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***Britthaven, Inc.***

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August 2, 2010

Jane Rhoe-Jones, Project Analyst  
Certificate of Need Section  
NC Division of Health Service Regulation  
2704 Mail Service Center  
Raleigh, NC 27699-2704

Dear Ms. Rhoe-Jones:

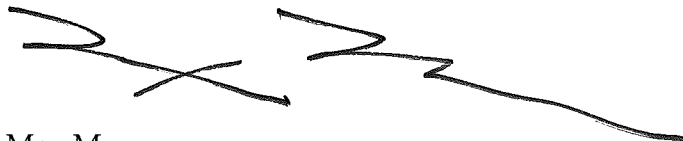
The attached document consists of Britthaven's comments regarding the following CON application, which was submitted for the Review Period beginning July 1, 2010:

- Project ID #O-8533-10, Applicants:
  - Bowden Nursing Home, Inc. (Building Owner/Lessor)
  - Wrightsville Health Investors, LLC (Landowner)
  - Wrightsville Health Holdings, LLC

These comments address each applicant's conformity to the specific statutory criteria and special rules relevant to the proposed relocation of beds/development of a replacement facility in New Hanover County.

Thank you for your consideration of these remarks. Should you have any questions regarding these materials, please do not hesitate to contact me.

Sincerely,  
BRITTHAVEN, INC.



Max Mason,  
Development Coordinator

Enclosures

Received by  
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02 AUG 2010 4:37

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Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
Submitted by: Britthaven, Inc.  
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**OVERVIEW**

Bowden Nursing Home, Inc. ("Bowden") proposes to relocate 80 existing nursing facility ("NF") beds currently operated by Britthaven, Inc. in Wrightsville Beach (eastern New Hanover County) to a newly constructed replacement facility located in southern New Hanover County. This proposed replacement/relocation is subject to Certificate of Need ("CON") review and must conform to the applicable regulatory and administrative review criteria. Additionally, this proposal, the principal intent of which is to upgrade an aging physical plant, should continue to serve the same community with at least the same standards as currently available.

After reviewing Bowden's CON application in detail, Britthaven has identified several issues with the proposal that may render it non-conforming to certain CON review criteria. These areas of potential non-conformity are discussed below.

**IDENTIFICATION OF LEGAL APPLICANTS**

The CON Application Form defines a Legal Applicant as "the existing legal entity (i.e., person or organization that will own the building. If the building is or will be leased, both the lessor and the lessee are applicants and both must be identified below."

Based on materials contained throughout Bowden's CON application, it is unclear whether the appropriate Legal Applicant has been identified and whether sufficient documentation about that applicant has been provided.

The following entities are identified as Legal Applicants for this CON proposal:

- Bowden Nursing Home, Inc.
- Wrightsville Health Investors, LLC, and
- Wrightsville Health Holdings, LLC

On page 8 of the CON application, Bowden Nursing Home, Inc. is identified as the "Owner of Bricks and Mortar" of the replacement NF facility. This ownership status, however, appears to be contradicted by the Asset Purchase Agreement contained on pages 162 to 200. In this Agreement, the "Buyer" is identified as Smith/Packett Med-Com, LLC, whose responsibility it is to "acquire ownership of a parcel of land in New Hanover County" and to "construct the buildings and improvements constituting the New Facility." (p. 176) The responsibility for paying all costs and expenses associated with the land and building construction is Smith/Packett's. (p. 177)

Although Smith/Packett apparently will enter into a "Ground Lease" with Bowden for the newly acquired property (pp. 107-122), there is no clear evidence that any entity other than Smith/Packett, which will finance the purchase of the land, will be the owner of the land.

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Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
Submitted by: Britthaven, Inc.  
Date: August 2, 2010

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Furthermore, there is no evidence that Smith/Packett, which will finance the construction of the building (pursuant to the Asset Purchase Agreement), will cease to own the new replacement building even though a lease agreement between Bowden (Landlord) and Wrightsville Health Holdings, LLC (Tenant) for the new facility is included on pp. 123-161.

Although not expressed clearly in the Asset Purchase Agreement (or elsewhere), it appears that Smith/Packett intends for Wrightsville Health Investors, LLC, which is commonly “owned by the same owners of Smith/Packett”, to obtain the loans for land acquisition and building construction (p. 442) This letter from Smith/Packett Med-Com, LLC president Hunter D. Smith, indicates that Smith/Packett Med-Com, LLC, and Wrightsville Health Investors, LLC “are solely responsible for funding the capital costs associated with the new skilled nursing facility” and that “Wrightsville Health Investors, LLC is securing the financing for the capital costs of the project.” (p. 442) By all accounts, the specific role of Smith/Packett in this proposed process is unclear, though there is some evidence indicating that it should be the Legal Applicant. It simply is not possible to determine the exact relationships between parties and whether a clear connection between the applicants and various agreements can be made such that all applicable CON review criteria are satisfied.

**ACCESS TO THE MEDICALLY UNDERSERVED**

Britthaven of Wrightsville has been a leader in New Hanover County in the provision of days of care to Medicaid recipients. The following data, provided by Bowden in its application (p. 25), confirms Britthaven of Wrightsville’s commitment to accommodating the needs of the medically underserved population:

-----10/1/2008 - 9/30/2009 Occupancy and Utilization-----					
<u>Facility</u>	<u>Beds</u>	<u>Total Occupancy</u>	<u>Medicare</u>	<u>Medicaid</u>	<u>Private/Other</u>
Autumn Care	90	90.0%	27.3%	47.9%	24.8%
Britthaven-North Chase	130	90.6%	20.1%	58.5%	21.4%
Britthaven-Wrightsville	80	80.1%	7.0%	87.1%	5.9%
Cornelia Dixon	199	96.8%	8.3%	54.9%	36.8%
Cypress Point	100	96.0%	30.5%	51.1%	18.4%
Liberty Commons	100	84.1%	16.2%	65.3%	18.5%
Silver Stream	110	90.0%	41.7%	41.8%	16.5%
Wilmington Health & Rehabilitation	120	-----Data not available-----			
<b>TOTAL</b>	<b>809</b>	<b>90.8%</b>	<b>20.5%</b>	<b>56.5%</b>	<b>23.0%</b>
<b>PROPOSED YR. 2 @ New</b>					
<b>Hanover Health &amp; Rehabilitation</b>	<b>80</b>	<b>93%</b>	<b>19.7%</b>	<b>75.3%</b>	<b>5.0%</b>

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Comments re:	Project ID# O-8533-10 / Bowden Nursing Home, Inc.
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As illustrated, Britthaven of Wrightsville provides, by far, the highest percentage of days of care to Medicaid residents of all existing facilities in New Hanover County (87.1%). According to Britthaven's most current data, this trend of Medicaid accessibility continues. In May and June of 2010, 88.4% of Britthaven of Wrightsville's days of care were provided to Medicaid recipients. In contrast, Bowden proposes to reduce the percentage of days of care to Medicaid recipients from 87.1% to 75.3%. This level of reduction is significant.

Bowden's justification for this reduction—that it will serve the same number of Medicaid recipients (approximately 56) as Britthaven of Wrightsville (p. 25)—fails to account for any growth in need for access by Medicaid patients. This assumption is questionable.

Furthermore, Bowden states that it will be able to serve more patients than Britthaven of Wrightsville by eliminating existing ward rooms. Under this scenario more beds will be available to the community; however, they apparently will not be available to Medicaid recipients.

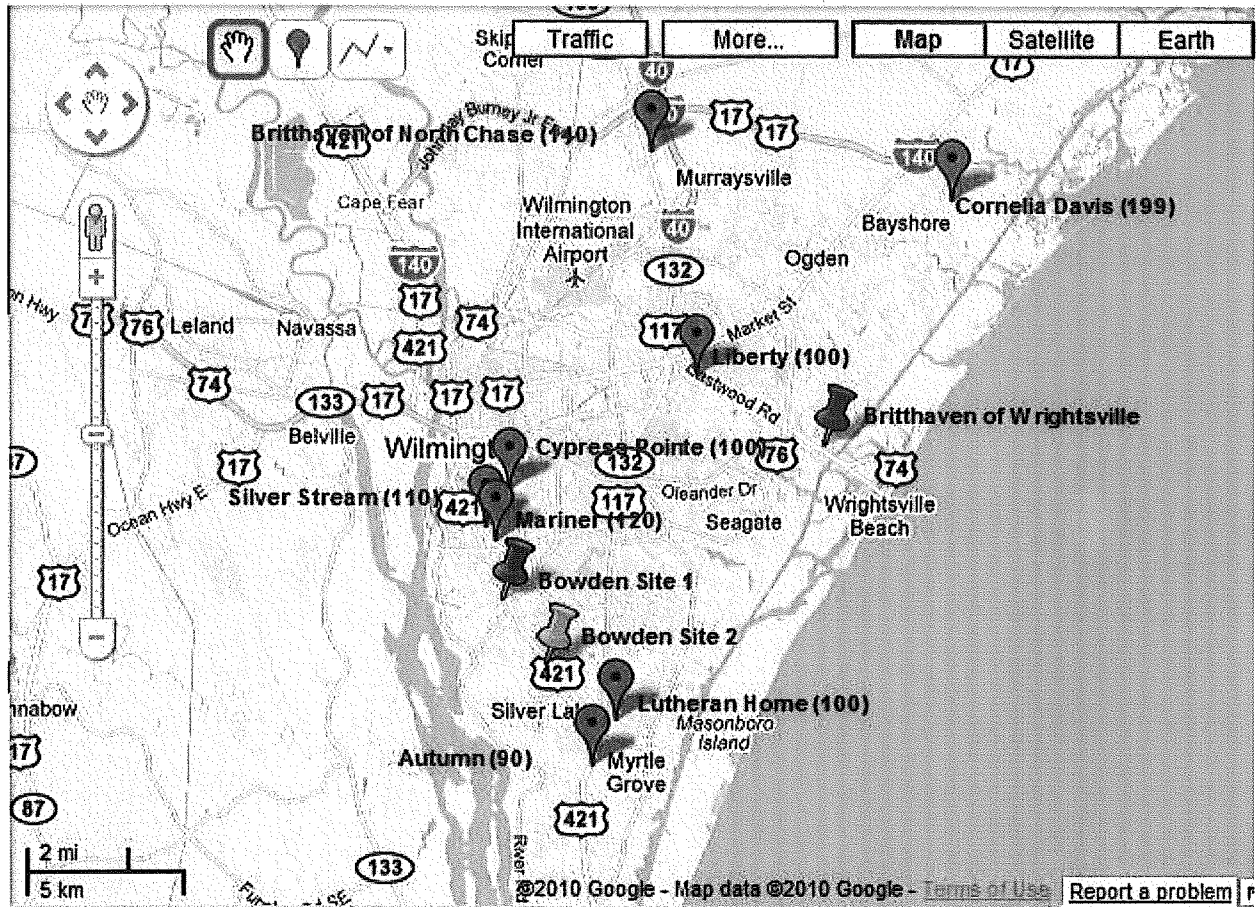
Based on this proposed reduction in percentage of days of care provided to Medicaid recipients, it is possible that Bowden is non-conforming to CON Statutory Review Criterion (13):

*The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority.*

### **GEOGRAPHIC ACCESSIBILITY**

As illustrated in the map below, Bowden proposes to relocate 80 beds from Britthaven of Wrightsville to a southern/southwestern location along Carolina Beach Rd. in Wilmington (represented as a red and turquoise push-pin; primary and secondary sites, respectively).

Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
Submitted by: Britthaven, Inc.  
Date: August 2, 2010



As is clearly evident from the map, relocating the 80 existing beds from Wrightsville Beach will create a clear gap in access for the eastern coastal region of New Hanover County. Bowden's stated justification for relocating the 80 beds may lack sufficient merit. To reach its need determination, Bowden divided New Hanover County into "North" and "South" regions; however, the bases for determining what constitutes "northern" and "southern" New Hanover County are not provided and, thus, are presumed to be somewhat arbitrary.

Tables on pp. 27 – 30 of Bowden's CON application assign certain zip codes to each of these two regions. Apparently, no attempt was made to examine need in the "East" and "West" regions of New Hanover County, nor in the "Central" region of the county. Since no such analysis was conducted, it is impossible to conclude whether or not the information Bowden presents is either definitive or reasonable.

Furthermore, and significantly, Bowden provides no indication that it had any specific discussion with ancillary or support service providers in New Hanover County in which they sought guidance as to the best location to meet the needs of New Hanover County citizens. On the surface, relocating these beds near Autumn Care and the Lutheran Home (100 beds under

Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
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 Date: August 2, 2010

development), and away from Wrightsville Beach (0 beds if relocation is approved), does not make sense from a health-planning perspective.

**STAFFING**

CON Statutory Review Criterion (7) pertains to staffing and states, specifically, that:

*The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided.*

An examination of Section VII of Bowden's CON application reveals that the applicant apparently proposes to staff its proposed new facility at a lower level than the existing Britthaven of Wrightsville facility. Although Bowden was not required to complete Table VII.4 of the standard nursing facility CON application, Britthaven recreated the table from information provided in Table IV.2 (p. 41) and Table VII.3 (pp. 56-7). Please see the following:

<b>Bowden Nursing Home</b>				
<b><i>Projected Direct Care Nursing Staff Hours per Patient Day</i></b>				
	RNs	LPNs	Aides	Total
<b>NURSING FACILITY</b>				
A. Number of FT'Es from table VII.3	4.20	7.00	29.40	40.60
B. Number of nursing hours per year per FTE ( i.e. 2080 or 1950)	2,080	2,080	1,950	
C. Total nursing hours per year (A x B)	8,736	14,560	57,330	80,626
D. Number of Patient Days from Table IV.2	27,141	27,141	27,141	27,141
E. Nursing hours per patient day (C/D)	<b>0.32</b>	<b>0.54</b>	<b>2.11</b>	<b>2.97</b>
Source: Bow den CON Application				

As this table illustrates, Bowden proposes **fewer than 3 FTEs** of combined RN, LPN, and CNA staff per patient, per day. Data from Britthaven of Wrightsville's 2010 License Renewal Application, applied to the same table, shows the following staffing ratios:

<b>Britthaven of Wrightsville</b>				
<b><i>Actual Direct Care Nursing Staff Hours per Patient Day</i></b>				
	RNs	LPNs	Aides	Total
<b>NURSING FACILITY</b>				
A. Number of FT'Es from table VII.3	6.60	5.60	23.25	35.45
B. Number of nursing hours per year per FTE ( i.e. 2080 or 1950)	2,080	2,080	1,950	
C. Total nursing hours per year (A x B)	13,728	11,648	45,338	70,714
D. Number of Patient Days from Table IV.2	23,389	23,389	23,389	23,389
E. Nursing hours per patient day (C/D)	<b>0.59</b>	<b>0.50</b>	<b>1.94</b>	<b>3.02</b>
Source: 2010 License Renew al Application				

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Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
Submitted by: Britthaven, Inc.  
Date: August 2, 2010

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Although the difference in FTEs is small (3.02 vs. 2.97), it is reasonable to question whether Bowden represents an effective alternative by operating a new facility with fewer staff per patient, per day than currently available at Britthaven of Wrightsville. The ability of staff to meet the needs of patients is further suspect given that Bowden proposes to serve a presumably higher-acuity, rehab-heavy population of Medicare patients.

**STAFF SALARIES**

Although not explicitly stated, it is assumed that Bowden intends to maintain current staff upon facility replacement/relocation. One would assume, therefore, that projected staff salaries would remain at least at their current level. In some cases, there is clear correspondence between Britthaven of Wrightsville salaries and Bowden's projected salaries. In a significant number of other cases, though, Bowden projects a decrease in salary. Britthaven was unable to locate an explanation for a salary decrease. Please see the following table containing salary data:

Applicants	Bowden (Given)	Bowden (Calculated)	Britthaven of Wrightsville
<b>Staff Salaries (VII.3)</b>			
<b>ROUTINE</b>			
DON	\$57,845		\$57,845
ADON	\$0		\$51,744
SDC	\$38,480		\$38,480
RN	\$46,249		\$46,249
LPN	\$0	\$40,783	\$40,783
CNA	\$0	\$23,190	\$24,350
CNA/Hour	\$0.00	\$11.89	\$12.49
Medical Records Clerk	\$26,000		\$25,938
Pharmacy Consultant	\$4,800		\$1,710
<b>DIETARY</b>			
Food Service Supervisor	\$31,574		\$31,574
Cooks	\$17,160		\$17,165
Dietary Aides	\$15,080		\$15,085
<b>SOCIAL WORK</b>			
Social Services Director	\$30,992		\$37,440
Social Services Assist.	\$0		
<b>ADMIN. &amp; GENERAL</b>			
Administrator	\$75,000		\$79,999

The boxes highlighted in yellow (LPN and CNA) are those for which Bowden did not provide an annual salary in Table VII.3, as requested. Using the salary expense information in Form C, Britthaven was able to calculate an annual salary for each position. This calculation is shown below:

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Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
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Date: August 2, 2010

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[A]	[B]	[C]	[D]
Position	FTEs	Total Salary Expense	Salary/Wage per FTE
	<i>[Table VII.3]</i>	<i>[Form C]</i>	<i>[C] / [B]</i>
LPN	7	\$285,481	\$40,783
CNA	29.4	\$681,800	\$23,190

Of particular note in these data is the fact that Bowden apparently plans to pay its CNAs less than they currently make at Britthaven of Wrightsville (\$23,190 vs. \$24,350). This amounts to a \$1,160 annual reduction in pay for the largest segment of Bowden's staff. A similar situation exists for the Social Services Supervisor (a \$6,448 pay reduction) and the Administrator (a \$4,999 pay reduction). Again, no explanation is provided for any reduction in pay, which is surprising given that Bowden clearly adopted many of Britthaven's salaries exactly. One must question what impact these salaries would have on staff morale and performance.

#### **APPLICABILITY TO GEN POLICIES OF THE 2010 SMFP**

On page 30 of its CON application Bowden states that it did not find "any of the three [General] policies to be applicable to the proposed replacement of an existing nursing facility." As clearly set forth in the Required State Agency Findings for CON application reviews, conformity to Policy GEN-3 is assessed as part of review criterion G.S. 131E-183(a), (1), which states:

*The proposed project shall be consistent with **applicable policies** and need determinations in the State Medical Facilities Plan, [...] **[Emphasis added]***

Policy GEN-3 specifically states the following:

*A CON applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing healthcare value for resources expended. A CON applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the ability of capacity to provide these services. A CON applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the SMFP as well as address the needs of all residents in the proposed service area.*

It is assumed that Bowden determined that this Policy was inapplicable to its proposal because it is not technically "a CON applicant applying to develop or offer a new institutional health service for which there is a need determination" in the SMFP. Given that the applicant proposes to relocate the facility and serve a different type of patient (in terms of payer-mix) in a different location, Britthaven wonders whether Bowden should not have addressed how its proposal



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Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
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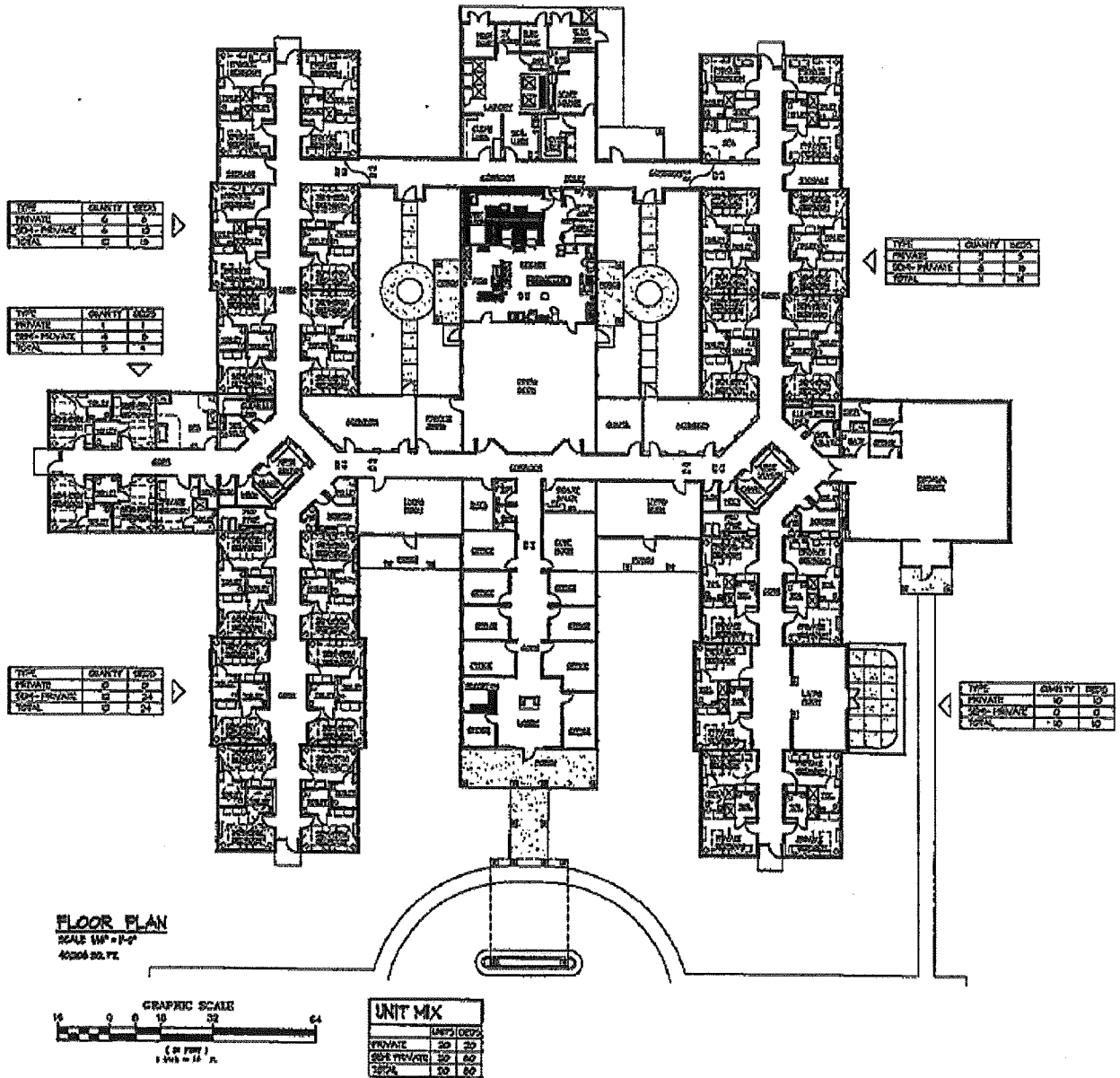
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conforms to the Basic Principles of the SMFP, for which Policy GEN-3 exists to ensure adherence.

### **FACILITY DESIGN**

Bowden's proposed new facility does not appear to represent a true "neighborhood" floor plan, but rather, it reflects a much more traditional layout, as illustrated below (excerpt from p. 499 of the Bowden application).

Comments re: Project ID# O-8533-10 / Bowden Nursing Home, Inc.  
 Submitted by: Britthaven, Inc.  
 Date: August 2, 2010



Although an upgrade over the 53-year old existing building, one questions whether this floor plan maximizes the potential to introduce a full-spectrum of "home-like" design elements. For instance, it appears that on the left side of the facility 51 patients will share activities, living and dining space. On the right, 24 patients will share these community spaces. This layout does not seem to reflect the "neighborhood" trend of many newer, recently-approved (by the CON Section), facilities.

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Comments re:	Project ID# O-8533-10 / Bowden Nursing Home, Inc.
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### **PATIENT ORIGIN**

Bowden projects that 88% of its residents will be from New Hanover County. This projection is not supported by historical data for Britthaven of Wrightsville, for which 75.8% of its patients were New Hanover County residents in FY2009. Bowden does not explain what accounts for this 12.2% increase in patient county-of-origin.

### **CONCLUSION**

Britthaven's review of Bowden's CON application reveals that the proposed option for replacing the existing 80-bed nursing facility in Wrightsville Beach may not represent the best alternative for New Hanover County residents. Bowden's proposed relocation of beds from Wrightsville Beach to south Wilmington would remove the only facility located on Wrightsville Beach, thereby potentially limiting access to a segment of the population that has relied on this resource. Furthermore, access to Medicaid patients may decrease should Bowden's proposal be approved. Bowden projects to provide a smaller percentage of its days of care to Medicaid recipients than is shown by current utilization data for Britthaven of Wrightsville. Reducing access to NF beds for Medicaid patients may conflict with the intent of the Access Basic Principle of the 2010 SMFP. Lastly, it appears that Bowden will provide fewer licensed nursing and aide staff per patient, per day than is currently available at Britthaven of Wrightsville. The potential impact on quality and value should be considered when a reduction in staffing is proposed, particularly given the applicant's projected change in patient mix.

### **ADDITIONAL INFORMATION**

Britthaven contends that, pursuant to paragraph 23 of the current lease agreement between Bowden and Britthaven, Inc., Bowden has failed to properly offer Britthaven a right of first refusal to acquire the NF beds and certain equipment and regulatory approvals and Licenses associated with operation of the Britthaven of Wrightsville facility. As such, Bowden lacks "clear title" to sell or otherwise transfer these specific NF beds, which is Bowden's intent according to the Asset Purchase Agreement contained in Exhibit 5 (pp. 162-200), paragraph F.