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Johnston County Rehabilitation Center
Liberty Healthcare Properties of West Johnston County, LLC

Liberty Commons Nursing and Rehabilitation Center of West Johnston County, LLC

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August 2, 2010

Craig Smith, Section Chief
Paula Quirin, Project Analyst
Certificate of Need Section, DHSR, DHHS
701 Barbour Drive
Raleigh, NC 27603

Dear Mr. Smith and Ms. Quirin,

In accordance with NC G.S. §131E-185(a1)(1), Johnston County Rehabilitation Center, Liberty Healthcare Properties of West Johnston County, LLC, and Liberty Commons Nursing and Rehabilitation of West Johnston County, LLC hereby submit the following comments related to competing applications filed in response to the need determination in the 2010 NC State Medical Facilities Plan ("SMFP") for 60 skilled nursing beds to be located in Johnston County. Our comments include discussion of representations made in the competing applications and whether, or not, the applications comply with the relevant review criteria, plans, and standards. We offer comments on the following applications:

- J-8541-10 UniHealth Post-Acute Care – Clayton, LLC & Johnston County Healthcare Properties, LLC**
- J-8540-10 Britthaven, Inc. d/b/a Britthaven of Johnston/Clayton**
- J-8539-10 Britthaven, Inc. d/b/a Britthaven of Johnston/Cleveland**

Our comments are organized to address specific discrepancies and questions separately for each individual application. Based on our analysis of the applications, our Johnston County Rehabilitation Center application represents the most effective alternative for meeting the needs of Johnston County and also is the only application that fully conforms to all the relevant review criteria, plans, and standards. We appreciate your consideration of our comments in your review process.

Sincerely,

Doug Whitman
Development Director
DWhitman@liberty-ltc.com
(910) 332-1982

Competitive Comments on Applications Submitted in Response to the Need Determination for 60 Skilled Nursing beds in Johnston County

Submitted by

Johnston County Rehabilitation Center
Liberty Healthcare Properties of West Johnston County, LLC
Liberty Commons Nursing and Rehabilitation Center of West Johnston County, LLC
Applicants of Project ID# J-8538-10

Overview

We have closely examined each of the applications referenced above for accuracy and to the extent that each meets the review criteria outlined in NC G.S. §131E-183. We discovered discrepancies and errors of varying severity in all three applications and found instances in each application where the applicants failed to adequately satisfy review criteria with the information and responses provided.

We have prepared two sections of comments: (1) General Comparative Comments: we will evaluate certain aspects of each proposal against the competing proposal, and (2) Individual Application Issues: we will highlight specific issues with each application. In all three competing applications there are flaws and issues of such a nature as to warrant each non-conforming to relevant review criteria. Therefore, we assert that Liberty's Johnston County Rehabilitation Center is the most effective alternative proposed to meet the needs of the residents of Johnston County, particularly those that are currently underserved, and is the only application submitted that fully conforms to the relevant review criteria, plans, and standards, and therefore, should be approved for development.

General Comparative Comments

The Liberty, Britthaven, and UniHealth Post-Acute Care – Clayton (UPAC-Clayton) applications all propose to develop new facilities, each with a different number of beds in response to the 2010 SMFP need determination for 60 new skilled nursing beds in Johnston County. Pursuant to NC G.S. §131E-183(a)(1) and the 2010 SMFP, no more than 60 new skilled nursing beds may be approved for Johnston County in this review. Because each of the four applications proposes to develop 60 new skilled nursing beds in Johnston County, only one of these applications may be approved. Liberty provides the comparative comments in this section to demonstrate the ways in which Liberty's Johnston County Rehabilitation Center application is comparatively superior to the other competing applications in this review. In order to determine the most effective alternative to meet the

identified need for 60 new skilled nursing facility beds in Johnston County, Liberty reviewed and compared the following factors in each application:

- Geographic Location
- Capital Costs
- Total project cost per square foot and bed
- Per Diem Rates
- Costs per Patient Day
- Access by County Residents
- Medicaid/Medicare payor mix
- Direct care staff hours per patient day

Liberty believes these factors are appropriate comparison factors that can yield some insight into the differences between the competing applications.

Geographic Location

Liberty proposes to construct a new facility in rural west Johnston County. We have strategically located this building to serve residents that reside in three townships with contiguous boundaries; Pleasant Grove, Cleveland, and Elevation Townships. We will refer to these three Townships as West Johnston County. Liberty determined that West Johnston County is experiencing significant growth in both its general population and its elder population. However, West Johnston County is still somewhat geographically removed from the more developed areas of Johnston County, with the closest developed area being Clayton. To supplement the 60 skilled nursing beds for which Liberty has applied at Johnston County Rehabilitation Center, Liberty plans to relocate 6 skilled nursing beds and 24 adult care home beds from a Liberty-owned building in Johnston County, Liberty Commons – in Benson. The Benson area has a surplus of beds both in skilled nursing and in adult care. West Johnston County is also an area with no existing skilled nursing or adult care facilities and thus Liberty's application will improve the equitable geographic distribution of beds in the county.

The Britthaven of Clayton and UPAC – Clayton applications both propose to locate their new nursing facilities in close proximity to the new Johnston Memorial Hospital Clayton Campus (See Exhibit 1). Both of these locations (Britthaven-Clayton and UPAC) are less than 2 miles from Brian Center Health and Rehabilitation of Clayton, a 90 bed skilled nursing facility currently operating in Clayton. These applications propose to locate in an area that is very convenient to the owners/operators, but will not improve the geographical distribution of beds in Johnston County.

Britthaven of Cleveland proposes to locate the new facility in the Cleveland Township, approximately 5.5 miles away from the existing Brian Center. While this location is a more positive step toward equitable distribution within the county, it is not the most effective alternative as it will still be located relatively close to an existing nursing home. Furthermore, as is discussed in more detail below, since this applicant does not control its property, it should have proposed two possible sites. However, Britthaven-Cleveland did not propose two different sites, as requested by the application, but rather subdivided a single site into two separate 10 acre

tracts. This is not in keeping with the intention of the CON instructions to provide two separate sites and because of its close proximity to Brian Center, it is not the most effective alternative in terms of geographical distribution of beds.

Capital Costs

The total capital cost proposed by each applicant is as follows:

<i>Applicant</i>	<i>Capital Cost</i>
Liberty	\$9,248,204
UPAC-Clayton	\$7,552,288
Britthaven-Clayton	\$10,607,069
Britthaven-Cleveland	\$9,871,060

Although UPAC-Clayton’s proposed capital cost is 18% lower than Liberty’s, Liberty proposes to develop 50% more beds in its facility than UPAC Clayton. Liberty recognizes that the CON Section does not always review capital costs as a comparative factor; however Liberty thought it beneficial to include this cost comparison for informational purposes.

Total Project Cost per Square Foot and per Bed

The total project costs per square foot and per bed for each applicant are as follows:

<i>Applicant</i>	<i>Total Cost per Square Foot</i>	<i>Total Cost per Bed</i>
Liberty	\$166	\$102,758
UPAC-Clayton	\$209	\$125,871
Britthaven-Clayton	\$170	\$106,071
Britthaven-Cleveland	\$158	\$98,711

Liberty’s West Johnston County Rehabilitation Center application proposes the second lowest overall costs per square foot and second lowest cost per bed of any applicant. Therefore, in terms of cost per square foot and cost per bed, Liberty and Britthaven-Cleveland are the more effective alternatives, while UPAC-Clayton and Britthaven-Clayton are the less effective alternatives.

Per Diem Rates

The per diem rates proposed by each applicant are as follows:

Private Pay

<i>Applicant</i>	<i>Private Pay (Private Room)</i>	<i>Private Pay (Semi-private Room)</i>
Liberty	\$195.00	\$185.00
UPAC-Clayton	\$210.00	\$193.23
Britthaven-Clayton	\$175.00	\$165.00
Britthaven-Cleveland	\$175.00	\$165.00

Medicare

<i>Applicant</i>	<i>Medicare Rate</i>
Liberty	\$413.11
UPAC-Clayton	\$438.15
Britthaven-Clayton	\$405.00
Britthaven-Cleveland	\$405.00

Medicaid

<i>Applicant</i>	<i>Medicaid Rate</i>
Liberty	\$158.14
UPAC-Clayton	\$163.18
Britthaven-Clayton	\$159.41
Britthaven-Cleveland	\$159.41

Liberty proposes the second lowest private pay rates and the second lowest Medicare rates, and proposes the lowest Medicaid rate of any applicant. UPAC-Clayton proposes the highest rate in all three categories, and thus is the least effective alternative of any application.

Costs per Patient Day

The following table summarizes each application's Year 2 direct and total operating costs per patient day (PPD) for general skilled nursing residents (excludes any adult care beds or special care unit beds):

<i>Applicant</i>	<i>Year 2 Direct Operating Costs PPD</i>	<i>Year 2 Total Operating Costs PPD</i>
Liberty	\$129.41	\$193.62
UPAC-Clayton	\$164.24	\$258.21
Britthaven-Clayton	\$130.32	\$195.97
Britthaven-Cleveland	\$130.32	\$195.97

Liberty projects the lowest Direct and Total operating costs PPD of any applicant. Therefore, with respect to providing quality, **cost-effective** care, Liberty represents the most effective alternative. UPAC-Clayton proposes the highest Direct and Total operating costs PPD of any applicant and is therefore the least effective alternative. Furthermore, UPAC-Clayton's proposed Total Operating Costs PPD are 23% higher than their highest long term care rate, thus bringing into question their ability to operate the facility cash flow positive.

Access by County Residents

The table below indicates the percentage of residents of Johnston County that are proposed to be served by each applicant in the first full year of operation:

<i>Applicant</i>	<i>% of Johnston County Residents Served in Year 1</i>
Liberty	85%
UPAC-Clayton	66.9%
Britthaven-Clayton	85%
Britthaven-Cleveland	85%

Liberty and Britthaven project to serve the highest percentage of residents from Johnston County and are therefore more effective alternatives than UPAC-Clayton.

Medicaid/Medicare Payor Mix

The following table illustrates the percentages of Medicare and Medicaid residents proposed to be served by each facility in the second full year for general skilled nursing residents (excluding ACH beds and SCU beds):

<i>Applicant</i>	<i>% Medicaid</i>	<i>% Medicare</i>
Liberty	68%	20%
UPAC-Clayton	60.3%	31%
Britthaven-Clayton	80%	15%
Britthaven-Cleveland	80%	15%

Direct Care Staff Hours PPD

The following table summarizes the total direct care hours per patient day and the direct care hours provided by licensed nursing staff (i.e. RN's and LPN's) per patient day for general skilled nursing (excluding ACH beds and SCU beds):

<i>Applicant</i>	<i>Total Direct Care Hours PPD</i>	<i>Licensed Staff Direct Care Hours PPD</i>
Liberty	4.168	1.246
UPAC-Clayton	3.5	1.3
Britthaven-Clayton	3.8	1.39
Britthaven-Cleveland	3.8	1.39

All applicants are on par with one another with regard to licensed nursing staff direct care hours, however Liberty's Johnston County Rehabilitation Center proposes the most total direct care hours PPD of any applicant and is therefore the most effective alternative.

Conclusion

In conclusion, Liberty's Johnston County Rehabilitation Center proposes the most direct care hours per patient day at the lowest operating costs of any application. Liberty's Johnston County Rehabilitation Center proposes very modest rates that are in line with rates currently charged by other existing facilities in Johnston County. Liberty's Johnston County Rehabilitation Center proposes to reserve a full two-thirds of its patient days for Medicaid dependent residents. Liberty will locate its new facility in a rural part of West Johnston County, in the Pleasant Grove Township, that is experiencing rapid growth and has demonstrated a strong need for both skilled nursing beds and adult care home beds.

The remaining pages of this document contain comments related to specific representations made in each individual application.

J-8541-10: UniHealth Post-Acute Care – Clayton, LLC & Johnston County Healthcare Properties, Inc. (UHS Pruitt)

- The applicants grossly misstated their revenue projections for all patient revenue sources (i.e. Private Pay, Medicare, Medicaid, and Hospice). According to Exhibit 63 of this application, the applicants received approval from Craig Smith, CON Section Chief, to include two different pro forma financial sets. According to page 192 of the application, the Form B included immediately following Section XII of the application utilized “the most recent quarterly data provided by DMA, April-June 2010 rates” and “Form B, in Exhibit 81, utilized the rates the May 12, 2010 Month Report instructs applicants proposing a new nursing facility pursuant to a need determination in the 2010 SMFP to use.” According to Exhibit 63, “Mr. Smith stated that all applicants must show revenue assumptions utilizing the rates posted in the May 12, 2010 Monthly Report. Mr. Smith then stated that it would be okay to show two proformas; one with the May 12 posted rates and one with the most recent DMA rates. Mr. Smith stated the alternate proforma results would affect only the revenue line.” However, upon examining the two separate Form B pro formas, it was noticed that *only* expenses were different between the two, and the revenue projections for Medicaid and Hospice were the same despite two different proposed rates. Upon further examination it was determined that the applicants completely miscalculated all projected patient revenues. Please see calculations below¹:

- For the 1st Full Fiscal Year revenues should be as follows according to projected patient days and rates in Sections IV and X, respectively:
 - Private Pay Revenue = Private Pay Patient Days x Private Pay Rate
 - 607 *Patient Days* × \$210.00 *per day* = \$127,470
 - Pages 228 and 1165 state that Private Pay Revenue will be \$130,200. This revenue is thus **overstated** by \$2,730.
 - Medicare Revenue = Medicare Patient Days x Medicare Rate
 - 5,371 *Patient Days* × \$438.15 = \$2,511,038
 - Pages 228 and 1165 state that Medicare Revenue will be \$2,216,122. This revenue is thus **understated** by \$294,916.
 - Medicaid Revenue = Medicaid Patient Days x Medicaid Rate
 - 11,291 *Patient Days* × \$158.95 *per day (May 12 Monthly Report Rate)* = \$1,794,704
 - 11,291 *Patient Days* × \$163.18 *per day (April – June DMA rate)* = \$1,842,465
 - Pages 228 and 1165 state that Medicaid Revenue will be \$2,225,816. This revenue is thus **overstated** by \$431,112 if measured against the \$158.95/diem rate and **overstated** by \$383,351 if measured against the \$163.18/diem rate.
 - Hospice Revenue = Hospice Patient Days x Hospice Rate

¹ Patient Days were extracted from pages 138 and 139 (Table IV.3) of the UPAC-Clayton application and rates were taken from pages 194 and 195 (Table X.4A and X.4B) and from pages 1162 and 1163 of the Exhibits Volume 2 from the UPAC-Clayton application.

- $941 \text{ Patient Days} \times \$158.95 \text{ per day (May 12 Monthly Report Rate)} = \$149,572$
 - $941 \text{ Patient Days} \times \$163.18 \text{ per day (April – June DMA rate)} = \$153,552$
 - Pages 228 and 1165 state that the Hospice Revenue will be \$182,019. This revenue is thus **overstated** by \$32,447 if measured against the \$158.95/diem rate and **overstated** by \$28,467 if measured by the \$163.18/diem rate.
- For the 2nd Full Fiscal Year revenues should be as follows according to projected patient days and rates in Sections IV and X, respectively:
- Private Pay Revenue = Private Pay Patient Days x Private Pay Rate
 - $730 \text{ Patient Days} \times \$210.00 \text{ per day} = \$153,300$
 - Pages 229 and 1166 state that Private Pay Revenue will be \$156,240. This revenue is thus **overstated** by \$2,940.
 - Medicare Revenue = Medicare Patient Days x Medicare Rate
 - $6,570 \text{ Patient Days} \times \$438.15 = \$2,878,646$
 - Pages 229 and 1166 state that Medicare Revenue will be \$2,712,085. This revenue is thus **understated** by \$166,561.
 - Medicaid Revenue = Medicaid Patient Days x Medicaid Rate
 - $12,775 \text{ Patient Days} \times \$158.95 \text{ per day (May 12 Monthly Report Rate)} = \$2,030,586$
 - $12,775 \text{ Patient Days} \times \$163.18 \text{ per day (April – June DMA rate)} = \$2,084,625$
 - Pages 229 and 1166 state that Medicaid Revenue will be \$2,517,440. This revenue is thus **overstated** by \$486,854 if measured against the \$158.95/diem rate and **overstated** by \$432,815 if measured against the \$163.18/diem rate.
 - Hospice Revenue = Hospice Patient Days x Hospice Rate
 - $1,095 \text{ Patient Days} \times \$158.95 \text{ per day (May 12 Monthly Report Rate)} = \$174,050$
 - $1,095 \text{ Patient Days} \times \$163.18 \text{ per day (April – June DMA rate)} = \$178,682$
 - Pages 229 and 1166 state that the Hospice Revenue will be \$211,582. This revenue is thus **overstated** by \$37,532 if measured against the \$158.95/diem rate and **overstated** by \$32,900 if measured by the \$163.18/diem rate.

The end result of these miscalculations is a net **overstatement** of profit in each of the first two full years of operation. If measured using the applicants' Medicaid and Hospice per diem rate of \$158.95 (which utilizes the data source that both Liberty and Britthaven used, per CON instruction) then the applicants' revenue was overstated by **\$171,373** in the 1st full year and overstated by **\$360,765** in the 2nd full year. This would result in a net **loss** of (\$391,551) in the 1st year and a net **loss** of (\$323,239) in the 2nd full year. These figures were calculated using the profit figures from Form B on pages 228 and 229 of the UPAC-Clayton application. This set of pro formas yields a higher profit than the pro formas on pages 1165 and 1166 (Exhibit 81), so the net losses according to Exhibit 81 would be (\$430,046) and

(\$366,454) in the first two years. If measured against the applicants' higher Medicaid/Hospice rate of \$163.18 per diem then the applicants' revenue was **overstated** by \$119,632 in the 1st year and \$302,094 in the 2nd year. The applicants have proposed a facility that is **not** financially feasible, as it is projected to lose between \$700,000 - \$800,000 in its first two years, depending on which rate and which pro forma is used for calculations. This error significantly increases the initial operating losses (as there is no positive cash flow in the foreseeable future) and therefore suggests that the initial operating period extends indefinitely. There is no evidence that UniHealth is able or willing to fund these significant long term operating losses.

Therefore, this application is non-conforming with Criterion 5.

- Page 109 – Applicants state, “the selected primary location is in an area that has no existing nursing facility beds.” This is not a true statement, as Brian Center Health and Rehabilitation (a 90 bed skilled nursing facility) is located 1.5 miles from the proposed primary site for UniHealth Post-Acute Care – Clayton.
- Page 128 – Applicants project 33% of its facility's residents will originate from Wake County. This proposal would therefore leave only 40 or so beds for Johnston County residents. The need determination in the 2010 SMFP is 60 beds for **Johnston County**. Thus, if the applicants take one-third of their patients from Wake County then they will not be meeting the need identified in the SMFP. **Thus the application is non-conforming to Criteria 1, 3, and 13.**
- Page 70 – Applicants state “Neighborhood design and **private** rooms will support hospice services.” However, pages 138-140 projects **all** hospice patient days to be in **semi-private** rooms.
- Page 217 – The applicants' projected time table states that the water and sewer extension (of approximately 1,000 ft according to page 203) will be completed and ready on the same day that the land is purchased, which is also the same day the applicants expect the CON to be awarded. It seems wholly unrealistic and unreasonable to assume that a sewer or water extension would be completed from start to finish in one day.

J-8540-10 Britthaven, Inc. d/b/a Britthaven of Johnston/Clayton

- Page 141 – Applicant was instructed to project utilization for the first **three** full federal fiscal years per IV.2 (b). However, the applicants failed to project utilization for the 3rd full year of operation.
- Pages 146 and 162 – On page 162 the applicant projects that 4% of its Alzheimer’s Unit Patients will be Medicare residents in the 2nd year of operation. However, on page 146 the applicant does not project any Alzheimer’s Medicare days in the 2nd year, nor does it project any Alzheimer’s Medicare revenue in the 2nd year on Form B on page 231.
- Page 231 – Applicant projects 5,202 Alzheimer’s Unit patient days in the 2nd full year. However, page 146 projects 4,993 patient days for this period. This represents a census difference of 209 resident days.
- Page 215 – The applicant proposes zero square feet to be made available for exam/treatment. A treatment room would be a highly beneficial area, especially in a skilled nursing setting, that allows the resident total privacy with his/her doctor.
- Page 213 – Applicant claims that the average room sizes will be 266 and 268 square feet for semi-private and private rooms, respectively. However, on page 215 it states that there will be 19,272 square feet for resident rooms and 5,148 square feet for resident bathrooms, totaling 24,420 square feet for an overall average room size of 244 square feet. If only considering the actual resident room, the average size is only 193 square feet.
- Page 222 – The applicant projects to submit preliminary drawings, final drawings, and to have final approval from the Construction Section, DFS all on March 1, 2011. It does not seem reasonable or logical to assume that the Construction Section will give final approval on the same day that it receives the preliminary drawings.
- The applicant projects the interest rate for its commercial loan to be 1.85%, and tied to the LIBOR. This is based on a daily floating rate and is very low compared to historical and traditional rates. Industry experts believe it is unreasonable to assume that LIBOR will remain at these historical lows in the long-term. Over time this rate will likely increase since the loan is not proposed to be at a fixed rate. This low rate of 1.85% will not likely be attainable even at the projected initial funding of the loan, since this is projected to be in January 2011. If this were to happen Britthaven’s costs could potentially be much higher. Liberty projected a conservative rate of 6.5% and could show higher profitability if using today’s current rates in the proformas.

Thus the applicant’s have not adequately addressed Criterion 5.

- Page 199 – Applicants state that the calculated Fair Rental Value (FRV) Rate is \$15.28, but they do not provide any explanation, assumptions, or methodology to show how this rate was calculated. The applicants state:

“Britthaven used a rate of \$159.41 in accordance with the following instructions from the June 2010 CON Section Monthly Report:

Applicants proposing a new nursing facility pursuant to a need determination in the 2010 SMFP should use the following rates:

Direct Rate: \$100.25
Indirect Rate: \$31.13
Nursing Home Assessment: \$12.75
Fair Rental Value Rate: \$15.28
Total NH rate: \$159.41”

Though Britthaven claims that the Fair Rental Value was provided, we do not believe it was provided. It is our understanding that it is the applicant's responsibility to calculate it, or to contact DMA regarding the appropriate rate. Since the applicants did not provide evidence of either, it is unclear whether the FRV rate is appropriate. Thus, it is unclear whether the financial projections provided are reliable.

J-8539-10 Britthaven, Inc. d/b/a Britthaven of Johnston/Cleveland

- Section XI – The applicant’s primary and secondary sites are two 10 acre tracts of the same 23 acre parcel. The applicant showed two shaded areas of one parcel to represent two potential sites. This is not adequate and completely defeats the purpose of providing two available sites. Because the applicant’s do not have control over the site, the owner could sell the entire parcel without subdividing it, or some other problem could arise that would make this parcel inadequate for use. If this were to occur, Britthaven would no longer have a viable site option for its proposal.
- Page 141 – Applicant was instructed to project utilization for the first **three** full federal fiscal years per IV.2 (b). However, the applicants failed to project utilization for the 3rd full year of operation.
- Pages 146 and 162 – On page 162 the applicant projects that 4% of its Alzheimer’s Unit Patients will be Medicare residents in the 2nd year of operation. However, on page 146 the applicant does not project any Alzheimer’s Medicare days in the 2nd year, nor does it project any Alzheimer’s Medicare revenue in the 2nd year on Form B on page 231.
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Fair Rental Value Rate: \$15.28

Total NH rate: \$159.41”

Though Britthaven claims that the Fair Rental Value was provided, we do not believe it was provided. It is our understanding that it is the applicant’s responsibility to calculate it, or to contact DMA regarding the appropriate rate. Since the applicants did not provide evidence of either, it is unclear whether the FRV rate is appropriate. Thus, it is unclear whether the financial projections provided are reliable.