but only after each applicant made certain modifications that enabled me to find them in compliance. As detailed in my Recommended Decision, I held a Project Status Conference in this review because each applicant did not meet all applicable standards and criteria.

[1] See discussion in my Recommended Decision at pages 6-7.

At the Project Status Conference, I advised each applicant that it needed to make changes to its charity care policies and procedures to comply with the charity care and sliding fee scale standard. In addition, I informed Amedisys-Westminster that it must address two issues regarding its responses to the financial feasibility standard and related CON review criteria; and advised Bayada-Gaithersburg that it needed to modify its responses to the financial feasibility and the impact standards.

Adventist's initial modification was complete, and no additional changes were needed. However, neither Amedisys-Westminster nor Bayada-Gaithersburg had made all necessary modifications, so I sought completeness information from each and informed them that this was their last opportunity to provide the information I had requested at the Project Status Conference.

In its second modification, Amedisys-Westminster made additional changes needed to satisfactorily meet the charity care and financial feasibility standards. Bayada-Gaithersburg made modifications to its responses to the impact and financial feasibility standards, and to COMAR 10.24.16.08E(4), the subsection of the charity care standard referencing the credibility of an applicant's charity care commitment and its specific plan to meet that commitment. On this component, Bayada-Gaithersburg did not provide the level of detail that I would have liked to have seen as part of a comprehensive approach to engage with community-based agencies and other non-hospital providers serving the indigent populations in each of the four jurisdictions it proposes to serve.

As noted in my Recommended Decision, I decided to look at Bayada-Gaithersburg's response to the charity care and sliding fee scale standard in the most favorable light because it was the only applicant that sought to expand to Allegany, Garrett, and Washington Counties, jurisdictions where the Commission found need when it adopted the current HHA Chapter. Thus, Bayada-Gaithersburg's commitment to expand to each county in the region plays an important role in my recommendation. Meeting the Commission's goal for additional access for residents of those three counties is important and, as a result, I believe this approach furthers MHCC's overarching commitment to the public good, and our mission to increase access to quality health care for all of Maryland residents. For this reason, I recommend the two previously noted additional conditions on Bayada-Gaithersburg's Certificate of Need.

Further Proceedings

This matter will be placed on the agenda for the meeting of the Maryland Health Care Commission on January 17, 2019, beginning at 1:00 p.m. at 4160 Patterson Avenue in Baltimore. The Commission will issue a final decision based on the record of the proceeding.

As provided in COMAR 10.24.01.09B, each applicant may submit written exceptions to the enclosed Recommended Decision. **If an applicant desires to file exceptions, it must provide notice of its intent to file exceptions to other parties, Commission staff, and relevant County Health Officers on or before 4:30 p.m. on Monday, January 14, 2019.** If such a notice is filed, this matter will not be considered at the January 17, 2019 meeting of the Commission. Instead, I will set dates for the filing of exceptions and any response(s), as appropriate, and oral argument on any exceptions will be heard at the February 21, 2019 meeting of the Commission.

IN THE MATTER OF THE	*	
WESTERN MARYLAND	*	**BEFORE**
HOME HEALTH AGENCY REVIEW	*	
	*	**THE**
ADVENTIST HOME HEALTH	*	
SERVICES, INC.	*	**MARYLAND**
(Maryland license HH7032)	*	
Docket No. 17-R2-2397	*	**HEALTH CARE**
	*	
AMEDISYS MARYLAND, LLC	*	**COMMISSION**
D/B/A AMEDISYS HOME HEALTH	*	
(Maryland license HH7048)	*	
Docket No. 17-R2-2398	*	
	*	
BAYADA HOME HEALTH	*	
CARE, INC.	*	
(Maryland license HH7158)	*	
Docket No. 17-R2-2399	*	
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Reviewer's Recommended Decision

January 17, 2019

(released January 9, 2018)

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I. INTRODUCTION

A. The Applicants

Adventist Home Health Services, Inc. (Maryland license number HH7032)

Adventist Home Health Services, Inc. ("Adventist") is a licensed home health agency ("HHA") certified for Medicare and Medicaid participation and accredited by the Community Health Accreditation Program. Adventist serves all seven of its authorized jurisdictions consisting of Anne Arundel, Calvert, Charles, Howard, Montgomery, Prince George's, and St. Mary's Counties. According to the Maryland Health Care Commission's ("Commission's") 2014 HHA public use database (the most current data available),[1] Adventist served a total of 5,761 clients[2] (based on an unduplicated count), with the majority of its clients residing in Montgomery County (3,551 clients). In addition to the six major HHA service disciplines (i.e., skilled nursing services, home health aide services, physical therapy, occupational therapy, speech/language therapy, and medical social services) Adventist also provides home infusion therapy, wound care, dietician services, and chaplain services. (DI #4 Adventist Home Health ("AHH"), p. 3).

Adventist is a faith-based, not-for-profit HHA established in 1973 as part of the Adventist HealthCare system. (DI #4AHH, p.5). Adventist is part of Adventist HealthCare, Inc., which operates two general hospitals, two special rehabilitation hospitals, and other health care facilities in Montgomery County and provides other health care services. The HHA's main (parent) office is located in Silver Spring and it has two branch offices in Rockville and Waldorf. (DI #4AHH, p. 4). The Centers for Medicare and Medicaid Services ("CMS") Home Health Compare website reports a quality of patient care star rating of 4.5 stars for Adventist for calendar year ("CY") 2017 and a patient survey rating of three stars for the fiscal year ending ("FYE") on April 30, 2018. (DI #4AHH, pp. 5, 24) (updated to 2018 by Commission staff).[3]

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[1] At the time the CON review schedule was published in October 2016 for the 2017 HHA CON reviews, the most recent available data from the Commission's Annual HHA Survey was for FY 2014. In May 2016, one month after the effective date of the new HHA Chapter, COMAR 10.24.16, Commission staff convened a work group on updating the HHA Survey. The redesign of the data collection instrument included adding new edit functions, testing, and re-testing, as well as necessary reprogramming. This caused a delay in updating the HHA public use data set for use in the 2017 HHA CON review.

[2] In this Recommended Decision, I use the term "client" rather than "patient" because HHA services are provided to persons in their own residences and not in an institutional or inpatient setting. This is consistent with the terminology used by HHA providers and in the HHA Chapter.

[3] Home Health Compare uses a star rating between one and five stars to show how a home health agency compares to other home health agencies on measurements of its performance. The star ratings are based on eight measures of quality that give a general overview of performance. Across the country, most agencies fall "in the middle" with three or 3½ stars being the average rating across the eight measures. A star rating higher than 3½ means that an agency had above-average performance compared to other agencies. A star rating lower than three stars means that an agency's performance was below average compared to other home health agencies. https://www.medicare.gov/homehealthcompare/search.html

Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Maryland license number HH7048)

Amedisys Maryland, LLC d/b/a Amedisys Home Health ("Amedisys-Westminster") is a licensed HHA based in Westminster (Carroll County) that is certified for Medicare and Medicaid participation and accredited by the Accreditation Commission for Health Care, Inc. ("ACHC"). It is one of seven distinct licensed and Medicare-certified HHAs in Maryland that are subsidiaries of Amedisys, Inc., a public corporation established in 1982 that provides home health and hospice services with operations in 36 states through more than 400 Medicare-certified home health and hospice agencies (DI #5 Amedisys-Westminster ("AW"), p. 6).

All seven of the Amedisys HHAs operating in Maryland entered the state through acquisitions of existing Maryland HHAs. The applicant agency, based in Westminster, is authorized to serve six jurisdictions (Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, and Baltimore City). The agency reported serving five of the six authorized jurisdictions in 2014, having served no clients in Harford County. There is significant overlap in the authorized service areas of the seven Amedisys HHAs operating in Maryland. Collectively, they are authorized to serve a total of 14 jurisdictions. (DI #5AW, p. 6; DI #9AW, p. 1). Of the seven Amedisys Maryland HHAs, four (including Amedisys-Westminster, the applicant) met the performance requirements of COMAR 10.24.16, the HHA Chapter of the State Health Plan for Facilities and Services ("State Health Plan"), making each of the four eligible to expand.

In 2014 Amedisys-Westminster served a total of 559 clients (based on an unduplicated count) in five jurisdictions, with the majority of its clients residing in Carroll County (296 clients). HHA services currently provided by Amedisys-Westminster include the six major disciplines: skilled nursing, home health aide services, occupational therapy, speech/language therapy, physical therapy and medical social services. (DI #5AW, p. 4). The applicant has one office located in Westminster. (DI #5AW, p. 5). The CMS Home Health Compare website reports a quality of patient care star rating of 4.5 stars for Amedisys-Westminster for CY 2017 and a patient survey rating of three stars for the FYE April 30, 2018. (DI #5AW, p. 6) (updated to 2018 by Commission staff).

Bayada Home Health Care, Inc. (Maryland license number HH7158)

Bayada Home Health Care, Inc. ("Bayada-Gaithersburg"), a licensed HHA located in Gaithersburg (Montgomery County), is certified for Medicare and Medicaid participation and accredited by CHAP. (DI #4 Bayada-Gaithersburg ("BG"), Att. A-3). Bayada-Gaithersburg is a subsidiary of Bayada Home Health Care, Inc. ("Bayada"). At the time of application, Bayada was a privately held proprietary corporation with HHA operations in six states. (DI #4BG, Att. L) It was founded in 1975 and was owned by Joseph Mark Baiada. (DI #4BG, pp. 3, 4). In response to Commission staff's completeness questions, Bayada stated that it would "be transitioning from a privately owned company to that of a non-profit status within the next three years." (DI #7BG, p. 4).

Bayada entered Maryland through acquisition of two existing HHAs. Bayada-Gaithersburg is authorized to serve Montgomery County and is the only Maryland Bayada HHA that met the

HHA Chapter's performance requirements qualifying the agency to seek expansion of its service area.

The HHA services currently provided by Bayada-Gaithersburg include the six major disciplines: skilled nursing; home health aide services; occupational therapy; speech/language therapy; physical therapy; and medical social services. (DI #4BG, p. 6). The applicant reported serving 621 clients in 2014 (based on an unduplicated count). The CMS Home Health Compare website reports a quality of patient care star rating of 4.5 stars for Bayada-Gaithersburg for CY 2017 and a patient survey rating of two stars for the FYE April 30, 2018.

On October 9, 2018, Bayada requested a determination of coverage regarding whether a CON was needed for what it characterized as "an internal restructure that Bayada will undergo on or before December 31, 2018." (DI #16a-BG). This transfer, which constitutes an acquisition under Commission regulations, would result in the sole owner of Bayada, Mr. Joseph Mark Baiada, gifting all of his interest in Bayada to a to-be-formed 501(c)(3) non-profit corporation. This change in ownership constitutes a modification of Bayada's CON application more than 45 days after docketing, an action that would not be permitted under COMAR 10.24.01.08E(2) unless each applicant in a comparative review consents to the change.[4] The other applicants agreed to Bayada-Gaithersburg's modification. (DI #16b-BG). Commission staff issued a determination of coverage that the acquisition did not require CON review and that, given the consent by the other applicants in this review (and applicants in other comparative reviews involving other Bayada entities), Bayada-Gaithersburg's application is modified, resulting in the identified applicant in this review becoming the non-profit 501(c)(3) corporation, upon closing of the transaction. (DI #25BG).

B. The Proposed Projects

Adventist is proposing to extend its service area to Frederick County, one of four counties in the Western Maryland region, using its existing Rockville branch office. Adventist proposes to provide the same HHA services it currently provides to clients of all ages in Frederick County. (DI #4AHH, p. 3). The project has an estimated cost of $75,000 to cover legal and application-related consulting expenses, equipment costs, and project-related staff transportation and start-up costs. (DI #7AHH, p. 1). The source of funds is cash, and Adventist anticipates that its project will be fully operational in Frederick County within one month of CON approval. (DI #4AHH, pp. 4, 25).

Amedisys-Westminster also proposes to expand its existing service area to Frederick County, out of a new branch office, and will provide the same HHA services it currently provides. Amedisys-Westminster projects spending $40,000 for CON-related legal fees. (DI #5AW, pp. 35, 36). The new branch office will be located in Frederick and is estimated to have an annual rental

[4] COMAR 10.24.01.08E(2) provides that "[a]n application may be modified until the 45th day after docketing or as a result of a project status conference held pursuant to Regulation .09A(2) of this chapter. After the 45th day, a modification to an application in a comparative review not made as the result of a project status conference requires the consent of each applicant."

cost of $36,000. (DI # 9AW, p. 1). The applicant plans to fund this project with cash and expects to be fully operational within nine months from the CON approval date.

Bayada-Gaithersburg proposes to expand its existing service area to all four counties of the Western Maryland region, using its office location in Gaithersburg. (DI #4BG, p. 7). The applicant states that it would initially serve clients in Frederick and Washington Counties and expand into Allegany and Garrett Counties approximately a year later. (DI #7BG, p. 1). Another Bayada HHA, Bayada-Towson, serves Frederick County but did not qualify to submit an expansion proposal in the review cycle. The applicant states that it plans to provide the six major HHA disciplines it currently provides in Montgomery County in each of the four Western Maryland region counties. The applicant projects that no capital expenditure is required to implement this project. (DI # 4BG, p. 28).

C. Reviewer's Recommended Decision

I found that the proposed expansion of Adventist (Maryland HHA license HH7032) and Amedisys-Westminster (Maryland HHA license HH7048) into Frederick County and of Bayada-Gaithersburg into the Western Maryland region (Allegany, Frederick, Garrett, and Washington Counties) each complies with the applicable standards of the HHA Chapter and with the CON review criteria. The need for additional home health agency providers in Frederick County and the Western Maryland region is established under qualifying criteria in the HHA Chapter which show that Frederick and Washington Counties have highly concentrated HHA markets and that Allegany and Garrett Counties have insufficient consumer choice.[5] I also found that the proposed expansions are viable. Each meets other applicable standards and criteria. For these reasons, I recommend that the Commission **APPROVE** the applications of Adventist, Amedisys-Westminster, and Bayada-Gaithersburg with the condition that each:

1. Maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding fee scale, and reduced fee services;

2. Provide an amount of charity care equivalent to or greater than the average amount of charity care provided by home health agencies [in Frederick County, for Adventist and Amedisys-Westminster; in the Western Maryland region (Allegany, Frederick, Garrett, and Washington Counties) for Bayada-Gaithersburg]; and

3. Provide documentation regarding its links with hospitals, nursing homes, continuing care retirement communities, hospice programs, assisted living providers, Adult Evaluation and Review Services, adult day care programs, the local Department of Social Services, and home-delivered meal programs located within its proposed service area when it requests first use approval.

[5] See discussion in the Background section of my Recommended Decision, *infra* , p. 6.

For reasons discussed later in my Recommended Decision,[6] I also recommend that the following additional conditions be placed on any Certificate of Need issued to Bayada-Gaithersburg:

4. Prior to partial or final first use approval, Bayada-Gaithersburg shall develop separate forms, acceptable to Commission staff, to implement its determinations of probable and final eligibility for charity or reduced fee care.

5. Prior to partial or final first use approval, Bayada-Gaithersburg shall provide information regarding additional steps, acceptable to Commission staff, that it has taken to assure that it will provide an amount of charity care that is equivalent to or greater than the average amount of charity care provided by home health agencies in the Western Maryland region.

II. PROCEDURAL HISTORY

A. Record of the Review

These three applications were filed on May 5, 2017. Each application required at least two rounds of completeness questions, and because this was destined to be a comparative review, staff waited until all applications were complete to docket them, which occurred on September 15, 2017. I advised the applicants of my appointment as reviewer on February 16, 2018. (DI #20 General File ("GF").

My initial review revealed that each applicant failed to comply with regulatory requirements for at least one of the applicable State Health Plan standards and CON review criteria. As a result, I held a Project Status Conference in this review on March 6, 2018. At the Project Status Conference, I advised each applicant that it needed to make changes to its charity care policies and procedures to comply with the charity care and sliding fee scale standard. In addition, I informed Amedisys-Westminster that it must address two issues regarding its responses to the financial feasibility standard and related CON review criteria, and I advised Bayada-Gaithersburg that it needed to modify its responses to the financial feasibility standard and the impact standard. I followed up by sending a detailed summary of the Project Status Conference to the three applicants, in which I set out the changes that were needed in each application.

Adventist's initial modification was complete, but neither Amedisys-Westminster nor Bayada-Gaithersburg had made all necessary modifications. Thus, in a May 3, 2018 letter, I asked completeness questions, setting a deadline of May 14, 2018. I told the two applicants that this was their "last opportunity … to provide the information I requested at the Project Status Conference and detailed in my March 9, 2018 Project Status Conference summary." (DI #25GF, p. 10). In response, Amedisys-Westminster made additional needed changes to its responses to the charity care and financial feasibility standards. Bayada-Gaithersburg made the requested changes to its response to the impact and financial feasibility standards and the minimum changes needed to its response to the charity care standard.

[6] See my analysis of Bayada-Gaithersburg's compliance COMAR 10.24.16.08E(4), *infra* , pp. 20-24.

A detailed Record of the Review chronicling all documents filed in this review is attached as an Appendix.

Interested Party in the Review

Only Amedisys-Westminster filed comments and sought interested party status in the review. Amedisys's comments noted that "[t]he Commission has determined that the Western Maryland region, including Frederick County, needs new HHA providers based on criteria that include insufficient consumer choice of HHAs, a highly concentrated HHA service market, or an insufficient choice of HHAs with high quality performance," and that, under the provisions of 10.24.16.10,[7] the Commission could approve all three applicants in this review. Amedisys also touted its "strong performance on quality" and stated that "its experience … [along with] that of its corporate family … [make it] well-suited to meet the demonstrated need … [in] Frederick County." (DI #19GF, p. 4). Finally, Amedisys-Westminster stated that "from a comparative perspective, its Application is the strongest of the three Applications that are pending before the Commission." (DI #19GF, p. 5).

C. Local Government Review and Comment

No local health departments or government agencies submitted comments on any of the applications.

III. BACKGROUND

The HHA Chapter, COMAR 10.24.16, regulates the development and expansion of home health agency services in Maryland, and is based upon the Commission's policy position that consumers need a choice of high quality HHA providers. The HHA Chapter, at COMAR 10.24.16.04, provides that a jurisdiction is identified as having a need for additional home health agency services if it is determined through application of regulatory criteria that the jurisdiction has: (1) insufficient consumer choice of HHAs; (2) a highly concentrated HHA service market; or (3) insufficient choice of HHAs with high quality performance.[8] Applying these provisions,

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[7] COMAR 10.24.16.10, Gradual Entry of New Market Entrants, provides that,

> [i]n order to promote gradual growth in the number of HHAs in Maryland and avoid excessive disruption or destabilization of the existing HHA staffing resources, the Commission … will … limit the number of new entrants authorized by CON approval for any given review cycle to:
> A. No more than 40 percent of the number of existing HHAs in a jurisdiction or multi-jurisdictional region with four or more agencies; and
> B. No more than one additional HHA in a jurisdiction or multi-jurisdictional region with fewer than four existing HHAs.

This rule, when applied to the Western Maryland region, permits the approval of up to four new entrants in the region.

[8] The HHA Chapter

> takes the approach of regulating HHA services by emphasizing the importance of providing consumers with meaningful choices for obtaining high quality services, in which one HHA or a small number of HHAs do not command overwhelming dominance. It sets a benchmark of sufficient consumer choice as the availability of at least three high performing agencies in each jurisdiction. It targets highly

Allegany, Frederick, Garrett, and Washington Counties each shows a need for additional HHA services, and were characterized as constituting the Western Maryland region.

Allegany and Garrett counties had both insufficient consumer choice in that two or fewer Medicare-certified HHAs served 10 or more clients each year during the most recent three-year period, and also had highly concentrated HHA markets as defined by the Herfindahl-Hirschman Index ("HHI").[9]

Frederick and Washington Counties – despite having a sufficient number of competing HHAs – still qualified as highly concentrated HHA markets under the regulations. Thus, under the policy in the HHA Chapter, these two jurisdictions qualified for consideration of additional HHA providers as a way to increase the competitiveness of the markets.

To submit an application that can be accepted for review, a potential applicant must meet performance-related qualifications specified in the HHA Chapter. Each of the three applicants was among the 18 Maryland HHAs that met the required performance levels in the July 2016 CMS Home Health Compare dataset, and thus qualified to apply for a CON to expand its agency's current authorized service area. Although this is a comparative review of three applicants, the CON preference rules defined in COMAR 10.24.16.09 are not applied as the number of applicants does not exceed the permitted number of additional HHAs for the Western Maryland region as provided in COMAR 10.24.16.10.[10]

> concentrated HHA markets, as measured by the Herfindahl-Hirschman Index (HHI), for consideration of new HHA providers, through new agency establishment or expansion of existing HHA(s). Research indicates that quality and performance scores improve over time in more competitive markets.
>
> COMAR 10.24.16.03B, pp. 10-11 (interior citation omitted).

[9] The Herfindahl-Hirschman Index is a measure of the competitiveness exhibited in a market served by competing firms. Further discussion of this index and its use is included in in this Recommended Decision in discussion of the Need criterion, COMAR 10.24.01.08G(3)(b), *infra*, pp. 40-42.

[10] Regulations requiring gradual entry of new market entrants into a jurisdiction or multi-jurisdictional region, as provided in COMAR 10.24.16.10, promote gradual growth in the number of HHAs in the jurisdiction and are intended to avoid excessive disruption or destabilization of existing HHA operations. The Commission limits the number of new entrants authorized by CON approval for any given review cycle to no more than 40 percent of the number of existing HHAs in a jurisdiction or multi-jurisdictional region with four or more agencies and no more than one additional HHA in a jurisdiction or multi-jurisdictional region with fewer than four existing HHAs. For the Western Maryland region review, the maximum number of possible new HHA entrants is four.

IV. REVIEWER'S ANALYSIS AND FINDINGS

The Commission reviews CON applications using six criteria found in COMAR 10.24.01.08G(3). The first criterion concerns the standards and policies in the relevant chapter of the State Health Plan.

COMAR 10.24.01.08G(3) Criteria for Review of an Application for Certificate of Need.

A. COMAR 10.24.01.08G(3)(a) THE STATE HEALTH PLAN

An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.

In this review, the relevant chapter of the State Health Plan for Facilities and Services is the HHA Chapter, COMAR 10.24.16. The Certificate of Need review standards for HHA services are found in COMAR 10.24.16.08. Each applicant that seeks a Certificate of Need for a project covered by the HHA Chapter must address and document its compliance with each of the following standards.

COMAR 10.24.16.08 Certificate of Need Review Standards for Home Health Agency Services.

A. Service Area

An applicant shall:

(1) Designate the jurisdiction or jurisdictions in which it proposes to provide home health agency services; and

(2) Provide an overall description of the configuration of the parent home health agency and its interrelationships, including the designation and location of its main office, each subunit, and each branch, as defined in this Chapter, or other major administrative offices recognized by Medicare.

Applicants' Responses

Adventist

Adventist proposes to expand its current service area (Anne Arundel, Calvert, Charles, Howard, Montgomery, Prince George's, and St. Mary's Counties) to include Frederick County, one of four counties in the Western Maryland region. Adventist plans to provide the services to Frederick County out of its existing Rockville (Montgomery County) branch office. (DI #4AHH, p. 7).

Amedisys-Westminster

Amedisys-Westminster also seeks to expand its current service area (Anne Arundel, Baltimore, Carroll, Harford and Howard Counties, and Baltimore City) to include Frederick County, using a new branch office to be established in Frederick. (DI #5AW, pp. 9, 10).

Bayada-Gaithersburg

Bayada-Gaithersburg proposes initially to serve the eastern jurisdictions of the Western Region, Frederick and Washington Counties, and states its intention to expand its services to the entire region, adding Allegany and Garrett Counties. (DI #7BG, p. 1). It would manage this expansion from its existing Gaithersburg (Montgomery County) office.

Reviewer's Analysis and Findings

All three applicants are existing Medicare- and Medicaid-certified HHAs that seek to expand their service areas to include one or more jurisdictions in the Western Maryland region, which consists of Allegany, Frederick, Garrett, and Washington Counties. Adventist and Amedisys-Westminster propose to expand into one jurisdiction, Frederick County, while Bayada-Gaithersburg proposes eventually to serve all four jurisdictions but initially expand to Frederick and Washington Counties. Adventist and Bayada-Gaithersburg propose to serve their respective expanded service areas from existing offices in Montgomery County. Amedisys-Westminster plans to establish a new branch office in Frederick County.

I find that each applicant complies with standard .08A.

B. Populations and Services.

An applicant shall describe the population to be served and the specific services it will provide.

Applicants' Responses

Adventist

Adventist proposes to serve clients of all ages in Frederick County with the same services it currently provides, which include the six major disciplines of HHA services: skilled nursing services; home health aide services; physical therapy; occupational therapy; speech/language therapy: and medical social services. In addition, Adventist plans to provide home infusion, wound care, dietician, and chaplain services. (DI #4AHH, p. 3).

Amedisys-Westminster

Amedisys-Westminster proposes to serve the population of Frederick County ages 18 and above. In addition to the six major HHA disciplines, it proposes to offer the following additional services: care transitions; client educational training; medication management; home infusion therapy; certified wound care through tele-consultation; and nutritional consultation. (DI #5AW, p. 10).

Bayada-Gaithersburg

Bayada-Gaithersburg proposes to provide the six major disciplines of HHA services to any individual who is 18 years of age or older and who meets the criteria of homebound status. (DI #7BG, p. 2).

Reviewer's Analysis and Findings

Adventist proposes serving all ages, as it currently does. The other two applicants propose limiting their target clientele to adults. All of the applicants commit to providing all six major disciplines of HHA service, and Adventist and Amedisys-Westminster plan to provide additional services.

I find that standard .08B has been met by each of the three applicants.

C. Financial Accessibility.

An applicant shall be or agree to become licensed and Medicare- and Medicaid-certified, and agree to maintain Medicare and Medicaid certification and to accept clients whose expected primary source of payment is either or both of these programs.

Applicants' Responses

Adventist

Adventist is currently both Medicare- and Medicaid-certified, and proposes to accept clients in Frederick County whose expected primary payment source is either or both of these programs. (DI #4AHH, p.10).

Amedisys-Westminster

Amedisys-Westminster agrees to maintain its Medicare and Medicaid certification and to continue to accept clients whose expected primary source of payment is either or both of these programs. (DI #5AW, p. 11). The applicant has provided documentation of its current Maryland issued HHA license as well as its Medicare certification and Medicaid participation. (DI #5AW, Exh. 5, 6).

Bayada-Gaithersburg

Bayada-Gaithersburg documented that it is Medicare- and Medicaid-certified and agrees to comply with this standard. It also submitted its most recent recertification survey letter from the Maryland Department of Health's Office of Health Care Quality ("OHCQ"), which documented the applicant's compliance with federal participation and State HHA licensure requirements. (DI #4BG, p. 9 and Att. A).

Reviewer's Analysis and Findings

All three applicants are currently licensed Maryland home health agencies and are Medicare- and Medicaid-certified. Historic and projected payor mix information supports each applicant's commitment to continue to accept clients whose expected primary source of payment is Medicare and/or Medicaid.

I find that each applicant complies with the financial accessibility standard.

D. Fees and Time Payment Plan.

An applicant shall make its fees known to prospective clients and their families at time of patient assessment before services are provided and shall:

(1) Describe its special time payment plans for an individual who is unable to make full payment at the time services are rendered; and

(2) Submit to the Commission and to each client a written copy of its policy detailing time payment options and mechanisms for clients to arrange for time payment.

Applicants' Responses

Adventist

Adventist submitted a revised copy of its Charity Care Assessment and Medicaid Determination Policy (its Policy No. 3.1040) in its modified application following the Project Status Conference. The revised policy clarifies its process for determining probable eligibility for reduced fee or charity care to be based on an abridged set of information.[11] Adventist states that its revised policy enables Adventist to make the required determination of probable eligibility within two business days. Adventist states that it presents its Policy No. 3.1040 to prospective clients and families at their initial meeting in order to review and discuss the arrangements for payment and/or the provision of charity or reduced fee care. Adventist's modified policy also details its processes for making a final determination of eligibility for charity or reduced fee care. The applicant states that, if the client is deemed not eligible for Medicaid or charity care because the client's household income exceeds the charity care threshold, the client may be eligible for reduced fees based on a sliding scale of income or a schedule for paying their bill over time. Adventist states that it provides clients with a time payment plan in which the client pays a minimum payment of as little as $10.00 monthly and is allowed up to 18 months to pay off the balance. (DI #13AHH, Exh. A, pp. 2, 3).

Amedisys-Westminster

Amedisys-Westminster twice modified its application in response to my recommendations at the Project Status Conference that it revise its charity care and sliding fee scale policy and procedures to be internally consistent and less confusing to prospective clients and their families, and comply with two parts of the Charity Care and Sliding Fee Scale standard at COMAR 10.24.16.08E(1) and (2). Amedisys-Westminster submitted a new, freestanding Maryland-specific policy on charity care and discounted fee care (its Policy FM-008A) entitled "Maryland

[11] Adventist's original policy required submission of supporting documents.

Charity Care and Discounted Fee Care – Availability, Eligibility and Eligibility Determination Process; Time Payment Plan" (DI #17AW, p. 1; DI #17AW, Exh. 7A). The applicant notes that its time payment plan is described in this policy, which states that "[a] patient who qualifies for discounted fee care under this policy may request to pay billed charges over time. Amedisys requests a minimum of $25 per month with the balance being resolved within one year from start-of-care." (DI #17AW, Exh. 7A, p. 2).

Bayada-Gaithersburg

Responding to the recommendations I made at the March 2018 Project Status Conference and in my May 9, 2018 completeness letter following its first modification, Bayada-Gaithersburg modified its application to provide an updated charity care policy for its Maryland Home Health and Hospice (Policy #0-8407). Its latest policy provides for charity care or reduced fees to clients experiencing financial hardship. (DI #15). The applicant also submitted a revised copy of its Maryland Notice of Charity Care and Reduced Fees (Form #0-7657) which it states that it provides to all prospective clients prior to providing services. (*Id.*). According to this Notice (Form # 0-7657), clients who qualify for reduced fees are informed of the discounted rates that apply as per current Federal Poverty Guidelines and Bayada's sliding fee scale. Those who qualify for reduced fees will be offered a time payment plan, and those who do not qualify for charity care or reduced fees will be assisted in seeking alternative payment arrangements. (DI #15BG, Attachments). Policy #0-8407 specifies in Procedure 2.0 that Bayada publishes a Public Notice (Form #0-9485) regarding its Charity Care, sliding fee scale and time payment plans. (DI #15BG, Attachments).

Reviewer's Analysis and Findings

Each applicant has provided copies of its written policies and relevant procedures for making fees known to prospective clients prior to provision of services. Each describes having a time payment plan for those clients who may not be able to make payments at the time services are rendered.

I find that each applicant complies with this standard regarding fees and time payment.

E. Charity Care and Sliding Fee Scale.

Each applicant for home health agency services shall have a written policy for the provision of charity care for indigent and uninsured patients to ensure access to home health agency services regardless of an individual's ability to pay and shall provide home health agency services on a charitable basis to qualified indigent and low income persons consistent with this policy. The policy shall include provisions for, at a minimum, the following:

(1) Determination of Eligibility for Charity Care and Reduced Fees. Within two business days following a client's initial request for charity care services, application for medical assistance, or both, the home health agency shall make a determination of probable eligibility for medical assistance, charity care, and reduced fees, and communicate this probable eligibility determination to the client.

Applicants' Responses

Adventist

Adventist modified its response to this standard to address concerns I raised at the Project Status Conference, and has established a two-step process, one for determining probable eligibility and a second step for a final determination of eligibility for charity care and reduced fees to be consistent with this standard. Adventist's Charity Care Assessment and Medicaid Determination Policy includes both charity care and the opportunity to participate in a sliding fee schedule. The revised policy describes the process for determination of probable eligibility for Medical Assistance, charity care, and reduced fees, within two business days following a client's initial request for charity care services, application for medical assistance, or both. Adventist states it will make a determination of probable eligibility for medical assistance, charity care, and reduced fees, based on an abridged set of information on family size, insurance status, and income as provided from the referral source or during the first meeting with the client or the client's family (whichever comes first) and communicate its probable eligibility determination to the client within that timeframe. (DI #13AHH, p. 1 and Exh. A, pp. 2, 3).

Amedisys-Westminster

In its second modification made in response to my Project Status Conference recommendations, Amedisys-Westminster clarified its charity care policy and procedures to be consistent with two subsections of the Charity Care and Sliding Fee Scale standard, COMAR 10.24.16.08E(1) and (2). Amedisys-Westminster established a new Maryland-specific policy on charity care and discounted fee care (Policy FM-008-A), which includes a description of its two-step process for determination of eligibility by differentiating between the determination of probable eligibility (step one) and the final determination (step two). The applicant notes that the determination of probable eligibility is based on information provided by the potential client and/or family representative during an interview conducted by an Amedisys-Westminster social worker. The applicant confirms that no completion of application form, verification, or documentation of information provided during the interview process will be requested or required for the determination of probable eligibility to be made within two business days following a client's initial request for charity care services, application for medical assistance, or both, and that it will inform the client and/or family representative regarding probable eligibility within the two-day timeframe. (DI #17AW, pp. 2, 3, and Exh. 7A, pp. 1, 2). Amedisys-Westminster requires supporting documentation before it makes a final determination of eligibility.

Bayada-Gaithersburg

Bayada-Gaithersburg's initial attempt after the Project Status Conference to modify its policy to bring it into compliance with this subsection missed the mark, as I pointed out in my May 3 completeness letter. Its second modification of its response to this subsection, filed May 14, 2018, was successful. In that modification, it clarified that probable eligibility is based on an interview to obtain information from a prospective client on its household income and medical expenses without requiring underlying documentation. (DI #15BG). This modified policy states that Bayada-Gaithersburg will inform a prospective client of its determination of probable

eligibility for charity care within two business days from a request for charity care, reduced fees, or application for Medicaid. (DI #15BG, Att., Policy #0-8407, Procedure 3.0). Bayada-Gaithersburg's policy describes a two-step process, with the first step being a determination of probable eligibility based only on an interview and the second step resulting in a final determination for charity care or discounted fees, and requiring underlying documentation. (DI #15BG, Att., Policy #0-8407, Procedure 4.0).

Reviewer's Analysis and Findings

The charity care standard requires that an HHA make a determination of probable eligibility within two business days of a client's request for charity or reduced fee care[12] and communicate that determination to the client. This two-day turnaround to make a determination of *probable* eligibility is designed to let a client know fairly quickly whether s/he is likely to qualify, if the underlying required documentation later bears out what the client represents in an initial request. In essence, this subsection acknowledges that it may take a client days or weeks to get all the documentation that an HHA requires before the HHA will make a *final determination* of the client's eligibility.

Each of the applicants' charity care and sliding fee scale policies is designed so that a determination of probable eligibility for financial assistance will be made within two business days *of an initial request* for charity care or reduced fees, as required by the standard. Notably, none of these applicants requires the client or representative to provide underlying documentation before the HHA will make a determination of probable eligibility. I find that all comply with this subsection of the charity care standard. Because Bayada-Gaithersburg's current form is not sufficiently clear for prospective clients and families and is also likely to be confusing for Bayada-Gaithersburg's staff, I recommend that it develop separate forms that clarify that underlying documentation is required only for a final determination of eligibility. The first form should not require underlying documentation and should be completed by the interviewer and used to make a determination of probable eligibility (its Procedure 4.1). The second form may require underlying documentation and should be completed by the prospective client (with or without assistance) and used to make a determination of final eligibility (Procedure 4.2). I recommend that, if the Commission adopts my Recommended Decision, the following condition be placed on the Certificate of Need issued to Bayada-Gaithersburg:

> Prior to partial or final first use approval, Bayada-Gaithersburg shall develop separate forms, acceptable to Commission staff, to implement its determinations of probable and final eligibility for charity or reduced fee care.

(2) Notice of Charity Care and Sliding Fee Scale Policies. Public notice and information regarding the home health agency's charity care and sliding fee scale policies shall be disseminated, on an annual basis, through methods designed to best reach the population in the HHA's service area, and in a format understandable by the service area population. Notices regarding the HHA's charity care and sliding fee scale policies

[12] This determination and notification requirement also applies to an application for medical assistance (Medicaid) or to both a request for charity care and application for Medicaid.

shall be posted in the business office of the HHA and on the HHA's website, if such a site is maintained. Prior to the provision of HHA services, a HHA shall address clients' or clients' families concerns with payment for HHA services, and provide individual notice regarding the HHA's charity care and sliding fee scale policies to the client and family.

Applicants' Responses

Adventist

Adventist modified its application in response to the Project Status Conference and, as necessary, revised all applicable forms, applications, notices, procedures, and information[13] to comply with Subsection .08E(2) of the standard. Adventist submitted a set of informational literature that it provides to potential clients and families, which includes: a description of its financial assistance policy referring to charity care; a sliding fee scale; a time payment plan; and two other pamphlets or booklets ("Bringing HealthCare Home," and "Patient Orientation for Home Health Care"), both of which also include a statement of its financial assistance policy. Adventist's website posts information about charity care and financial assistance (AdventistHomeCare.com). (DI #13AHH, p. 2 and Exh. B), which addresses my Project Status Conference recommendation that Adventist post its revised notice and place it in an easily accessible location on its website. Adventist also documents its annual publication of notices regarding its charity care and sliding fee scale policies in newspapers in its service areas including the *Baltimore Sun*, *Washington Post*, and *Frederick News-Post* and states that it will continue to do so. (DI #13AHH, p. 2 and Exh. C). Finally, Adventist provided three photographs illustrating the Charity Care and Financial Assistance notices displayed in each of its business offices. (DI #13AHH, p. 2 and Exh. D).

Amedisys-Westminster

Amedisys-Westminster twice modified its application to address my Project Status Conference recommendations to revise all applicable forms, notices, and information provided to comply with Subsection .08E(2). In response to my Project Status Conference recommendations, Amedisys-Westminster revised its notices to apply not only to Frederick County, but to the entire service area of Amedisys-Westminster. It also provided the other documents that I requested.[14]

Amedisys-Westminster clarified the information and documentation required for making a final determination of eligibility for charity care or reduced fee care along with providing copies of the applicable forms, including its Income Documentation Verification form and the Income Documentation Attestation form. (DI #17AW, Exh 7A). In response to my completeness questions on its first post-Project Status Conference modified application, it again modified its application by providing copies of notices it will post and give to clients/families. (DI #17AW, Ex 39). A summary notice entitled "Public Disclosure of the Availability of Charity Care, Discounted Fee Care and Time Payment Plan" summarizes its revised Maryland-specific policy (FM-008A). The

[13] I requested that each applicant provide copies of all applications, procedures, public notices, posted notices, notices to potential clients/families, etc. for charity care or reduced fees, and other similar documents, whether revised or not.

[14] See preceding footnote.

notice was re-titled to avoid confusion by precisely matching the name of the policy itself. (DI #17AW, Exh. 8). Amedisys-Westminster explains that, since its parent company, Amedisys Inc., maintains a single website (www.amedisys.com) for the entire company and subsidiaries, information on the Maryland-specific charity care policy (FM-008A) may be located by clicking on "Find a Care Center" which leads to the landing page for each of the seven licensed Amedisys HHAs in Maryland, where there is a tab entitled "Charity Care and Other Financial Assistance" for each Maryland location, including Amedisys-Westminster. The applicant notes that a prospective client may click on that tab to access the public notice entitled "Public Disclosure of the Availability of Charity Care, Discounted Fee Care and Time Payment Plan," which summarizes the Maryland-specific policy (FM-008A). It states that such notice will be

> (1) posted in all of its business offices in its service area, (2) provided to all potential patients and their families, (3) posted on the applicant's website, (4) provided to the local health departments and other social services agencies in the applicant's service area, (5) provided to local referral sources in the applicant's service area (hospital, nursing home, etc.), and (6) provided to all local nonprofits or other agencies that the applicant partners with to provide charity care.
> (DI #17AW, pp. 3-5 and Exh. 39).

Amedisys-Westminster also states that it will publish this notice in local newspapers serving its entire service area at least twice a year, and the notice will include a link to the Maryland-specific charity care policy. (DI#17AW, p. 4).

Bayada-Gaithersburg

Responding to recommendations I made at the March 6, 2018 Project Status Conference, Bayada-Gaithersburg provided in its second modification on May 14, 2018, a revised charity care policy (#0-8407) and copies of its following notices and documentation form: (1) Bayada Home Health Care – Maryland Notice of Charity Care and Reduced Fees (#0-9485); (2) Bayada Home Health Care – Maryland Notice of Charity Care and Reduced Fees (#0-7657); and (3) Financial Hardship Form (Form #0-9506).

Its updated Charity Care Policy (at Procedure 2.0) refers to its Maryland Charity Care and Reduced Fee Public Notice (#0-9485) and its Maryland Notice of Charity Care and Reduced Fees (#0-7657). Bayada-Gaithersburg states that its Public Notice (#0-9485) is visibly posted on Bayada's website (www.bayada.com/homehealthcare), on its Facebook pages, and in its office. It also states that "[t]his public notice is also disseminated via annual publication in newspapers in the service area regarding Bayada Charity Care, the sliding fee scale and time payment plans for reduced fees of $25 per month." (DI #15BG, Att., Charity Care Policy #0-8407). Bayada-Gaithersburg reports that its Maryland Notice of Charity Care and Reduced Fees (#0-7657) is provided to all prospective clients prior to provision of services. (DI #15BG, Att., Charity Care Policy #0-8407).

Reviewer's Analysis and Findings

Each applicant provided its notices regarding its HHA's charity care and sliding fee scale policies and documented how this information is disseminated to the public. Having examined these documents, I find that each applicant met Subsection .08E(2) of the standard because each applicant's notices provided clear information that is consistent not only with the charity care and sliding fee scale standard but also with the applicant's written policies.

(3) Discounted Care Based on a Sliding Fee Scale and Time Payment Plan Policy. Each HHA's charity care policy shall include provisions for a sliding fee scale and time payment plans for low-income clients who do not qualify for full charity care, but are unable to bear the full cost of services.

Applicants' Responses

Adventist

Adventist's Charity Care and Financial Assistance Policy, as modified after the Project Status Conference, includes procedures for assessing the amount of discounted care available to low-income clients based on family size and states that Federal Poverty Guidelines are used to arrive at the cost for those who do not qualify for charity care, but are unable to bear the full cost of services. (DI #13AHH, Exh. A). The policy includes provisions for a sliding fee scale and time payment plans. (DI #13AHH, Exh. A, p. 3; Sliding Fees Schedule, Att. 1, pp. 6, 7; Fee Schedule, Att. 2, p. 8). Adventist provides clients with a time payment plan that allows them to pay a minimum monthly payment of as little as $10.00, and allows up to 18 months to pay off the balance. (DI #13AHH, Exh A, p. 2).

In response to my Project Status Conference recommendations, Adventist also submitted copies of all forms, applications, notices, and procedures (revised or not) regarding charity care, reduced fees, and sliding scale that will apply to a prospective client.

Amedisys-Westminster

Amedisys-Westminster twice modified its application after the Project Status Conference to revise its Charity Care and Sliding Fee Scale policy and procedures to be consistent with the standard, COMAR 10.24.16.08E.

Amedisys-Westminster adopted a new freestanding Maryland-specific policy governing charity care, discounted fee care, and time payment plan (Policy FM-008A) that provides eligibility criteria for both charity care and discounted fee care. The revised policy includes a new definitions section that redefines both "charity care" and "discounted fee care." This policy provides that charity (free) care is made available to clients at or below 125 percent of the Federal Poverty Guidelines as determined by family size. Discounted fee care, for those low-income clients who do not qualify for free care but are unable to bear the full cost of services, is made available to clients above 125 percent up to 400 percent of the Federal Poverty Guidelines for family size, using the sliding fee scale and time payment plan contained in Policy FM-008A. (DI #17AW, p 2

and Exh. 7A, pp. 1, 2). Amedisys-Westminster further clarifies that its new Maryland-specific FM-008A Policy applies to all Amedisys HHAs operating in Maryland.

Bayada-Gaithersburg

Bayada-Gaithersburg describes its offering of reduced fees for low income clients in its revised Charity Care Policy (#0-8407) and Notices (#0-7657 and #0-9485), submitted May 14, 2018 with its second modification made in response to the Project Status Conference. (DI #15BG, Policy #0-8407; Notices #0-7657 and #0-9485). Time payment plans for reduced fees of $25 per month are in Procedure 2.0 of its Charity Care Policy (#0-8407).

Reviewer's Analysis and Findings

Each applicant provided copies of its policies that address financial assistance options available for low-income clients ineligible for charity care. I find that each applicant modified its application to comply with Subsection .08E(3) of the standard by providing clear and consistent information in its provisions for sliding fee scale and time payment plans for those clients who do not qualify for charity care but are unable to bear the full cost of services.

> ***(4) Policy Provisions. An applicant proposing to establish a home health agency or expand home health agency services to a previously unauthorized jurisdiction shall make a commitment to, at a minimum, provide an amount of charity care equivalent to the average amount of charity care provided by home health agencies in the jurisdiction or multi-jurisdictional region it proposes to serve during the most recent year for which data is available. The applicant shall demonstrate that:***
>
> > ***(a) Its track record in the provision of charity care services, if any, supports the credibility of its commitment; and***
> >
> > ***(b) It has a specific plan for achieving the level of charity care to which it is committed.***

Applicants' Responses

Adventist

Adventist, in response to Paragraph (a), states its commitment to provide, at a minimum, an amount of charity care equivalent to the average amount provided by HHAs in Frederick County. Referencing the Commission's 2014 Home Health Public Use Data, Adventist points out that 101 of the 90,974 total HHA visits delivered in Frederick County were charity care visits (i.e., 0.11 percent). In the same year 385 of Adventist's 76,216 total visits across seven counties were charity care visits (i.e., 0.51 percent). Adventist asserts that this track record supports the credibility of its charity care commitment. (DI #4AHH, pp.11-13). Its revenue and expense statement shows $75,000 in charity care in both 2015 and 2016. It projects providing $84,375 in charity care in 2019, its first year at full utilization. (DI #4AHH, Exhibit 1, p. 6, Table 3).

Regarding Paragraph (b), Adventist notes that it works with hospital discharge planners and case managers in every hospital within its current authorized jurisdictions to convey its charity care policy, and plans to broaden its outreach by distributing its charity care policy to all referral sources including hospital and community organizations (such as churches and organizations serving underserved communities) in Frederick County. (DI #4AHH, pp. 13, 14).

Amedisys-Westminster

Addressing Paragraph (a), Amedisys-Westminster makes a commitment to provide an amount of charity care equal to the average amount provided by HHAs in Frederick County in 2014, which was 0.11 percent of total HHA visits. In response to my Project Status Conference directive that it unmingle its level of charity care from that of multiple Amedisys HHA providers, Amedisys-Westminster stated that its own level of charity care for the three-year period 2012-2014, was 0.34 percent (150 charity care visits out of 43,857 total visits), more than twice the average for all Frederick County HHAs which was 0.15 percent during the same three years.[15] (DI #16AW, pp. 2, 3). For the more recent years 2015-2017, Amedisys-Westminster reports that it did not serve any charity care clients. It notes that over the entire period of 2012-2017, the amount of charity care it provided was 0.19 percent (150 charity care visits out of 80,110 total visits) which it notes exceeds the 2014 overall average in Frederick County of 0.11 percent. Its financial projections assume six charity care clients (or 96 visits) in each year which, according to the applicant, equates to two percent of total visits in Year 1; one percent in Year 2; and 0.8 percent in Year 3. (DI #5AW, p. 13; DI #16AW, p. 2). Amedisys-Westminster's revenue associated with its projected level of charity care for its proposed project is shown as a charity care write-off of $13,192 in 2018 and a write-off of $20,046 in 2021. (DI #16AW, p. 2 and Table 4, p. 15).

In response to Paragraph (b), Amedisys-Westminster provides a specific plan in its first modification made in response to the Project Status Conference that includes establishing an ongoing charity care referral relationship with two leading local nonprofit organizations in Frederick County that serve disadvantaged and indigent populations. These are the Frederick Community Action Agency and Heartly House. Amedisys-Westminster provided copies of emails with both these organizations, documenting a mutual interest in establishing a charity care referral relationship if Amedisys-Westminster is approved to expand into Frederick County. Amedisys-Westminster also states that it will hire a full-time community liaison who will be responsible to identify potential referral sources, and informing and educating them about its charity care policy (DI#16AW, pp 4, 5). It states that it will also work with the Frederick County Department of Health and the local social services office, as well as with the Frederick County-owned nursing home (Citizens Care) and assisted living facility (Montevu) to make them aware of the availability of charitable service from Amedisys-Westminster. (DI #5AW, p. 13; DI #7AW, pp. 3, 4). The applicant further notes that it plans to have a staff director for its planned branch office in Frederick County to provide closer oversight and to assist in meeting its charity care commitment. (DI #16AW, p. 6).

[15] 381 charity care visits out of 249,325 total visits.

Bayada-Gaithersburg

Bayada-Gaithersburg, in response to Paragraph (a), suggests that its lack of a track record of providing charity care is due, in part, to its for-profit status. It notes that Bayada Home Health Care, Inc. is in the process of changing to a not-for-profit-entity within the next two years "in an effort to continue to support our mission of serving more clients." (DI #14BG, p.2).[16] Bayada-Gaithersburg states its commitment to providing an amount of charity care to meet an existing 0.31 percent multi-jurisdictional average in the Western Maryland region (DI #14BG, p. 2). The applicant states that it will provide the average number of charity clients in each jurisdiction, "calculated to represent an average of two clients for Frederick, five clients in Washington, 14 clients in Allegany and 1 in Garrett County within a fiscal year." (DI #14BG, p. 2).

In its second modification of forecasted financials in response to the Project Status Conference recommendations, Bayada-Gaithersburg expresses the amount of charity care in its proposed budget for its expansion project as lost revenue of $3,642 in 2018 and lost revenue of $14,502 at full utilization in 2021. (DI #15BG, Att., p. 6, Table 4). Bayada-Gaithersburg projects providing an amount of charity care for each fiscal year equivalent to 0.7 percent of total charity care visits (DI #15BG, p.3; Att., p. 1, Table 2A.). Based on information selected from the Commission's HHA Utilization Table 19, which shows the total number of visits by payment source, the applicant suggests that the 730 visits of "other" payment category is the amount of charity care provided in Western Maryland in FY 2014 which represents 0.4 percent of the total number of visits. Bayada-Gaithersburg states that its proposed commitment of 0.7 percent of its total visits for charity care is an amount greater than what is typically provided in the Western Maryland region. (DI #15BG, p. 3).

Responding to Paragraph (b), Bayada-Gaithersburg notes that, in Montgomery County, it engages with local hospitals and local facilities, and states its intention to continue addressing the needs of all individuals, regardless of their payor source. (DI #4BG, p. 11). In the second modification of its application after the Project Status Conference, the applicant states that its skilled nursing facility partners, Genesis Glade Valley and Genesis Ballenger Creek, will assist in the transition of their non-insured clients to the home setting following discharge from these nursing homes. (DI#15BG, p. 3). Bayada-Gaithersburg discusses plans to educate its marketing manager on its new charity care and reduced fee policy and procedures. It states that it left a voicemail message at Meritus Hospital Center and at Western Maryland Regional Medical Center. Bayada-Gaithersburg states that, upon receiving a CON, it will make the necessary personnel investment to enable assigning a marketing manager to each hospital system who will be responsible for promoting its charity care policy. (DI #15BG, p. 3).

Reviewer's Analysis and Findings

This subsection of the charity care standard requires an applicant to make a commitment to provide an amount of charity care at least equivalent to the average amount of charity care provided by home health agencies in the jurisdiction or multi-jurisdictional region it proposes to

[16] See discussion regarding Bayada, *supra*, p. 3. The transaction by which the ultimate parent of Bayada-Gaithersburg changes to a non-profit was expected to take place on or before December 31, 2018.

serve, and have a track record or plan that supports its commitment. The subsection also requires it to demonstrate that "[i]ts track record in the provision of charity care services, if any, supports the credibility of its commitment." In Table IV-1, below, I compiled the most recent available data to determine a benchmark for provision of charity care in: (1) Frederick County, to which Adventist and Amedisys-Westminster seek to expand; and (2) the Western Maryland region, to which Bayada-Gaithersburg seeks to expand.

Table IV-1: Charity Care Visits and Total Visits, by Jurisdiction, FY 2014
Western Maryland Region

Jurisdictions	Number of HHAs Serving Jurisdiction	Number of HHAs Reporting Provision of Charity Care	Total Number of Reported Charity Care Visits	Total HHA Visits	Level of Charity Care Expressed as Proportion of Total Visits
Allegany County	1	1	186	28,819	0.65%
Frederick County*	11	2	101	90,074	0.11%
Garrett County	2	0	0	7,646	0.00%
Washington County	4	1	262	51,353	0.51%
Total Western Maryland	14**	3**	549	178,792	0.31%

Source: MHCC, HHA Public Use Dataset, FY 2014.
*Notes: The other Bayada HHA in Maryland, Bayada-Towson (HH #7101), which currently serves Frederick County (one of eight jurisdictions in its service area), served 364 clients with 6,236 visits and reported zero charity care visits in Frederick County in 2014. ** Total unduplicated counts of HHAs in Western Maryland.

As shown in the table, Adventist and Amedisys must each make a commitment to provide at least 0.11 percent of visits as charity care visits, the benchmark for Frederick County HHAs. Because Bayada-Gaithersburg applied to serve all of Western Maryland, it must commit to the provision of 0.31percent of its visits as charity care visits.

Under Paragraph (a) of the standard, I reviewed each applicant's track record for providing charity care services. To perform this analysis, I compiled the number of charity care visits and total visits for each applicant across all jurisdictions in which it operated, and calculated the percentage of those visits that were charity care visits. I then compiled corresponding data for all HHAs that operated in the same jurisdiction(s) as each applicant, and calculated the percentage of charity care visits. This method enables me to compare each applicant's charity care contribution in its service areas relative to peer agencies in its service areas, as shown below in Table IV-2.

Table IV-2: Comparison of Each Applicant's Charity Care Performance to Aggregate Charity Care Performance of Peer HHAs Operating in the Same Jurisdiction(s)

Agency	Charity Care Visits	Total HHA Visits	Level of Charity Care Expressed as Proportion of Total Visits
Adventist (HH7032)	385	76,216	0.51%
Other HHAs in same jurisdictions	1,334	742,399	0.18%
Amedisys (HH7048)	8	9,719	0.08%
Other HHAs in same jurisdictions	902	927,573	0.10%
Bayada-Gaithersburg (HH7158)	2	10,423	0.02%
Other HHAs in same jurisdictions	687	231,123	0.30%

Source: 2014 MHCC Home Health Agency Survey.

From this information, I make the following observations:

- At 0.51 percent, Adventist reported providing a significantly higher proportion of charity care in its service area in 2014 than that provided by all other agencies providing service to the same jurisdictions, at 0.11 percent.

- At 0.08 percent, Amedisys-Westminster reported providing a slightly lower proportion of charity care in the five jurisdictions it served in 2014 than did all other agencies providing service in those jurisdictions, at 0.10 percent.

- At just two charity care visits out of a total of 10,423 in 2014 in its Montgomery County service area, Bayada-Gaithersburg's reported proportion of charity care (0.02 percent) was far below the aggregate proportion of charity are provided by all of the other agencies serving Montgomery County, at 0.30 percent.

Adventist's track record for providing charity care is superior. In its service area in 2014, its reported proportion of charity care was almost three times that of other HHA providers in the same jurisdictions and also well above the 0.11 percent of charity care provided by home health agencies in Frederick County. Adventist's past achievement of providing charity care that exceeds the charity care percentage provided by its peers, along with its history of and planned outreach to the communities it serves, supports its commitment to continue to conform with or exceed the standard. Adventist meets the requirements of Subsection .08E(4).

Amedisys-Westminster's charity care data shows that, in the five jurisdictions served in 2014, it reported provision of a total of 9,719 total visits of which eight were charity care visits (0.08 percent). This is below the 0.10 percent average of all other HHAs serving the same geographic area and the 0.11 percent average for Frederick County. Amedisys-Westminster is part of Amedisys Maryland LLC, whose HHA, then known as Home Health Corporation of America, failed to deliver the amount of charity care required by a condition of its CON, as I discuss at COMAR 10.24.01.08G(3)(e), *infra*, pp. 46-47. These facts do not suggest a robust track record in the provision of charity care. As noted above, Amedisys-Westminster reported that, over the entire 2012–2017 period, 0.19 percent of its visits (150 out of 80,110) were charity care visits, exceeding the Frederick County HHA 2014 average of 0.11 percent. Of course, its more recent reported experience does not cast it in as favorable a light.

Amedisys-Westminster described its specific plan which demonstrates that it has already engaged with a variety of institutional and community-based providers, including homeless shelters in Frederick County to establish charity care referral arrangements, to achieve an amount of charity care in Frederick County that appears realistic based on its experience of providing charity care at a level that is only slightly below its peers, as shown in Table 1V-2, *supra*, p. 21. The specificity of its plan and efforts it has already made support its commitment to achieve the required level of charity care. Amedisys-Westminster satisfies the requirements of Subsection .08E(4).

Bayada-Gaithersburg presents a more difficult situation. It was forthright in its application, noting that it has not provided much charity care in the past. It also tied that fact to its for-profit

status, and suggested that an upcoming transition to not-for-profit status within the next two years would "support our mission of serving more clients." (DI #14BG, p.2). As shown in Table IV-2 above, its response to the Commission's HHA Annual Survey for FY 2014 confirms that Bayada-Gaithersburg provided very little charity care, specifically two visits out of 10,423, or 0.02 percent of total visits. This represents just one-fifteenth of the jurisdictional average proportion of charity care provided by other HHAs in the same jurisdiction. That performance is also far below the required commitment an applicant must make to serve the Western Maryland region, which is 0.31 percent.

I also note that Bayada-Gaithersburg demonstrated some confusion regarding the metrics being applied in this standard. Applicants were informed at the pre-application conference on March 28, 2017 that the metric for charity care would be the percentage of charity care visits divided by total visits. In its April 9, 2018 modification made after the Project Status Conference, Bayada-Gaithersburg calculated charity care based on number of clients, rather than visits. Because its first modification did not make needed changes, I sent a May 3, 2018 letter seeking information that would make its application complete. In response, Bayada-Gaithersburg modified its application a second time. In its second modification, Bayada-Gaithersburg calculated its charity care target incorrectly, assuming – mistakenly – that the "other" payment category on the Commission's HHA Utilization Table 19 equates to the amount of charity care. Bayada-Gaithersburg's inconsistent and vague responses on the amount of charity care provided by existing HHAs in Western Maryland indicates that it does not fully understand the charity care standard.

In response to my May 3, 2018 letter seeking completeness information from Bayada-Gaithersburg regarding its plan for achieving the level of charity care to which it is committed, it filed a second modification of its response to this subsection. Bayada-Gaithersburg stated that it will work with its two nursing home partners. It also said that, upon receiving a CON, it will make the necessary personnel investment so that it could assign a marketing manager to each hospital system who will be responsible for promoting its charity care policy. (DI #15BG, p. 3). Unlike Amedisys-Westminster, Bayada-Gaithersburg did not provide a comprehensive approach to engage with community-based agencies and other non-hospital providers serving the indigent populations in each of the four jurisdictions it proposes to serve. While its plan does not have the level of detail that I wanted, I will nevertheless find that, under the circumstances in this review, Bayada-Gaithersburg meets the minimum requirements of Subsection .08E(4). I note that Bayada-Gaithersburg is the only applicant in this review that seeks to expand to Allegany, Garrett, and Washington Counties, jurisdictions where the Commission found need when it adopted the current HHA Chapter.[17] Meeting this goal for additional access for residents of those three counties is important and, as a result, I am looking at Bayada-Gaithersburg's response in the most favorable light.

For the reasons stated above, I find that each applicant complies with Subsection .08E(4). I recommend that, if the Commission approves the Bayada-Gaithersburg application, the following condition be placed on a Certificate of Need issued to Bayada-Gaithersburg:

[17] See the discussion in the Background section of my Recommended Decision, *supra*, p. 6.

Prior to partial or final first use approval, Bayada-Gaithersburg shall provide information regarding additional steps, acceptable to Commission staff, that it has taken to assure that it will provide an amount of charity care that is equivalent to or greater than the average amount of charity care provided by home health agencies in the Western Maryland region.

Summary of Findings – COMAR 10.24.16.08E

I find that each applicant complies with all subsections of the charity care and sliding fee scale standard, COMAR 10.24.16.08E. I recommend that any Certificate of Need be issued with the following conditions requiring that each agency:

Maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care and a sliding scale for reduced fee services for low income individuals who do not qualify for full charity care; and

Provide an amount of charity care equivalent to or greater than the average amount of charity care provided by home health agencies [in Frederick County, for Adventist and Amedisys-Westminster; in the Western Maryland region (Allegany, Frederick, Garrett, and Washington Counties) for Bayada-Gaithersburg]; and

I also recommend the following additional conditions be placed on a Certificate of Need issued to Bayada-Gaithersburg:

Prior to partial or final first use approval, Bayada-Gaithersburg shall develop separate forms, acceptable to Commission staff, to implement its determinations of probable and final eligibility for charity or reduced fee care; and

Prior to partial or final first use approval, Bayada-Gaithersburg shall provide information regarding additional steps, acceptable to Commission staff, that it has taken to assure that it will provide an amount of charity care that is equivalent to or greater than the average amount of charity care provided by home health agencies in the Western Maryland region.

F. Financial Feasibility.

An applicant shall submit financial projections for its proposed project that must be accompanied by a statement containing the assumptions used to develop projections for its operating revenues and costs. Each applicant must document that:

(1) Utilization projections are consistent with observed historic trends of HHAs in each jurisdiction for which the applicant seeks authority to provide home health agency services;

Applicants' Responses

Adventist

Adventist projects that it will serve 515 home health clients with a total of 6,304 visits in 2019. It bases its projection on its reasoning that 2016 hospital discharge data shows that seven percent of the 7,140 clients (about 500 clients) discharged from Shady Grove Medical Center, Washington Adventist Hospital and Adventist Rehabilitation Hospital were discharged to home care. Adventist estimates that at least 100 clients discharged from Adventist hospitals will choose Adventist for home care. The applicant also finds support in the Commission's Public Use Data for 2011–2014, which shows a 10.9 percent increase in HHA visits in Frederick County during this period. (DI #4AHH, p. 14). It states that the remaining 415 clients it projects will come from existing utilization augmented by a projected three percent growth year-over-year. (DI #4AHH, p.14 and Exh. 1, p. 1).

Adventist further supports its projections by describing its outreach and networks. For example, its Community Liaison staff routinely meet with case managers at Frederick Memorial Hospital, at several nursing homes and assisted living facilities in Frederick County, and with several Shady Grove Medical Center-affiliated physicians' offices in Frederick County. (DI #7AHH, pp. 3, 4).

Amedisys-Westminster

In its first modification, Amedisys-Westminster addresses my recommendation that it base its projections on its own experience, not on the experience of all Amedisys HHA providers. In its second modification it also clarifies its assumptions regarding client acuity compared to that of Amedisys clients statewide, stating that Amedisys-Westminster's clients have relatively higher acuity. The applicant notes that it bases its assumptions for projecting total clients on a projection of current volume in the parent location, plus projected admissions in the new area, based on historic admission volume and existing market share data. It states that its revenue and average visit volumes are based on the experience of Amedisys-Westminster clients. (DI #16AW, p. 5; DI #17AW, p.6).

Amedisys-Westminster projects that it will achieve full utilization for its proposed project in its fourth year, serving 599 clients with 10,680 total visits (ramping up from 2,089 visits in the first year of operation, 5,883 visits in the second year, and 9,103 visits in the third year.) (DI #17AW, Table 2B, p. 8). It bases its projections on 2010–2014 utilization trends in Frederick County gleaned from information in the Commission's Public Use Dataset, stating that there was a 45 percent increase in total HHA visits from 62,715[18] in 2010 to 90,974 in 2014, with an average increase of nearly 10 percent per year. It reasons that continuing at a 10 percent rate of growth would yield approximately 134,000 total visits in 2018. (DI # 5AW, p. 14). Amedisys-Westminster states that it intends to deploy a substantial sales team to introduce Amedisys to and earn the trust of referral sources in Frederick County. (DI #5AW, p.15).

[18] I note that the actual number of HHA visits for Frederick County reported on the Commission's HHA Annual Survey, FY 2010, was 63,449 visits, which shows a 43.4 percent increase in total visits from 2010 to 2014. (*See* http://mhcc.maryland.gov/public_use_files/index.aspx).

Bayada-Gaithersburg

In its first modification submitted April 9, 2018 following the Project Status Conference, Bayada-Gaithersburg responds to most of my March 9 recommendations regarding the financial feasibility standard. It revised its total staffing expense and full time-equivalent ("FTE") projections. Bayada-Gaithersburg's second modification, submitted May 14, 2018 in response to my request for completeness information, provides additional information on the number of agency employee and contract physical therapy FTEs. It also updates Table 5 in the CON application (staffing resources) to reflect FTEs change consistent with the salary expenses for contractual services on Table 3 in the CON application (revenue and expenses). In its second modification, the applicant further clarifies its assumptions, stating that it based its projected expenses for contractual services on historical percentages.

Bayada-Gaithersburg projects serving 274 clients with 4,407 visits in its first year, 871 clients and 14,137 visits in its second year, 1,324 clients and 20,496 visits in the third year, and 1,515 clients with 23,582 visits at full utilization in its fourth year (FY 2021), with the implementation of its project and gradual expansion into all four jurisdictions of the Western Maryland region. (DI #15BG, Att., p.2, Table 2B). According to the applicant, visits per episode by discipline are taken from its past experience. (DI #7BG, p. 5). Historical information provided by the applicant includes its CY 2016 data, which shows that it provided 1,075 total clients and 18,204 total visits in Montgomery County, the single county the applicant is currently authorized to serve. (DI #15BG, Att., p. 1, Table 2A).

Reviewer's Analysis and Findings

To determine whether each applicant's utilization projections are consistent with observed historic trends of HHAs in the jurisdiction(s) it is applying to serve, I compared each applicant's projected utilization[19] with the historic overall average number of visits per HHA client for each jurisdiction in Western Maryland and for the region as a whole. I also compared each applicant's projected utilization to its current utilization levels. See summary in Table IV-3, immediately below.

Table IV-3: Historic and Projected HHA Visits per Client

Home Health Agencies	Historic [1]	Projected [2]
Adventist	12.0	12.2
Amedisys-Westminster	20.9	17.8
Bayada-Gaithersburg	16.5	15.6
All HHAs serving Allegany County	11.7	-
All HHAs serving Frederick County	19.2	-
All HHAs serving Garrett County	13.6	-
All HHAs serving Washington County	15.4	-
All HHAs serving the Western Maryland Region	16.2	-

Sources: Applicants' respective CON applications. Total Clients (unduplicated count) and Visits (Table 2A); Payor Mix as Percent of Total Visits (Table 3), and MHCC, Home Health Agency Surveys and Public Use Data Files; FY 2012–2014

Notes: [1] 2015-2016 for applicant HHAs and 2012-2014 for all other.

[2] First year at "full use" after expansion into Western Maryland; 2019 for Adventist and 2021 for other two applicant HHAs.

[19] Average visits per HHA client.

Adventist projects an average of 12.2 visits per HHA client for both its initial year (2018) and first year at full utilization (2019) in Frederick County. Amedisys-Westminster projects an average of 18.7 visits per HHA client for its initial year (2018) and 17.8 average visits per client for its first year at full utilization (2021) in Frederick County. By comparison, existing HHAs in Frederick County had an overall average of 19.2 visits per client for the most recent three-year period (2012–2014).

Adventist's projected average visits per client in Frederick County are consistent with its historic agency-wide experience but significantly below the reported average of HHAs currently serving Frederick County. Amedisys-Westminster's projected utilization in Frederick County of 17.8 visits per client in 2021 is lower than both its historic experience and the overall reported average number of visits per HHA client for Frederick County (19.2) for the period of FY 2012–2014.

Bayada-Gaithersburg seeks to expand initially into Frederick and Washington Counties, but move into all four counties in the region. It projects an average of 16.1 visits per client in those two counties in 2018 and 15.6 visits per client in all four counties in 2021, when it anticipates achieving full utilization and serving all four jurisdictions in the Western Maryland region. By comparison, existing HHAs serving Frederick and Washington Counties had an overall average of 17.6 visits per client for the most recent three-year period, 2012-2014. Existing HHAs in Western Maryland reported an overall average of 16.2 visits per client.

I compared Bayada-Gaithersburg's historic experience with its projections. Bayada-Gaithersburg's historic utilization in Montgomery County, its only authorized jurisdiction, was 16.1 and 16.9 visits per client in 2015 and 2016, respectively, with a two-year average of 16.5 visits per client. Its projected utilization of 16.1 visits per client in the first year of expanded service to two jurisdictions is similar to its own historic experience, while its projected utilization of 15.6 visits per client at full utilization serving four new jurisdictions is lower than both its own experience and that of existing HHAs in the Western Maryland region (16.2 average visits per client). I note that the average visits per client in Frederick is an outlier due to one HHA with an extremely high number of visits per client. Bayada's projected utilization is closely aligned with historical experience in the rest of the region.

I find that each applicant complies with Subsection .08F(1) of the standard.

(2) Projected revenue estimates are consistent with current or anticipated charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care provision, as experienced by the applicant if an existing HHA or, if a proposed new HHA, consistent with the recent experience of other Maryland HHAs serving each proposed jurisdiction; and

Applicants' Responses

Adventist

Adventist states that the assumptions it used to project revenue are consistent with the charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care provisions it currently experiences. (DI #4AHH, p. 15 and Exh. 1, p. 1). It states that it projected revenue based on its FY 2017 approved budget with three percent utilization growth year over year. (DI #4AHH, Exh. 1, p. 1). Adventist bases its projected payor mix as a percent of total revenue on its 2017 budget through March of 2017. (*Id.*). It notes that it experienced stronger volume growth in the second half of 2016 and the first part of 2017 than anticipated in its 2017 budgeted volume, which was based on actual utilization through July 2016. (DI #9AHH, pp. 1, 2).

Amedisys-Westminster

Amedisys-Westminster notes that, as an existing HHA, it bases projected revenue on its current charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care. (DI #5AW, p. 15). In its initial modification after the Project Status Conference, the applicant clarifies that its projected revenue and average visit volumes are based exclusively on its own agency experience and data, and not that of other Amedisys providers in Maryland or their clients. (DI #16AW, p. 5). In its second modification made after I sought additional information so that its modification would be complete, Amedisys-Westminster notes that its gross revenue projections are based on its provision of HHA services to clients with a higher average acuity compared with other Amedisys Maryland clients statewide. (DI #17AW, p. 5). The applicant states that its projected payor mix as a percent of total revenue is also based on its own experience.

Bayada-Gaithersburg

Bayada-Gaithersburg states that it made the following assumptions to project revenue: (1) episodic mix (percent of low utilization payment adjustment episodes, percent of therapy episodes, etc.) was projected based on its experience; (2) episodic values were projected based on its case mix weight; (3) net billing rates by discipline were projected based on contract experience in Maryland; and (4) contractual allowances were calculated based on the difference between standard charge rate and net billing rate. (DI #7BG, p. 5). The applicant further notes that its projected payor mix is based on current experience. (DI #7BG, p. 5).

Reviewer's Analysis and Findings

Each applicant's projected revenue is based on its own experience and reasonable assumptions. Therefore, I find each applicant is consistent with Subsection .08F(2) of the standard.

(3) Staffing and overall expense projections are consistent with utilization projections and are based on current expenditure levels and reasonably anticipated future staffing levels as experienced by the applicant if an existing HHA or, if a proposed new HHA,

consistent with the recent experience of other Maryland HHAs serving the each proposed jurisdiction.

Applicants' Responses

Adventist

Adventist states that its staffing and overall expense projections are consistent with utilization projections and are based on its current expenditure levels and reasonably anticipated future staffing levels given its prior experience. (DI #4AHH, p. 15; DI #4AHH, Exh. 1, pp. 1, 6, 8). It notes that it based its projected number of visits by each of the six disciplines on actual 2016 utilization plus three percent growth year over year. (DI #4AHH, Exh. 1, p. 1). Adventist proposes to add a total of 4.5 FTEs in Year 2019 to address its projected increase in visits. (DI #4AHH, Table 5, Exh. 1, p. 8).

Amedisys-Westminster

In its first modification made after the Project Status Conference, Amedisys-Westminster notes that its staffing and overall expense projections are based on its own current expenditure levels and projected utilization and reasonably anticipated future staffing levels. (DI #16AW, pp. 5, 6). It states that its projected staffing expenses, including salaries and wages for 2018, are consistent with projected changes in FTEs for agency and contract staff. (DI #16AW, Table 3, p. 14 and Table 5, p. 17).

Bayada-Gaithersburg

In its second modification Bayada-Gaithersburg provides a listing of assumptions for projected expenses, including but not limited to: labor; office personnel; and general and administrative expenses. It notes that, overall, it bases its expense projections on its historical and current expenditure estimates (DI #7BG, pp. 5 and 6). It provides projected expenses for salaries, wages, and professional fees for its agency staff and contractual staff. (DI #15BG, Table 3, p. 4; DI #15BG, Table 5; p. 10).

Reviewer's Analysis and Findings

In order to assess the reasonableness of each applicant's staffing and expense forecasts, I analyzed the ratio of visits per FTE for each of the six major HHA disciplines (Table 2A in applications) to the projected number of FTEs (Table 5 in the applications). Table IV-4 below displays that information. I note that the projected number of FTEs for two of the applicants reflect projections at full implementation (Adventist, Year 2019; Bayada-Gaithersburg, Year 2021), while for the third applicant, Amedisys-Westminster, its projected number of FTEs is for its initial year of implementation (2018).

Table IV-4: Projected HHA Visits per FTE, Applicants and Maryland Average

Applicant	Skilled Nursing	Physical Therapy	Occupational Therapy	Speech Therapy	Home Health Aide	Medical Social Services
Adventist	937.1	1,156.0	847.2	1,033.5	781.3	484.6
Amedisys-Westminster	776.2	1,211.6	842.8	140.0	699.0	84.0
Bayada-Gaithersburg	821.2	896.8	960.0	897.2	995.8	992.7
Maryland Statewide Average FY 2014	966.11	1,375.3	1,231.3	964.5	916.8	447.6

Sources: Projected number of visits by discipline (Table 2A); projected number of full-time equivalents (FTEs) (Table 5), from respective CON applications. Maryland Statewide Average number of HHA visits per FTE by major discipline is calculated from HHA Public Use Data, FY 2014, HHA Utilization Tables 9 and 11.
Notes: Additional number of FTEs reflect projections at full implementation for Adventist (2019) and Bayada-Gaithersburg (2021). For Amedisys-Westminster, its projected number of FTEs is for its initial year of implementation (2018). Skilled nursing includes registered nurse and licensed practical nurse. Physical therapy ("PT") includes PT assistant.

Although the applicants' projected average visits per FTE vary considerably, only one ratio, Bayada-Gaithersburg's projection for medical social services, is far in excess of the statewide average. All three applicants are experienced HHAs.

I find that each of the three applicants complies with the Subsection .08F(3) of the standard.

G. Impact.

An applicant shall address the impact of its proposed home health agency service on each existing home health agency authorized to serve each jurisdiction or regional service area affected by the proposed project. This shall include impact on existing HHAs' caseloads, staffing and payor mix.

Applicants' Responses: Impact on Caseloads

Adventist

Adventist projects that there will be a need for capacity to serve 851 additional clients in Frederick County by 2019. (DI #4AHH, p. 16). The applicant projects that it will serve 515 of those 851 clients in 2019, with 6,304 total HHA visits, and that the impact on each HHA in Frederick County will be proportional to its existing market share (DI #4AHH, p.15). Adventist references the percent distribution of clients by HHA in Frederick County using MHCC's 2014 HHA Public Use Dataset, illustrating the caseload impact of the projected 515 clients to be served in 2019 by applying the same market share distribution in 2014 to its projected 515 clients. (DI #4AHH, Table 6, p. 16). Adventist states its belief that "additional need will 'backfill' and compensate any agencies for any losses in market share that they may lose as a result of Adventist's approval." (DI #4AHH, p. 16).

Amedisys-Westminster

Amedisys-Westminster projects serving 599 clients with a volume of 10,680 total visits in Frederick County in its fourth year (the first year of projected full utilization), which the applicant characterizes as "a modest projection." It does not expect its expansion to have a material impact on any existing HHAs. (DI #5AW, p. 28; DI #17AW, Table 2B p. 8). The applicant further states

that this expectation is reasonable in light of the large and growing 65+ population and low home health utilization rate in Frederick County, a harbinger of growth potential for which the existing and new HHAs can compete. (DI #5AW, p. 28). Amedisys-Westminster cites the HHA Chapter, at COMAR 10.24.16.03B, noting that development and expansion opportunities in a highly concentrated HHA jurisdiction may cause some amount of volume to shift. It further notes that the additional competition from the proposed expansion could incentivize the existing agencies in Frederick County to improve quality and performance scores over time. (DI #5AW, p. 28).

Bayada-Gaithersburg

Bayada-Gaithersburg projects serving 1,515 clients and 23,582 visits at full utilization in its fourth year (FY 2021), with expansion into all four jurisdictions in the Western Maryland region. (DI #4BG, Table 2B, p. 31). The applicant projects that its proposed expansion will not adversely impact other home health programs in the Western Maryland region as an increase in home health utilization is anticipated in these jurisdictions and other home health agencies can expect their volumes to increase even as the applicant enters the market. (DI #4BG, pp. 12, 21). It also makes reference to the increasing 65+ population and general population to support its intention to meet the growing needs of the population. (DI #4BG, p. 22). Using information from Medicare claims data from 2015, Bayada-Gaithersburg calculates that the average home health utilization against total Medicare billing across all four proposed jurisdictions is 2.68 percent, which is noted as lower than the State average of 3.01 percent. (DI #7BG, p. 7). Based on this information, the applicant states that it will not have a negative impact on current caseloads as there are individuals currently needing care who are not receiving it. (DI #7BG, p. 8).

Reviewer's Analysis and Findings: Impact on Caseloads

I find that the two applicants proposing expansion limited to Frederick County provided reasonable assumptions for projecting their impact on existing HHA caseloads. Adventist and Amedisys-Westminster project that the impact of their capture of market share in Frederick County will be blunted for existing agencies by the anticipated increase in population that will increase service demand and allow all existing HHA case volume to expand. Of the 11 HHAs currently serving Frederick County, it appears that two agencies are likely to experience the greatest impact on their case volume since these two agencies rely heavily on Frederick County for their volume.[20]

Bayada-Gaithersburg also provided reasonable assumptions to support its view that its gradual expansion into all four jurisdictions in the Western Maryland region would not have a severe negative impact on existing HHA caseloads. Bayada-Gaithersburg contends that, with the growth of the aging population, comes increasing demand for HHA services. Of the 14 HHAs serving one or two jurisdictions in the four-county Western Maryland region, six agencies are likely to experience the greatest impact on their caseloads. Three of these six agencies[21] obtain all

[20] Frederick Memorial Hospital Home Health Services served clients in five jurisdictions, with over 95 percent in Frederick County. HomeCall–Frederick served clients in three jurisdictions, with 48 percent in Frederick County. (Commission's HHA Annual Survey, FY 2014).

[21] Garrett County Health Department HHA served clients only in Garrett County. Meritus Home Health served clients in two counties, Frederick and Washington. Western Maryland Health System Home Care served clients in Allegany and Garrett Counties.

their clients from one or two of the jurisdictions in the Western Maryland region, one agency[22] obtains about 96 percent of its clients from two jurisdictions, and two agencies[23] each obtain about 75 percent of their total cases from the same two jurisdictions in the Western Maryland region, Frederick and Washington Counties.

I recognize that a smaller HHA serving the more remote, rural areas of western Maryland may be more likely to experience a substantial impact on its growth potential as a result of the introduction of a new agency, compared to a larger HHA with a broader geographic service area. However, as provided in the HHA Chapter, at COMAR 10.24.16.04, the Commission sees a need to promote more consumer choice of well performing providers and greater competition in jurisdictions where there is a concentrated market for HHA services. I believe that the growth in the aging population and implementation of ongoing efforts to transform health care delivery under the Total Cost of Care hospital payment model may increase demand for HHA services. Therefore, there is likely to be acceptable impact on existing agency case volume in Frederick County and the Western Maryland region as a result of these proposed projects.

Based on the information provided by the applicants, as well as my analysis of existing HHA client volume by geographic service area, I find that the impact of these proposed service area expansions, individually and collectively, on existing HHAs, is acceptable and necessary for the HHA Chapter's objectives to be met.

Applicants' Responses: Impact on Staffing

Adventist

Adventist states that its additional expansion into Frederick County will require the following additional staff: 1.84 FTE RNs; two FTE physical therapists; 0.4 FTE occupational therapists; 0.1 FTE speech therapists; 0.12 FTE home health aides; and 0.04 FTE medical social workers. Adventist states that it already has staff who live in or near Frederick County and who may choose to work in Frederick County once it is providing services there. It further states that it "does not anticipate that these positions will be difficult to fill and will not pose a burden to existing agencies." (DI #4AHH, p. 16). Adventist notes that, in 2015, its turnover rate was 21 percent, up from 13 percent in 2014. The applicant states that it has been able to fill staff vacancies within one to two months. (DI #4AHH, p. 25).

Amedisys-Westminster

Amedisys-Westminster's staffing projection shows an incremental increase in staffing as follows: 1.5 additional administrative FTEs; two additional RN FTEs; 1 additional LPN FTE; 1.1 additional physical therapy FTE; one additional occupational therapy FTE; one additional speech therapy FTE; one additional home health aide FTE; and 0.5 additional medical social work FTE.

[22] Frederick Memorial served clients in five jurisdictions, with almost 96 percent in two counties, Frederick and Washington.

[23] HomeCall- Frederick served clients in three jurisdictions, with 75 percent in Frederick or Washington Counties and 25 percent in Montgomery County. Lutheran Home Care & Hospice served clients in three jurisdictions with 75 percent residing in Frederick or Washington Counties, and 25 percent in Carroll County.

(DI #16AW, Table 5, p. 17; DI #17AW, Table 4, p. 12). . The applicant notes that these positions to be filled are not considered to be in short supply, based on its analysis of market data and staffing trends and does not anticipate difficulty in recruiting new staff (DI #5AW, p. 26). Amedisys-Westminster states that the average vacancy and turnover rates experienced by Amedisys in Maryland have been 17 percent. (DI#5AW, p. 26).

Bayada-Gaithersburg

Bayada-Gaithersburg projects an additional 35.62 FTEs based on its current staffing levels and operational experience. Bayada-Gaithersburg proposes adding 35.62 FTEs with its expansion into all four jurisdictions in the Western Maryland region. Its breakdown of additional FTEs for this proposed project includes the following: 8.66 additional administrative FTEs; 11.68 additional skilled nursing FTEs; 9.39 additional physical therapy FTEs; 3.42 additional occupational therapy FTEs; 1.79 additional speech therapy FTEs; 0.43 additional home health aide FTEs; and 0.25 additional medical social work FTEs. (DI #15BG; Table 5, p. 10). The applicant notes that it employs individuals who reside in both Frederick and Washington Counties who are available to meet the needs of individuals where they live and assist with the expansion into these underserved areas. (DI #7BG, p. 8). The applicant further states that its proposed project will not represent unnecessary duplication of services and will not adversely affect existing agencies in the four-county service area. (DI #10BG, pp. 3, 4).

Reviewer's Analysis and Findings: Impact on Staffing

Table IV-5 shows the additional staffing that each applicant projects as needed to execute its proposed expansion.

Table IV-5 Additional Staffing Required to Support Applicants' Proposed Expansions

	Adventist	Amedisys-Westminster	Bayada-Gaithersburg
Position Title	**Additional FTEs (2019)**	**Additional FTEs (2018)**	**Additional FTEs (2021)**
Administrative Personnel	-	1.5	8.66
Registered Nurse	1.84	2	11.68
Licensed Practical Nurse	-	1	Included with RN
Physical Therapist	2	1.1	9.39
Occupational Therapist	0.4	1	3.42
Speech Therapist	0.1	1	1.79
Home Health Aide	0.12	1	0.43
Medical Social Worker	0.04	0.5	0.25
Total FTEs	4.5	9.1	35.62

Sources: Adventist (DI #4, Table 5, Exh. 1, p. 8); Amedisys-Westminster (DI # 16, Table 5, p. 17); Bayada-Gaithersburg (DI #15, Table 5, p. 10).

Notes:

Additional number of FTEs reflect the respective projections at full implementation for Adventist (2019) and Bayada-Gaithersburg (2021).

For Amedisys-Westminster, its additional number of FTEs is for its initial year of implementation (2018).

Number of FTEs includes agency and contract staff. Physical therapist assistant included with physical therapist.

Adventist projects that it will need a small increase in its staffing (4.5 direct patient care FTEs) as a result of its proposed expansion into Frederick County. As noted by Adventist, it already employs staff who live near or in Frederick County and may choose to serve clients residing there. I believe that this additional need for staff will not pose a burden on the existing HHAs in Frederick County.

Amedisys-Westminster projects that it will add 7.6 direct patient care and 1.5 administrative personnel FTEs in its initial year of implementation (2018). Amedisys-Westminster's staffing projection seems reasonable, as it proposes to expand into Frederick County out of a new branch office to be located within that county. The additional administrative personnel include one FTE for a community liaison position to address its charity care commitment, and 0.5 FTE for an office manager in its new branch office. As noted by Amedisys-Westminster, the additional staffing is not considered to be in short supply and would not be difficult to fill, implying its proposed minimal additional staffing would not have an adverse impact on other agencies' staffing resources in Frederick County.

Bayada-Gaithersburg proposes to serve Frederick and Washington Counties initially, later phasing services into Allegany and Garrett. It projects a total incremental increase of 35.6 additional FTEs: 8.66 FTEs for administrative services; and 26.96 FTEs for direct patient care services in Year 2021, the first year projected for full implementation in all four counties. Its staffing increase seems to align with its proposal to expand its existing HHA (currently serving one jurisdiction) over time to serve all four jurisdictions in the Western Maryland region out of its existing parent office located in Gaithersburg. Bayada-Gaithersburg notes that its projections are based on the expected productivity for a full-time staff member in each discipline. I agree with the applicant that its market entry would not adversely impact staffing resources of other agencies in the four-county Western Maryland region. Although their recruitment would be significant, it is spread over four counties and several years.

For reasons noted, I find that each applicant has met this standard.

Applicants' Responses: Impact on Payor Mix

Adventist

Adventist states that it does not believe that its approval will materially affect the payor mix of the existing agencies. It states that, based on its experience in other counties, Adventist accepts a wider range of insurers and HMO subscribers than do other agencies, and believes that it will increase access and choice for many Frederick County residents. (DI #4AHH, p. 16). Finally, Adventist notes that, "[a]s reimbursement is determined by payors, Adventist's approval will not impact the cost of care." (DI #4AHH, p. 16).

Amedisys-Westminster

Amedisys-Westminster states that "[n]o impact on payer mix of other home health agencies is expected as a result of this project." (DI #5AW, p. 28). It also states that it does not expect there to be any impact on its charges. (DI #5AW, p. 29). Amedisys-Westminster suggests that its

expansion to Frederick County will have a positive impact on costs to the health care delivery system as home health care is a lower cost alternative to institutional settings. (*Id.*).

Bayada-Gaithersburg

Bayada-Gaithersburg states that it does not project "disturbing the payer mix of any rival agencies but rather notes a healthy mix that will support the growing needs of its recipients." (DI #7BG, p. 8). It further states that traditional Medicare fee-for-service continues to be the dominant payor. As the population grows, Bayada-Gaithersburg foresees a proportionate growth in both commercial insurance and traditional fee-for-service Medicare. (DI #7BG, p. 8).

Reviewer's Analysis and Findings: Impact on Payor Mix

I have arranged the applicants' projections of payor mix in Table IV-6 ,below. For purposes of comparison, I also considered information from the Commission's HHA public use dataset[24] to access the distribution of HHA visits by payor type by jurisdiction, as well as for the Western Maryland region.

Table IV-6: Projected Payor Mix (as % of total visits) at Full Utilization for Proposed Expansions

Agency	Payors					Data Source
	Medicare	Medicaid	Blue Cross/ Commercial Insurance	Self-pay	Other	
Adventist	78.4%	1.3%	20.3%	- - -	- - -	DI #4, Table 4 Exh. 1, p. 7
Amedisys-Westminster	95%	1%	4%	- - -	- - -	DI#17, Table 4, pp.12,13
Bayada-Gaithersburg	81.6%	0.5%	15.8%	0.4%	1.7%	DI #15, Table 4, pp.6,7

For the two applicants proposing to expand only into Frederick County, I have compared Adventist's and Amedisys-Westminster's projected proportion of visits by payor type with the information on existing HHAs in Frederick County. Adventist shows a slightly lower projected level of Medicare visits (78.4 percent) than the experience of existing HHAs in Frederick County, which was 81 percent in 2014. Adventist also had a higher projected level of privately insured clients[25] (20.3 percent) than existing HHAs in Frederick County had in 2014 (15.2 percent). (DI #4AHH, Table 3, Exh. 1, p. 6).

Amedisys-Westminster has a projected payor mix with a much higher proportion of Medicare visits than Adventist's projected levels. At 95 percent it also outstrips the Medicare proportion for existing HHAs in Frederick County, which was 81.1 percent in 2014. (DI#17AW, Table 3, Attachment, p.6).

Both Adventist and Amedisys-Westminster projected a lower proportion of visits to clients covered by Medicaid – 1.3 percent for Adventist and one percent for Amedisys-Westminster – than did existing HHAs in Frederick County (2.7 percent in 2014).

[24] As noted in the Background section, *supra*, p. 6, FY 2014 is the most recent year of available data.
[25] In my analysis, I combine the payor types "Blue Cross" and "Other Commercial Insurance" as equivalent to "private insurance" when comparing applicants' projected payor mix with information on payors in MHCC's HHA public use dataset.

Bayada-Gaithersburg, which proposes to expand into all four jurisdictions in the Western Maryland region, shows a projected proportion of Medicare visits (81.6 percent in 2021) that is very similar to the experience of all HHAs in the Western Maryland region (81.3 percent in 2014). (DI #15BG, Table 3, p.5). However, its percentage of Medicaid visits is low (0.5 percent in 2021) compared with 3.5 percent of visits for the entire Western Maryland region in 2014.

I find that none of the applicants projected a payor mix that varies from what can reasonably be anticipated to such a degree that its projections should be rejected as unreliable and its application denied on the basis of incompatibility with this standard. Therefore, I find that each of the three applicants has complied with the standard.

H. Financial Solvency.

An applicant shall document the availability of financial resources necessary to sustain the project. Documentation shall demonstrate an applicant's ability to comply with the capital reserve and other solvency requirements specified by CMS for a Medicare-certified home health agency.

Applicants' Responses

Adventist

Adventist provided the two most recent audited financial statements for Adventist HealthCare, Inc. and Controlled Entities, noting that the statements demonstrate: (1) the availability of financial resources necessary to sustain Adventist's HHA expansion project; and (2) its ability to comply with CMS' capital reserve and other solvency requirements. (DI #4AHH, p. 17; DI #4AHH, Exh. 3, pp.1-96).

Amedisys-Westminster

Amedisys-Westminster notes that it is a wholly-owned subsidiary of Amedisys Holding, LLC, which is 100 percent owned by Amedisys, Inc., and that, for this reason, it is financially supported and provided with needed cash flow as one of Amedisys' subsidiary operations. (DI #5AW, p. 16). It provided the 2016 Annual Report for Amedisys, Inc. to demonstrate the availability of financial resources necessary to sustain its expansion project. (DI #5AW, Exh. 15).

Bayada-Gaithersburg

Bayada-Gaithersburg provided a April 20, 2017 letter of financial solvency from the independent auditor PricewaterhouseCoopers, LLP attesting to the applicant's availability of financial resources necessary (as of January 2016) to sustain its expansion project into the four-jurisdiction Western Maryland region. (DI #4BG, p. 12; DI #4BG, Att. G).

Reviewer's Analysis and Findings

I find that each of the three applicants complies with the financial solvency standard, as each applicant provided documentation to support the availability of the financial resources necessary to implement its proposed service area expansion.

I. Linkages with Other Service Providers.

An applicant shall document its links with hospitals, nursing homes, continuing care retirement communities, hospice programs, assisted living providers, Adult Evaluation and Review Services, adult day care programs, the local Department of Social Services, and home delivered meal programs located within its proposed service area.

(1) A new home health agency shall provide this documentation when it requests first use approval.

(2) A Maryland home health agency already licensed and operating shall provide documentation of these linkages in its existing service area and document its work in forming such linkages before beginning operation in each new jurisdiction it is authorized to serve.

Applicants' Responses

Adventist

Adventist notes that, as an existing HHA currently authorized to serve seven counties in Maryland, it already has many linkages, both formal and informal. It provided a list of comprehensive care facilities and hospitals, as well as other HHAs, physicians' groups, and community-based medical day care programs, to which Adventist makes or from which it receives referrals. (DI #4AHH, pp. 17, 18). Adventist states that it will develop comparable linkages in Frederick County, and has already arranged for its Community Liaison staff to meet with case managers at Frederick Memorial Hospital and several nursing homes and assisted living facilities in Frederick County. It also notes that approximately 100 physicians with privileges at Shady Grove Medical Center, an Adventist HealthCare general hospital, have offices in Frederick County. (DI #7AHH, pp. 3-5).

Amedisys-Westminster

Amedisys-Westminster describes its linkages with a variety of health care and service providers in its existing service area. The applicant provided a list of various referral sources in 2015 and 2016 to demonstrate its linkages with health care providers (DI #5AW, p. 16 and Exh. 9). Furthermore, the applicant states that it has already begun to form linkages in Frederick County, and has provided documentation of its efforts to date with letters of support from various providers. (DI #5AW, Exh. 10; DI #16AW, pp.3 -5).

Bayada-Gaithersburg

Bayada-Gaithersburg describes its current linkages in Montgomery County as well as active linkages in Frederick County from another licensed Bayada home health agency. The

applicant identifies its current relationships with hospital and community-based providers, Maryland insurance companies, and a large physician-led accountable care organization. It states its intention to use its Bayada-employed marketing managers, transitional care managers, and others to assist in the establishment of new relationships and linkages in the four-jurisdiction Western Maryland region. (DI #4BG, p. 13 and Att. H; D I#7BG, p. 8; DI #10BG, pp. 4, 5).

Reviewer's Analysis and Findings

Each of the applicants has provided documentation of its current linkages and each has shared its progress in establishing new relationships in its proposed new service area(s).

I find that each of the three applicants complies with this standard, but to assure appropriate follow-up in in implementing expansion of its HHA, recommend that any CON contain the following condition requiring each applicant to:

> Provide documentation regarding its links with hospitals, nursing homes, continuing care retirement communities, hospice programs, assisted living providers, Adult Evaluation and Review Services, adult day care programs, the local Department of Social Services, and home delivered meal programs located within its proposed service area when it requests first use approval.

J. Discharge Planning.

An applicant shall document that it has a formal discharge planning process including the ability to provide appropriate referrals to maintain continuity of care. It will identify all the valid reasons upon which it may discharge clients or transfer clients to another health care facility or program.

Applicants' Responses

Adventist

Adventist provides its existing Home Health Patient Care Policy, which includes its discharge, discontinuation, and transfer of services criteria (Policy No: 8.1180), which specifies twenty-two circumstances in which it may decline to admit or continue providing HHA services to clients (DI #4AHH, p. 19; DI# 4AHH, Exh. 4, pp 8 -11). Examples of such circumstances include: threats of violence or actual violence; client's home environment will not support the provision of home health services; and the goals of the client's plan of care have been attained or are no longer attainable. Adventist states that, under this policy's Subsection D.1., it initiates appropriate community and agency referrals for clients who require discharge due to discontinued services. (DI #4AHH, Exh. 4, p. 10).

Amedisys-Westminster

Amedisys-Westminster provided a copy of its policy and procedures for Discharge Planning (Policy AA-016), which describes its discharge process that "ensures the patient is being discharged appropriately and arrangements have been made to address any ongoing health care

needs the patient may have at the time of discharge." (DI #5AW, Exh. 11) This policy includes a listing of nineteen circumstances under which Amedisys-Westminster may decline to continue providing HHA services. Examples of such circumstances include: threats of violence or actual violence to staff members; the agency can no longer provide appropriate staffing; the client's home environment will not support the provision of home health services; and the client moves to a location outside the agency's licensed geographic service area. With regard to the ability to make appropriate referrals, Amedisys's discharge policy states that its purpose is to "ensure the patient is being discharged appropriately and arrangements have been made to address any ongoing healthcare needs the patient may have at the time of discharge." (DI #5AW, Exh. 11) .

Bayada-Gaithersburg

Bayada-Gaithersburg provided an excerpt from its existing policy and procedures for discharging clients. According to its general procedures a client may be discharged for seven reasons, including: client requires care or services that cannot be provided by the agency; the physician fails to sign and return the plan of treatment; and, all goals have been attained and skilled care services are no longer required. Prior to discharge, Bayada-Gaithersburg states that it assesses a client's continuing care needs and apprises the client and caregiver of available alternative resources to address any ongoing needs. (DI #4BG, p. 13-16).

Reviewer's Analysis and Findings

I find that each of the three applicants has an appropriate discharge planning process that meets the requirements of Standard .08J.

K. Data Collection and Submission.

An applicant shall demonstrate ongoing compliance or ability to comply with all applicable federal and State data collection and reporting requirements including, but not limited to, the Commission's Home Health Agency Annual Survey, CMS' Outcome and Assessment Information Set (OASIS), and CMS' Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) survey.

Applicants' Responses

Adventist

As an existing Medicare-certified HHA licensed in Maryland, Adventist notes that it complies with all applicable federal and State data collection and reporting requirements including, but not limited to, the Commission's HHA Annual Survey, CMS' Outcome and Assessment Information Set (OASIS), and CMS' Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) survey. (DI #4AHH, p. 19).

Amedisys-Westminster

Amedisys-Westminster notes that it submits the required information on the Commission's Home Health Agency Annual Survey, as well as complies with all CMS data collection and

reporting requirements including the Outcome and Assessment Information Set (OASIS) and CMS' Home Health Consumer Assessment of Healthcare Providers and Systems (HHCAHPS) survey. (DI #5AW, p. 17; DI #5AW, Exh. 12).

Bayada-Gaithersburg

Bayada-Gaithersburg notes that, as an existing Medicare-certified HHA licensed in Maryland, it submits data on CMS' Home Health Compare and continuously monitors its quality performance [26] (DI#4BG, p. 16). The applicant provides its Policy and Procedures (#0-403) regarding its Quality Assessment and Quality Improvement Implementation program. (DI#4BG, Att. I).

Reviewer's Analysis and Findings

Each of the three applicants complies with the data collection and submission standard as each of the applicants satisfies federal and State data collection and reporting requirements.

COMAR 10.24.01.08G(3) Criteria for Review of an Application for Certificate of Need.

B. Need

The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

Introduction

In accordance with the HHA Chapter, at COMAR 10.24.16.04, the population of the four counties in the Western Maryland region – Allegany, Frederick, Garrett and Washington – are identified as needing additional home health agency service providers. In setting up a review schedule for HHA reviews, Commission staff applied regulatory criteria that showed that Allegany and Garrett Counties have insufficient consumer choice and highly concentrated HHA markets, and that both Frederick and Washington Counties, while having sufficient consumer choice, have highly concentrated HHA markets. Notice was published in the *Maryland Register*, Volume 43, Issue 23, p. 1326 (November 14, 2016).

As previously noted the HHA Chapter addresses the issue of market concentration through use of the Herfindahl-Hirschman Index ("HHI"), a measure of the competitiveness exhibited in a market served by competing firms. It is usually characterized as a measure of the degree to which market power within a given market is concentrated. Less concentration, i.e., more widely diffused market power, means a more competitive market. In the HHA Chapter, HHI is defined as the sum of the squares of the market shares of all the HHAs authorized and actually serving a jurisdiction.

[26] Commission records show that Bayada-Gaithersburg submits required responses to the Commission's Home Health Agency Annual Survey. (http://mhcc.maryland.gov/public_use_files/index.aspx).

In theory, results can range from 0 to 1.0. An HHI of 1.0 indicates a monopoly in which one firm has total market power. Conversely, a competition index close to 0.0 indicates a condition of highly dispersed market power in which no one firm or small group of firms is dominant. For purposes of CON regulation of HHA services, the HHA Chapter uses U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines established in 2010, to establish an HHI threshold of 0.25 or greater as defining a highly concentrated jurisdictional market for HHA services.

Applicants' Responses

Adventist

Adventist supports its case for new market entry into Frederick County by applying the calculated 2014 HHA use rate by age to projected 2019 population to forecast an additional 851 clients to be served in Frederick County in 2019. (DI #4AHH, pp. 20-23). As Adventist previously noted, Adventist HealthCare, Inc. hospitals in Montgomery County discharged 3,611 clients from Frederick County in CY 2015 and 3,699 clients in CY 2016. Of these, 90 clients had discharge dispositions to home care in 2015 and 79 clients has such dispositions in 2016. (DI #4AHH, p. 21). Adventist notes that this number understates the actual number of Adventist HealthCare, Inc. clients accessing home care in that it does not include people who accessed home care services on their own (or were referred by their physicians) shortly after discharge. (DI #4AHH, p. 21).

Amedisys-Westminster

In addressing need, Amedisys-Westminster makes reference to the July 2014 population projections developed by Maryland's Department of Planning, which projected an annualized growth rate of 1.58 percent in Frederick County's population for the 2015 to 2020 time period, the third highest in the State (following Charles and St. Mary's Counties). It also notes that the 65 and older population in Frederick County increased from 11.1 percent of the total population in 2010 to 13.3 percent in 2015, an increase of nearly 20 percent. This increase in the 65 and older population is greater than the 15 percent increase for Maryland statewide for the same time period. (DI #5AW, p. 21). The applicant also refers to Medicare claims data for 2014, which shows that Frederick County's HHA utilization rate (8.0 percent) is the ninth lowest in Maryland, and is lower than the statewide rate (8.6 percent). (DI #5AW, p. 22). It notes the 45 percent increase in the number of HHA visits in Frederick County between 2010 and 2014, and states that it is reasonable to expect this growth in HHA utilization to continue based on a variety of factors including technology advancements, elderly population growth, and increasing pressure to avoid unnecessary hospitalizations. (DI #5AW, p. 22).

Bayada-Gaithersburg

Bayada-Gaithersburg highlights several factors supporting the need for increased access to HHA services in each of the four jurisdictions it proposes to serve. It references the HHA Chapter's objective of sufficient choice of HHA providers with high quality performance. It further provides historic, current, and projected population data by age cohort to further support the

growth in the Medicare eligible population, who, according to the applicant, require targeted outreach (DI #4BG, p. 19; DI #7BG, pp. 1, 2).

Reviewer's Analysis and Findings

Need for additional HHA services in the Western Maryland region, comprised of four jurisdictions (Allegany, Frederick, Garrett and Washington Counties), has been identified consistent with the need determination regulation in the HHA Chapter, COMAR 10.24.16.04. All three applicants further support the case for need in their respective proposed service areas by highlighting the growing 65+ age cohort, increasing efforts to avoid hospitalizations and re-admissions, as well as providing options for persons to receive care in their own homes with advancements in technology.

I find that each of the three applicants has addressed the need for its project and has complied with the need criterion.

C. Availability of More Cost-Effective Alternatives

The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.

Applicants' Responses

Adventist

Adventist notes that, as an HHA in neighboring Montgomery County, the expansion of its HHA into Frederick County can be accomplished with minimum additional staff and a very small investment. Adventist states that its proposal will allow it to offer care for the approximately 100 Frederick County residents each year who are discharged from Adventist HealthCare hospitals and who need home health following discharge. Furthermore, Adventist notes its five star quality of care rating on CMS Home Health Compare[27] and states that it will provide the residents of Frederick County with increased choice of a quality provider with a broad range of services and a very diverse series of payor contracts. (DI #4AHH, pp. 23, 24).

Amedisys-Westminster

Amedisys-Westminster addresses the cost-effectiveness achievable through expansion of its existing Medicare-certified HHA operations, primarily in Carroll County, and establishment of a branch office in adjacent Frederick County. This proposed new branch office will operate under

[27] I note that this rating was at the time of Adventist's application. The latest Home Health Compare posting (11/12/18) shows that Adventist has a 4.5 star rating: https://www.medicare.gov/homehealthcompare/profile.html#profTab=1&ID=217032&state=MD&lat=0&lng=0&name=Adventist.

the applicant's existing Medicare provider number and will share administration, supervision, and services with the parent office. Amedisys-Westminster describes some of the benefits of being part of a leading national home health care company, with resources that include several evidence-based clinical programs designed to improve outcomes and reduce hospital admissions. The applicant states that its proposed project is a cost-effective way to introduce additional HHA competition in Frederick County and increase HHA utilization, driving down health care costs, and improving quality. (DI #5AW, pp. 23 -24).

Bayada-Gaithersburg

Bayada-Gaithersburg notes that HHAs are a cost-effective alternative to inpatient settings for care. It notes that HHA services help to prevent or postpone hospital or nursing home care which also reduces costs, allowing individuals to recover and age in their own homes. (DI #4BG, p.20). Furthermore, Bayada-Gaithersburg states that its expansion will benefit from operational efficiencies through its corporate office and use of electronic signatures and point of care charting. It will share administrative support functions from its existing office in Montgomery County to neighboring jurisdictions, resulting in greater operational efficiencies and economies of scale. (DI #4BG, p.20).

Reviewer's Analysis and Findings

Each applicant is proposing to expand its agency's existing service area, and references its ability to tap into existing overhead functions. I find expansion to be a cost-effective approach that spreads fixed costs as it extends services, thus providing more choices and a higher level of competition in the Western Maryland region's HHA market. Adventist and Bayada-Gaithersburg address achievement of operational efficiencies by using existing offices and shared administrative services. Amedisys-Westminster's proposal includes establishment of a new branch office, adding costs for leasing office space, but "shar[ing] administration, supervision, and services with the parent office."

I find that each of the three applicants has demonstrated the cost effectiveness of expanding its service areas as proposed.

D. Viability of the Proposal

The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

Adventist

Adventist estimates the cost of its project to be $75,000, which will be funded with cash. (DI #4AHH, Exh. 1, pp. 2-3). This cost estimate consists of legal and consultant fees and a contingency allowance to address unanticipated costs. (DI #7AHH, p.1). The applicant documents its ability to fund the project with submission of audited consolidated financial statements and supplementary information for its parent company Adventist HealthCare, Inc. and controlled

entities, for the years ending December 2013, 2014, and 2015. (DI #4AHH, Exh. 3, audited financial statements). Letters of support were provided by Senator Michael Hough, Senator Ron Young, and Bud Otis, Frederick County Council President. (DI #4AHH, Exh. 6).

To support the availability of resources necessary to sustain its project, Adventist provides information on: its overall historic and projected financial performance. (DI #4AHH, Exh. 1, Table 3, p. 6); utilization by total number of clients and visits by six major disciplines (DI #4AHH, Exh. 1, Table 2A, p. 4); and payor mix by revenue and visits (DI #4AHH, Exh. 1, Table 3, p.6). It reports net income of about $873,000 in 2016, and projects its income will increase to $2,336,000 in 2019, the first year projected for full project implementation. (DI #4AHH, Exh. 1, Table 3, p.6).

Amedisys-Westminster

Amedisys-Westminster estimates a project cash expenditure of $40,000, all attributed to CON-related legal fees. (DI #5AW, pp 35, 36). Additional operating costs include $36,000 in annual rental expense for office space in Frederick County and $3,600 in annual lease costs for equipment. (DI #5AW, p. 36). It plans to finance this project with cash and expects to achieve full implementation within nine months from the CON approval date. (DI #5AW, pp. 5, 36).

Amedisys-Westminster documents its ability to fund the project by submitting the audited financial statements of Amedisys, Inc., the applicant's ultimate parent company. (DI #5AW, Exh. 14, 15). Letters of support from providers that have used Amedisys-Westminster to serve Carroll County clients were provided by: Americoast Mid-Atlantic (a durable medical equipment provider); Right at Home In-Home Care and Assistance and Visiting Angels (residential service agencies); Living Assistance Services, a provider of senior homecare services; and Brinton Woods Health and Rehabilitation Center. (DI #5AW, Exh. 10).

Amedisys-Westminster provides historic and projected information on its: financial performance (DI #17AW, Table 3, p. 10); utilization by total number of clients and visits by six major disciplines (DI #17AW, Table 2A, p. 8); and its payor mix by revenue and visits (DI #17AW, Table 3, p. 11). It saw a net loss of approximately $102,000 in 2015 and a net loss of $8,000 in 2016, which it attributes to costs associated with company-wide conversion of its electronic medical records ("EMR") system. (DI #12AW, p. 5). Amedisys-Westminster notes that it is beginning to see integration efficiencies and clinical improvements with its new EMR implementation. (DI #12AW, p. 5). The applicant's projected net loss of approximately $300,000 in its initial 2018 year of operation are related to one time start-up costs for its establishment of a new branch office and expenses of about $50,000 per month combined with no anticipated revenue for six months. (DI #12AW, p. 5). Amedisys-Westminster projects profitable results beginning in the second year of operation.

Bayada-Gaithersburg

Bayada-Gaithersburg states that there are no capital costs required to implement its project. (DI #4BG, p.28). A letter from PricewaterhouseCoopers LLP ("PwC") dated April 20, 2017 titled "Confirmation of Financial Stability" included financial highlights from the 2015 financial audit performed by PwC. It notes positive revenue growth, net income and operating cash flow, which

further support Bayada-Gaithersburg's financial strength and ability to launch and sustain its project. (DI #4BG, Att. G).

To support its ability to sustain its proposed expansion. Bayada-Gaithersburg provides information on its: agency-wide historic and projected financial performance (DI #15BG, Att., Table 3, pp. 4 and 5); utilization by total number of clients and visits by six major disciplines (DI #15BG, Att., Table 2A, p. 1); and its payor mix as percent of total revenue and total visits (DI #15BG, Att., Table 3, p. 5). It reports net income of approximately $530,000 in 2016, and projects that its income will increase to approximately $854,000 in 2021, its first year at full utilization.

Reviewer's Analysis and Findings

A summary table comparing the three applicants' historic and projected financial performance is provided below in Table IV-7 "Comparative Statistical and Financial Performance – Actual and Projected." While I have some concerns regarding Amedisys-Westminster's initial net loss of approximately $300,000 in 2018, my concerns are mitigated by the applicant's expected positive net income of approximately $246,000 in 2021, the first year at full utilization, combined with the understanding that this applicant is part of Amedisys, Inc., which has documented financial resources to support the applicant.

Table IV-7: Comparative Statistical and Financial Performance – Actual and Projected

Statistical Indicators	Adventist			Amedysis-Westminster			Bayada-Gaithersburg		
	Actual	Projected		Actual	Projected		Actual	Projected	
	2016	First Year 2018	At Full Use 2019	2016	First Year 2018	At Full Use 2021	2016	First Year 2018	At Full Use 2021
Total Visits	95,202	107,406	113,825	12,970	17,312	25,903	18,204	26,607	52,323
Total Clients	7,928	8,775	9,293	590	820	1,307	1,075	1,792	3,614
Average Visits/Client	12.0	12.2	12.2	22.0	21.1	19.8	16.9	14.8	14.5
Net Income ($000s)									
Net Operating Revenue	$19,938	$22,452	$23,125	$2,148	$2,826	$4,665	$3,824	$5,149	$10,166
Total Operating Expenses	$19,106	$20,306	$20,845	$2,157	$3,125	$4,419	$3,294	$4,925	$9,312
Non-Operating Income	$39.9	$55	$55	$0	$0	$0	$0	$0	$0
Net Income (loss)	$873	$2,201	$2,336	($8)	($300)	$246	$530	$224	$854
Payor Mix (% of total Visits)									
Medicare[28]	76%	78.4%	78.4%	95%	94%	95%	81.1%	82.3%	81.6%
Medicaid	1%	1.3%	1.3%	1%	1%	1%	0.0%	0.5%	0.5%
Blue Cross	6%	1.9%	1.9%				8.8%	8.2%	8.6%
Other Commercial Insurance	16%	18.4%	18.4%	4%	5%	4%	7.9%	6.9%	7.2%
Self-Pay and Other	0%	0%	0%	0%	0%	0%	2.1%	2.0%	1.1%

Sources: Applicants' respective CON applications. Total Clients (unduplicated count) and Visits (Table 2A); Net Income (Table 3); Payor Mix as Percent of Total Visits (Table 3).

I find that each applicant demonstrated that it has the resources necessary to implement and sustain its project.

[28] Includes PPS episodic payors.

E. Compliance with Conditions of Previous Certificates of Need

An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.

Applicants' Responses

Adventist

Adventist's HHA preceded CON regulation and, for this reason, was initially grandfathered to serve Montgomery and Prince George's County. It subsequently acquired an existing HHA to allow expansion into Calvert, Charles, and St. Mary's Counties. The applicant provided information on CONs issued to its parent company, Adventist HealthCare, Inc. Adventist states that MHCC staff, through its issuance of first use approvals, found that Adventist HealthCare, Inc. has complied with all conditions applicable to the listed CONs as part of its First Use reviews. (DI #4AHH, p. 26). The most recent CON issued for Adventist HealthCare, Inc., on December 17, 2015, was for the relocation of Washington Adventist Hospital from Takoma Park to Silver Spring. According to Adventist, that granted CON is on schedule and on budget. (DI #4AHH, p. 26).

Amedisys-Westminster

Amedisys-Westminster is one of seven licensed HHAs in Maryland that is a "doing business as" name of Amedisys Maryland, LLC. Each of the seven Amedisys Maryland HHAs, including the Amedisys-Westminster applicant, initially entered the Maryland HHA market through acquisition of an existing Maryland HHA. Amedisys-Westminster has never obtained a CON from MHCC. However, one Amedisys Maryland HHA, Amedisys Maryland LLC d/b/a Home Health Care of America ("HHCA") received a 2011 CON permitting it to expand into Talbot County. This CON contained a condition that HHCA provide an amount of charity care equivalent in value to 0.4 percent of total expenses and to document compliance with this condition within six months of the close of each fiscal year. HHCA was also required to address outreach and public notification requirements. According to the applicant, HHCA was able to comply with the 0.4 percent requirement in 2013, but not subsequently. Amedisys-Westminster states that need for charity care was reduced due to the expansion of insurance and Medicaid coverage that occurred in 2014. Amedisys-Westminster provided documentation of what it described as HHCA's ongoing public outreach efforts to remain in compliance with its 2011 CON. (DI #5AW, p. 27).

Bayada-Gaithersburg

Bayada-Gaithersburg is one of two licensed Bayada HHAs in Maryland. Each entered the Maryland HHA market through acquisition of an existing HHA. It notes that no Bayada HHA has ever obtained a CON from the Commission. (DI #4BG, p.23).

Reviewer's Analysis and Findings

Bayada has not received a Certificate of Need in Maryland. It purchased agencies already established in the State. In 1994, Adventist received Certificates of Need that permitted its

expansion into Anne Arundel County (Docket No. 93-02-1734) and Howard County (Docket No. 92-13-1680) and complied with all terms and conditions of its CONs. Adventist HealthCare, Inc., Adventist's parent, has complied with all terms and conditions of each previous Certificate of Need it has been granted. As noted in Amedisys-Westminster's response to this standard, another d/b/a entity of Amedisys Maryland LLC, Amedisys Maryland LLC d/b/a Home Health Care of America, initially complied with a condition in a 2011 CON (Docket No. 10-20-2312) to provide a certain level of charity care, but over time its charity care fell below the set level. It states that the expansion of insurance with the Affordable Care Act resulted in fewer people needing charity care.

Given HHCA's failure to comply with the charity care condition placed on the single CON it has received, I reviewed MHCC Home Health Survey data to compare the level of HHCA's charity care provision against that of its peer agencies in the region. As shown in Table IV-8 below, its provision of charity care is generally better than the average in each jurisdiction and in its total service area.

Table IV-8: Percentage of Charity Care for Amedisys and All other HHA Agencies in Selected Jurisdictions

	2012		2013		2014		2015		2016	
	Amedisys	Area Total	Amedisys	Area Total	Amedisys	Area Total	Amedisys	Area Total	Amedisys	Area Total
Dorchester	0.42%	0.40%	0.46%	0.27%	0.01%	0.09%	0.26%	0.14%	0.29%	0.28%
Somerset	0.55%	0.39%	0.27%	0.16%	0.19%	0.09%	0%	0%	0%	0%
Talbot	0.50%	0.22%	0.04%	0.12%	0%	0.10%	0%	0.03%	0%	0.08%
Wicomico	0.49%	0.42%	0.39%	0.25%	0.03%	0.06%	0.02%	0.04%	0.18%	0.08%
Worcester	0.28%	0.27%	0.11%	0.17%	0.26%	0.17%	0%	0.01%	0.19%	0.10%
Area-wide	**0.42%**	**0.35%**	**0.27%**	**0.21%**	**0.11%**	**0.10%**	**0.06%**	**0.05%**	**0.17%**	**0.11%**

Source: MHCC Home Health Agency Surveys, 2012-2016.
Note: 2015 and 2016 data have not yet been audited.

Thus, while Amedisys Maryland LLC d/b/a HHCA did not comply with the condition of its 2011 CON, its provision of charity care in comparison to other HHAs in the noted jurisdictions is acceptable. I find that Amedisys-Westminster has provided an acceptable "explanation as to why the condition . . . [was] not met" by Amedisys Maryland LLC. Adventist complied with all terms and conditions of its CONs, as did its parent corporation, Adventist HealthCare, Inc. This criterion does not apply to Bayada-Westminster because no Bayada entity has received a CON in Maryland.

F. Impact on Existing Providers and the Health Care Delivery System

An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.

Applicants' Responses

Adventist

Adventist refers to its response to the HHA Chapter standard on Impact, COMAR 10.24.16.08G,[29] which it states addresses how its proposed expansion into an adjacent jurisdiction, Frederick County, would not materially affect existing HHAs' case volumes or payor mix. (DI #4AHH, p. 27), It bases that statement on its projection that there will be a need for capacity to serve 851 additional clients in Frederick County by 2019 (compared to 2014). Because the number of projected new clients is greater than the 515 clients it projects serving, Adventist states that any market share existing agencies might lose would likely be "backfilled" by new demand. Furthermore, it notes that its proposed staffing increase (4.5 additional FTEs) would not impose a burden to existing agencies in Frederick County. Adventist notes that its approval for expansion will not impact the cost of care, as reimbursement is determined by payors. (DI #4AHH, p. 16).

Amedisys-Westminster

Amedisys-Westminster reiterates its statements responding to COMAR 10.24.16.08G, regarding impact of its project on existing HHAs in Frederick County and responding to the need criterion, COMAR 10.24.01.08G(3)(b). It believes that its expansion will have a positive impact on access to HHA services by increasing choice of quality HHA providers to Frederick County residents, as well as on costs to the health care delivery system, as a lower cost alternative to inpatient facility settings. It expects no impact on its charges, because the charges for HHA services are set by Medicare payment rates and commercial payors have leverage to set reimbursement levels through contract negotiation. (DI #5AW, pp. 25, 28, 29).

Bayada-Gaithersburg

Bayada-Gaithersburg states that it projects no impact on existing providers as a result of its entry into the Western Maryland region. It bases this projection on Medicare billing data that shows that the average home health utilization in the four proposed jurisdictions is lower than the State average of 3.01%. (DI #4BG, p. 24).

Reviewer's Analysis and Findings

This general review criteria requires an applicant to address impact on existing health care providers in the health planning region, as well as on impact on access to services and on costs. The HHA Chapter's impact standard, COMAR 10.24.16.08G, is more narrow, asking applicants to address impact on the other existing agencies in the region. As I discussed earlier in this Recommended Decision, at COMAR 10.24.16.08G,[30] I found that each applicant successfully addresses the objectives of the HHA Chapter. Providing more consumer choice of HHAs and fostering more competitive HHA markets will, by definition, be expected to blunt the growth potential of the existing providers. This is an unavoidable consequence of the HHA Chapter's determination of need, at COMAR 10.24.16.04, that gave rise to this review. The desired impact

[29] See a summary of Adventist's response to that standard, *supra*, pp. 30, 32, 34.
[30] See discussion, *supra*, at pp. 30-36.

of this project is increased consumer choice and competition. Successful achievement of those goals will inevitably alter the market share positions of HHAs operating in Western Maryland. Nevertheless, it appears that there is likely to be sufficient growth in the market such that there will not be an undue negative impact on existing HHAs' staffing resources, case volume, or payor mix.

Consistent with my analysis and findings regarding the Impact standard, I find that, given the expected positive impact on consumers, each applicant's proposed expansion will not have an undue negative impact on other providers of the service in the jurisdiction(s), and will have little to no impact on costs and charges. The dominance of Medicare as a payor for HHA services means that HHAs have very limited ability to set their own prices. I find that, overall, the impact on the health care delivery system and on persons who will need HHA care, will be positive.

V. REVIEWER'S RECOMMENDATION

In this review, three existing HHAs seek to expand their authorized service areas into one or more jurisdictions of the Western Maryland region, consisting of Frederick, Washington, Allegany, and Garrett Counties. These four counties evidenced a need for additional providers of HHA services under the HHA Chapter's regulatory criteria that permitted acceptance of applications if a jurisdiction has: (1) insufficient consumer choice of HHAs; (2) a highly concentrated HHA market; or (3) insufficient choice of HHAs with high quality performance. As explained in more detail in the "Background" section[31] of this Recommended Decision, Allegany and Garrett Counties had need for new HHA providers because each had insufficient consumer choice and each also had highly concentrated HHA markets. While Frederick and Washington Counties had a sufficient number of competing HHAs, these jurisdictions met the definition of highly concentrated markets.

Only Bayada-Gaithersburg applied to serve all four counties. This applicant's commitment to expand to each county in the Western Maryland region plays an important role in my recommendation. Adventist and Amedisys-Westminster applied to expand only into Frederick County. According to the gradual entry provisions in the HHA Chapter, all three applicants could be approved if each met all the standards in the HHA Chapter and satisfied the CON review criteria

My review of the record resulted in my finding that each applicant met all applicable State Health Plan standards and CON review criteria. This was not always the case. As previously noted, I held a Project Status Conference in this review in March 2018 because, at that time, none of the applicants demonstrated compliance with all applicable standards and criteria. At the Project Status Conference, I advised each applicant that it needed to make changes to its charity care policies and procedures to comply with the charity care and sliding fee scale standard. In addition, I informed Amedisys-Westminster that it must address two issues regarding its responses to the financial feasibility standard and related CON review criteria. I advised Bayada-Gaithersburg that, in addition to the charity care and sliding fee scale standard, it still needed to modify its responses to the financial feasibility standard and the impact standard.

[31] See discussion, *supra*, at pp. 6-7.

I sent a detailed summary of the Project Status Conference to the three applicants, in which I set out changes that were needed in each application in order for me to be able to recommend that the Commission approve that application. Adventist's initial modification was complete; no additional changes were needed. In a May 3, 2018 letter, I sought completeness information from Amedisys-Westminster and Bayada-Gaithersburg because neither had made all necessary modifications. In this letter I informed Amedisys-Westminster and Bayada-Gaithersburg that additional changes had to be made by May 14, 2018. I told the two applicants that this was their "last opportunity … to provide the information I requested at the Project Status Conference and detailed in my March 9, 2018 Project Status Conference summary." (DI #25GF), p. 10).

Amedisys-Westminster and Bayada-Gaithersburg each filed a second modification to its application on May 14, 2018. Amedisys-Westminster made additional needed changes to its responses to the charity care and financial feasibility standards. Bayada-Gaithersburg made the requested modifications to its responses to the impact and financial feasibility standards and also made modifications to COMAR 10.24.16.08E(4), the subsection of the charity care standard referencing the credibility of an applicant's charity care commitment and its specific plan to meet that commitment. Unlike Amedisys-Westminster, Bayada-Gaithersburg did not provide a comprehensive approach to engage with community-based agencies and other non-hospital providers serving the indigent populations in each of the four jurisdictions it proposes to serve. While its modified plan does not contain the level of detail that I desired, I found that, under the circumstances in this review, Bayada-Gaithersburg meets the minimum requirements of Subsection .08E(4). I note that Bayada-Gaithersburg is the only applicant in this review that seeks to expand to Allegany, Garrett, and Washington Counties, jurisdictions where the Commission found need when it adopted the current HHA Chapter. Meeting the Commission's goal for additional access for residents of those three counties is important and, as a result, I have looked at Bayada-Gaithersburg's response to the charity care and sliding fee scale standard, COMAR 10.24.16.08E, in the most favorable light.[32]

I found each application to be in compliance with all applicable standards in the HHA Chapter and with the Certificate of Need review criteria. For these reasons, I recommend that the Commission **APPROVE** the applications of Adventist, Amedisys-Westminster, and Bayada-Gaithersburg with the condition that each:

1. Maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding fee scale, and reduced fee services;

2. Provide an amount of charity care equivalent to or greater than the average amount of charity care provided by home health agencies [in Frederick County, for Adventist and Amedisys-Westminster; in the Western Maryland region (Allegany, Frederick, Garrett, and Washington Counties) for Bayada-Gaithersburg]; and

[32] I note that, if Bayada-Gaithersburg is granted a Certificate of Need to expand into all four counties, but does not do so, its Certificate of Need is subject to withdrawal under COMAR 10.24.01.12H.

3. Provide documentation regarding its links with hospitals, nursing homes, continuing care retirement communities, hospice programs, assisted living providers, Adult Evaluation and Review Services, adult day care programs, the local Department of Social Services, and home-delivered meal programs located within its proposed service area when it requests first use approval.

I also recommend that the following additional conditions be placed on any Certificate of Need issued to Bayada-Gaithersburg:

4. Prior to partial or final first use approval, Bayada-Gaithersburg shall develop separate forms, acceptable to Commission staff, to implement its determinations of probable and final eligibility for charity or reduced fee care.

5. Prior to partial or final first use approval, Bayada-Gaithersburg shall provide information regarding additional steps, acceptable to Commission staff, that it has taken to assure that it will provide an amount of charity care that is equivalent to or greater than the average amount of charity care provided by home health agencies in the Western Maryland region.

IN THE MATTER OF THE	*	
WESTERN MARYLAND	*	**BEFORE**
HOME HEALTH AGENCY REVIEW	*	
	*	**THE**
ADVENTIST HOME HEALTH	*	
SERVICES, INC.	*	**MARYLAND**
(Maryland license HH7032)	*	
Docket No. 17-R2-2397	*	**HEALTH CARE**
	*	
AMEDISYS MARYLAND, LLC	*	**COMMISSION**
D/B/A AMEDISYS HOME HEALTH	*	
(Maryland license HH7048)	*	
Docket No. 17-R2-2398	*	
	*	
BAYADA HOME HEALTH	*	
CARE, INC.	*	
(Maryland license HH7158)	*	
Docket No. 17-R2-2399	*	
	*	

*** ***

FINAL ORDER

Based on the analysis and findings in the Reviewer's Recommended Decision, it is this 17th day of January, 2019, **ORDERED**:

That the applications of Adventist Home Health Services, Inc. (Maryland license HH7032) ("Adventist"), Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Maryland license HH7048) ("Amedisys-Westminster"), and Bayada Home Health Care, Inc. (Maryland license HH7158) ("Bayada-Gaithersburg") for a Certificate of Need to provide home health services is each **APPROVED,** with conditions that each:

1. Maintain compliance with the provisions of COMAR 10.24.16.08E(1)-(4) regarding charity care, sliding fee scale, and reduced fee services;

2. Provide an amount of charity care equivalent to or greater than the average amount of charity care provided by home health agencies [in Frederick County, for Adventist and Amedisys-Westminster; in the Western Maryland region (Allegany, Frederick, Garrett, and Washington Counties) for Bayada-Gaithersburg]; and

3. Provide documentation regarding its links with hospitals, nursing homes, continuing care retirement communities, hospice programs, assisted living providers, Adult Evaluation and Review Services, adult day care programs, the local Department of Social Services, and home-delivered meal programs located within its proposed service area when it requests first use approval.

It is further ORDERED that the following additional conditions are placed on the Certificate of Need issued to Bayada-Gaithersburg:

4. Prior to partial or final first use approval, Bayada-Gaithersburg shall develop separate forms, acceptable to Commission staff, to implement its determinations of probable and final eligibility for charity or reduced fee care.

5. Prior to partial or final first use approval, Bayada-Gaithersburg shall provide information regarding additional steps, acceptable to Commission staff, that it has taken to assure that it will provide an amount of charity care that is equivalent to or greater than the average amount of charity care provided by home health agencies in the Western Maryland region.

MARYLAND HEALTH CARE COMMISSION

APPENDIX

Record of the Review

- Adventist Home Health Services, Inc. – Docket No. 17-R2-2397
- Amedisys Maryland, LLC, d/b/a Amedisys Home Health - Docket No. 17-R2-2398
- Bayada Home Health Care, Inc. – Docket No. 17-R2-2399
- General File

Record of the Review

Adventist Home Health Services, Inc.

Docket Item #	Description	Date
1AHH	MHCC receives Letter of Intent	3/3/17
2AHH	MHCC acknowledges letter of intent and affirms applicant's qualification to file CON.	3/9/17
3AHH	Applicant documents its qualifications.	March
4AHH	Applicant files Certificate of Need Application.	5/5/17
5AHH	PMHCC acknowledges receipt of application.	5/9/17
6AHH	MHCC staff requests completeness information.	5/24/17
7AHH	Applicant provides response to request for completeness information.	6/8/17
8AHH	MHCC staff sends request for additional completeness information.	7/19/17
9AHH	Applicant provides response to request for completeness information.	8/1/17
10AHH	MHCC informs applicant that the formal start of the review will be 9/15/17.	8/31/17
11AHH	MHCC requests local health planning comment on CON Application.	8/31/17
12AHH	Adventist affirms that by 4/9/18 it will modify its application in response to status conference.	3/9/18
13AHH	Adventist files its modified application.	4/9/18

Record of the Review

Amedisys Maryland, LLC, d/b/a Amedisys Home Health ("Amedisys-Westminster")

Docket Item #	Description	Date
1AW	MHCC receives Letter of Intent	3/2/17
2AW	MHCC staff acknowledges letter of intent and affirms applicant's qualification to file CON.	3/9/17
3AW	Applicant provides documents supporting its qualifications.	3/27/17
4AW	Applicant provides additional documentation supporting its qualifications.	5/5/17
5AW	Applicant files Certificate of Need Application.	5/5/17
6AW	MHCC staff acknowledges receipt of application.	5/9/17
7AW	MHCC staff requests completeness information.	5/24/17
8AW	E-mail exchange requesting and granting extension to file completeness information.	6/6/17
9AW	Applicant provides response to request for completeness information.	6/23/17
10AW	MHCC staff sends request for additional completeness information.	7/19/17
11AW	Applicant provides response to request for completeness information.	8/14/17
12AW	Applicant provides additional completeness information.	8/31/17
13AW	MHCC informs applicant that the formal start of the review will be 9/15/17.	8/31/17
14AW	MHCC requests local health planning comment on CON Application.	8/31/17
15AW	Email from applicant affirms that by 4/9/18. it will modify its application in response to status conference	3/11/18
16AW	Amedisys-Westminster files its modified application.	4/9/18
17AW	Amedisys-Westminster files Supplement and Revision to the CON Modification.	5/14/18
18AW	Applicant provides letter of support from the Frederick Community Action Agency.	4/30/18

Record of the Review

Bayada Home Health Care, Inc.

Docket Item #	Description	Date
1BG	MHCC receives Letter of Intent	3/3/17
2BG	MHCC staff acknowledges letter of intent and affirms applicant's qualification to file CON.	3/9/17
3BG	Applicant provides documents supporting its qualifications.	5/3/17
4BG	Applicant files Certificate of Need Application.	5/5/17
5BG	MHCC staff acknowledges receipt of application.	5/9/17
6BG	MHCC staff requests completeness information.	5/25/17
7BG	Applicant provides response to request for completeness information.	6/21/17
8BG	MHCC staff sends request for additional completeness information.	7/12/17
9BG	Email correspondence between Bayada and MHCC staff clarifying HHI question	7/20/17
10BG	Applicant provides additional completeness information.	7/26/17
11BG	MHCC informs applicant that the formal start of the review will be 9/15/17.	8/31/17
12BG	MHCC requests local health planning comment on CON Application.	8/31/17
13BG	Email from applicant affirms that, by 4/9/18, it will modify its application in response to status conference.	3/16/18
14BG	Bayada files its modified application.	4/9/18
15BG	Bayada files second modification of its CON application.	5/14/18
16a-BG	Bayada requests determination of coverage for what it characterizes as a corporate restructuring that constitutes an acquisition under MHCC regulations;	10/09/18
16b-BG	Bayada files request to modify the Applicant in its CON application, along with agreements from other applicants to allow the modification	11/30/18
17BG	Notice of, and opportunity to comment on, Bayada's Modified Application is posted on the MHCC website	12/4/18
18BG	MHCC requests that *The Frederick Post* publish notice of receipt of modification request	12/4/18
19BG	MHCC requests that the *Cumberland Times* publish notice of receipt of modification request	12/4/18
20BG	MHCC requests that *The Herald Mail* publish notice of receipt of modification request	12/4/18
21BG	MHCC requests that *The Republican* publish notice of receipt of modification request	12/4/18
22BG	Notice of modification as published in the *Frederick News-Post*	12/12/18
23BG	Notice of modification as published in *The Republican*	12/14/18
24BG	Notice of modification as published in *The Herald Mail*	12/11/18

25BG	MHCC staff advises Bayada that CON review is not required for the acquisition of Bayada entities (by a to-be-formed non-profit entity) and that, due to agreement by Adventist and Amedisys-Westminster, Bayada-Gaithersburg's application is modified, resulting in the identified applicant in this review becoming the non-profit 501(c)(3) corporation, upon closing of the transaction.	12/21/18

Record of the Review

General File

Docket Item #	Description	Date
1GF	MHCC staff acknowledges receipt of Letters of Intent to all persons who filed.	3/6/17
2GF	MHCC staff requests that the *Frederick News Post* publish notice of receipt of applications.	5/9/17
3GF	MHCC staff requests that *The Republican* publish notice of receipt of applications.	5/9/17
4GF	MHCC staff requests that the *Cumberland Times* publish notice of receipt of applications.	5/9/17
5GF	MHCC staff requests that the *Herald Mail* publish notice of receipt of applications.	5/9/17
6GF	MHCC staff requests that the *Maryland Register* publish notice of receipt of applications.	5/9/17
7GF	Notice of receipt of applications is published in *The Republican.*	5/19/17
8GF	Notice of receipt of applications is published in the *Herald Mail.*	5/19/17
9GF	Notice of receipt of applications is published in the *Frederick News Post.*	5/21/17
10GF	MHCC staff requests that the *Cumberland Times* publish notice that the formal start of the review is 9/15/17.	8/31/17
11GF	MHCC staff requests that the *Frederick News Post* publish notice that the formal start of review is 9/15/17.	8/31/17
12GF	MHCC staff requests that the *Herald Mail* publish notice that the formal start of the review is 9/15/17.	8/31/17
13GF	MHCC staff requests that *The Republican* publish notice that the formal start of the review is 9/15/17.	8/31/17
14GF	MHCC staff requests that the *Maryland Register* publish notice of the formal start of the review.	8/31/17
15GF	Notice of formal start of review is published in the *Frederick News Post.*	9/11/17
16GF	Notice of formal start of review is published in the *Cumberland Times.*	9/12/17
17GF	Notice of formal start of review is published in the *Herald Mail.*	9/15/17
18GF	Notice of formal start of review is published in *The Republican.*	9/14/17
19GF	Amedisys files Consolidated Interested Party Comments.	10/16/17
20GF	Commissioner-Reviewer Wang notifies all applicants of his appointment as reviewer and desired scheduling of a Project Status Conference.	2/16/18
21GF	MHCC staff sends email on behalf of Commissioner-Reviewer Wang seeking applicants' availability for project status conference.	2/19/18
22GF	Commissioner-Reviewer Wang sends Project Status Conference Summary.	3/9/18
23GF	Commissioner-Reviewer Wang responds to questions that followed the Project Status Conference.	3/26/18

24GF	MHCC staff responds on behalf of Commissioner-Reviewer Wang via emails clarifying certain recommendations made in the Project Status Conference Summary.	4/5/18-4/6/18
25GF	Letter from Commissioner-Reviewer Wang notifying each applicant of the status of its application following his review of their modifications, making further recommendations for needed modifications to Amedisys-Westminster and Bayada-Gaithersburg, and setting proceedings going forward.	5/3/18