



**Strategic
Healthcare
Consultants**



August 29, 2013

Mr. Craig Smith
Certificate of Need Section
Division of Facility Services
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: Written Comments Regarding Project Application # G-10160-13 Liberty Home
Care VI, LLC

Dear Mr. Smith:

I am writing on behalf of the CON applicant, Well Care Home Health. Please accept the attached written comments that were submitted regarding the above reference CON application.

Please do not hesitate to call me if I can answer any questions.

Sincerely,

David J. French
Consultant

Strategic Healthcare Consultants, Inc.
P.O. Box 2154
Reidsville, NC 27323
336.349.6250

Comments Regarding CON Project Application # G-10160-13 Liberty Home Care VI, LLC Submitted by Well Care Home Health

Liberty Home Care VI, LLC (“Liberty”) proposes to establish a new Medicare-certified home health agency in Forsyth County. The applicant projects service to 313 unduplicated patients in Year 1 and 330 unduplicated patients in Year 2.¹

The Liberty CON application is nonconforming to the CON review criteria as follows:

- (3) *The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.*

The Liberty application is nonconforming to CON Review Criterion (3) because the need methodology for projecting the numbers of unduplicated patients in Year 1 lacks adequate assumptions and explanations. Liberty also fails to explain if the projected numbers of patients to be served by the proposed agency in Forsyth County will be in addition to the expected numbers of Forsyth patients served by the existing Liberty Home Care offices in Davidson and Surry Counties.

In addition, the Liberty application fails to explain why a 5.43 percent increase in the numbers of unduplicated patients from Year 1 to Year 2 results in far greater increases in the numbers of duplicated patients, annual visits and the unsupported increase in the projected visits per patient from 14.67 in Year 1 to 16.99 in Year 2.

| | YR 1 | YR 2 | % Change |
|---|-------|-------|----------|
| Unduplicated Patients | 313 | 330 | 5.43% |
| Duplicated Patients | 676 | 786 | 16.27% |
| Projected Visits | 4592 | 5606 | 22.08% |
| Projected Visits per Unduplicated Patient | 14.67 | 16.99 | 15.79% |

The inconsistent numbers of visits per unduplicated patient in Year 2 as compared to Year 1 demonstrate that the Liberty methodology is defective. Therefore, the total annual visit projections that are based on these differing visits per year are unreliable for both Years 1 and 2.

The extent to which Liberty will provide access to Medicaid patients is provided on pages 35 and 39 showing 5.9% of duplicated patients and 3.6% of visits in Year 2. These percentages demonstrate that very few low income Medicaid patients are projected to be served by the proposed project.

¹Liberty’s pages 30 and 67 project 203 (Nurse) and 109 (PT) which is a total of 312, not 313, unduplicated patients in Year 1. Liberty’s Form B uses 313 unduplicated patients in Year 1 (page 58).

- (4) *Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.*

In Section II.5, Liberty describes the alternatives it considered. However, the Liberty application is not conforming to Criteria (3), (5), (7) and (18a). An applicant that does not conform to all Criteria is not an effective alternative. As discussed in the comments regarding Criterion (3), the Liberty methodology and assumptions are incomplete and unreasonable. The modest increase of 5.43 percent for the projected number of unduplicated patients from the first year to the second year is inconsistent with the 22.08 percent increase in total visits for Year 2. With unreliable projections for the annual visits, the financial projections are unreasonable. The Liberty application does not demonstrate the availability of funds or financial feasibility based on reasonable projections of costs and, therefore, is not conforming to Criterion (5). The Liberty application does not adequately demonstrate that it proposes adequate staffing for the visits it projects to perform during the second year of operation. Therefore, the Liberty application does not adequately demonstrate the availability of sufficient health manpower for provision of the services proposed. Consequently, Liberty is not conforming to Criterion (7). The Liberty application is also nonconforming to Criterion 13(c) because the proposed agency projects to serve a substandard number of Medicaid patients. The Liberty application does not adequately demonstrate that the expected effects of its proposal on competition in the service area include a positive impact on the cost effectiveness and quality of the proposed services. As a result, the Liberty application is not conforming to Criterion (18a). An application that cannot be approved is not an effective alternative. [Reference: 2012 Mecklenburg Home Health Review Findings, CON Project ID # F-10006-12, p. 45]

- (5) *Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.*

The Liberty application is nonconforming to Criterion (5) because the financial pro forma projections are based on unreliable projections for staffing levels and the numbers of patients and visits.

Liberty did not propose sufficient staffing for the number of visits projected to be performed per day in Project Year 2. Therefore, Liberty does not adequately demonstrate that total operating costs, including salaries, in Project Year 2 are reliable. Therefore, Liberty does not adequately demonstrate that the financial feasibility of its proposal is based on reasonable costs projections. See Criterion (7) for additional discussion, incorporated here. [Reference: 2012 Mecklenburg Home Health Review Findings, p. 60]

Liberty projects a positive net income in Year Two of its project. However, as explained below, Liberty's showing revenues that exceed operating costs is not based on reliable and reasonable costs projections. Consequently, Liberty does not adequately demonstrate that the financial feasibility of its proposal is based upon reasonable costs projections and the Liberty application is, therefore, nonconforming to Criterion (5).

Liberty failed to demonstrate financial feasibility “based upon reasonable projections of ... costs” because its Form B expense projections on pages 58 and 59 do not agree with the FTE and salary projections Liberty identified in Table VII.2 on page 45.

Having identified “reasonable projections of ... costs” for certain salaried positions in Section VII of its application, it was incumbent upon Liberty to use those projections in its demonstration of financial feasibility to show conformity with Criterion (5). As explained below, Liberty did not use the salary projections from Section VII in its Pro Forma projections. As a result, the Liberty cost projections are unsupported and unreliable.

For instance, in Table VII.2 on page 45, Liberty projects that in Year Two it will require the services of 1.0 FTE in the Aide position and identifies an average salary for that position as \$26,329.06 based on the salary.com (Winston Salem) median. However, on Form B, in order to project financial feasibility in Year Two, Liberty includes only \$13,535 in salary expense for the Aide position.

In Table VII.2, Liberty projects that it will require the services of 0.2 FTE for the Social Worker position and identifies an average salary for that position as \$44,999.14. Based on Table VII.2, Liberty would need to budget \$8,999.82 to cover the cost of 0.2 FTE hours for the Social Worker position. However, on Form B, in order to project financial feasibility in Year Two, Liberty includes only \$2,256 for the salary for the position of Social Worker.

In Table VII.2, Liberty projects that it will require the services of 2.0 FTE Physical Therapists; at the position average salary identified by Liberty, the associated cost would be \$151,641.36. However, on Form B, in order to project financial feasibility in Year Two, Liberty includes only \$129,875 in salary expense for Physical Therapists.

In other positions, Liberty has included more expense in its Form B as compared to the FTE and position average salary figures included in its Table VII.2. Different salary explanations are provided on different pages of the Liberty application. Notwithstanding, based on Liberty’s own Table VII.2, Liberty has failed to show financial feasibility on the basis of reasonable cost projections for the expenses associated with its Aides, Social Workers and Physical Therapists.

Although total visits increase, Liberty projects annual salary expenses for its RN and Physical Therapy positions to decrease between Years One and Two. The total salary expense projection for the Aide position increases only a few hundred dollars on the Liberty Form B despite the projection on page 45 to double the number of FTE Aide hours from 0.5 to 1.0 between Years One and Two. Liberty’s salary cost projections are not consistent, supported or credible.

As a result, Liberty has not demonstrated the use of “reasonable projections” of cost in its Pro Forma showing of financial feasibility.

| Liberty CON Application | Table VII.2 Projection, Page 45 | Form B Projection, Pages 58-59 | Understated Salary Expense By Position | Understated Salary Expense | Understated Taxes & Benefits* | Total |
|-------------------------|---------------------------------|--------------------------------|--|----------------------------|-------------------------------|-----------|
| Aide | 26,329.06 | 13,535 | 12,794.06 | | | |
| Social Worker | 8,999.82 | 2,256 | 6,743.82 | | | |
| Physical Therapist | 151,641.36 | 129,875 | 21,766.36 | | | |
| | | | | 41,304.24 | 11,028 | 52,332.47 |

*Based on Taxes and Benefits as a percent of Total Salary as shown on Liberty’s Form B (Total Salary Expense \$419,874 / Total Taxes and Benefits \$112,287)

Liberty failed to show financial feasibility on the basis of reasonable costs projections as required by Criterion (5). Had Liberty incorporated the full extent of its own projections of the reasonable salary expense for the positions noted above plus taxes and benefits for those positions per Liberty’s Table VII.2 (p. 45), it would have shown over \$52,000 in additional expense on its Form B. [Reference: 2003 Planning Area 13 Fixed MRI Review Findings, p. 25]

Inasmuch as Liberty only projected a Net Operating Income of \$49,819 in Year 2, Liberty’s failure to include \$52,332 in salary-related expenses results in a failure to demonstrate financial feasibility as required by Criterion (5).

Availability of Funds – In Section VIII.1, Liberty projects the capital cost of its project to be \$27,100. In Section IX.2, Liberty projects start-up expenses to be \$125,280 and initial operating expenses to be \$173,372, for total projected working capital of \$298,652. In Section IX, Liberty states that its source of funding is Owner Equity (John A. McNeill, Jr. and Ronald B. McNeill) in the amount of \$298,652.

Exhibit 13 contains a letter from Joel White, CPA, attesting that John A. McNeill, Jr. and Ronald B. McNeill each have in excess of \$250,000 in cash, stocks, or short term investments. Exhibit 13 contains a July 1, 2013 letter from John A. McNeill, Jr. and Ronald B. McNeill, which states:

“We have both agreed and are both committed to personally funding the proposed project, including all capital expenditures and working capital, estimated to be approximately three-hundred thousand dollars (\$300,000).”

However, the letter in Exhibit 13 only commits to funding of approximately \$300,000, which is sufficient for the \$298,652 in total projected working capital needs of the project but not for the \$27,100 in capital cost expenses. Therefore, Liberty does not adequately demonstrate the availability of sufficient funds for both the total capital cost and working capital cost needs of its project, which total \$325,752. [Reference: 2010 Charlotte Area Single Specialty OR Demonstration Project Findings, CON Project ID # F-8545-10, p.

55] See *also* Retirement Villages, Inc. v North Carolina Dept. of Human Resources 124 N.C. App. 495, 477 S.E. 2nd 697 (1996).

In summary, Liberty did not adequately demonstrate that the financial feasibility of its proposal is based upon reasonable operating cost projections and did not demonstrate the availability of funds. Therefore, the Liberty application is not conforming to this criterion.

- (7) *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.*

The Liberty application fails to conform to CON Review Criterion (7) because the application lacks adequate management personnel and the staffing assumptions are unreliable. Page 45 of the application shows a 0.33 FTE Operations Manager and a 0.40 FTE Patient Care Coordinator. With this substandard level of staffing, the proposed agency will have no management personnel for over 25 percent of the time each week. Liberty fails to demonstrate that the proposed new home health agency has adequate management personnel to supervise and train the staff and provide comprehensive and high quality home health services.

Page 82 of the application includes the assumption “2 hours of the current Social Worker’s [time] is allocated to this office.” In contrast, page 45 of the application shows a 0.20 FTE for Social Worker position which is 10 hours per week. The proposed project’s shared staffing arrangement means that if an operations manager, patient care coordinator or social worker are on vacation or the position becomes vacant, then multiple home health agencies will lack sufficient manpower for the provision of home health services.

To determine if Liberty’s proposed staffing for Project Year 2 is sufficient, projected visits were divided by the visits per day assumption, which results in the total work days required to complete the visits. The resulting quotient is divided by 260 work days per year (2,080 work hours per year per FTE position / 8 hours per day = 260 work days per year). This results in the number of required FTE positions. The number of required FTE positions can then be compared to the number of projected FTE positions provided by the applicant in Section VII of the application. This calculation was performed as follows:

| Discipline | Projected Visits Project Year 2 (Section IV) (A) | Visits per Day Project Year 2 (Section VII) (B) | Required FTE Positions | Projected FTE Positions Project Year 2 (Section VII) |
|------------------|---|--|------------------------|--|
| Speech Therapist | 253 | 5 | 0.19 | .03 |

Liberty’s projected FTE positions in Project Year 2 are less than the required FTE positions (as calculated) for speech therapists.

Liberty did not adequately demonstrate that it proposes adequate staffing for the visits it projects to perform during the second year of operation. Therefore, Liberty did not

adequately demonstrate the availability of sufficient health manpower for the provision of proposed services. Consequently, Liberty is not conforming to this criterion. [Reference: 2012 Mecklenburg Home Health Review Findings, pp. 83-84]

13 (c) *That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services;*

The Liberty application is nonconforming to Criterion 13(c) because the proposed agency projects to provide a substandard level of access for Medicaid patients. Page 39 of the Liberty application indicates that the proposed agency will serve 5.9 percent Medicaid patients and Medicaid visits will comprise only 3.6 percent of the total visits for the agency. The following table provides the 2012 percentages of patients by payor category for existing home health providers located in Forsyth County.

| 2012 Data Section D Percentages of Patients by Payor Category | | Medicare + Medicare HMO | Medicaid + Medicaid HMO | Private Insurance + Private HMO | Indigent Non-Pay | Other |
|---|--|-------------------------|-------------------------|---------------------------------|------------------|-------|
| HC0499 | Advance Home Care | 35.5% | 8.3% | 54.1% | 2.1% | 0.0% |
| HC0567 | Gentiva Health Services | 50.9% | 7.3% | 41.8% | 0.0% | 0.0% |
| HC1304 | Amedisys Home health of Winston-Salem | 56.8% | 5.7% | 37.2% | 0.3% | 0.0% |
| HC0231 | Gentiva Health Services | 52.6% | 28.7% | 18.7% | 0.0% | 0.0% |
| HC1210 | Gentiva Health Services | 53.5% | 16.6% | 29.9% | 0.0% | 0.0% |
| HC0005 | Bayada Nurses (Previously Home Health P) | 60.7% | 8.3% | 31.0% | 0.0% | 0.0% |
| HC1131 | Gentiva Health Services | 56.6% | 27.7% | 15.7% | 0.0% | 0.0% |
| HC1886 | Interim HealthCare of the Triad | 15.1% | 34.4% | 50.5% | 0.0% | 0.0% |
| HC0409 | Hospice and Palliative Care Center | 61.4% | 13.6% | 20.5% | 2.3% | 2.3% |

Sources: 2013 Home Health License Renewal Applications, Data Supplements

Existing home health agencies located in Forsyth County reported a combined total of 1,253 Medicaid patients which represents 11.72 percent of their combined total of 10,687 patients served. The Medicaid projection of 5.9 percent of total patients by Liberty is well below the percentage of Medicaid patients served by the majority of the existing providers.

(18a) *The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.*

The Liberty application fails to conform to Criterion (18a) because Liberty failed to demonstrate that the financial feasibility of its proposed project is based on reasonable cost projections. Therefore, Liberty does not adequately demonstrate that the expected effects of its proposal on competition include a positive impact on cost-effectiveness. See Criterion (5) for discussion regarding cost projections. The Liberty application's cost projections are not supported and are not credible. Specifically, the salary expenses used in the Liberty Form B are understated and do not agree with the salary projections identified by Liberty in its Table VII.2, p. 45.

Liberty does not project adequate staffing in Project Year 2 for the level of services proposed and does not adequately demonstrate that the projected operating costs, including salaries, are reliable. See Sections II, III, VII, X and the pro forma financial statements. See also Criteria (5) and (7) for additional discussion, incorporated here. Therefore, Liberty does not adequately demonstrate that the expected effects of the proposed services on competition in the proposed service area include a positive impact on the cost effectiveness and quality of the services proposed. Therefore, the Liberty application is non-conforming to this criterion. [Reference: 2012 Mecklenburg County Home Health Review Findings, p. 113]

The Liberty proposal does nothing to enhance competition in the Forsyth County market because existing Liberty agencies in adjoining counties are already serving Forsyth County residents. The proposed project will not enhance access for Medicaid patients as explained in the comments regarding Criterion 13(c). Cost effectiveness has not been demonstrated because the utilization projections are flawed and the financial statement assumptions are inconsistent with the staffing information.

Criteria and Standards

In addition to the CON review criteria described above, the Liberty application is also nonconforming to certain Criteria and Standards for Home Health Services as outlined below:

10A NCAC 14C .2002 Information Required of the Applicant

(a) An applicant shall identify:

(4) the projected number of patients to be served by service discipline for the first two years of operation

(5) the projected number of visits to be served by service discipline for the first two years of operation

Liberty fails to provide reasonable projections for the numbers of patients and the numbers of visits, causing the application to be nonconforming to these criteria. The Liberty application fails to explain why a 5.43 percent increase in the numbers of unduplicated patients from Year 1 to Year 2 results in far greater increases in the numbers of duplicated patients and annual visits and an increase in the projected visits per patient from 14.67 in Year 1 to 16.99 in Year 2.

| | YR 1 | YR 2 | % Change |
|---|-------|-------|----------|
| Unduplicated Patients | 313 | 330 | 5.43% |
| Duplicated Patients | 676 | 786 | 16.27% |
| Projected Visits | 4592 | 5606 | 22.08% |
| Projected Visits per Unduplicated Patient | 14.67 | 16.99 | 15.79% |

The inconsistent numbers of visits per unduplicated patient in Year 2 as compared to Year 1 are not explained in the application. Therefore, the total annual visits projections that are based on these differing visits per year are unreliable for both Years 1 and 2.

10A NCAC 14C.2002

(b) An applicant shall specify the proposed site on which the office is proposed to be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify an alternate site. The applicant shall provide documentation from the owner of the sites or a realtor that the proposed and alternate site(s) are available for acquisition.

In Section XI, page 55, Liberty identifies only one site for the proposed Medicare-certified home health agency. Exhibit 15 consists of an email and memo from a Property Manager stating terms and the name of the Landlord. Exhibit 15 does not document that the site is available for acquisition. Even if Exhibit 15 is considered sufficient to show availability of the site identified by Liberty, Liberty did not provide documentation that the proposed site is “owned by or under the control of” Liberty and did not identify an alternate site. Therefore, the Liberty application is nonconforming with this Rule. [Reference: 2012 Wake County Home Health Review Findings, p. 75]

Comparative Analysis

In addition to the comments regarding the CON review criteria and administrative rule, Well Care provides the comparative analysis as seen on the following pages.

Pursuant to G.S. 131E-183(a)(1) and the 2013 SMFP, no more than one new Medicare-certified home health agency or office may be approved for Forsyth County in this review. Because each applicant proposes to develop a new Medicare-certified home health agency in Forsyth County, all four applicants cannot be approved. Therefore, after considering all of the information in each application and reviewing each application individually against all applicable statutory and regulatory review criteria, a comparative analysis of the proposals must be conducted. For the reasons set forth below and in the remainder of these comments, the application submitted by Well Care should be approved and all other applications should be disapproved.

Patient Population / Scope of Home Health Services

Well Care, Liberty and Maxim propose to provide home health services to adults and pediatric patients. In contrast, UniHealth chooses not to serve pediatric patients and is the least effective proposal for this factor. [Reference: 2012 HSA IV Inpatient Rehabilitation Beds Findings, finding WakeMed (Project ID # J-100018-12) the most effective alternative with regard to providing a broader scope of rehabilitation services (p. 137); approving WakeMed based in part on its proposal to offer a “greater scope of ... services than the other applicants propose” (p.146); and approving

Duke Raleigh (Project ID # J-10021-12) in part on its proposal to offer a scope of services that addresses a growing patient population]

Use of Electronic Health Records and Lap Top Computers

Well Care, UniHealth and Maxim propose to utilize electronic health records and lap top computers. The Liberty application fails to document the use of these technologies and is the least effective proposal for this factor. [Reference: 2012 Autumn Care of Statesville Findings, Project ID # F-8757-11, noting electronic health records system as an innovative approach]

Use of Telemonitoring Systems

Well Care, UniHealth and Liberty propose to utilize telemonitoring systems. The Maxim application fails to document the use of telemonitoring and is the least effective proposal for this factor.

Demonstration of Need

Liberty did not demonstrate that its proposed utilization is based upon reasonable and supported assumptions. See Criterion (3) for discussion. [Reference: 2012 HSA IV Inpatient Rehabilitation Beds, Project ID # J-10022-12]

Conformity with Review Criteria

The application submitted by Well Care is conforming to all applicable statutory and regulatory criteria and standards for home health agency reviews. However, the applications submitted by Liberty, Maxim and UHS are not conforming to all applicable statutory and regulatory criteria and standards for home health agency reviews. See discussion above.

Applicant Reputability

The choice of comparative factors is left to the discretion of the Agency. North Carolina law makes it clear that the Comparative Analysis performed by the Agency is a matter within its discretion. There is no statute or rule which requires the Agency to utilize certain comparative factors. In its Comparative Analysis, the Agency may include other “findings and conclusions upon which it based its decision.” See N.C. GEN. STAT. § 131E–186(b). Those additional findings and conclusions give the Agency the opportunity to explain why it finds one applicant preferable to another on a comparative basis.

In the circumstances of this review, Maxim is a less preferable applicant on the basis of the following:

In its CON application, Maxim relies on statements which characterize Maxim as “one of the largest and fastest growing healthcare companies in North America” and indicates that Maxim “has earned a reputation for dedication to customer service and for the quality of [its] healthcare professionals.” (p. 6). Although such statements appear to be intended as general support for Maxim’s projections regarding referrals and future utilization of its proposed Forsyth County project, the reliability and reasonableness of these assertions is questionable based on other information publicly available or included in the Maxim application.

While Maxim describes the reforms and remedial actions it has taken to improve its operations, the facts nonetheless indicate that Maxim was charged in a criminal complaint with conspiracy

to commit health care fraud relating to a nationwide scheme to defraud the Medicaid program and the Veterans Affairs program of more than \$61 million based on billings for home health services that were not actually delivered. In September 2011, Maxim entered into a Deferred Prosecution Agreement with the United States Department of Justice, allowing the corporation to avoid a health care fraud conviction.

In November 2011, eight former Maxim employees pled guilty to and were sentenced on felony charges arising out of the submission of fraudulent billings to government health care programs, the creation of fraudulent documentation associated with government program billings and false statements to government health care program officials regarding Maxim's activities. Gregory Munzel, regional account manager of Maxim's Charleston, South Carolina office, acknowledged fabricating documentation to make it appear that caregivers were properly credentialed when, in fact, they were not. In response to sales pressure from superiors to generate more revenue, Maxim employees fabricated time sheets and submitted bills for services delivered by unlicensed offices.

Based on the above, the Maxim CON application for Forsyth County is premised upon statements regarding the Company's forecasted growth and reputation which are called into question by facts regarding its recent history of fraud allegations and the felony convictions of its personnel. As a result, Maxim is a less preferable applicant as compared to other applicants in this review.

Moreover, the Maxim CON application for Forsyth County is likewise premised on what Maxim describes as its "sufficient financial resources." (p. 122). Maxim indicates its intent to rely on the "Unrestricted Cash of Maxim" for its project. See Criterion (5) for discussion. Maxim includes audited financial statements indicating approximately \$6.6 million in cash and cash equivalents as of December 31, 2012.

Yet, in North Carolina alone, Maxim identifies three CON projects (two approved and one pending) that will involve capital expenditure commitments and working capital needs. (p. 121). In addition, Maxim indicates that it owns and operates 246 home health offices in states other than North Carolina. (p. 5)

Maxim's Consolidated Financial Statements, included in its CON application in this review, indicate that Maxim experienced a company-wide Net Loss from operations of \$13.6 million in 2011 and \$21.8 million in 2012. At December 31, 2012 and 2011, respectively, Maxim recorded liability of \$71.2 million and \$71.5 million, within Other Accrued Expenses associated with the settlement of the fraud investigation. Of this liability, \$70.9 million and \$71.2 million are classified as long-term. Future interest costs associated with the settlement are estimated to be \$5.2 million. Maxim's cash and cash equivalents decreased from \$10 million in 2011 to \$6.6 million in 2012. Maxim's total asset value declined from \$310 million to \$254 million between 2011 and 2012. Stockholders' equity in common stock was valued at \$4,000 as of 2012. Effective December 31, 2012, the Maxim Board of Directors approved a revaluation of all authorized shares of common stock, resulting in a 70% decrease in the per share price of Maxim stock.

Based on the marked downward trend depicted in Maxim's financial statements and the potentially significant long-term financial implications of recent fraud allegations and felony convictions involving Maxim and its employees, Maxim is a less preferable applicant as compared to the other applicants in this review.

Projected Access by Medicare Recipients

For each applicant in this review, the following table compares: a) the total number of duplicated patients in Project Year 2; b) the number of duplicated Medicare patients in Project Year 2; and c) duplicated Medicare patients as a percentage of total duplicated patients. Generally, the application proposing the higher number of Medicare patients is the more effective alternative with regard to this comparative factor. The applications are listed in the table below in decreasing order of effectiveness based on the number of Medicare patients projected to be served.

Project Year 2

| Rank | Applicant | Total Number of Duplicated Patients | Number of Duplicated Medicare Patients | Duplicated Medicare Patients as a Percentage of Total Duplicated Patients |
|-------------|------------------|--|---|--|
| 1 | Well Care | 1241 | 844 | 68.0% |
| 2 | UniHealth | 808 | 579 | 71.7% |
| 3 | Liberty | 786 | 515 | 65.5% |
| 4 | Maxim | 587 | 388 | 66.1% |

As shown in the table above, Well Care projects to serve the highest number of duplicated Medicare patients in Project Year 2. UniHealth projects the second highest. However, the UniHealth projections of total patients and visits are unreliable due to the erroneous projections for home health aides and home health visits. See Criterion 3 for discussion. Liberty projects the third highest. The application submitted by Well Care is the most effective alternative with regard to projected access by Medicare recipients.

Projected Access by Medicaid Recipients

For each applicant in this review, the following table compares: a) the total number of duplicated patients in Project Year 2; b) the number of duplicated Medicaid patients in Project Year 2; and c) duplicated Medicaid patients as a percentage of total duplicated patients. Generally, the application proposing the higher number of Medicaid patients is the more effective alternative with regard to this comparative factor.

The applications are listed in the table below in decreasing order of effectiveness based on the number of Medicaid patients projected to be served.

Project Year 2

| Rank | Applicant | Total Number of Duplicated Patients | Number of Duplicated Medicaid Patients | Duplicated Medicaid Patients as a Percentage of Total Duplicated Patients |
|-------------|------------------|--|---|--|
| 1 | Well Care | 1241 | 332 | 26.75% |
| 2 | UniHealth | 808 | 119 | 14.73% |
| 3 | Maxim | 786 | 106 | 13.49% |
| 4 | Liberty | 587 | 45 | 7.67% |

As shown in the table above, Well Care projects to serve the highest number of duplicated Medicaid recipients and the highest percentage of duplicated Medicaid patients as a percentage of total duplicated patients in Project Year 2. UniHealth projects the second highest number of Medicaid patients. Maxim projects the third highest percentage. The application submitted by Well Care is the most effective alternative in this review with regard to access by Medicaid recipients.

Well Care projects to serve the highest Medicaid access patient percentage (26.75%) and the highest Medicare access visit percentage (21.59%). UniHealth projects the second highest Medicaid access patient percentage (14.73%) and the second highest Medicare access visit percentage (15.86%). However, the UniHealth projections of total patients and visits are unreliable due to the erroneous projections for home health aides and home health visits as discussed in the Criterion 3 comments. Liberty projects the lowest Medicaid access patient percentage (7.67%) and the lowest Medicaid access visit percentage (3.6%). Maxim projects the second lowest Medicaid access patient percentage (13.49%) and the second lowest Medicare access visit percentage (11.33%). Based on an access comparative analysis, the Well Care application is the superior proposal. The UniHealth application is the least effective proposal because its projections are not based on reasonable assumptions and calculations regarding the projected numbers of patients and visits.

Projected Numbers of Unduplicated Patients (Year 2)

Well Care projects the highest numbers of unduplicated patients based on reasonable assumptions. Maxim projects the second highest unduplicated patients. Liberty projects the lowest number of unduplicated patients. The UniHealth application has inconsistent information regarding the number of unduplicated patients in Year 2 based on the 581, 582 and 583 projections as discussed in the Criterion 3 comments related to this proposal. The Well Care application is most effective and is comparatively superior to the other applications; the UniHealth application is the least effective.

Average Number of Visits per Unduplicated Patient

The majority of home health services are covered by Medicare, which does not reimburse on a per visit basis. Rather, Medicare reimburses on a per episode basis. Thus, there is a financial disincentive to providing more visits per Medicare episode. The following table shows the average number of visits per unduplicated patient projected by each applicant in Project Year 2. Generally,

the application proposing the highest number of visits per unduplicated patient is the more effective alternative with regard to this comparative factor. The applications are listed in the table below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Number of Unduplicated Patients | Projected Number of Visits | Average Number of Visits per Unduplicated Patient |
|-------------|------------------|--|-----------------------------------|--|
| 1 | UniHealth | 583 | 13,307 | 22.83 |
| 2 | Well Care | 591 | 13,183 | 22.30 |
| 3 | Maxim | 542 | 12,046 | 22.23 |
| 4 | Liberty | 330 | 5,606 | 16.99 |

As shown in the table above, Well Care projects the second highest visits per patient (22.3) and second highest total visits (13,183) based on reasonable assumptions. UniHealth projects the highest visits per patient (22.83) and second highest total visits (13,307). However, the UniHealth projections of total patients and visits are unreliable due to the erroneous projections for home health aides and home health visits as discussed in the Criterion 3 comments. Maxim projects the second lowest visits per patient (22.23) and second lowest total visits (12,046). Liberty projects the lowest visits per patient (16.99) and lowest total visits (5,606). The Well Care application is most effective and comparatively superior to the other applications and the UniHealth application is the least effective due to erroneous projections of visits.

Average Net Patient Revenue per Visit

Average net revenue per visit in Project Year 2 was calculated by dividing projected net revenue from Form B by the projected number of visits from Section IV, as shown in the table below. Generally, the application proposing the lowest average net revenue per visit is the more effective alternative with regard to this comparative factor. The applications are listed in the table below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Total Number of Visits | Net Patient Revenue | Average Net Patient Revenue per Visit |
|-------------|------------------|-------------------------------|----------------------------|--|
| 1 | Well Care | 13,183 | \$1,593,202 | \$ 120.85 |
| 2 | UniHealth | 13,307 | \$1,678,022 | \$ 126.10 |
| 3 | Maxim | 12,042 | \$1,682,838 | \$ 136.75 |
| 4 | Liberty | 5,606 | \$833,837 | \$ 148.74 |

As shown in the table above, the Well Care application projects the lowest average net revenue per visit (\$120.85). The UniHealth application projects the second lowest average net revenue per visit (\$126.10) but its visit projections are unreliable. The Liberty application projects the highest average net revenue per visit (\$148.74). The Maxim proposal contains the second highest average net revenue per visit (\$139.75). The Well Care application is the most effective and is comparatively superior to the other applications; the UniHealth application is the least effective due to erroneous visits projections.

Average Net Revenue per Unduplicated Patient

Average net revenue per unduplicated patient in Project Year 2 was calculated by dividing projected net revenue from Form B by the projected number of unduplicated patients from Section IV, as shown in the table below. Generally, the application proposing the lowest average net revenue per unduplicated patient is the more effective alternative with regard to this comparative factor. The applications are listed in the table below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Number of Unduplicated Patients | Net Patient Revenue | Average Net Patient Revenue per Unduplicated Patient |
|------|-----------|---------------------------------|---------------------|--|
| 1 | Liberty | 330 | \$833,833 | \$ 2,526.78 |
| 2 | Well Care | 591 | \$1,593,202 | \$ 2,695.02 |
| 3 | Maxim | 587 | \$1,682,838 | \$ 2,866.84 |
| 4 | UniHealth | 582 | \$1,678,022 | \$ 2,878.25 |

As shown in the table above, the Well Care application provides the second lowest net revenue per unduplicated patient. The UniHealth application provides the highest net revenue per unduplicated patient. Also, the UniHealth application contains inconsistent information regarding the number of unduplicated patients in Year 2. The Liberty application projects the lowest net revenue per unduplicated patients. The Maxim application provides the second highest net revenue per unduplicated patient. The Liberty application is the most effective proposal and the Well Care application is the second most effective proposal. The UniHealth application is the least effective due to having the highest net revenue and inconsistent projections regarding unduplicated patients.

Average Total Operating Cost per Visit

The average total operating cost per visit in Project Year 2 was calculated by dividing projected operating costs from Form B by the total number of visits from Section IV, as shown in the table below. Generally, the application proposing the lowest average total operating cost per visit is the more effective alternative with regard to this comparative factor. The applications are listed in the table below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Total # of Visits | Total Operating Costs | Average Total Operating Cost per Visit |
|------|-----------|-------------------|-----------------------|--|
| 1 | Well Care | 13,183 | \$1,478,323 | \$ 112.14 |
| 2 | Maxim | 12,042 | \$1,637,427 | \$ 122.16 |
| 3 | UniHealth | 13,307 | \$784,018 | \$ 123.05 |
| 4 | Liberty | 5,606 | \$1,471,014 | \$ 139.85 |

As shown in the table above, Well Care projects the lowest average total operating cost per visit in Project Year 2. The application submitted by Well Care is the most effective alternative with regard to average total operating cost per visit.

The UniHealth application provides the second highest cost per visit (\$123.05) but its visit projections are unreliable. The Liberty application projects the highest average total cost per visit (\$139.85) and its costs are inaccurate and understated due to discrepancies regarding staffing levels and salaries. The Maxim application projects the second lowest average total cost per visit (\$122.16). The Well Care application is the most effective and is comparatively superior to the other applications; the UniHealth application and the Liberty application are the least effective due to erroneous projections.

Average Direct Care Operating Cost per Visit

The average direct care operating cost per visit in Project Year 2 was calculated by dividing projected direct care expenses from Form B by the total number of home health visits from Section IV, as shown in the table below. Generally, the application proposing the lowest average direct care operating cost per visit is the more effective alternative with regard to this comparative factor. The applications are listed in the table below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Total Number of Visits | Total Direct Care Costs | Average Direct Care Operating Cost per Visit |
|-------------|------------------|-------------------------------|--------------------------------|---|
| 1 | Liberty | 5,606 | \$421,683 | \$ 75.22 |
| 2 | Well Care | 13,183 | \$1,071,382 | \$ 81.27 |
| 3 | Maxim | 12,042 | \$1,053,675 | \$ 87.50 |
| 4 | UniHealth | 13,307 | \$1,226,506 | \$ 92.17 |

As shown in the table above, the Well Care application projects the second lowest average direct operating cost per visit (\$81.27). The UniHealth application projects the highest average direct operating cost per visit (\$92.17) but the UniHealth visit projections are unreliable. The Liberty application projects the lowest direct operating cost per visit (\$75.22); however, its costs are inaccurate and understated due to discrepancies regarding staffing levels and salaries. The Maxim application projects the second highest average direct operating cost per visit (\$87.50). The Well Care application is the most effective and is comparatively superior to the other applications; the UniHealth application and the Liberty application are the least effective due to erroneous projections.

Average Administrative Operating Cost per Visit

The average administrative operating cost per visit in Project Year 2 was calculated by dividing projected administrative operating costs from Form B by the total number of visits from Section IV.1, as shown in the table below. Generally, the application proposing the lowest average administrative operating cost per visit is the more effective alternative with regard to this comparative factor.

The applications are listed below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Total # of Visits | Administrative Costs | Average Administrative Operating Cost per Visit |
|-------------|------------------|--------------------------|-----------------------------|--|
| 1 | Well Care | 13,183 | \$406,954 | \$ 30.87 |
| 2 | UniHealth | 13,307 | \$410,852 | \$ 30.87 |
| 3 | Maxim | 12,042 | \$417,399 | \$ 34.66 |
| 4 | Liberty | 5,606 | \$362,319 | \$ 64.93 |

As shown in the table above, Well Care and UniHealth project the lowest average administrative operating cost per visit in Project Year 2. Maxim projects the next lowest. Although the UniHealth application provides the same administrative cost per visit (\$30.87) as Well Care, the UniHealth visit projections are unreliable. The Liberty application projects the highest administrative cost per visit (\$64.93). The Maxim application projects the second lowest administrative total cost per visit (\$34.66). The Well Care application is the most effective and is comparatively superior to the other applications; the UniHealth application is the least effective due to erroneous projections of visits.

Ratio of Average Net Revenue per Visit to Average Total Operating Cost per Visit

Well Care projects a ratio of total revenue to total expense of 1.08 based on reasonable operational and financial projections. UniHealth projects a ratio of total revenue to total expense of 1.03. However, the UniHealth projections of total patients and visits are unreliable due to the erroneous projections for home health aides and home health visits as discussed in the Criterion 3 comments. Consequently the UniHealth financial projections are inaccurate. Liberty projects a ratio of total revenue to total expense of 1.06. However, the Liberty costs are inaccurate and understated due to discrepancies regarding staffing levels and salaries. Maxim projects the highest ratio of total revenue to total expense of 1.14. The Well Care application is the most effective and is comparatively superior to the other applications; the UniHealth application and the Liberty application are the least effective due to erroneous projections.

Average Direct Care Operating Cost per Visit as a Percentage of Average Total Operating Cost per Visit

The percentages in the table below were calculated by dividing the average direct care cost per visit in Project Year 2 by the average total operating cost per visit in Project Year 2. Generally, the application proposing the highest percentage is the more effective alternative with regard to this comparative factor.

The applications are listed in the table below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Average Total Operating Cost per Visit (A) | Average Direct Care Operating Cost per Visit (B) | Average Direct Care Operating Cost as a % of Average Total Cost per Visit (B / A) |
|-------------|------------------|---|---|--|
| 1 | UniHealth | \$123.05 | \$92.17 | 74.90% |
| 2 | Well Care | \$112.14 | \$81.27 | 72.47% |
| 3 | Maxim | \$122.16 | \$87.50 | 71.62% |
| 4 | Liberty | \$139.85 | \$75.22 | 53.79% |

As shown in the table above, the Well Care application projects the second highest direct cost per visit as a percent of total operating cost per visit (72.47%). The UniHealth application projects the highest direct cost per visit as a percent of total operating cost per visit (74.90%). However, the UniHealth projections of total patients and visits are unreliable due to the erroneous projections for home health aides and home health visits as discussed in the Criterion 3 comments. The Liberty application projects the lowest direct cost per visit as a percent of total operating cost per visit (53.79%) and Liberty's costs are inaccurate and understated due to discrepancies regarding staffing levels and salaries. The Maxim application projects the second lowest direct cost per visit as a percent of total operating cost per visit (71.62%). The Well Care application is the most effective and is comparatively superior to the other applications; the UniHealth application and the Liberty application are the least effective due to erroneous cost projections.

Nursing and Home Health Aide Salaries in Project Year 2

All applicants propose to provide nursing and home health aide services with staff that are employees of the proposed home health agency. The tables below compare the proposed annual salary for registered nurses, licensed practical nurses and home health aides in Project Year 2. Generally, the application proposing the highest annual salary is the more effective alternative with regard to this comparative factor. The applications are listed below in decreasing order of effectiveness.

Project Year 2

| Rank | Applicant | Registered Nurse |
|-------------|------------------|-------------------------|
| 1 | UniHealth | \$ 78,056.00 |
| 2 | Well Care | \$ 77,662.00 |
| 3 | Maxim | \$ 77,080.00 |
| 4 | Liberty | \$ 66,010.00 |

As shown in the table above, the Well Care application projects the second highest RN salary (\$77,662). The UniHealth application projects the highest RN salary (\$78,056). Liberty projects the lowest RN salary (\$66,010). Maxim projects the second lowest RN salary (\$77,080). The UniHealth application projects the highest RN salary and Well Care projects the second highest.

Project Year 2

| Rank | Applicant | Licensed Practical Nurse |
|------|-----------|--------------------------|
| 1 | Well Care | \$ 49,600.00 |
| 2 | UniHealth | \$ 49,216.00 |
| 3 | Maxim | NA |
| 4 | Liberty | NA |

As shown in the table above, the Well Care application projects the highest LPN salary (\$49,600). The UniHealth application projects the second highest LPN salary (\$49,216). Liberty and Maxim both proposed to have no LPN staff.

Project Year 2

| Rank | Applicant | Home Health Aide |
|------|-----------|------------------|
| 1 | Well Care | \$ 37,029.00 |
| 2 | UniHealth | \$ 36,159.00 |
| 3 | Maxim | \$ 33,245.00 |
| 4 | Liberty | \$ 26,329.00 |

As shown in the table above, the Well Care application projects the highest HHA salary (\$37,029). The UniHealth application projects the second highest HHA salary (\$36,159). Liberty projects the lowest HHA salary (\$26,329) while Maxim projects the second lowest HHA salary (\$33,245). The Well Care application projects the highest HHA salary and UniHealth projects the second highest. The Liberty application is the least effective proposal.

Salaries are a significant contributing factor in recruitment and retention of staff. As shown above,

- UniHealth projects the highest annual salary for a registered nurse in Project Year 2.
- Well Care projects the highest annual salary for a licensed practical nurse in Project Year 2.
- Well Care projects the highest annual salary for a home health aide in Project Year 2.

Thus, the application submitted by UniHealth is the most effective alternative with regard to annual salary for registered nurses and the application submitted by Well Care is the most effective alternative with regard to annual salary for licensed practical nurses and Well Care is the most effective alternative with regard to annual salary for home health aides.

SUMMARY

The following is a summary of the reasons the proposal submitted by Well Care is determined to be the most effective alternative in this review:

- Well Care projects to serve the highest number of duplicated Medicare patients in Project Year 2.
- Well Care projects to serve the highest Medicaid access patient percentage and the highest Medicare access visit percentage in Project Year 2.
- Well Care projects to serve the highest number of unduplicated patients in Project Year 2.
- Well Care projects the second highest visits per patient and second highest total visits in Project Year 2.

- Well Care projects the lowest average net revenue per visit in Project Year 2.
- Well Care projects the second lowest net revenue per unduplicated patient in Project Year 2.
- Well Care projects the lowest average total operating cost per visit in Project Year 2.
- Well Care projects the second lowest average direct operating cost per visit in Project Year 2.
- Well Care, along with UniHealth, projects the lowest average administrative operating cost per visit in Project Year 2.
- Well Care projects the second highest direct cost per visit as a percent of total operating cost per visit in Project Year 2.
- Well Care projects the second highest Registered Nurse salary in Project Year 2.
- Well Care projects the highest Licensed Practical Nurse salary in Project Year 2.
- Well Care projects the highest Home Health Aide salary in Project Year 2.
- Well Care proposes to provide home health services to adults and pediatric patients.
- Well Care proposes to utilize telemonitoring systems, electronic health records and lap top computers.

Comparative Factors

The following table provides comparative factors for Year 2 of operations of the four CON project applications.

| Summary of Comparative Factors | Well Care | UniHealth | Liberty | Maxim |
|---|-------------|-----------------------|------------|-------------|
| | YR 2 | YR 2 | YR 2 | YR 2 |
| Proposed services for pediatric patients | Yes | No | Yes | Yes |
| Use of electronic health records and laptop computers | Yes | Yes | No | Yes |
| Use of telemonitoring system | Yes | Yes | Yes | No |
| Medicare Access % Duplicated Patients | 68.00% | 71.66% | 65.50% | 65.10% |
| Medicare Access % Visits | 82.31% | 79.99% | 71.50% | 79.00% |
| Medicaid Access % Patients | 26.75% | 14.73% | 7.67% | 13.49% |
| Medicaid Access % Visits | 21.59% | 15.86% | 3.60% | 11.32% |
| Number of Unduplicated Patients | 591 | 581 or 582 or 583 ??? | 330 | 542 |
| Average Number of Visits per Patient | 22.3 | 22.83 | 16.99 | 22.23 |
| Total Visits | 13,183 | 13,307 | 5,606 | 12,046 |
| Average Net Revenue per Visit | \$120.85 | \$126.10 | \$148.74 | \$139.75 |
| Average Net Revenue per Unduplicated Patient | \$2,695.02 | \$2,878.25 | \$2,526.78 | \$2,866.84 |
| Average Total Cost per Visit | \$112.14 | \$123.05 | \$139.85 | \$122.16 |
| Average Admin Cost per Visit | \$30.87 | \$30.87 | \$64.63 | \$34.66 |
| Average Direct Operating Cost per Visit | \$81.27 | \$92.17 | \$75.22 | \$87.50 |
| Direct Cost per Visit as Percent of Totals Operating Cost per Visit | 72.47% | 74.90% | 53.79% | 71.62% |
| RN Salaries | \$77,662 | \$78,056 | \$66,010 | \$77,080 |
| LPN Salaries | \$49,600 | \$49,217 | NA | NA |
| HHA Salaries | \$37,029 | \$36,159 | \$26,329 | \$33,245 |
| Total Revenue | \$1,593,209 | \$1,678,022 | \$833,837 | \$1,682,838 |
| Total Expense | \$1,478,323 | \$1,637,427 | \$784,018 | \$1,471,014 |
| Ratio | 1.08 | 1.03 | 1.06 | 1.14 |

CONCLUSION

Pursuant to G.S. 131E-183(a)(1), the need determination in the SMFP is the determinative limit on the number of Medicare-certified home health agencies that can be approved by the Certificate of Need Section.

For all of the reasons summarized in these comments, the application of Well Care is the most effective alternative proposed in this review for the development of a new Medicare-certified home health agency and should be approved.