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MARYLAND HEALTH CARE COMMISSION

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MEMORANDUM

TO: Commissioners

Amedisys Maryland, LLC, d/b/a Amedisys Home Health
Bayada Home Health Care, Inc.
Optimal Health Care, Inc.

FROM: Marcus L. Wang, Esquire
Commissioner/Reviewer

RE: Recommended Decision
Upper Eastern Shore Home Health Agency Review:
Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Docket No. 18-R1-2424; Maryland license HH7111)
Bayada Home Health Care, Inc. (Docket No. 18-R1-2425: Maryland HHA license HH7101)
Optimal Health Care, Inc. (Docket No. 18-R1-2426; Maryland RSA license R3119)

DATE: October 10, 2019

Enclosed is my Recommended Decision in my review of Certificate of Need ("CON") applications by Amedisys Maryland, LLC, d/b/a Amedisys Home Health ("Amedisys-Salisbury"), Bayada Home Health Care, Inc. ("Bayada-Towson"), and Optimal Health Care, Inc. ("Optimal"). Amedisys-Salisbury and Bayada-Towson are existing Maryland Medicare-certified home health agencies ("HHAs") that seek to expand their HHA services to certain jurisdictions in the Upper Eastern Shore region. Optimal, a Maryland residential service agency ("RSA") that currently provides skilled nursing services and is accredited by the Joint Commission, seeks to establish an HHA that will serve the entire Upper Eastern Shore region. For purposes of this review, the Upper Eastern Shore region consists of Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties.

Amedisys-Salisbury proposes to expand its existing service area to Caroline, Kent, and Queen Anne's Counties, and provide the same HHA services to residents of these jurisdictions that it currently provides out of its existing main office in Salisbury. Amedisys-Salisbury projected

spending $40,000 for CON-related legal fees, and plans to fund this project with cash. If its CON application is approved, it expects to be fully operational in the new jurisdictions within nine months from award of the CON.

Bayada-Towson seeks to extend its service area to Cecil County, one of five counties in the currently-designated Upper Eastern Shore region, using its existing Harford branch office. The applicant proposes to provide the same HHA services in Cecil County that it currently provides to clients who are 18 years of age and older in Anne Arundel, Baltimore, Harford, and Howard Counties. The applicant states that no capital expenditure is required to implement this project and that it anticipates that its provision of HHA services in Cecil County will be fully operational within three months of CON approval.

Optimal, currently a Maryland licensed RSA, proposes to establish an HHA that will serve clients in all five counties (Caroline, Cecil, Kent, Queen Anne's, and Talbot) of the Upper Eastern Shore region out of its RSA office location in Easton (Talbot County). The applicant states that, upon approval of its CON application, it will take the necessary steps with OHCQ and CMS to get licensed and Medicare-certified to serve as a HHA in Maryland. It estimates that this process will take 10 to 13 months to complete. Optimal plans to provide the six major HHA disciplines it currently provides in each of the five Upper Eastern Shore region counties. It projects spending $36,700 in startup costs and $28,000 in annual lease costs, which it will fund with a combination of cash and loans.

Having considered the entire record in this review, I have determined that each of these three applications complies with applicable standards in COMAR 10.24.16, the HHA Services Chapter of the State Health Plan, and with the CON review criteria. For these reasons, I recommend that the Commission **APPROVE** each application, with conditions that each agency:

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 a level of charity care equivalent to or greater than the average level of charity care provided by home health agencies in the areas in which it is expanding (Caroline, Kent, and Queen Anne's Counties for Amedisys-Salisbury; Cecil County for Bayada-Towson) or in the region which it will be authorized to serve as a new home health agency (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties in the case of Optimal); and

3. Prior to its request for first use approval, provide documentation of 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 approved expanded service area.

I further recommend that any Certificate of Need issued to Amedisys-Salisbury contain the following additional condition:

4. Amedisys-Salisbury shall serve clients whose payor source is Medicare, Medicaid, private insurance, or self-pay when providing home health agency services to clients in Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worchester Counties. Amedisys-Salisbury shall not discriminate on the basis of a patient's payment source in providing home health agency service to any patient.

Interested Parties

Only Amedisys-Salisbury filed comments and sought interested party status in the review. Its comments noted that "[t]he Commission has determined that 15 jurisdictions in the State qualified as having a need for additional HHA services, based on the criteria outlined in COMAR 10.24.15.04A that include insufficient consumer choice of HHAs, a highly concentrated HHA service market, or an insufficient choice of HHAs with high quality performance." While Amedisys-Salisbury stated that its application was the strongest, it specifically did not object to the Commission's approval of Optimal's application, noting that would provide "consumers with meaningful choices for obtaining high quality HHA services."

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 decision 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. Applying these provisions, Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties show a need for additional HHA services, and were characterized as constituting the Upper Eastern Shore region. On July 20, 2017, one existing HHA applicant, VNA Home Health of Maryland, was granted a CON to expand its service area to include Caroline, Kent, Queen Anne's, and Talbot Counties. As detailed more fully at pages 5-6 of my Recommended Decision, the Commission later extended the 2017 HHA review cycle for the Upper Eastern Shore region, initiating the applications in this current review.

Both Caroline and Kent Counties showed a need for more HHA providers because of insufficient consumer choice (i.e., two or fewer Medicare-certified HHAs that served ten or more clients each year during the most recent three-year period) and have highly concentrated HHA markets. Cecil, Queen Anne's, and Talbot Counties had a sufficient number of competing HHAs but were highly concentrated HHA markets as defined by the Herfindahl-Hirschman Index.

To submit an application that can be accepted for review, a potential applicant must meet performance-related qualifications specified in the HHA Chapter, COMAR 10.24.16.06. When the 2017 review cycle for the designated Upper Eastern Shore region was extended in 2018, Commission staff updated its determination of the performance-based qualifications specified at COMAR 10.24.16.07 regarding HHAs, hospitals, and nursing homes that could file CON applications to establish or expand HHAs in the Upper Eastern Shore region. Both Amedisys-Salisbury and Bayada-Towson qualified to apply to expand their HHAs into the Upper Eastern

Shore region under the March 2018 assessment. Optimal qualified to be a CON applicant on the basis of its status as a Maryland RSA currently licensed and accredited in good standing that has provided skilled nursing services and has an acceptable, established quality assurance program.

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 Upper Eastern Shore region as provided in COMAR 10.24.16.10.

Further Proceedings

This matter will be placed on the agenda for the meeting of the Maryland Health Care Commission on October 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, October 14, 2019.** If such a notice is filed, this matter will not be considered at the October 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 November 21, 2019 meeting of the Commission.

IN THE MATTER OF THE	*	
UPPER EASTERN SHORE	*	**BEFORE**
HOME HEALTH AGENCY REVIEW	*	
	*	**THE**
AMEDISYS MARYLAND, LLC	*	
D/B/A AMEDISYS HOME HEALTH	*	**MARYLAND**
(Maryland license HH7111)	*	
Docket No. 18-R1-2424	*	**HEALTH CARE**
	*	
BAYADA HOME HEALTH	*	**COMMISSION**
CARE, INC.	*	
(Maryland license HH7101)	*	
Docket No. 18-R1-2425	*	
	*	
OPTIMAL HEALTH CARE, INC.	*	
(Maryland RSA license R3119)	*	
Docket No. 18-R1-2426	*	
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Reviewer's Recommended Decision

October 17, 2019

(Recommended Decision Released October 10, 2019)

Table of Contents

I. INTRODUCTION

A. The Applicants

Three applicants seek Certificates of Need ("CONs") in this review, which was scheduled to consider additional home health agency ("HHA") service providers in the five-county Upper Eastern Shore region consisting of Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties. Two of the applicants are existing Maryland HHAs that propose to expand their existing authorized service areas to include specified Upper Eastern Shore jurisdictions. The third is an existing residential service agency ("RSA") currently serving RSA patients in the Upper Eastern Shore region that proposes to establish an HHA in all five counties of the region.

Amedisys Maryland, LLC d/b/a Amedisys Home Health

Amedisys Maryland, LLC d/b/a Amedisys Home Health (Maryland license HH7111) ("Amedisys-Salisbury") is a licensed HHA based in Salisbury (Wicomico County) that is certified for Medicare and Medicaid participation and accredited by the Accreditation Commission for Health Care, Inc. It is one of seven distinct licensed and Medicare-certified HHAs in Maryland that is a subsidiary 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 #3-AS, p. 8). Amedisys, Inc. entered the Maryland market through acquisition of existing Maryland HHAs. Collectively, the Amedisys, Inc. HHAs in Maryland are authorized to serve 15 jurisdictions. (DI #3-AS, p. 8).

Amedisys-Salisbury is authorized to serve five Eastern Shore jurisdictions – Cecil, Dorchester; Somerset, Talbot, Wicomico, and Worcester Counties. In 2016, the applicant reported serving a total of 2,433 clients (based on an unduplicated count) in those five jurisdictions. HHA services currently provided by Amedisys-Salisbury consist of the six major disciplines: skilled nursing; home health aide services; occupational therapy; speech/language therapy; physical therapy; and medical social services. (DI #3-AS, p. 8). The applicant has one office located in Salisbury. (DI #3-AS, p. 7). The Home Health Compare website of the Center for Medicare and Medicaid Services ("CMS") reports that Amedisys-Salisbury has a quality of patient care star rating[1] of 3.5 stars (out of five) for the calendar year ending ("CYE") 2018 and a patient survey rating[2] of four stars for the FYE June 30, 2018. (DI #3-AS, p. 8, updated).

Bayada Home Health Care, Inc.

Bayada Home Health Care, Inc. (Maryland license HH7101) ("Bayada-Towson"), is a licensed HHA based in Towson (Baltimore County) and is certified for Medicare and Medicaid

[1] The quality of patient care star rating summarizes eight of the 23 quality measures reported to CMS and provided on the Home Health Compare website: https://www.medicare.gov/homehealthcompare/search.html. It provides a single overall indicator of an agency's performance compared to other agencies. Five stars is the highest rating.

[2] The patient survey star ratings help consumers quickly and easily assess the patient experience of care information reported to CMS and provided on the Home Health Compare website. Five stars is the highest rating.

participation and accredited by Community Health Accreditation Partner ("CHAP). (DI #3-BT, p. 6). The applicant is a subsidiary of Bayada Home Health Care, Inc. At the time of application, Bayada Home Health Care, Inc. was in the process of transitioning from a privately held proprietary corporation to a non-profit organization, which was completed in late 2018. Bayada Home Health Care, Inc. provides services in 23 states and six countries.[3] It was founded in 1975 and was owned by Joseph Mark Baiada prior to the reorganization. (DI #3-BT, "Overview").

Bayada Home Health Care, Inc. entered the Maryland market through acquisition of two existing HHAs. Bayada-Towson, the applicant in this review, is authorized to serve Anne Arundel, Baltimore, Harford, and Howard Counties

In 2016, Bayada-Towson reported serving a total of 9,970 clients (based on an unduplicated count). (DI#3-BT, Table 2A). It provides the six major disciplines of HHA services: skilled nursing; home health aide services; occupational therapy; speech/language therapy; physical therapy; and medical social services. (DI #3-BT, p. 7). The CMS Home Health Compare website reports a quality of patient care star rating of four stars for Bayada-Towson for CYE 2018 and a patient survey rating of three stars for the FYE June 30, 2018.

Optimal Health Care, Inc.

Optimal Health Care, Inc. ("Optimal") (Maryland RSA license R3119) was founded as a health services company in 2008. OHC has been a licensed RSA in Maryland since 2010 and has been fully accredited by CHAP to provide private duty nursing and therapy services since 2011. OHC currently operates six offices in Maryland, one of which is located in Easton (Talbot County). (DI #2-OHC, pp.12-13).

Optimal reports that in 2016 it served a total of 494 clients (based on an unduplicated count). (DI #19-OHC, Att. 1). The RSA services currently provided by Optimal are in-home nursing, home health aide services, therapy services, and home medical equipment services. (DI #2-OHC, p. 13).

B. The Proposed Projects

Amedisys-Salisbury proposes to expand its existing service area to include Caroline, Kent, and Queen Anne's Counties, serving these jurisdictions from its existing main office in Salisbury. It proposes to provide the same HHA services it currently provides throughout this expanded service area. The applicant projects spending $40,000 for CON-related legal fees. (DI #3-AS, pp. 47, 48). It plans to fund this project with cash and expects to be fully operational within nine months following CON approval. (DI #3-AS, p. 7).

Bayada-Towson is proposing to extend its service area to Cecil County, one of five counties in the Upper Eastern Shore region, using its existing Harford County branch office. Bayada-Towson proposes to provide the same HHA services it currently provides to clients ages 18 and older in Cecil County. It projects that no capital expenditure is required to implement this project.

[3] https://www.bayada.com/about.asp

The applicant anticipates that its project will be fully operational in Cecil County within three months of CON approval. (DI #3-AS, pp. 6, 7).

Optimal proposes to serve the entire five county Upper Eastern Shore region if authorized to establish an HHA and plans to use its office in Easton as a base of operations for the proposed HHA. (DI #2-OHC, p. 13). The applicant states that, upon approval of its CON, it will take the necessary steps to obtain HHA licensure and Medicare certification. The applicant estimates this process will take 10 to 13 months to complete. (DI #11-OHC, p. 2). Optimal plans to provide the six major HHA disciplines throughout the region. The applicant projects spending $36,700 in startup costs and $28,000 in annual lease costs. The applicant plans to fund this project with a combination of cash and loans. (DI #2-OHC, pp. 41, 42).

C. Reviewer's Recommended Decision

I find that the proposed expansion of the authorized service areas of both Amedisys-Salisbury and Bayada-Towson comply with the applicable standards of the State Health Plan ("SHP") and with the CON review criteria applicable to all CON applications.

I also find that Optimal's proposed establishment of an HHA with an authorized five-county service area complies with the applicable standards in COMAR 10.24.16, the Home Health Agency Chapter ("HHA Chapter") of the State Health Plan for Facilities and Services ("State Health Plan") and with COMAR 10.24.01.08G(3)(a)-(f), the general CON review criteria.

The need for additional home health agency providers in the Upper Eastern Shore region is established under qualifying criteria in the HHA Chapter. Caroline and Kent Counties qualify because they have limited consumer choice of HHA service providers. Cecil, Queen Anne's, and Talbot counties qualify because they have highly concentrated HHA markets, based on an analysis using the Herfindahl-Hirschman Index ("HHI").[4] I also found that the proposed projects are viable and that each meets other applicable standards and criteria.

For these reasons, I recommend that the Commission **APPROVE** each of the applications of Amedisys-Salisbury, Bayada-Towson, and Optimal Health Care, Inc. 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 a level of charity care equivalent to or greater than the average level of charity care provided by home health agencies in the areas to which it is expanding (Caroline, Kent, and Queen Anne's Counties for Amedisys-Salisbury; Cecil County for Bayada-Towson) or in the region which it will be authorized to serve as a new home health agency (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties in the case of Optimal); and

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

3. Prior to its request for first use approval, provide documentation of 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 approved expanded service area.

I further recommend that any CON issued by the Commission to Amedisys-Salisbury contain the following additional condition:

4. Amedisys-Salisbury shall serve clients whose payor source is Medicare, Medicaid, private insurance, or self-pay when providing home health agency services to clients in Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worchester Counties. It shall not discriminate on the basis of a client's payment source in providing home health agency service to any client.

II. PROCEDURAL HISTORY

A. Record of the Review

These three applications were filed on July 6, 2018. Each application required 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 March 29, 2019. (DI #16 General File ("GF")). I advised the applicants of my appointment as reviewer on September 3, 2019. (DI #22-GF).

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

B. Interested Party in the Review

Only Amedisys-Salisbury filed comments and sought interested party status in the review. Amedisys-Salisbury noted that

> [t]he Commission has determined that 15 jurisdictions in the State qualified as having a need for additional HHA services, based on the criteria outlined in COMAR 10.24.15.04A that include insufficient consumer choice of HHAs, a highly concentrated HHA service market, or an insufficient choice of HHAs with high quality performance. It configured these 15 jurisdictions into four regions, including the Upper Eastern Shore region (the counties of Caroline, Cecil, Kent, Queen Anne's, and Talbot).
> (DI #7A-GF).

Amedisys-Salisbury described its existing status as an existing HHA located and providing services within this multi-jurisdictional area and stated that "its Application to expand HHA services … is the strongest application." It also stated that it does not object if the Commission

decides to approve Optimal's application, as this will provide "consumers with meaningful choices for obtaining high quality HHA services." (DI #21-GF, pp. 2-6).

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. The 2016 replacement HHA Chapter provides opportunities for expansion of the number of HHAs serving jurisdictions or regions of Maryland based on a preference for more consumer choice of HHA service providers, more choice of HHA providers rated as higher quality performers, and more competitive HHA markets. The regulations identify a jurisdiction as having a need for additional home health agency services if it is determined to have: (1) insufficient consumer choice of HHAs; (2) a highly concentrated HHA service market; or (3) insufficient choice of HHAs with high quality performance.

Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties were identified as having a need for additional HHA services using these criteria. In order to create a viable market for establishment of a new HHA, these jurisdictions were defined as the Upper Eastern Shore region and service to this region was the basis for creation of a project review cycle, with letters of intent and applications due in 2017. As previously noted, Commission staff determined that Caroline and Kent Counties needed more HHA providers because of insufficient consumer choice (i.e., two or fewer Medicare-certified HHAs that served ten or more clients in each year of the most recent three-year period). Although Cecil, Queen Anne's, and Talbot Counties had a sufficient number of competing HHAs, Commission staff determined that additional HHAs were needed because those jurisdictions had highly concentrated HHA markets as defined by the Herfindahl-Hirschman Index ("HHI").[5]

This current review is an extension of the 2017 review cycle for the Upper Eastern Shore region. In the 2017 review cycle, an existing HHA, VNA Home Health of Maryland ("VNA"), was granted a CON to expand its service area to include Caroline, Kent, Queen Anne's, and Talbot

[5] The Herfindahl-Hirschman Index is a measure of the competitiveness, or the lack of competitiveness, exhibited in a market served by competing firms. It is usually characterized as a measure of the level of concentration of market power within the market. For purposes of CON regulation, it is defined as the sum of the squares of the market shares of all the HHAs authorized and actually serving a jurisdiction. 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. Again, for purposes of CON regulation of HHA services, the State Health Plan 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.

Counties. Subsequently, Commission staff considered comments by an HHA advocacy group and decided to re-open the Upper Eastern Shore review cycle.[6]

When the 2017 review cycle for the Upper Eastern Shore region was extended in 2018, the 2017 need projection[7] remained in effect. However, Commission staff updated its determination of the performance-based qualifications specified at COMAR 10.24.16.07 regarding HHAs, hospitals, and nursing homes that could file CON applications to establish or expand HHAs in the Upper Eastern Shore region.[8] Both Amedisys-Salisbury and Bayada-Towson qualified to apply to expand their HHAs into the Upper Eastern Shore region under the March 2018 assessment. Optimal qualified to be a CON applicant on the basis of its status as a Maryland RSA currently licensed and accredited in good standing that has provided skilled nursing services and has an acceptable, established quality assurance program.

Each potential applicant must also demonstrate: (1) an absence of criminal or fraudulent behavior in its history of health care facility operations; (2) a good track record of complying with licensure, certification, and accreditation requirements; (3) sufficient financial resources for the project proposed; and (4) a record of serving all payer types. COMAR 10.24.16.06C.

Although this is a comparative review of three applications, the CON preference rules in COMAR 10.24.16.09 do not apply because the number of applicants does not exceed the permitted number of additional HHAs for the Upper Eastern Shore region as provided in COMAR 10.24.16.10.[9]

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[6] The Commission detailed the circumstances in a March 15, 2018 posting:

> The 2017 HHA CON review schedule was published in the *Maryland Register* on November 14, 2016 …. One applicant, VNA … filed a letter of intent to serve that region. Commission staff considered concerns expressed by the Maryland National Capital Homecare Association that it was unaware of the CON review schedule for HHAs that was published in the *Maryland Register* and on the Commission's website …. Based on VNA's willingness to waive its rights under the HHA Chapter, the Commission re-opened the Upper Eastern Shore region for receipt of new letters of intent and CON applications to permit the filing of applications to serve that region one year after VNA was granted CON approval for its expansion in that region.

MHCC, *Guidelines: Home Health Agency Certificate of Need (CON) Review for Re-Opened Upper Eastern Shore: Types of Applicants, Qualifications for Accepting a CON Application, and Qualifying Maryland Applicants* (March 15, 2018), p.1, n.1.

[7] That is, in March 2018, Commission staff did not re-examine what jurisdictions had highly concentrated HHA markets or insufficient consumer choice.

[8] The guidelines document for the "re-opened" Upper Eastern Shore region was posted on the Commission's website on March 15, 2018, and may be accessed at: https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/documents/chcf_con_hha_guidelines_updated_20180315.pdf. Other required qualifications are found at COMAR 10.24.16.06C.

[9] Regulations requiring gradual entry of new market entrants into a jurisdiction or multi-jurisdictional region, at 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 HHA Chapter 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.

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 review standards for HHA services are found in COMAR 10.24.16.08. Each applicant that seeks a Certificate of Need to establish or expand an HHA must address and document its compliance with each of the following standards, if applicable.

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

Amedisys-Salisbury

Amedisys-Salisbury proposes to expand its current service area to include Caroline, Kent, and Queen Anne's Counties, three of five counties in the Upper Eastern Shore region. It plans to provide services to these three counties out of its existing main office in Salisbury. (DI #3-AS, pp. 7-8).

Bayada-Towson

Bayada-Towson proposes to expand its current service area to include Cecil County. It plans to use its existing satellite office in Forest Hill (Harford County) as the base for its Cecil County operations. (DI #3-BT, p. 8).

Optimal

Optimal proposes to establish an HHA that will serve the entire five-county Upper Eastern Shore region. Optimal plans to serve this region through its office in Talbot County. (DI #2-OHC, pp. 14, 15).

Reviewer's Analysis and Findings

Each applicant has designated the jurisdiction(s) it proposes to serve and provided 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, or other major administrative offices recognized by Medicare, as applicable. Therefore, 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

Amedisys-Salisbury

Amedisys-Salisbury proposes to serve adult clients (18 and older) and provide 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, it plans to provide care transitions, medication management, pain management, infusion therapy, nutritional consultation, psychiatric services, and wound care, as well as offering specialized chronic care programs that focus on heart disease, diabetes, chronic obstructive pulmonary disease ("COPD"), oncology, and chronic kidney disease. (DI #3-AS, pp. 12-13).

Bayada-Towson

Bayada-Towson states that it will serve adult clients (18 and older) and provide the same services it currently provides, which include the six major disciplines of HHA services. In addition, it plans to provide nutritional consultation, wound care, medication management, pain management, and infusion therapy, as well as offering specialized chronic care programs including a comprehensive joint program, a heart failure program, a COPD program, and a readmission reduction program. (DI #3-BT, p. 10).

Optimal

Optimal proposes to provide home health services to persons of all ages. It plans to provide the six major disciplines of HHA services. In addition, Optimal plans to provide dietary and nutritional services, drug services, laboratory services, and medically necessary sick room equipment and supplies. (DI #2-OHC, pp. 16-17).

Reviewer's Analysis and Findings

Each applicant described the population it will serve and the specific services it will provide. For these reasons, 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

Amedisys-Salisbury

Amedisys-Salisbury is currently Medicare- and Medicaid-certified and proposes to accept clients whose expected primary payment source is either or both of these programs. (DI #4-AS, p.10).

Bayada-Towson

Bayada-Towson states that it is currently Medicare- and Medicaid-certified and will accept clients whose expected primary payment source is either or both of these programs. (DI #10-BT, p. 10).

Optimal

Optimal agrees to establish a Medicare- and Medicaid-certified HHA if authorized to do so and states that it will accept clients whose expected primary payment source is either or both of these programs. (DI #2-OHC, p. 18).

Reviewer's Analysis and Findings

I find that each applicant either is or agrees to become licensed and Medicare- and Medicaid-certified and that each agrees to maintain Medicare and Medicaid certification and to accept clients whose expected primary source of payment is either or both of these programs.

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

Amedisys-Salisbury

Amedisys-Salisbury submitted a Maryland-specific policy on charity care and discounted fee care, its Policy FM-008A entitled "Maryland Charity Care and Discounted Fee Care – Availability, Eligibility and Eligibility Determination Process; Time Payment Plan." The applicant notes that its time payment plan is described in this policy, and that it provides that "[a] patient who qualifies for discounted fee care under this policy may request to pay billed charges over time." The applicant's policy requests a minimum of $25 per month with "the balance being resolved within one year from start-of-care." (DI #3-AS, Exh. 7).

Bayada-Towson

Bayada-Towson submitted its Maryland-specific policy on charity care and discounted fee care, Policy #0-8407 entitled "Charity Care-Maryland Home Health and Hospice." The policy provides for charity care or reduced fees to clients experiencing financial hardship. (DI #3-BT, Att. C3). It also submitted its Maryland Financial Hardship Form (Form #0-9506) (DI #3-BT, Att. C2), and its Notice of Charity Care and Reduced Fees (Form #0-7657), which it states that it provides to all prospective clients prior to providing services. According to this Notice, clients who qualify for reduced fees are informed of the discounted rates that apply as per current Federal Poverty Guidelines and Bayada-Towson'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 #3-BT, Exh. C1). Policy #0-8407 specifies in Procedure 2.0 that Bayada-Towson publishes a Public Notice (Form #0-9485) regarding its Charity Care, sliding fee scale and time payment plans. (DI #3-BT, Exh. C3).

Optimal

Optimal submitted a policy on charity care and discounted fee care entitled "Charity Care and Discounted Fee Care – Availability, Eligibility and Eligibility Determination Process; Time Payment Plan." The applicant's 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. [Optimal] requests a minimum of $25 per month with the balance being resolved within one year from start-of-care." (DI #14-OHC, Exh. 1).

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 full payment at the time services are rendered.

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

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

Amedisys-Salisbury

Amedisys-Salisbury provided its Maryland-specific policy on charity care and discounted fee care (Policy FM-008-A). That policy describes a two-step process for determination of eligibility, beginning with a determination of probable eligibility followed by a final determination. 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-Salisbury social worker. It 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, which will be communicated to a potential client within two business days following a client's initial request for charity care services, application for medical assistance, or both. However, it requires supporting documentation before it makes a final determination of eligibility. (DI #3-AS, pp. 14, 15, 16; Exh. 7).

Bayada-Towson

Bayada-Towson's policy states that it will inform a prospective client of its determination of probable eligibility for charity care within two business days of a request for charity care, reduced fees, or application for Medicaid. (DI #3-BT, Exh. C, Policy #0-8407, Procedure 3.0). Its policy describes a two-step process to determine eligibility for charity care. In the first step it will make a determination of probable eligibility based only on an interview with the prospective client to acquire the necessary information. A final determination of eligibility for charity care or discounted fees requires the client to provide documentation of income and expenses. (DI #3-BT, Exh. C, Policy #0-8407, Procedure 4.0).

Optimal

Optimal's policy on charity and discounted fee care includes a description of its two-step process for determination of eligibility, with a determination of probable eligibility followed by a final determination. The applicant states 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. Optimal's policy also states that it will inform the client and/or family representative regarding probable eligibility within the two-day time frame. Optimal will require supporting documentation before it makes a final determination of eligibility. (DI #14-OHC, Att. 1).

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 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 some time 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 each applicant complies with this subsection of the charity care standard.

> ***(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 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

Amedisys-Salisbury

Amedisys-Salisbury provided its charity care forms, notices, and information. (DI #3 AS, Exh. 7). A summary notice entitled "Public Disclosure of the Availability of Charity Care, Discounted Fee Care and Time Payment Plan" summarizes its Maryland-specific policy (FM-008A). Amedisys-Salisbury 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, Inc. HHAs in Maryland, where there is a tab entitled "Charity Care and Other Financial Assistance" for each Maryland location, including Amedisys-Salisbury. 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 also 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 #3-AS, p.15).

Amedisys-Salisbury also noted that it will publish notice of its charity care policy in local newspapers at least twice a year, more frequently than is required under COMAR 10.24.16.08E. (DI #3- AS, p. 21).

Bayada-Towson

Bayada-Towson provided its charity care forms, notices, and information (DI #3-BT, Exh. C) including its Charity Care Policy (its Procedure 2.0), its Maryland Charity Care and Reduced Fee Public Notice (#0-9485), and its Maryland Notice of Charity Care and Reduced Fees (#0-7657). Bayada-Towson states that its public notice (#0-9485) is visibly posted on Bayada Home Health Care, Inc.'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." Bayada-Towson 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 #3-BT, Att. C, Charity Care Policy #0-8407).

Optimal

Optimal provided its charity care forms and notices. (DI #11-OHC, Exh. 1, 2). Optimal stated that it will publish notice of its charity care policy in local newspapers, in its business offices

and client handbook, and on its website. (DI #11OHC, p. 6). The applicant's charity care policy entitled "Charity Care and Discounted Fee Care–Availability, Eligibility, and Eligibility Determination Process; Time Payment Plan" mentions that in situations where "the client or guarantor does not have the ability to pay OHC, Inc. for services rendered … [the client] may apply for Charity Care, a sliding fee scale or installment payment plans." (DI #14-OHC, Exh. 1).

Reviewer's Analysis and Findings

Each applicant provided its notices regarding its HHA 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 meets the requirements of 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

Amedisys-Salisbury

Amedisys-Salisbury submitted a 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 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 with income at or below 125 percent of the Federal Poverty Level ("FPL") 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 of the FPL up to 400 percent of the FPL for the applicable family size, using the sliding fee scale and time payment plan contained in Policy FM-008A. (DI #3-AS, Exh. 7, pp. 1, 2).

Bayada-Towson

Bayada-Towson describes its offering of reduced fees for low income clients in its Charity Care Policy (#0-8407) and notices (#0-7657 and #0-9485). This policy provides that charity (free) care is made available to clients whose total family income is below 300 percent of the FPL as determined by family size, or if the client's total yearly medical bills are greater than 50 percent of total yearly income. Time payment plans for reduced fees of $25 per month are described in Procedure 2.0 of its Charity Care Policy (#0-8407). (DI #3-BT, Att. C, Policy #0-8407; Forms #0-7657, #0-9485).

Optimal

Optimal submitted a policy governing charity care, discounted fee care, and time payment plans that defines eligibility criteria for both charity and discounted fee care. It notes that charity care is free care and is made available to clients at or below 125 percent of the FPL. Optimal policy makes discounted fee care available to those low-income clients who do not qualify for free care but are unable to bear the full cost of services, and is made available to clients with incomes above 125 percent of the FPL up to 400 percent of the FPL, with a sliding fee scale and time payment plan. (DI #14-OHC, Exh. 1).

Reviewer's Analysis and Findings

Each applicant provided copies of its policies that address financial assistance. Each policy complies with Subsection .08E(3) of the standard by providing clear and consistent information on the provisions for sliding fee scale and time payment plans for indigent clients who do not qualify for charity care but are unable to bear the full cost of services. I find that each applicant complies with Subsection (3) of the standard.

> ***(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

Amedisys-Salisbury

Amedisys-Salisbury makes a commitment to provide an amount of charity care equal to the average amount reported by HHAs in the multi-jurisdictional area of Caroline, Kent, and Queen Anne's Counties in 2014, which was 0.14 percent of total HHA visits. (DI #3-AS, p. 16).[10] For the years 2012 to 2014, it reports that an average of 0.27 percent of its total visits were provided on a charitable basis. For the more recent years 2015 to 2017, it reports an average of 0.63 percent of its total visits were provided on a charitable basis. The applicant states that 0.17 percent of its total visits over the entire 2012-2017 period were charitable. It notes that this exceeds the 2014 overall average in the multi-jurisdictional area, a reported 0.14 percent. The value of Amedisys-Salisbury's projected level of charity care for its proposed project is $3,290 in 2019 and $9,165 in 2022. (DI #3-AS, p. 19, Table 4).

[10] Forty-six charity care visits out of 33,689 total visits for Caroline, Kent, and Queen Anne's Counties.

Amedisys-Salisbury's plan to meet its charity care goal includes establishing and maintaining ongoing referral relationships with leading local nonprofit organizations in the currently designated Upper Eastern Shore region that serve disadvantaged and indigent populations. These include Saint Martin's Ministries of Ridgely, Maryland in Caroline County, the Mobile Integrated Health pilot project in Queen Anne's County, and the Choptank Community Health System. Amedisys-Salisbury also states that it will hire a full-time community liaison who will be responsible for identifying potential referral sources, and informing and educating them about its charity care policy (DI #3-AS, p. 20).

Bayada-Towson

Bayada-Towson commits to providing and exceeding the charity care equivalent to the average reported amount provided by HHAs in Cecil County in 2014, which was 0.35 percent of visits. The applicant states that, going forward as a not-for-profit entity, it is committed, at a minimum, to providing charitable care equivalent to 0.8 percent of visits. It notes that this exceeds the reported 2014[11] average of 0.35 percent in Cecil County.

The applicant admits that, for the years 2012 to 2014, it reported, on average, charitable visits that were less than 0.01 percent of total visits. Bayada-Towson suggests that its lack of any substantive track record in providing charity care is due, in part, to its previous for-profit status. (DI #8-BT, pp. 4, 5).

Bayada-Towson's plan for reaching its 0.8 percent of charity care visits is based on implementing structured education for all marketing and transitional care managers and directors in the organization on its revised Charity Care and Public Notice policies. This will ensure that information is shared with existing external partners, as well as introduced to all new referral sources. It also plans to utilize its current medical social worker in Harford County to form relationships with potential referral sources for indigent patients in Cecil County. (DI #8-BT, p. 4). It states that it will make the Cecil County Department of Aging and the local social service offices aware of the availability of charitable services from Bayada-Towson if it expands its HHA services to Cecil County. It states that it plans to create and execute an outreach plan in order to connect with many charities and local government entities. (DI #3-BT, p. 15).

Optimal

Optimal commits to providing a level of charitable service that is equivalent, at a minimum, to the average level of charity care reported by HHAs in the Upper Eastern Shore Region in 2014, which was 0.21 percent of total HHA visits.[12] Optimal has a goal of providing at least 0.25 percent of total HHA visits on a charitable basis. (DI #11-OHC, p. 6). It states that it has been providing charity care in Western Maryland for the last eight years and reports that, over the three year period of 2015 to 2017, charitable visits accounted for 0.39 percent of total visits. (DI #11-OHC, p. 5; DI #13-OHC, p. 2).

[11] At the time of the application, the latest published Public Use Data was for 2014.
[12] 182 charity care visits out of 85,533 total visits.

The applicant's charity care plan involves its marketing director working with case managers from skilled nursing facilities, hospitals, and other referral sources within the region to identify individuals in need of charity care. It states that it is the marketing director's responsibility to ensure that the charity care policy is properly applied. Optimal states that it will partner with community-based and non-hospital organizations to ensure it reaches the level of charity care to which it is committed, and specifically mentioned partnerships with: SHORE UP! Inc., a private, non-profit Community Action Partnership, serving low-income and disadvantaged persons on the Eastern Shore; the Departments of Social Services in Upper Eastern Shore jurisdictions; the Developmental Disabilities Administration of the Maryland Department of Health; public school systems in each of the Upper Eastern Shore jurisdictions; and other human resource agencies in the region. (DI #13-OHC, pp. 2-4). In order to monitor the effectiveness of its charity care provision, the applicant states that it will implement a quarterly charity care reporting system for its program director. (DI #11-OHC, p. 6; DI #13 OHC, pp. 2-5).

Reviewer's Analysis and Findings

In the following Table IV-1, I show the most recent reported data on the provision of charity care by HHAs serving the Upper Eastern Shore Region.

Table IV-1: Charity Care Visits and Total Visits, by Jurisdiction, FY 2014
Upper Eastern Shore 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 – Charity Care Visits as Proportion of Total Visits
Caroline	3	1	27	13,701	0.20%
Cecil	7	3	111	31,450	0.35%
Kent	2	1	1	5,434	0.02%
Queen Anne's	6	1	18	14,554	0.12%
Talbot	3	2	25	20,460	0.12%
Total Upper Eastern Shore	**12***	**6***	**182**	**85,533**	**0.21%**

Source: MHCC, HHA Public Use Dataset, FY 2014.
* Total unduplicated counts of HHAs in Upper Eastern Shore.

Amedisys-Salisbury commits to provide a level of charity care equal to the average level provided by HHAs in the multi-jurisdictional area of Caroline, Kent, and Queen Anne's Counties in 2014, which was 0.14 percent of total HHA visits.

Bayada-Towson commits to provide 0.8 percent of its total visits as charity care, which exceeds the 2014 average of 0.35 percent reported by HHAs serving Cecil County.

Optimal commits to achieve a ratio of charity care visits to total visits equal to the average reported ratio of HHAs in the Upper Eastern Shore region in 2014, which was 0.21 percent. Its stated goal is to provide at least 0.25 percent of its total visits as charity care visits.

Under Paragraph (4)(a) of the standard, I reviewed each applicant's track record in providing charity care services. For the two HHA applicants, I compiled the reported 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 area relative to peer agencies in its service area, 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) in FY 2014

Agency	Charity Care Visits	Total HHA Visits	Level of Charity Care Expressed as Proportion of Total Visits
Amedisys-Salisbury	60	56,819	0.11%
Other HHAs in same jurisdictions	136	136,229	0.10%
Bayada-Towson	28	155,535	0.02%
Other HHAs in same jurisdictions	1,003	1,018,547	0.10%

Source: 2014 MHCC Home Health Agency Survey.

Since the third applicant, Optimal, is not a Maryland HHA, it has not been required to report information on its provision of charity care. As noted, Optimal stated that it has provided charity care to its RSA patients that equal 0.39 percent of its total RSA visits for the three-year period of 2015 to 2017. (DI #13-OHC, p. 2).

Amedisys-Salisbury has provided a level of charity care very similar to that of other HHAs serving the same jurisdictions. Bayada-Towson has not provided a level of charity care similar to that of other HHAs serving the jurisdictions. Optimal has provided a level of charity care that compares favorably with typical HHAs that report the provision of charitable service. I find that Amedisys-Salisbury satisfies the requirements of Subsection .08E(4).

While Bayada-Towson has not provided much charity care in the past, it states that, going forward as a not-for-profit entity, it will provide a level of charity (0.8 percent of total visits) that exceeds the 2014 average of 0.35 percent reported for Cecil County. (DI #8-BT, pp. 4, 5). It has a plan for reaching this commitment. Despite its lack of a track record in line with the commitment, I find that Bayada-Towson satisfies the requirements of Subsection .08E(4) through its commitment and plan for implementation.

Optimal made a commitment to provide an amount of charity care equal to the average amount provided by HHAs in the multi-jurisdictional area of the Upper Eastern Shore region in 2014, which was 0.21 percent. As part of its application and in response to the charity care standard, Optimal has created a detailed charity care policy and robust plan for accomplishing its charity care goals. Based on this commitment, its reported track record, its charity care policy, and plan, I find that Optimal satisfies the requirements of Subsection .08E(4).

Summary of Findings – COMAR 10.24.16.08E

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

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

2. Provide a level of charity care equivalent to or greater than the average level of charity care provided by home health agencies in the areas to which it is expanding (Caroline, Kent, and Queen Anne's Counties for Amedisys-Salisbury; Cecil County for Bayada-Towson) or in the region which it will be authorized to serve as a new home health agency (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties in the case of Optimal).

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

Amedisys-Salisbury

Amedisys-Salisbury stated that its utilization projections are based on its own agency experience. (DI #8-AS, p. 4). It projects that it will achieve full utilization for its proposed service area expansion within four years, with 9,855 visits in all three counties (ramping up from 3,393 visits in the first year of operation). (DI #8-AS, Table 2B, p. 8). It bases its projections on its own experience and 2010–2014 utilization trends in Caroline, Kent, and Queen Anne's Counties gleaned from information in the Commission's Public Use Dataset, stating that there was a 23 percent increase in total HHA visits[13] from 27,314 in 2010 to 33,557 in 2014. It reasons that while utilization in the counties has grown, residents continue to underutilize home health services and, with elderly populations projected to double by 2030, the applicant expects to meet its own utilization projections. Amedisys-Salisbury states that it intends to deploy a substantial sales team to introduce Amedisys-Salisbury to the new jurisdictions and earn the trust of referral sources in the multi-jurisdictional area. (DI #3-AS, pp. 22, 23).

Bayada-Towson

Bayada-Towson bases its utilization projections on its historic data. (DI #8-BT, p. 5). It projects that it will achieve full utilization for its proposed project in its fourth year, with 14,593 visits in Cecil County (ramping up from 3,239 visits in the first year of operation). (DI #8-BT, p. 5). It bases its projections on its own experience, the fact that the Commission has identified Cecil County as a county qualifying for additional HHA providers, and population growth of the elderly

[13] I confirmed these figures using the Commission's HHA Annual Survey for FY 2010 through FY 2014: http://mhcc.maryland.gov/public_use_files/index.aspx.

population It notes that Cecil County projected18.1 percent growth in the 65 and older population from 2010-2016. (DI #8-BT, p5; DI #3-BT, pp. 16, 22).

Optimal

Optimal based its utilization projections on historic data for the multi-jurisdictional region of the Upper Eastern Shore region. The applicant also notes the growing population of the elderly population in the region. (DI #2-OHC, p. 23).

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[14] with the historic overall average number of visits per HHA client for each jurisdiction in the Upper Eastern Shore and for the region as a whole. I also compared each applicant's projected utilization to its current utilization levels. See the following Table IV-3.-

Table IV-3: FY 2016 HHA Visits per Client and Projected HHA Visits per Client

Home Health Agencies	FY 2016	Projected[1]
Amedisys - Salisbury	23.0	24.6
Bayada - Towson	16.8	16.8
Optimal	N/A	10.0
Average for all HHAs serving:		
Caroline County	20.4	-
Cecil County	16.1	-
Kent County	14.2	-
Queen Anne's County	15.9	-
Talbot County	19.8	
Upper Eastern Shore Region	17.3	-

Sources: Applicants' respective CON applications. MHCC, Home Health Agency Surveys and Public Use Data Files; FY 2014
Notes: [1] First year at "full use" after expansion into Upper Eastern Shore region.

Amedisys-Salisbury reported an average of 23 visits per HHA client in FY 2016 and projects an average of 24.6 visits per HHA client in its first year of projected full use (2022). Bayada-Towson reported 16.8 visits per client in FY 2016 and projects the same in its projected first year of full use (2022). Optimal does not have a history of HHA visits per client and projects 10 visits per HHA client for its first projected year of full use (2021).

Amedisys-Salisbury's historic and projected HHA visits per client are higher than the recent average for each county and the multi-jurisdictional area into which it seeks to expand (Caroline, Kent, and Queen Anne's Counties). It is currently providing service in Talbot and Dorchester Counties and has based its projections on its Eastern Shore experience.

Bayada-Towson's historic and projected visits per client of 16.8 is very close to the average for Cecil County, the jurisdiction it targets for expansion.

[14] Average visits per HHA client.

Optimal's projected HHA visits per client is substantially lower than the averages reported for Upper Eastern Shore jurisdictions and, in my view, underestimates the number of visits per client it will probably achieve. I note, however, that the data indicates substantial variation in actual experience among the five jurisdictions of the region. The average visits per client reported for Caroline County is 44% higher than that reported for Kent County. Kent County's reported experience is 42% higher than that projected by Optimal. I also note that, in FY 2016, six Maryland HHAs reported Medicare client and visit totals that yielded visit per client ratios ranging from 4 visits per client to 12 visits per client.

The utilization projections of Bayada-Towson with respect to visits per client are consistent with observed experience in Cecil County. The projections of Amedisys-Salisbury are significantly higher than the recently observed ratio of visits per client in the Upper Eastern Shore jurisdictions it proposes to serve. However, its utilization projections are consistent with its experience in the lower Eastern Shore and with Commission HHA survey data showing that nine HHAs in Maryland (about 17% of total agencies) recorded visit per client ratios of 23 to 27 visits in FY 2016 for Medicare HHA patients. Finally, as noted above, I believe that Optimal has likely underestimated its likely ratio of visits per client, which is well below reported experience in the Upper Eastern Shore jurisdictions, but within the range of ratios reported by six Maryland HHAs (11% of total agencies) in FY 2016. I note that Optimal, reflecting its experience as a residential service area, projects a more modest proportion of Medicare patients in its overall patient mix than is seen in most HHAs. Optimal's payor mix assumption also explains why its ratio of visits per client is relatively low – non-Medicare patients in the five-jurisdiction Upper Eastern Shore region experience a much lower average number of visits (11.0 per client in FY 2016) over the course of their care by an HHA than do Medicare patients (an average of 20.8 visits per client).

While the projections of Amedisys-Salisbury and Optimal vary from the average observed on the Upper Eastern Shore, they fall within the observed range of ratios reported by Maryland HHAs and form an acceptable baseline assumption for projecting revenues and expenses. For these reasons, I find that each applicant's utilization projection meets 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

Amedisys-Salisbury

Amedisys-Salisbury notes that, as an existing HHA, it bases projected revenue on its own current charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care. The applicant states that it considered its historical average revenue per episode on episodic patients as well as private patients and its projections are based on anticipated admission growth. (DI #3-AS, pp. 23, 24).

Bayada-Towson

Bayada-Towson notes that its revenue projections are based on its historic experience. (DI #8-BT, p. 5).

Optimal

Optimal projects its revenue based on the assumption that when it becomes Medicare and Medicaid certified by CMS it will receive the standard Medicare and Medicaid rates of reimbursement. Optimal states that it has adjusted its gross revenue projections to yield projections of net revenue by accounting for contractual adjustments, discounts, and bad debt. (DI #2-OHC, Table 4). It has also assumed a level of charity care that is equal to the recent experience of other Maryland HHAs serving each proposed jurisdiction. (DI #11-OHC, p. 6; DI #13-OHC, pp. 2-5).

Reviewer's Analysis and Findings

The applicants have based their revenue projections on their own experience and on reasonable assumptions. I find that each applicant meets this 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 each proposed jurisdiction.

Applicants' Responses

Amedisys-Salisbury

Amedisys-Salisbury notes that its staffing and overall expense projections are based on its own current expenditure levels, its projected utilization, and the reasonably anticipated future staffing levels needed for that projected level of use. (DI#3-AS, p. 24).

Bayada-Towson

Bayada-Towson states that its staffing and overall expense projections are based on anticipated visit growth and the expected productivity levels for each discipline, taking into account its experience with the mix of and visits per episode to arrive at its projected staffing needs. (DI #3-BT, Table 5, p. 41).

Optimal

Optimal bases its staffing projections on an average of 20 visits per week for each full-time equivalent ("FTE") professional staff position (nurse, physical therapist, occupational therapist, speech and language therapist, and medical social worker). (DI #2-OHC, p. 13). It notes that its staff currently provides RSA services to clients in the Upper Eastern Shore region. Optimal states

that its part-time professional staff will convert to full-time staff as the number of visits increases over its first years of HHA operation (2019-2021). (DI #2-OHC, p. 25). (DI #2 OHC, p. 35).

Reviewer's Analysis and Findings

Amedisys-Salisbury and Bayada-Towson are experienced HHAs. Optimal, an experienced RSA provider of home-based care including skilled nursing care, projected a fairly conservative staffing model. 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. The projected number of FTEs for the applicants reflect projections at full implementation (Amedisys-Salisbury, Year 2022; Bayada-Towson, Year 2022; and Optimal, Year 2021).

Table IV-4: Projected HHA Visits per FTE Staff Projected by Applicants and the Reported Maryland Average

Applicant	Skilled Nursing	Physical Therapy	Occupational Therapy	Speech Therapy	Home Health Aide	Medical Social Services
Amedisys-Salisbury	1,063	1,371	902	781	3,261	523
Bayada-Towson	868	986	1,025	1,013	1,024	1,027
Optimal	817	888	781	132	837	950
Maryland Average FY 2014	966	1,375	1,231	965	917	448

Sources: Projected number of visits by discipline (Table 2A); projected number of 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 Amedisys-Salisbury (2022), Bayada-Towson (2022), and Optimal (2021). Skilled nursing includes registered nurses and licensed practical nurse. Physical therapy ("PT") FTEs include PT assistants.

Although the applicants' projected average visits per FTE vary considerably, one ratio, Amedisys-Salisbury's projection for home health aides, stands out as an extreme outlier, when compared to the statewide average. While I am wary of such a claim, the applicant provided historic utilization and staffing figures that were consistent with this projection (3,601 visits per home health aide FTE in 2016 and 3,470 per FTE in 2017).

I find that each of the three applicants complies with 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

Amedisys-Salisbury

Amedisys-Salisbury projects serving 382 clients with a volume of 9,985 total visits in Caroline, Kent, and Queen Anne's Counties at full utilization in its fourth year (FY 2022). It

characterizes this as "a modest projection."[15] This applicant says that its expansion will not have a material impact on any existing HHAs. It further states that this expectation is reasonable in light of the large and growing elderly population and a low home health agency utilization rate in those jurisdictions, which it views as a harbinger of demand growth potential for which existing and new HHAs entering the market can compete. Amedisys-Salisbury states that home health use can be expected to increase with Maryland's Total Cost of Care ("TCOC") model driving care to lower cost settings. (DI #8-AS, p. 5). It states that it can use existing staff to help serve the new counties, minimizing the number of new staff that need to be hired. The applicant projects a need to add two administrative FTEs, three registered nurse FTEs, 1.5 physical therapist FTEs, 0.5 occupational therapist FTEs, 0.25 speech therapist FTEs, 0.25 home health aide FTEs, and 0.25 medical social worker FTEs. It states that it has not experienced any workforce shortages or difficulty in recruiting and retaining qualified staff in this region. Further, Amedisys-Salisbury states that the modest number of new staff to be hired (only four of which will be clinical staff) will not have an impact on the ability of existing HHAs in these counties to staff their operations. (DI #8-AS, pp. 5, 6).

Amedisys-Salisbury projects that its entry into the market will have "no material impact" on the payor mix of other HHAs, because three of the six existing HHAs[16] serving this multi-jurisdictional region (Caroline, Kent, and Queen Anne's Counties) derive a small percentage of their total clients and visits from this region. (DI #8-AS, p. 6 and DI #3-AS, p. 41, Table 24). The applicant also cites the projected growth in the elderly population as a reason that it will not have a significant effect on payor mix. (DI #8-AS, p. 6).

Bayada-Towson

Bayada-Towson projects serving 868 clients and 14,593 visits at full utilization in its fourth year (FY 2022), with expansion into Cecil County. (DI #3-BT, Table 2B, p. 35). The applicant projects that its proposed expansion will not have an adverse impact on other home health programs in this jurisdiction because the Commission has identified Cecil County as a jurisdiction qualifying for consideration of additional HHA service providers. (DI #3-BT, p. 16). Bayada-Towson also makes reference to the increasing elderly population. (DI #3-BT, pp. 16, 22). It notes that its projected 868 clients (14,593 visits) is equivalent to a market share of 44.4% of clients and 47.5% of visits based on the total client and visit volume reported for Cecil County in FY 2016.

Bayada-Towson projects a need for 5.28 administrative FTEs, 7.76 registered and practical nurse FTEs, 4.91 physical therapist FTEs, 2.74 occupational therapist FTEs, 0.26 speech therapist FTEs, 0.77 home health aide FTEs, and 0.22 medical social worker FTEs to implement the expansion into Cecil County. (DI #8 BT, Att. A, Table 5). The applicant states that it has "a number of staff that live in or are willing to provide services in Cecil County," and plans to ensure that its recruiting managers are familiar with the geographical area and recruit accordingly. (DI #8-BT, p. 6).

[15] I note that 382 clients is the equivalent to a market share of 18.6% of clients and 27.5% of visits based on the total client and visit volume reported for this three-county area in FY 2016.

[16] The other three existing HHAs derive a significant percentage of their total clients and visits from this region, ranging from 19% (Home Call) to 100% (Chester River Home Care only serves Kent and Queen Anne's Counties). Shore Home Health derives 40% of its clients and 39% of its visits from these counties.

The applicant projects that its proposed expansion will not adversely impact the payor mix of other HHAs in this jurisdiction because the Commission has identified Cecil County as a county where additional HHA services are needed. (DI #3 BT, p. 16). The applicant also makes reference to the projected growth of both the general population and the elderly population in Cecil County. (DI #3-BT, p. 16).

Optimal

Optimal projects providing 9,492 visits in 2021 across the five-county Upper Eastern Shore region it intends to serve with its proposed new HHA. (DI# 2-OHC, Table 2B, p. 44). The applicant states that its proposed entry into the market will not have an adverse impact on other home health agencies operating in the Upper Eastern Shore region because of population growth, and the population's increasing desire to remain in their homes as they age. (DI #2-OHC, p. 25). Its visit volume projection is equivalent to a market share of 9.9 percent in the five-county region, based on reported 2016 use of HHAs,

Optimal projects the following staff complement by 2021: 4.6 administrative FTEs; 4.65 nursing FTEs; 4.06 physical therapist FTEs; 0.85 occupational therapist FTEs; 0.72 speech therapist FTEs; 1.02 home health aide FTEs; and 0.2 medical social worker FTEs. (DI #2-OHC, Table 5, pp. 50-52). The applicant also states that its staffing calculations are based on its current operations as an RSA. (DI #2-OHC, p. 50).

The applicant states that its proposed entry into the market will not have an adverse impact on the payor mix of other HHAs in the Upper Eastern Shore region because of population growth, and the growing demand by the population to age in place. (DI #2-OHC, p. 25). The applicant notes that the Commission identified the Upper Eastern Shore region as a multi-jurisdictional area in need of additional home health service providers and increased consumer choice. Optimal states that its willingness to accept most payer types will dilute any impact it might otherwise have on the payer mix of other HHAs in the region. (DI #11-OHC, p. 9).

Reviewer's Analysis and Findings

Each of the applicants meet the literal requirements of this standard, which simply requires an applicant to 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, addressing caseload, staffing and payor mix.

Both Amedisys-Salisbury and Bayada-Towson are projecting levels of use within respectively, a three-county area and a single jurisdiction, that would undoubtedly have a material impact on some of the existing HHAs, if these applicants were successful in achieving their client and visit forecast. Between FY 2010 and FY 2016, visit volume was reported to have grown by an average of about 2,700 visits per year in the three-county area into which Amedisys-Salisbury proposes to expand. A continued trend of this size would indicate that it is likely to have a substantive impact on the market share of existing HHAs if it is successful in reaching a visit volume of almost 10,000 annual visits within the next few years. Bayada-Towson's utilization

projection, based on serving only one jurisdiction in the region, Cecil County, is very aggressive, projecting approximately 14,600 visits in a jurisdiction in which seven HHAs reported just under 31,000 total visits in FY 2016. Reported visit volume for Cecil County grew 13% between FY 2010 and FY 2016, an annual average of just over 600 visits per year.

For these reasons, I think it is unlikely that these two existing HHAs will realize their use projections. However, this is not of great concern in my consideration of these proposals. Each is a large enough existing HHA so that it should not experience problems if lower than projected growth is realized in their respective expansion efforts. More importantly, even if these two HHAs are highly successful entrants into the new territories they have targeted, for the most part, the existing HHAs with which they will compete are sufficiently large, multi-jurisdictional agencies that can withstand significant reductions in their market share without experiencing any existential impact. There are a total of 12 HHAs that currently serve clients in all or part of the five-county region. Six had reported agency visit volumes in excess of 63,000 visits in FY 2016 (including Amedisys-Salisbury). Of the six smaller volume HHAs, two are Amedisys HHAs that both serve Cecil County and reported a combined total of over 53,000 visits in FY 2016. One is a specialized HHA for pediatric patients (Johns Hopkins Pediatrics at Home) and only two of its reported FY 2016 clients (it reported a total of 1,554 admissions statewide) originated in the Upper Eastern Shore. Comprehensive Home Health Services is a low volume HHA with its clientele concentrated in the Baltimore area. Only 8.5% of its clients originated in the Upper Eastern Shore region (Cecil County). The most vulnerable HHAs in this review are Shore Home Health and Chester River Home Health. As previously noted, Chester River Home Health derives all of its clients from Kent and Queen Anne's Counties. Shore Home Health derives 40% of its clients and 39% of its visits from Caroline, Talbot, and Queen Anne's Counties (with the remainder coming from Dorchester County). These characteristics mean that these two HHAs could experience a material impact from the introduction of new competing HHAs on the Upper Eastern Shore. However, given that overall regional impact is likely to be modest and the desirability of providing more competition in the small jurisdictions served by these HHAs, I find that likely impact on existing HHAs is not an appropriate basis for denying any of the applications.

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 to access the distribution of HHA visits by payor type by jurisdiction for the Upper Eastern Shore Region.

Table IV-5: Payor Mix (as % of total visits) at Full Utilization for Proposed Expansions

Agency	Payers					
	Medicare	Medicaid	Blue Cross/ Commercial Insurance	Self-pay	Other	Data Source
Amedisys-Salisbury (2022)	92%	6%	0%	0%	2%	DI #3, Table 4B
Bayada-Towson (2022)	74%	0.8%	23%	0.4%	2%	DI#3, Table 4B, p. 38
Optimal (2021)	51%	10%	38%	1%	0%	DI #2, Table 4B, p. 49
Upper Eastern Shore (2014)	87%	2%	11%	0.1%	0.5%	HHA Public Use Data, FY 2014

Amedisys-Salisbury's projected payor mix indicates that it intends to exclude providing services to most private payors. While this pattern is not reflected in this HHA's historic reporting

on payor mix, it has reported a relatively low proportion of service to commercial payers. (Approximately 4% in FY 2016.)

Bayada-Towson's projection of service to Medicaid patients is relatively low but the historic experience reported by the existing HHAs in the Upper Eastern Shore is only 2 percent.

Optimal's projected payor mix reflects service to Medicare patients that is well below average, which probably reflects its historic experience as an RSA, delivering care in the home without an ability to bill Medicare for any services.

I do not find that projected payer mix is a basis for denial of any applicant's application. However, given Amedisys-Salisbury's projections, I recommend the following condition be a part of any CON issued to Amedisys-Salisbury in this review:

> Amedisys-Salisbury shall serve clients whose payor source is Medicare, Medicaid, private insurance, or self-pay when providing home health agency services to clients in Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worchester Counties. It shall not discriminate on the basis of a patient's payment source in providing home health agency service to any client.

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

Amedisys-Salisbury

Amedisys-Salisbury is a Maryland-licensed HHA that is one of seven Maryland-licensed HHAs that is part of Amedisys Maryland, LLC d/b/a Amedisys Home Health. It is immediately owned by Amedisys Holding, LLC, with its ultimate parent being Amedisys, Inc. (DI #3-AS, pp. 7-8, 24). For this reason, Amedisys-Salisbury is financially supported and provided with needed cash flow as one of Amedisys, Inc.'s subsidiary operations. (DI #3-AS, p. 24). The applicant provided the 2016 Annual Report for Amedisys, Inc. to demonstrate the availability of financial resources necessary to sustain its expansion project. (DI #3-AS, Exh. 15).

Bayada-Towson

Bayada-Towson provided a June 13, 2018 letter of financial solvency from an independent certified public accountant referencing a 2017 financial statement audited by PricewaterhouseCoopers, LLP, which confirms the applicant's availability of financial resources necessary (as of December 2017) to sustain its expansion project. (DI #3-BT, Att. D).

Optimal

Optimal provided its bank statements for its business checking and payroll accounts as of June 30, 2018. It also provided a letter approving a $150,000 line of credit from Capitol One. (DI #2-OHC, p. 26, Exh. E, F). Optimal described its understanding of CMS's capital reserve and solvency requirements for HHAs and put forward a plan for meeting the milestones necessary to be successful. (DI #11 OHC, p. 10).

Reviewer's Analysis and Findings

I find that, because each applicant provided documentation to support its availability of the financial resources necessary to implement its project, each complies with the financial solvency standard.

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

Amedisys-Salisbury

Amedisys-Salisbury describes its linkages with a variety of health care and service providers in its existing service area. It provided a list of various referral sources in 2015 and 2016 to demonstrate its linkages with health care providers. (DI #3-AS, p. 25 and Exh. 10). Furthermore, the applicant states that it has already begun to form linkages with health care providers in the Upper Eastern Shore region and provided a list of these health care providers. (DI #3 AS, p. 25 and Exh. 11).

Bayada-Towson

Bayada-Towson expects that many of the existing linkages within current markets will have some be effective in Cecil County. The applicant describes its efforts to evaluate additional potential partnerships in Cecil County with visits to local skilled nursing facilities, several physician offices, Union Hospital, and with the director of the Department of Aging. (DI #3-BT, p 17). It also references its letters of support from University of Maryland Upper Chesapeake Medical Center and Griswold Home Care. (DI #3-BT, Exh. E2, E3).

Optimal

Optimal states that it will provide documentation of linkages with other service provides when requesting first use approval. (DI #2 OHC, p. 26).

Reviewer's Analysis and Findings

Each of the applicants has either provided documentation of current linkages that are likely to relevant or to be replicated in their expanded service area. A commitment to forge appropriate community linkages was stated by each applicant.

I find that each of the three applicants complies with this standard. I recommend that any CON awarded in this review include the condition that the each HHA:

> Prior to its request for first use approval, provide documentation of 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 approved expanded service area.

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

Amedisys-Salisbury

Amedisys-Salisbury provided a copy of its policy and procedures for discharge planning (Policy AA-016), which describes its discharge process that it states "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 #8 AS, Exh. 12). This policy includes a listing of 19 circumstances under which Amedisys-Salisbury 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 agency 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-Salisbury'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 #8-AS, Exh. 12).

Bayada-Towson

Bayada-Towson provided a copy of its policy and procedures for discharge planning (Policies #0-946 and #0-9307). 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-Towson states that it will assess a client's continuing care needs and apprise the client and caregiver of available alternative resources to address any ongoing needs. The applicant has a separate policy in place that addresses referrals and transfers to maintain continuity of care (Policy #0-9307). (DI #3-BT, Exh. F-1., F-2).

Optimal

Optimal provided a copy of its policy and procedures for discharge planning, the purpose of which is to "ensure the safety and well-being of the client." (DI #2-OHC, Att. G). This policy includes a listing of seven circumstances under which a client may be discharged. Examples of such circumstances include: client or payer refusing to pay for services; client acuity requires a higher level of care than Optimal can provide; and, client or people in the client's home demonstrate disruptive, abusive, or uncooperative behavior that impedes the delivery of care and treatment. The applicant's policy also includes planning for referrals to maintain continuity of care. (DI #2-OHC, Exh. G).

Reviewer's Analysis and Findings

I find that each applicant 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

Amedisys-Salisbury

Amedisys-Salisbury states that it submits the required information on the Commission's Home Health Agency Annual Survey, and that it 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 #3-AS, pp. 26, 27; DI #3-AS, Exh. 13, 14).

Bayada-Towson

Bayada-Towson states that, as an existing Medicare-certified HHA licensed in Maryland, it submits data on CMS' Home Health Compare and continuously monitors its quality performance (DI#3-BT, p. 19). It provided its Policy and Procedures (#0-403) regarding its Quality Assessment and Quality Improvement Implementation program. (DI #3-BT, Att. G).

Optimal

Optimal is not an existing HHA and, as such, has not submitted information to the Commission's Home Health Agency Annual Survey or participated in any CMS data collection. The applicant states that its Director of Clinical Operations will be responsible for compiling data and completing and submitting data to the appropriate agencies and will follow applicable federal and State guidelines. (DI #2-OHC, p. 27).

Reviewer's Analysis and Findings

Commission records show that Amedisys-Salisbury and Bayada-Towson submit data to the Commission's Home Health Agency Annual Survey.[17] Each of these HHA complies with the data collection and submission standard and satisfy federal and State data collection and reporting requirements. Optimal has committed to reporting and has demonstrated a readiness to do so if authorized to establish an HHA.

I find that Amedisys-Salisbury and Bayada-Towson each complies with this standard. I find that, based on its commitment, Optional also complies with this standard.

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.

Applicants' Responses

Amedisys-Salisbury

In addressing need, Amedisys-Salisbury noted that the July 2014 population projections developed by Maryland's Department of Planning projected an annualized growth rate of 0.69 percent in Caroline County, 1.29 percent in Kent County, and 0.85 percent in Queen Anne's County between 2015 and 2020. Further, the elderly population in these counties is growing much faster than the total population. Population aged 65 and older is estimated to have increased from

[17] http://mhcc.maryland.gov/public_use_files/index.aspx

13.3 percent of the total population in 2010 to 15.3 percent in 2015 and is projected to increase to 21.1 percent of the total population by 2030. The applicant also states that home health utilization can be expected to increase under Maryland's TCOC Model. (DI #3-AS, pp. 33-35).

Bayada-Towson

Bayada-Towson highlighted several factors supporting the need for increased access to HHA services in Cecil County. First, it cites the growth in the elderly population estimated to have occurred between 2010 and 2016 (18.1 percent). It also pointed out that, despite this population growth, HHA utilization in Cecil County decreased in 2013 and 2014 compared to 2011 and 2012. Bayada-Towson speculates that that this may indicate that current skilled home health agency services are unable to meet the demand. Additionally, it notes that HHAs provide the most economical approach to delivery of post-acute skilled care and can also facilitate primary care interventions that can avoid costly hospital admissions and emergency department visits. It believes that, as Maryland's TCOC model develops, it will likely drive growth in HHA utilization. (DI #8-BT, p. 8).

Optimal

Optimal cites the increasing use of HHA services from 2011 to 2014 as well as the projected population growth in the Upper Eastern Shore region over the next ten years. It projected what it describes as modest service volume growth based on these factors. (DI #2-OHC, pp. 30, 31). Optimal states that it is well-suited to help meet the needs of this region because it proposes to serve all five counties.

Reviewer's Analysis and Findings

There is an applicable need analysis in the HHA Chapter that is described in the Background section of this Recommended Decision, *supra*, pp. 5-6. It was used by Commission in establishing this extension of the review cycle.

I find that each of the three applicants has presented proposed projects that align with the HHA Chapter's need analysis.

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

Amedisys-Salisbury

Amedisys-Salisbury lists the cost-effectiveness advantages that home health agency services bring to the delivery system as a substitute for facility-based care, citing 2014 Medicare

claims data that showed the average Medicare expense-per-case in a skilled nursing facility to be more than twice the average Medicare expense-per-case in the home health agency setting ($11,695 vs. $5,301). The applicant points to "underutilization of home health care services in the Upper Eastern Shore, particularly in Kent and Queen Anne's Counties," and its aspiration to "educate and market … in these counties to increase the home health utilization rate and thereby reduce health care costs." (DI #3-AS, p. 36). It also cites its use of its existing Medicare-certified HHA branch office in Salisbury, as well as the economies of scale and efficiencies attributable to the resources and evidence-based clinical programs available to it as part of a leading national provider of home health agency services. The applicant states that its proposed project is a cost-effective way to introduce additional HHA competition in the multi-jurisdictional area and increase HHA utilization, driving down health care costs, and improving quality. (DI #3-AS, pp. 23 -24).

Bayada-Towson

Bayada-Towson states that "[h]ome health agencies are a cost-effective option compared to other healthcare avenues including a stay in a skilled nursing facility or ongoing inpatient acute care." (DI #3-BT, p.23). It points out the cost-effectiveness that can be achieved by expanding the operations of its existing Medicare-certified HHA branch office in Harford County, taking advantage of its existing infrastructure, such as administrative overhead and support systems. Bayada-Towson states that it will provide pre-acute and post-acute skilled home health agency services in Cecil County, and that its entry into the jurisdiction will improve access to care and reduce the total cost of care. Further, Bayada-Towson states that it will seek to integrate services with Maryland health systems that serve Cecil County's population, establishing new lines of communication, sharing data and outcomes, and piloting innovative delivery models with hospitals, other post-acute care providers, and primary care providers (already commonly practiced by Bayada entities in other Maryland jurisdictions). The applicant reiterated that home health care is a more cost-effective alternative to facility-based care and is likely to reduce hospital readmission rates. (DI # 8-BT, p. 9).

Optimal

Optimal addresses the cost-effectiveness of its proposed project by stating that it has extensive experience providing health care services to individuals at home in different regions of Maryland. The applicant states that it currently has the infrastructure and resources necessary to provide home health services, including online service management portals, physicians, staff, clients, and a corporate office located in the Upper Eastern Shore Region. Optimal also notes that use of home health care is more cost-effective and increases the quality of care when compared to care provided in a hospital or other facility. (DI #2-OHC, p. 32).

Reviewer's Analysis and Findings

Because the HHA Chapter seeks to give Marylanders more quality choices of HHA service providers, the applications do not that lend themselves to a conventional cost-effectiveness analysis. A response to the Commission's acceptance of CON applications requires a proposal to expand an existing HHA or establish a new HHA or there are not true alternatives to these basic

models. The Commission has formatted its most recent approach to CON regulation of the establishment or expansion of HHAs to allow for new providers in a regional service area, providing for some economy of scale in operation. While expanding an existing HHA will, in a general sense, tend to be less costly and probably more efficient in some operational aspects than establishing a new agency, the HHA Chapter does not limit new providers in jurisdictions to existing HHAs that seek to expand.

Each of the applicants in this review pointed out that it proposes to expand its agency's existing services and/or service area, since all provide services to patients in their homes, two as HHAs, and one as an RSA. Each has the ability to achieve operational efficiencies by using existing offices and tapping into shared administrative services and established infrastructure.

I find that each of the three applicants has demonstrated the cost effectiveness of expanding its service area, as proposed, or, in the case of Optimal, upgrading its level of provided services by becoming an HHA.

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.

Amedisys-Salisbury

Amedisys-Salisbury estimates a project cash expenditure of $40,000, all attributed to CON-related legal fees. Additional operating costs include $3,000 in annual lease costs for equipment. (DI #3-AS, Table 3). It plans to finance this project with cash and expects to achieve full implementation within nine months from the CON approval date. (DI #3-AS, p. 7). Amedisys-Salisbury documents its ability to fund the project by submitting the audited financial statements of Amedisys, Inc., the applicant's parent company. (DI #3-AS, Exh. 15, 16).

Amedisys-Salisbury provides historic and projected information on its financial performance, payer mix (DI #3-AS, Table 4), and utilization by number of clients and visits by each of the six major disciplines. (DI #3-AS, Tables 2A, 2B). The applicant reported net incomes in excess of $1.6 million in 2016 and $2.2 million in 2017, and projects profitable results beginning in the first year of operation following expansion. (DI #3-AS, Table 3; DI #8-AS, p. 10).

Bayada-Towson

Bayada-Towson states that there are no capital costs required to implement its project. (DI #3 BT, p. 24). A letter from an independent CPA dated June 13, 2018 titled "Confirmation of Financial Stability" included financial highlights from the 2017 financial audit performed by PricewaterhouseCoopers LLP ("PwC"). PwC notes the applicant's positive net income, net worth, and operating cash flow, lending further support to Bayada-Towson's ability to launch and sustain its project. (DI #3-BT, Exh. D).

To support its ability to sustain its proposed expansion, Bayada-Towson provides information on its agency-wide historic and projected financial performance (DI #3-BT, Tables 3, 4, pp. 36-40), utilization (DI #3-BT, Tables 2A, 2B, pp. 33-35); and its payer mix (DI #3-BT, Table 4, p. 40). It reports a net operating revenue related to the proposed project of approximately $578,000 in 2018, and projects that its income will increase to approximately $2.6 million by 2021, its first year at full utilization. (DI #3-BT, Table 4, p. 39).

Optimal

Optimal provided its 2017 Financial Statement (DI #2-OHC, Att. J, pp. 97-100), a May 2018 balance sheet (DI #2 OHC, Att. K, pp. 101-103), and a letter from an independent CPA dated July 6, 2018, which certifies that the applicant's financial statements and balance sheet are accurate (DI #2-OHC, Exh. L, p. 104). Optimal states that these documents indicate that it has access to the resources necessary to sustain this project.

Optimal projects income from the proposed project at approximately $13,000 in 2019, increasing to approximately $283,000 by the end of 2021, its first year at full utilization. (DI #2-OHC, Table 4).

Reviewer's Analysis and Findings

A summary table comparing the three applicants' historic and projected financial performance is provided below in Table IV-6.

Table IV-6: Comparative Statistical and Financial Performance – Actual and Projected

Statistical Indicators	Amedisys-Salisbury			Bayada-Towson			Optimal		
	Actual	Projected		Actual	Projected		Actual	Projected	
	2017	First Year 2019	At Full Use 2022	2017	First Year 2019	At Full Use 2021	2017	First Year 2019	At Full Use 2021
Total Visits	76,570	79,994	86,425	167,578	159,053	172,677	N/A	1,187	9,492
Total Clients	3,132	3,276	3,514	9,636	9,382	10,260	N/A	120	945
Average Visits/Client	24.4	24.4	24.6	17.4	16.9	16.8	N/A	9.9	10
Net Income ($000s)									
Net Operating Revenue	$12,011	$12,492	$13,490	$30,652	$28,369	$30,771	N/A	$193	$15,468
Total Operating Expenses	$9,726	$10,167	$10,887	$28,353	$26,335	$28,799	N/A	$4,925	$9,312
Non-Operating Income	$0	$0	$0	$0	$0	$0	N/A	$0	$0
Net Income (loss)	$2,285	$2,325	$2,604	$2,299	$2,034	$1,973	N/A	$13	$238
Payer Mix (% of total Visits)									
Medicare	92%	92%	92%	77.9%	74%	74%	N/A	51%	51%
Medicaid	6%	6%	6%	0.7%	0.8%	0.8%	N/A	10%	10%
Blue Cross				8.5%	9.9%	10%	N/A	20%	20%
Other Commercial Insurance	0%	0%	10%	11.1%	12.9%	13%	N/A	18%	18%
Self-Pay and Other[18]	2%	2%	2%	1.9%	2.1%	2.1%	N/A	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 has demonstrated that it has the resources necessary to implement and sustain its project.

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

Amedisys-Salisbury

Amedisys-Salisbury is one of seven licensed Maryland HHAs that is part of Amedisys Maryland, LLC, which does business in Maryland as Amedisys Home Health. Each of these seven HHAs, including the Amedisys-Salisbury applicant, initially entered the Maryland HHA market through acquisition of an existing Maryland HHA. The applicant received a 2011 CON permitting it to expand into Talbot County. This CON contained a condition that the applicant 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. The applicant was also required to address outreach and public notification requirements. According to the applicant, it was able to comply with the requirement in 2013, but not in subsequent years. Amedisys-Salisbury states that need for charity care was reduced due to the expansion of insurance

[18] Includes PPS episodic payors.

and Medicaid coverage that occurred in 2014. Amedisys-Salisbury provided documentation of what it described as its ongoing outreach for charity care referrals to remain in compliance with its 2011 CON. (DI #3 AS, p. 39). Amedisys-Westminster received a CON in January of 2019 to expand into Fredrick County, has received first use approval, and has, to date, complied with all conditions of that CON.

Bayada-Towson

Bayada-Towson is one of two licensed Bayada HHAs in Maryland. Each entered the Maryland HHA market through acquisition of an existing HHA. At the time of its application, the applicant noted that no Bayada HHA has ever obtained a CON from the Commission. (DI #3-BT, p 25). Bayada-Gaithersburg received a CON in January of 2019 to expand into all four counties of the Western Maryland region (Allegany, Frederick, Garrett, and Washington Counties), has received first use approval, and has, to date, complied with all conditions of that CON.

Optimal

Optimal was founded as a health services company in 2008 and its Home Care Division became a licensed RSA in 2010. (DI #2 OHC, p. 12). It has never received approval of a project through issuance of a CON.

Reviewer's Analysis and Findings

This criterion is not applicable to Bayada-Towson or Optimal.

As noted in Amedisys-Salisbury's response to this standard, it 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 prescribed minimum level. It states that the expansion of insurance and Medicaid coverage associated with implementation of the Affordable Care Act resulted in fewer people needing charity care.

Given Amedisys-Salisbury's failure to comply with the charity care condition placed on the single CON it has received, I reviewed MHCC's Home Health Survey data to compare the level of its charity care provision against that of its peer agencies in the region. As shown in Table IV-7 below, its provision of charity care is generally better than the average in each jurisdiction and in its total service area.

Table IV-7: Percentage of Charity Care for Amedisys-Salisbury and All Other HHA Agencies in Selected Jurisdictions

	2012		2013		2014		2015		2016	
	Amedisys-Salisbury	Area Total	Amedisys-Salisbury	Area Total	Amedisys-Salisbury	Area Total	Amedisys-Salisbury	Area Total	Amedisys-Salisbury	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-Salisbury did not comply with the condition of its 2011 CON, its provision of charity care in comparison to other HHAs in jurisdictions adjacent to the Upper Eastern Shore region is favorable. I find that Amedisys-Salisbury has provided an acceptable explanation of why it did not meet the condition of its 2011 CON.

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

Amedisys-Salisbury

Amedisys-Salisbury reiterated its responses to COMAR 10.24.16.08G, regarding impact of its project on existing HHAs in the Upper Eastern Shore region and 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 residents of the multi-jurisdictional region, as well as on costs to the health care delivery system, as a lower cost alternative to inpatient facility settings. (DI #3-AS, pp. 41, 42). It expects no impact on its charges, because the charges for HHA services are primarily set by Medicare payment rates and commercial payers have leverage to set reimbursement levels

Bayada-Towson

Bayada-Towson states that elderly population growth is the reason that its entry into Cecil County will not have an adverse impact on the volume of service provided by other existing HHAs. It projects a positive impact on the health care delivery system as a result of its project. (DI #3-BT, p. 26). It cites Maryland's TCOC Model that incentivizes the health care delivery system to utilize the most economical health care setting and that these incentives will increase demand for HHA services. (DI #8-BT, p. 10). It states that it expects no impact on its charges, because the charges for HHA services are set by Medicare payment rates and commercial payers have leverage to set reimbursement levels through contract negotiation. (DI #3-BT, p. 27).

Optimal

Optimal states that historic utilization trends from 2011-2014 and projected population growth of 15% over the next ten years indicate that there is a need for HHAs to enter the market. It believes that its entrance into the market will have a positive impact because it will be fulfilling this need and increasing choice. (DI #2-OHC, p. 37). Optimal states that it will not have a negative impact on existing providers because, despite the ongoing growth of the 65+ population in this region, there are very few HHAs that actually serve patients in the region. (DI #11-OHC, p. 16). The applicant expects no impact on the health care delivery system because Optimal is planning a

methodical entry into the market and anticipates that it will enter the market while the market is still growing. As a result, the applicant also does not expect its project to have an impact on other providers. (DI #11-OHC, p. 9).

Reviewer's Analysis and Findings

This criterion requires an applicant to address not only impact on existing home health agencies in the health planning region, as is required by the HHA Chapter's impact standard, COMAR 10.24.16.08G, but to also address the proposed project's impact on health care providers, on access to services, and on costs to the health care delivery system.

Earlier in this Recommended Decision, I discussed the applicants' compliance with the impact standard, COMAR 10.24.16.08G,[19]. Meeting the goals of the 2016 HHA Chapter, which includes providing more consumer choice of HHAs and fostering more competitive HHA markets, will, by definition, be likely to reduce the growth potential of existing providers. This is an unavoidable consequence of applying the HHA Chapter's need policies and awarding CONs to establish or expand HHAs in areas determined to warrant consideration of more good-performing HHAs. In my analysis of the impact standard, I found that the likely impact of these projects on existing HHAs was acceptable and did not provide a basis for denial of any of the proposed projects. I also note that an HHA has very limited ability to set its own prices, so there will be little to no impact on costs and charges.

For these reasons, I find that, overall, the impact of each applicant's project on the health care delivery system and on persons in need of HHA services is positive.

V. REVIEWER'S RECOMMENDATIONS

In this review, two existing HHAs seek to expand their authorized service areas to include some jurisdictions in the Upper Eastern Shore region and one RSA seeks to establish an HHA to serve the entire region. The region was determined to be eligible, under the State Health Plan for consideration of HHA projects like those proposed. The applicants were determined to be eligible to apply based on their performance track records on CMS Home Health Compare or the eligibility criteria established for RSAs in the SHP.

My review of the record resulted in my finding that each applicant met all applicable State Health Plan standards and that consideration of the general review criteria applicable to all CON applications present no impediment to approval of any of the applications.

I recommend that the Commission **APPROVE** each of the applications of Amedisys Maryland, L.L.C., d/b/a Amedisys Home Health (Maryland license HH7111) ("Amedisys-Salisbury"), Bayada Home Health Care, Inc. (Maryland license HH7101) ("Bayada-Towson"), and Optimal Health Care, Inc. (Maryland RSA license R3119) ("Optimal") for a Certificate of Need to provide home health agency services**,** with the conditions that each:

[19] See discussion, *supra*, at pp. 25-27.

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 a level of charity care equivalent to or greater than the average level of charity care provided by home health agencies in the areas to which it is expanding (Caroline, Kent, and Queen Anne's Counties for Amedisys-Salisbury; Cecil County for Bayada-Towson) or in the region which it will be authorized to serve as a new home health agency (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties in the case of Optimal); and

3. Prior to its request for first use approval, provide documentation of 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 approved expanded service area.

I further recommend any Certificate of Need issued to Amedisys-Salisbury contain the following additional condition:

4. Amedisys-Salisbury shall serve clients whose payor source is Medicare, Medicaid, private insurance, or self-pay when providing home health agency services to clients in Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worchester Counties. Amedisys-Salisbury shall not discriminate on the basis of a patient's payment source in providing home health agency service to any patient.

IN THE MATTER OF THE	*	
UPPER EASTERN SHORE	*	**BEFORE**
HOME HEALTH AGENCY REVIEW	*	
	*	**THE**
AMEDISYS MARYLAND, LLC	*	
D/B/A AMEDISYS HOME HEALTH	*	**MARYLAND**
(Maryland license HH7111)	*	
Docket No. 18-R1-2424	*	**HEALTH CARE**
	*	
BAYADA HOME HEALTH	*	**COMMISSION**
CARE, INC.	*	
(Maryland license HH7101)	*	
Docket No. 18-R1-2425	*	
	*	
OPTIMAL HEALTH CARE, INC.	*	
(Maryland RSA license R3119)	*	
Docket No. 18-R1-2426)	*	
	*	

* *

FINAL ORDER

Based on the analysis and findings in the Reviewer's Recommended Decision, it is this 19th day of September, 2019, **ORDERED**:

That each of the applications of Amedisys Maryland, L.L.C., d/b/a Amedisys Home Health (Maryland license HH7111) ("Amedisys-Salisbury"), Bayada Home Health Care, Inc. (Maryland license HH7101) ("Bayada-Towson"), and Optimal Health Care, Inc. (Maryland RSA license R3119) ("Optimal") for a Certificate of Need to provide home health services is **APPROVED,** with the 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 a level of charity care equivalent to or greater than the average level of charity care provided by home health agencies in the areas in which it is expanding (Caroline, Kent, and Queen Anne's Counties for Amedisys-Salisbury; Cecil County for Bayada-Towson) or in the region which it will be authorized to serve as a new home health agency (Caroline, Cecil, Kent, Queen Anne's, and Talbot Counties in the case of Optimal); and

3. Prior to its request for first use approval, provide documentation of 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 approved expanded service area.

IT IS FURTHER ORDERED that any Certificate of Need issued to Amedisys-Salisbury contain the following additional condition:

4. Amedisys-Salisbury shall serve clients whose payor source is Medicare, Medicaid, private insurance, or self-pay when providing home health agency services to clients in Caroline, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worchester Counties. Amedisys-Salisbury shall not discriminate on the basis of a patient's payment source in providing home health agency service to any patient.

MARYLAND HEALTH CARE COMMISSION

APPENDIX

Record of the Review

- Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Maryland license HH7111) Docket No. 18-R1-2424
- Bayada Home Health Care, Inc. – Docket No. 18-R1-2424
- Optimal Health Care, Inc. – Docket No. 18-R1-2426
- General File

Record of the Review

Amedisys Maryland, LLC, d/b/a Amedisys Home Health (Maryland license HH7111)
("Amedisys-Salisbury")

Docket Item #	Description	Date
1AS	MHCC receives Letter of Intent	2/27/18
2AS	Applicant documents its qualifications.	6/28/18
3AS	Applicant files Certificate of Need Application.	7/6/18
4AS	MHCC acknowledges receipt of application.	7/11/18
5AS	MHCC staff requests completeness information.	10/12/18
6AS	Applicant requests and is granted extension until 11/2/18.	10/23/18
7AS	Applicant requests and is granted extension until 11/9/18.	11/5/18
8AS	Applicant provides response to request for completeness information.	11/9/18
9AS	MHCC staff sends request for additional completeness information.	1/10/19
10AS	Applicant provides response to request for completeness information.	1/24/18
11AS	MHCC informs applicant that the formal start of the review will be 3/29/19.	3/15/19
12AS	MHCC requests local health planning comment on CON Application.	3/15/19

Record of the Review

Bayada Home Health Care, Inc. (Maryland license HH7101)
("Bayada-Towson")

Docket Item #	Description	Date
1BT	MHCC receives Letter of Intent	3/28/18
2BT	Applicant provides documents supporting its qualifications.	6/26/18
3BT	Applicant files Certificate of Need Application.	7/6/18
4BT	MHCC staff acknowledges receipt of Certificate of Need.	7/11/18
5BT	Applicant provides additional documentation supporting its qualifications.	7/12/18
6BT	MHCC staff requests completeness information.	10/12/18
7BT	Applicant requests and is granted extension until 11/9/18.	10/17/18
8BT	Applicant provides response to request for completeness information.	11/8/18
9aBT	Applicant requests determination of coverage for a corporate restructuring that MHCC considers an acquisition.	10/9/18
9bBT	Applicant requests approval of acquisition.	11/30/18
10BT	MHCC approves acquisition.	12/21/18
11BT	MHCC staff requests additional completeness information.	1/10/19
12BT	Applicant provides response to request for additional completeness information.	1/24/19
13BT	MHCC staff requests additional information.	2/4/19
14BT	Applicant provides response to request for additional information.	2/28/19 E-mail 3/25/19 Paper
15BT	MHCC informs applicant that the formal start of the review will be 3/29/19.	3/15/19
16BT	MHCC requests local health planning comment on CON Application.	3/15/19
17BT	Cecil County Health Officer declines to comment.	3/28/19

Record of the Review

Optimal Health Care, Inc. (Maryland RSA license R3119)
("Optimal")

Docket Item #	Description	Date
1OHC	MHCC receives Letter of Intent	5/3/18
2OHC	Applicant files Certificate of Need Application.	7/6/18
3OHC	MHCC staff acknowledges receipt of Certificate of Need.	7/11/18
4OHC	Applicant provides documents supporting its qualifications.	7/12/18
5OHC	Applicant provides additional documentation supporting its qualifications.	7/12/18
6OHC	Applicant provides additional documentation supporting its qualifications.	7/12/18
7OHC	MHCC staff requests additional documentation for qualification.	7/12/18
8OHC	Applicant provides additional documentation supporting its qualifications.	7/14/18
9OHC	MHCC staff sends request for completeness information.	10/12/18
10OHC	Applicant provides response to request for completeness information.	10/15/18
11OHC	Applicant provides response to request for completeness information.	10/26/18
12OHC	MHCC staff sends request for additional completeness information.	1/10/19
13OHC	Applicant provides additional completeness information.	1/24/19
14OHC	Applicant provides additional information.	2/26/19
15OHC	MHCC informs applicant that the formal start of the review will be 3/29/19.	3/15/19
16OHC	MHCC requests local health planning comment on CON Application.	3/15/19
17OHC	Cecil County Health Officer declines to comment.	3/28/19
18OHC	Applicant provides additional information.	5/10/19
19OHC	Applicant provides additional information.	7/30/19

Record of the Review

General File

Docket Item #	Description	Date
1 GF	MHCC staff acknowledges receipt of Letters of Intent to all persons who filed.	5/8/18
2 GF	MHCC staff provides applicants with information concerning pre-application conference.	5/10/18-5/15/18
3 GF	MHCC staff requests that *Kent County News* publish notice of receipt of applications.	7/11/19
4 GF	MHCC staff requests that *Record Observer* publish notice of receipt of applications.	7/11/18
5 GF	MHCC staff requests that *Star Democrat* publish notice of receipt of applications.	7/11/18
6 GF	MHCC staff requests that *Cecil Whig* publish notice of receipt of applications.	7/11/18
7 GF	MHCC staff requests that *Maryland Register* publish notice of receipt of applications.	7/18/18
8GF	Notice of receipt of applications is published in *Kent County News.*	7/19/19
9GF	Notice of receipt of applications is published in *Star Democrat.*	7/19/19
10GF	Notice of receipt of applications is published in *Cecil Whig.*	7/20/18
11GF	Notice of receipt of applications is published in *Record Observer.*	7/20/18
12GF	MHCC staff requests that *Kent County News* publish notice that the formal start of the review is 3/29/19.	3/15/19
13GF	MHCC staff requests that *Record Observer* publish notice that the formal start of review is 3/29/19.	3/15/19
14GF	MHCC staff requests that *Star Democrat* publish notice that the formal start of the review is 3/29/19.	3/15/19
15GF	MHCC staff requests that *Cecil Whig* publish notice that the formal start of the review is 3/29/19.	3/15/19
16GF	MHCC staff requests that the *Maryland Register* publish notice of the formal start of the review on 3/29/19.	3/15/19
17GF	Notice of formal start of review is published in *Kent County News.*	3/28/19
18GF	Notice of formal start of review is published in *Record Observer.*	3/28/19
19GF	Notice of formal start of review is published in *Star Democrat.*	3/29/19
20GF	Notice of formal start of review is published in *Cecil Whig.*	3/29/19
21GF	Amedisys files Consolidated Interested Party Comments.	4/29/19
22GF	Commissioner-Reviewer Wang notifies all applicants of his appointment as reviewer and desired scheduling of a Project Status Conference.	9/03/19