

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

DECISION DATE: February 25, 2014

PROJECT ANALYST: Gloria C. Hale  
INTERIM CHIEF: Martha J. Frisone

PROJECT I.D. NUMBER: G-10216-13/ Liberty Healthcare Properties of Silas Creek, LLC; Liberty Commons of Silas Creek, LLC; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC; and Liberty Healthcare Properties of Springwood, LLC/ Relocate 100 of the 200 nursing facility beds from Liberty Commons Nursing and Rehabilitation Center of Springwood to a new facility in Winston-Salem/ Forsyth County

### REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

C

The applicants, Liberty Healthcare Properties of Silas Creek, LLC; Liberty Commons of Silas Creek, LLC; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC; and Liberty Healthcare Properties of Springwood, LLC, (Liberty Commons of Silas Creek) propose to relocate 100 beds of an existing nursing facility with 200 nursing facility beds to a new 100-bed nursing facility to be located at 1940 Bethabara Road, Winston-Salem, in Forsyth County. The existing nursing facility, Springwood Care Center of Forsyth (Springwood), is located at 5755 Shattalon Drive, Winston-Salem. The proposed replacement facility, Liberty Commons of Silas Creek, would consist of 100 of the 200 existing nursing facility beds. The remaining 100 beds are proposed to be relocated to another replacement nursing facility within Forsyth County under a separate proposal. The proposed project does not involve the addition of any new health service

facility beds, services or equipment for which there is a need determination in the 2013 State Medical Facilities Plan (SMFP). However, there are several policies in the 2013 SMFP that are applicable to this review; Policy NH-6: *Relocation of Nursing Facility Beds*; Policy NH-8: *Innovations in Nursing Facility Design*; and Policy GEN-4: *Energy Efficiency and Sustainability for Health Service Facilities*. Those policies are discussed below:

**“Policy NH-6: Relocation of Nursing Facility Beds**

*Relocations of existing licensed nursing facility beds are allowed only within the host county and to contiguous counties currently served by the facility, except as provided in Policies NH-4, NH-5 and NH-7. Certificate of need applicants proposing to relocate licensed nursing facility beds to contiguous counties shall:*

- 1. Demonstrate that the proposal shall not result in a deficit in the number of licensed nursing facility beds in the county that would be losing adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins, and*
- 2. Demonstrate that the proposal shall not result in a surplus of licensed nursing facility beds in the county that would gain adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins.”*

The applicants propose to relocate 100 existing nursing facility beds within Forsyth County. Therefore, the proposal will not change the current nursing facility bed inventory in Forsyth County. Consequently, the application is conforming to Policy NH-6.

**“Policy NH-8: Innovations in Nursing Facility Design**

*Certificate of need applicants proposing new nursing facilities, replacement nursing facilities, and projects associated with the expansion and/or renovation of existing nursing facilities shall pursue innovative approaches in care practices, work place practices and environmental design that address quality of care and quality of life needs of the residents. These plans could include innovative design elements that encourage less institutional, more home-like settings, privacy, autonomy and resident choice, among others.”*

In Section III.4, page 56, the applicants state:

*“The proposed facility will be designed to incorporate more home-like features, increased privacy, autonomy, resident choice, satisfaction, and convenience, among others.*

...

*Liberty Commons-Silas Creek will pursue innovative approaches in care practices, workplace practices and environmental design that address residents' quality of care and life needs."*

In addition, as stated on page 58, the facility will include smaller dining and activity rooms to create a more home-like setting and will feature multiple 'neighborhoods' to group residents with similar capabilities and care needs together. There will be four outdoor courtyards and a therapy garden with shaded areas. Moreover, Liberty Commons of Silas Creek will have an adaptive computer system entitled, 'It's Never 2 Late', a portable system that can be moved to each neighborhood that "empowers residents to self-direct their own activities, therapies, and other programming based on their abilities and interests."

Furthermore, the applicants participate in the North Carolina Health Care Facilities Association's 'Journey to National Best.' The applicants state, on page 60, that the goal of this program is to "transform skilled nursing facilities into modern, high-quality facilities." Moreover, the applicants state,

*"The Journey to National Best focuses on five 'Guideposts' – Leadership, Services, Resources, Innovation, and Public Trust. These principles and accompanying high standards of care will keep Liberty Commons-Kernersville' [sic] residents as safe and healthy as possible, while allowing the resident-focused ideas that continue to improve residents' independence, dignity, and quality of life."*

The applicants adequately demonstrate the proposal incorporates innovative approaches to patient care, work place practices and environmental design that address quality of care and quality of life needs of the residents. Therefore, the applicants adequately demonstrate the proposal is consistent with Policy NH-8.

**"Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities**

*Any person proposing a capital expenditure greater than \$2 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178 shall include in its certificate of need application a written statement describing the project's plan to assure improved energy efficiency and water conservation.*

*In approving a certificate of need proposing an expenditure greater than \$5 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178, the Certificate of Need Section shall impose a condition requiring the applicant to develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The*

*plan must be consistent with the applicant's representation in the written statement as described in paragraph one of Policy GEN-4.*

*Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E-184 are required to submit a plan of energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant's representation in the written statement as described in paragraph one of Policy GEN-4. The plan shall not adversely affect patient or resident health, safety or infection control."*

In Section III.4, pages 55-56, the applicants state, *"The proposed project will develop and implement an Energy Efficiency and Sustainability Plan that conforms to or exceeds energy efficiency and water conservation standards in the latest editions of the NC State Building Codes."*

The applicants' proposals to address energy efficiency and water conservation include:

- *"Energy Star rated appliances*
- *High-efficiency HVAC systems with HEPA filters for residents' rooms*
- *Thermal pane windows*
- *Deciduous and Evergreen trees/landscaping around/beyond building (seasonal effects)*
- *Natural lighting through the use of strategically designed windows and solar tubes*
- *Cold water ozone laundry system for water and energy conservation*
- *Rainwater reclamation system for landscaping irrigation for water conservation"*

In addition, on page 56 the applicants state that they plan to implement periodic staff training on techniques to reduce energy and water use to ensure that staff *"does not become complacent over time with respect to energy/water efficiency."*

The applicants adequately demonstrate that they will assure improved energy efficiency and water conservation in the proposed replacement nursing facility. Therefore, the application is consistent with Policy GEN-4.

The application is consistent with Policy NH-6, Policy NH-8, Policy LTC-2, and Policy GEN-4, and is therefore conforming to this criterion.

- (2) Repealed effective July 1, 1987.
- (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.

C

The applicants propose to relocate 100 of 200 existing nursing facility beds to 1940 Bethabara Road in Winston-Salem, Forsyth County. The proposed nursing facility will be managed by Long Term Care Management Services, LLC. Exhibit 4 contains a copy of the proposed contract with Long Term Care Management Services, LLC.

**Population to be Served**

In Section III.9, page 65, the applicants provide the projected patient origin for Liberty Commons of Silas Creek during the first full year of operation following completion of the proposed project, as illustrated in the table below.

**Projected Patient Origin  
First Full Federal Fiscal Year  
FFY 2017**

<b>County</b>	<b>Percent of Total NF Admissions</b>
Forsyth	86.0%
Guilford	11.0%
Yadkin	1.8%
Davie	0.3%
Rowan	0.3%
Stokes	0.3%
Wilkes	0.3%
<b>Total</b>	<b>100.0%</b>

In Section III.9, page 65, the applicants state that due to the proposed new nursing facility being within two to three miles of the existing nursing facility, and due to the anticipated patient census, “...*patient origin percentages will likely be identical to what Springwood currently sees.*” The applicants adequately identify the population to be served.

**Demonstration of Need**

In Section III.1(a), page 45, the applicants state that the existing nursing facility, Springwood, “...*is in dire need of replacement.*” Further, the applicants have entered into an agreement with Forsyth County, the current owner of the real estate, to purchase the nursing facility. The land and building are not part of the purchase agreement, therefore the 200 beds must be relocated. The existing building was built in 1939 and it became licensed as a nursing facility in 1955. The applicants state the existing building is outdated and they describe the various shortcomings of the facility, including outdated and inefficient mechanical systems, inadequate living and dining space that results in

patients spending a lot of daytime hours in their rooms, institutional nurses stations at the corners of hallways, and a closed off portion of the facility due to asbestos. In addition, old ward rooms were converted to therapy rooms spread out in three separate areas. This was done to alleviate the need for staff to transport patients for therapy down another level to the therapy gym. However, the current location of the therapy rooms requires extra therapy staff. The applicants state, on page 46, *“Springwood is not capable of creating a community atmosphere within the existing building and as a result, residents’ quality of life suffers.”* Moreover, due to inefficiencies created by the layout, the facility has a functional capacity of only 165 beds since semi-private rooms have had to be utilized as private rooms to remain competitive.

The applicants state, in Section III.1(b), pages 47-48, that the purchase of the nursing facility not only provides Liberty Commons of Silas Creek with an opportunity to relocate the beds to new, state of the art facilities that are needed, but that it also allows for a redistribution of the beds within Forsyth County that will result in *“...a more equitable distribution in the county and increased geographic access to skilled nursing beds.”* To demonstrate this, the applicants performed an analysis of existing nursing facility beds by township in Forsyth County using 2013 State Medical Facilities Plan (SMFP) data and 2013 - 2018 township population data from Claritas. This resulted in the following nursing facility bed need by township in Forsyth County, as depicted on pages 49-50:

**Forsyth County Nursing Facility Bed Need by Township\***

<b>Township</b>	<b>Existing Nursing Facility Beds</b>	<b>Nursing Facility Beds Needed</b>	<b>Surplus (Deficit)</b>
Abbotts Creek	100	50	50
Belews Creek	0	24	(-24)
Bethania	0	42	(-42)
Broadbay	0	9	(-9)
Clemmonsville	217	78	139
Kernersville	92	135	(-43)
Lewisville	0	72	(-72)
Middle Fork I	0	8	(-8)
Middle Fork II	0	14	(-14)
Old Richmond	0	23	(-23)
Old Town	0	1	(-1)
Salem Chapel	0	29	(-29)
South Fork	0	9	(-9)
Vienna	0	48	(-48)
Winston	1,127	994	133
<b>Totals</b>	<b>1,536</b>	<b>1,536</b>	<b>0</b>

\*Exhibit 10 contains township bed need analysis and accompanying Claritas Data.

As the applicants indicate in the above table, Winston Township has a surplus of 133 nursing facility beds. However, as the applicants state on page 50, relocating 100 of the 200 nursing facility beds from Springwood to a new facility that is also in Winston Township “*will allow the current Springwood residents the opportunity to relocate to a new facility while causing minimal disruption to their current lives.*” Exhibit 22 includes documentation from 78 current Springwood residents indicating their willingness to relocate to the new facility. Moreover, the proposed facility will not be much further away for family and friends who wish to visit than the current facility.

Projected Utilization

In Section IV, pages 70-71, the applicants provided the projected utilization for Liberty Commons of Silas Creek by quarter, for the first two full years of operation, October 1, 2016 – September 30, 2018, as illustrated in the table below:

**Liberty Commons of Silas Creek  
 Projected Utilization  
 First Two Project Years (Oct. 1, 2016 – Sept. 30, 2018)**

<b>First Full Project Year</b>	<b>1<sup>st</sup> Quarter 10/01/16 – 12/31/16</b>	<b>2<sup>nd</sup> Quarter 1/01/17 – 3/31/17</b>	<b>3<sup>rd</sup> Quarter 4/01/17 – 6/30/17</b>	<b>4<sup>th</sup> Quarter 7/01/17 – 9/30/17</b>	<b>Total</b>
NF Patient Days	8,832	8,640	8,736	8,832	35,040
Occupancy Rate	96%	96%	96%	96%	96%
# of Beds	100	100	100	100	100
<b>Second Full Project Year</b>	<b>1<sup>st</sup> Quarter 10/01/17 – 12/31/17</b>	<b>2<sup>nd</sup> Quarter 1/01/18 – 3/31/18</b>	<b>3<sup>rd</sup> Quarter 4/01/18 – 6/30/18</b>	<b>4<sup>th</sup> Quarter 7/01/18 – 9/30/18</b>	<b>Total</b>
NF Patient Days	8,832	8,640	8,736	8,832	35,040
Occupancy Rate	96%	96%	96%	96%	96%
# of Beds	100	100	100	100	100

The applicants describe the assumptions and methodology used to project utilization at Liberty Commons of Silas Creek in Section IV.2, page 68, and in the pro formas section of the application following Section XII, page 128. The applicants state, on page 68:

*“Due to resident feedback via surveys, it is expected that the vast majority of current residents at Springwood will wish to transfer to Liberty Commons – Silas Creek. These transfers are reflected in the projected utilization tables below and the applicants to [sic] project the facility to achieve fill up via transfer of existing residents.”*

Projected utilization is based on reasonable, credible and supported assumptions.

The applicants adequately identify the population to be served and adequately demonstrate the need the population has for the proposal. Therefore, the application is conforming to this criterion.

- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

C

The applicants propose to relocate 100 of the 200 nursing facility beds located at 5755 Shattalon Drive in Winston-Salem to a new nursing facility to be developed at 1940

Bethabara Road in Winston-Salem, approximately 2.2 miles away. The remaining 100 beds of the 200-bed nursing facility will be relocated to Kernersville to a new nursing facility which is proposed in another application (Project I.D. #G-10220-13). Liberty Commons of Silas Creek will be geographically accessible to the same population currently being served at the existing facility. Exhibit 22 includes documentation from 78 current Springwood residents indicating their willingness to relocate to the new facility.

In addition, for those residents of Springwood who are not interested in relocating to Liberty Commons of Silas Creek, there are several other options for nursing facility care within Forsyth County. Nursing facilities in Forsyth County and their respective occupancy rates for FFY 2012 are provided in the following table:

**Nursing Facilities in Forsyth County\*  
 FFY 2012**

<b>Facility</b>	<b>Number of NF Beds</b>	<b>Total Available NF Bed Days</b>	<b>Total Actual Patient Census</b>	<b>Total Patient Days</b>	<b>Occupancy Rate</b>
Arbor Acres United Methodist Retirement Community, Inc.	65	23,725	59	21,707	91.49%
Brookridge Retirement Community	85	31,025	57	22,588	72.81%
Brian Center Health & Retirement/Winston-Salem	40	14,600	36	12,996	89.01%
Piney Grove Nursing and Rehabilitation Center	92	33,580	83	31,901	95.00%
Clemmons Nursing & Rehab Center	120	43,800	78	27,925	63.76%
Winston-Salem Nursing & Rehabilitation Center	230	83,950	192	70,080	83.48%
Oak Forest Health & Rehabilitation	170	62,050	162	59,836	96.43%
UniHealth Post-Acute Care-High Point	100	36,500	79	30,183	82.69%
Trinity Glen	117	42,705	110	37,727	88.34%
Salemtowne	84	30,660	84	30,285	98.78%
Kindred Transitional Care and Rehabilitation-Silas Creek	90	32,850	82	29,764	90.61%
Springwood Care Center of Forsyth County	200	73,000	147	58,242	79.78%
The Oaks	151	55,115	138	51,530	93.50%
<b>Totals</b>					

\*Data is from the 2013 License Renewal Applications for nursing homes.

Of the 13 licensed nursing facilities in Forsyth County, six, excluding Springwood, have occupancy rates under 90%. Therefore, there are other nursing facilities in the county that have the capacity for additional residents, such as those residents from Springwood who may not want to relocate to Liberty Commons of Silas Creek. The applicants demonstrate that the needs of the population presently served would be adequately met following the proposed relocation of the nursing facility beds.

In addition, in Section VI.3, page 79, the applicants project that over 65% of the projected nursing patient days will be reimbursed by Medicaid and that approximately 10% will be reimbursed by Medicare during the second full federal fiscal year (10/01/2017 – 9/30/2018) of operation following completion of the project. Therefore, the applicants demonstrate that the needs of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly will be adequately met.

The application is conforming to this criterion.

- (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.

## C

In Section III.2 (a), pages 52-53, the applicants describe several alternatives considered, including: maintaining the status quo and continuing to operate at the current location; constructing a new 200 bed facility in Winston-Salem; constructing more than two facilities; and removing all 200 beds from Winston-Salem to the outer areas of the county. The applicants determined that none of the alternatives were the most effective alternative, for the following reasons:

Maintain the Status Quo and Continue to Operate at the Current Location: this was not a viable alternative since the applicants are obligated by the terms of the purchase agreement to vacate the building and relocate the nursing facility beds. In addition, the applicants state, “*this would not be in the best interests of the residents since the building is very old, outdated, and inefficient.*”

Construct a New 200-Bed Facility in Winston-Salem: the applicants state that this alternative was considered, however since there is already a surplus of 133 beds, based on their township analysis of nursing facility bed need within the county, they determined that relocating a portion of the beds outside the Winston Township would result in a more equitable distribution of nursing facility beds. In addition, the applicants state that facilities of 100 beds are large enough to achieve economies of scale while avoiding being “*too institutional in nature.*”

Construct More Than Two Facilities: this alternative was dismissed since creating three smaller facilities would not be operationally efficient. In addition, there would not be sufficient infrastructure and ancillary support in another area of the county shown to have a bed deficit to support one of three replacement facilities. In addition, the applicants state that areas adjacent to these bed deficit areas have nursing bed surpluses and are therefore capable of meeting future nursing facility needs of area residents.

Remove all 200 beds from Winston-Salem to the Outer Areas of the County: the applicants determined that this was not the most effective alternative since it would necessitate relocating the Springwood residents out of Winston Township where they currently reside which “*would not be in their best interest.*” In addition, moving 200 nursing facility beds out of Winston Township would result in a bed deficit in the most populated area of Forsyth County.

Therefore, the applicants concluded that constructing two 100-bed facilities, with one in Winston-Salem and the other in Kernersville, would be the most effective alternative. The applicants state, on page 53, that two 100-bed facilities would result in efficient operations while maintaining a homelike environment, and relocating 100 of the beds to an area of need outside of Winston-Salem would reduce the nursing facility bed surplus in that township while addressing a need in the Kernersville area.

The application is conforming to all other applicable statutory review criteria. An application that cannot be approved cannot be an effective alternative.

The applicants adequately demonstrate that the proposal is their least costly or most effective alternative to meet the need. Therefore, the application is conforming to this criterion and approved subject to the following conditions.

- 1. Liberty Healthcare Properties of Silas Creek, LLC; Liberty Commons of Silas Creek, LLC; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC; and Liberty Healthcare Properties of Springwood, LLC shall materially comply with all representations made in the certificate of need application.**
- 2. Liberty Healthcare Properties of Silas Creek, LLC; Liberty Commons of Silas Creek, LLC; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC; and Liberty Healthcare Properties of Springwood, LLC shall construct a replacement nursing facility with a total licensed bed complement of no more than 100 nursing facility beds upon completion of the project.**
- 3. For the first two full federal fiscal years of operation following completion of the project, actual private pay charges shall not be increased more than 5% of the projected private pay charges provided in Section X of the application without first obtaining a determination from the Certificate of Need Section**

**that the proposed increase is in material compliance with the representations made in the certificate of need application.**

- 4. Liberty Healthcare Properties of Silas Creek, LLC; Liberty Commons of Silas Creek, LLC; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC; and Liberty Healthcare Properties of Springwood, LLC shall receive Medicaid per diem rates allowed by the Division of Medical Assistance, under the NC State Plan Section .0102.**
  - 5. Liberty Healthcare Properties of Silas Creek, LLC; Liberty Commons of Silas Creek, LLC; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC; and Liberty Healthcare Properties of Springwood, LLC shall submit a plan to the Construction Section of the Division of Health Service Regulation for energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section, pursuant to Policy GEN-4 of the 2013 SMFP.**
  - 6. Liberty Healthcare Properties of Silas Creek, LLC; Liberty Commons of Silas Creek, LLC; Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC; and Liberty Healthcare Properties of Springwood, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section, in writing prior to issuance of the certificate of need.**
- (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.

C

In Section VIII.1, page 96, the applicants project the total capital expenditure for the proposed project will be \$19,313,138. In Section VIII.2, page 97, the applicants indicate that the capital cost of the project will be financed with “*Government Loans - HUD Backed*” in the amount of \$14,962,226 and “*Owner’s Equity of John A. McNeill, Jr. and Ronald B. McNeill*” in the amount of \$4,350,912. In Section IX, page 101, the applicants state that the start-up expenses and initial operating expenses (working capital) will be \$471,829. As stated on page 103, these expenses will be financed with owner equity of John A McNeill, Jr. and Ronald B. McNeill. Exhibit 31 contains an October 8, 2013 letter from a representative of Capital Funding, LLC expressing interest in providing funding for the project, which states:

*“This is to confirm our commitment to Liberty Health Care to provide funding for the new facility owned by Liberty Healthcare Properties of Silas Creek, LLC to be located at 1940 Bethabara Rd, Winston-Salem, NC 27106, estimated to be*

*approximately twenty million dollars (\$20,000,000), pursuant to HUD Section 232/223(f) LEAN.”*

Exhibit 30 contains a letter, dated October 9, 2013, from Cherry Bekaert, LLP and signed by the Certified Public Accountant for both John A. McNeill, Jr. and Ronald B. McNeill, which states:

*“I understand that they have agreed to provide the funding for the capital costs associated with two proposed 100-bed Skilled Nursing Facilities to be located in two newly constructed buildings in Forsyth County, if necessary.*

...

*In lieu of submitting financial statements, I will attest that the [sic] John A. McNeill Jr. and Ronald B. McNeill each have excess of \$10,000,000 in cash, stocks, or short term investments in order to fund the construction and operation of the proposed skilled nursing facility, including any working capital, start-up and capital expenditures associated with the project.”*

The applicants adequately demonstrate the availability of funds for the capital and working needs of the proposed project.

In Section X.4, pages 110-111, the applicants project the following per diem rates and charges by payer source for the facility in the first two full federal fiscal years (October 1, 2016 – September 30, 2018) of operation following completion of the proposed project:

<b>Payer Source</b>	<b>Private Room</b>	<b>Semi-Private Room</b>
Private Pay	\$250.00	\$225.00
Commercial Insurance	\$250.00	\$250.00
Medicare *	\$374.82	\$374.82
Medicaid	\$160.32	\$160.32
VA	\$0	\$0
Other (private pay short-term rehab)	\$390.00	\$390.00

\*The charge reported in this table for Medicare is the weighted average of the facility's RUG rates.

In Form B, page 140, the applicants project revenues will exceed operating costs in the second year of operation, as illustrated in the following table.

**Revenues and Operating Costs  
Second Full Federal Fiscal Year  
10/1/17 – 9/30/18**

Total Revenue	\$7,305,195
Total Operating Costs	\$6,951,906
Net Profit	\$353,288
Total Direct Operating Cost / Patient Day	\$114.41
Total Indirect Operating Cost / Patient Day	\$81.44
Total Operating Cost / Patient Day	\$198.40

The assumptions used by the applicants in preparation of the pro forma financial statements, including projected utilization, are reasonable. See Criterion (3) for discussion of utilization projections which is incorporated hereby as if fully set forth herein.

In summary, the applicants adequately demonstrate the availability of funds for the capital needs of the proposal and adequately demonstrate that the financial feasibility of the proposal is based on reasonable projections of cost and revenues. Therefore, the application is conforming to the criterion.

- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

C

The applicants do not propose to develop additional nursing facility beds. Rather, the applicants propose to relocate 100 of 200 existing nursing facility beds to one of two new 100-bed replacement nursing facilities. The existing facility is 75 years old. The applicants project an occupancy rate of 96% for the replacement facility. The projected utilization is based on reasonable, credible and supported assumptions. See Criteria (3) for discussion regarding projected utilization which is incorporated hereby as if set forth fully herein. The applicants adequately demonstrate the proposed project would not result in the unnecessary duplication of existing or approved nursing facility beds in Forsyth County. Therefore, the application is 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.

C

In Section VII, pages 89-91, the applicants project the following staff for the second full federal fiscal year of the proposed project, as illustrated in the table below:

<b>Position</b>	<b>FTEs</b>
Director of Nursing	1.00
Staff Development Coordinator	1.00
MDS Nurse	1.00
RNs	7.02
LPNs	12.63
Certified Nursing Assistants	42.12
Ward Secretary	0.50
Med Records Consultant	0.25
Social Services Director	1.00
Food Service Supervisor	1.00
Cooks	2.80
Dietary Aides	4.20
Activity Director	1.00
Housekeeping Supervisor	0.50
Laundry Supervisor	0.50
Housekeeping Aides	4.90
Laundry Aides	2.80
Physical Therapist	1.00
Physical Therapy Assistant	1.60
Physical Therapy Aides	0.94
Occupational Therapist	1.00
Speech Therapist	1.00
Certified Occupational Therapy Assistant	1.60
Maintenance Supervisor	1.00
Administrator	1.00
Business Office Manager	1.00
Business Office Staff	0.50
<b>Total</b>	<b>94.86</b>

The applicants project direct care nursing staff hours per patient day for the second full federal fiscal year in Section VII.4, page 92, as follows:

**Direct Care Nursing Staff Hours per Patient Day**  
**2<sup>nd</sup> Full Federal Fiscal Year**  
**(October 1, 2017- September 30, 2018)**

	<b>RN's</b>	<b>LPN's</b>	<b>Aides</b>	<b>Total</b>
Total Nursing				
A. Number of FTEs	7.02	12.63	42.12	61.77
B. Number of Nursing Hours per year per FTE	2,080	2,080	1,950	
C. Total nursing hours per year (A x B)	14,600	26,280	82,125	123,005
D. Number of Patient Days (Table IV.2)	35,040	35,040	35,040	35,040
E. Nursing hours per patient day (C/D)	0.42	0.75	2.34	3.51

The applicants state, in Section II, page 23, and demonstrate in the above table, that they will provide daily direct care nursing staff equal to or exceeding 2.1 nursing hours per

patient day in accordance with the North Carolina Rules for the Licensing of Nursing Homes. Adequate costs for the health manpower and management positions proposed by the applicants are budgeted in the pro forma financial statements. The applicants document in Section V.3(c), page 76, that Dr. Allen Chamovitz has indicated his willingness to serve as Medical Director of the proposed facility. A letter from Dr. Chamovitz is provided in Exhibit 27. The applicants adequately demonstrate the availability of sufficient health manpower and management personnel to provide the proposed services. Therefore, the application is conforming to this criterion.

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

### C

In Section II.4, pages 39-40, the applicants describe the proposed ancillary services to be available on site or by other providers. Services provided on site include: non-emergency medical transport, dietary services, respiratory care, speech therapy, rehabilitation services, therapeutic activities, social services, hospice/respice, and others. Offsite providers include: McNeill's LTC Pharmacy, Solstas Lab Partners for laboratory services, barber/beauty services provided by Debora Simmons and Kathleen Geary, mental health/behavioral program provided by NC Elderly Psychiatric Services/CandiCares, and X-ray/radiology provided by Quality Mobile X-ray & Ultrasound. In Section V.2, page 75, the applicants state that the existing Springwood facility has several transfer agreements in place with health care providers. Exhibit 25 contains a copy of Springwood's transfer agreement with The Moses H. Cone Memorial Hospital and Novant Health Thomasville Medical Center. In addition, Exhibit 25 contains three letters from an administrator of Liberty Healthcare Management seeking to establish transfer agreements with Novant Health Hospitals/Medical Centers, The Moses H. Cone Memorial Hospital, and Wake Forest Baptist Medical Center once the replacement facility is operational. Furthermore, the applicants state in Section V.4(a), page 76, that they have developed relationships with health care and social services providers throughout the county and expect "*to extend these working relationships to include the new facilities [sic], should the proposal be approved.*" Moreover, the applicants provide several letters of support from a variety of health care providers in Exhibit 26. The applicants adequately demonstrate that the necessary ancillary and support services will be available and that the proposed services will be coordinated with the existing health care system. Therefore, the application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
  - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
  - (iii) would cost no more than if the services were provided by the HMO; and
  - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

C

The applicants propose to construct a 100-bed replacement nursing facility consisting of 66,450 square feet. The replacement nursing facility will have 64 beds in private rooms and 36 beds in semi-private rooms. Exhibit 36 contains a letter from the architectural firm, Architects Kurmaski & Tolson Associates, Inc., certifying that the total construction costs are estimated to be \$11,769,583, which is consistent with the costs reported by the applicants in Section VIII.1, page 96. The letter states:

*“We examined the feasibility of several design alternatives for the construction of a new 100 bed Nursing Facility in Forsyth County. ...I would estimate that the square foot cost for new construction will be \$136.16 for a total new building budget of \$10,234,420. A 15% contingency of \$1,535,163 brings the total estimated construction cost to \$11,769,583.”*

In Section XI.14, pages 123-124, the applicants discuss various techniques and policies they will consider implementing to address energy efficiency. These include, but are not limited

to: solar thermal roof panels to aid in supplying hot water, cold water ozone laundry, high-efficiency HVAC systems with HEPA filters for residents' rooms, and thermal pane windows. The applicants adequately demonstrate that the cost, design and means of construction represent the most reasonable alternative for the project they propose, and that the construction costs will not unduly increase costs and charges for health services. See Criterion (5) for discussion of costs and charges which is incorporated hereby as if set forth fully herein. Therefore, the application is conforming to this 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. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:
- (a) The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;

C

Liberty proposes to relocate 100 of 200 existing nursing facility beds {Springwood Care Center of Forsyth (Springwood)} to a new 100-bed nursing facility to be located in Winston-Salem in Forsyth County. The table below illustrates the FFY 2011 payer mix for the nursing facility beds as reported to the Division of Medical Assistance (DMA), Department of Health and Human Services (DHHS), in the facility's cost report.

**Federal Fiscal Year 2011 Payer Mix  
 Existing Forsyth County Nursing Facilities**

Facility	# of Beds	Total Patient Days	Occupancy Rate	Medicaid Days	Medicaid as % of Total	Medicare Days	Medicare as % of Total
Springwood Care Center of Forsyth	200	59,953	82%	40,443	67%	5,858	10%
County Totals/Averages	1,790	454,149	70%	282,897	62%	70,205	15%
Statewide Totals/Averages	47,633	12,884,904	74%	8,608,987	67%	2,343,731	18%

The Division of Medical Assistance (DMA) maintains a website which offers information regarding the number of persons eligible for Medicaid assistance and estimates of the percentage of uninsured for each county in North Carolina. The following table illustrates those percentages as of June 2010 and CY2008-2009,

respectively. More current data, particularly with regard to the estimated uninsured percentages, was not available.

<b>County</b>	<b>Total # of Medicaid Eligibles as % of Total Population</b>	<b>Total # of Medicaid Eligibles Age 21 and older as % of Total Population</b>	<b>% Uninsured CY 2008-2009 (Estimate by Cecil G. Sheps Center)</b>
<b>Forsyth</b>	16.1%	5.7%	19.5%
<b>Statewide</b>	<b>16.5%</b>	<b>6.7%</b>	<b>19.7%</b>

The majority of Medicaid eligibles are children under the age of 21. This age group does not utilize the same health services at the same rate as older segments of the population, particularly the nursing facility services offered by the applicants.

Moreover, the number of persons eligible for Medicaid assistance may be greater than the number of Medicaid eligibles who actually utilize health services. The DMA website includes information regarding dental services which illustrates this point. For dental services only, DMA provides a comparison of the number of persons eligible for dental services with the number actually receiving services. The statewide percentage of persons eligible to receive dental services who actually received dental services was 48.6% for those age 20 and younger and 31.6% for those age 21 and older. Similar information is not provided on the website for other types of services covered by Medicaid. However, it is reasonable to assume that the percentage of those actually receiving other types of health services covered by Medicaid is less than the percentage that is eligible for those services.

The Office of State Budget & Management (OSBM) maintains a website which provides historical and projected population data for each county in North Carolina. In addition, data is available by age, race or gender. However, a direct comparison to the applicants' current payer mix would be of little value. The population data by age, race or gender does not include information on the number of elderly, minorities or women utilizing health services. Furthermore, OSBM's website does not include information on the number of handicapped persons.

**Federal Fiscal Year 2011 Payer Mix  
 Existing Forsyth County Nursing Facilities**

<b>Facility</b>	<b># of Beds</b>	<b>Total Patient Days</b>	<b>Occupancy Rate</b>	<b>Medicaid Days</b>	<b>Medicaid as % of Total</b>	<b>Medicare Days</b>	<b>Medicare as % of Total</b>
Brian Center Health & Rehab /Winston-Salem	40	13,699	94%	2,139	15.6%	8,883	64.8%
Britthaven of Kernersville	92	8,088	24%	5,434	67.2%	1,463	18.1%
Brookridge Retirement Community	71	22,964	89%	4,812	21.0%	2,510	10.9%
Grace Healthcare of Winston-Salem	230	70,387	84%	54,256	77.1%	9,435	13.4%
Heritage Healthcare of High Point, LLC	100	27,558	76%	24,120	87.5%	1,898	6.9%
Kindred Transitional Care & Rehab Silas	90	29,742	91%	20,136	67.7%	6,496	21.8%
LC Nursing Center of The Oaks	151	22,035	40%	14,351	65.1%	3,356	15.2%
Lutheran Home - Winston-Salem, Inc.	217	35,323	45%	31,008	87.8%	3,069	8.7%
Oak Forest Health and Rehab	152	53,124	96%	33,296	62.7%	10,911	20.5%
Piney Grove Nursing & Rehab Center	92	23,185	69%	13,989	60.3%	5,643	24.3%
Regency Care of Clemmons, LLC	120	26,950	62%	16,515	61.3%	5,249	19.5%
Salemtowne (Moravian Home Inc.)	84	30,093	98%	3,301	11.0%	1,825	6.1%
Springwood Care Center of Forsyth	200	59,953	82%	40,443	67.5%	5,858	9.8%
The Oaks at Forsyth	151	31,048	56%	19,097	61.5%	3,609	11.6%
County Totals/Averages	1790	454,149	69.5%	282,897	62.3%	70,205	15.5%

Statewide Totals/Averages	47,633	12,884,904	74%	8,608,987	66.8%	2,343,731	18.2%
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As illustrated in the table above, during FFY 2011, 67.5% of total patient days were provided to Medicaid recipients at Springwood. The Forsyth County average during that same time period was 62.3% and the statewide average was 66.8%. Springwood's percentage was 5.2% higher than the Forsyth County average.

The applicants demonstrate that medically underserved populations currently have adequate access to the applicants' existing services and are conforming to this criterion.

- (b) Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

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In Section VI.6(b), page 80, the applicants state that they have had no patient civil rights access complaints filed against them or any entities related to them. The application is conforming to this criterion.

- (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; and

C

In Section VI.3, page 79, the applicants project the payer mix for the second full FFY (October 1, 2017 – September 30, 2018) of the project, as illustrated in the table below:

Payer Category	NF Patient Days as Percent of Total
Private Pay	12.50%
Medicare	10.42%
Medicaid	65.63%
Commercial Insurance	11.46%
<b>Total</b>	<b>100.0%</b>

In Section III.4, page 54, the applicants state,

*“Liberty Commons – Silas Creek will continue Liberty’s policies of serving the medically underserved. To achieve this, Liberty Commons – Silas Creek will*

*serve a large percentage (please see Table IV.3 for exact projections) of Medicaid patients, persons who are typically viewed as the medically underserved in Forsyth County. The facility projects that it will provide 65% of its skilled nursing beds to Medicaid residents. The applicants based these occupancy assumptions primarily on the current patient mix at Springwood, as it is anticipated that the majority of current residents will transfer to the new facility.”*

The applicants demonstrate that the proposed replacement nursing facility will provide adequate access to medically underserved populations. Therefore, the application is conforming to this criterion.

- (d) That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

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In Section VI.7, page 81, the applicants state, “*Liberty Commons – Kernersville [sic] will have a range of means by which a person will have access to its services through the following:*

***Hospitals***

- ◆ *Novant Health Forsyth Memorial Hospital*
- ◆ *Novant Health Medical Park Hospital*
- ◆ *Novant Health Clemmons Medical Center*
- ◆ *Novant Health Kernersville Medical Center*
- ◆ *Novant Health Thomasville Medical Center*
- ◆ *North Carolina Baptist Hospital*
- ◆ *Moses H. Cone Memorial Hospital*

***Physicians & Physician Groups***

- ◆ *Dr. Ezeigbo*
- ◆ *Dr. Chamovitz*
- ◆ *Dr. Henson*
- ◆ *Dr. Auffinger*
- ◆ *NC Elderly Psychiatric Services*
- ◆ *Dr. Washington, PhD*
- ◆ *Select Specialty Hospital*
- ◆ *Dr. Crotte*
- ◆ *Dr. Okocha*

***Other***

- ◆ *Liberty Homecare & Hospice*

- ◆ *Adult Care Facilities*
- ◆ *Advanced Home Care*
- ◆ *Piedmont Home Health*
- ◆ *Forsyth County Department of Social Services*
- ◆ *Piedmont Triad Regional Counsel*
- ◆ *Word of mouth”*

The applicants adequately identified the range of means by which patients will have access to the proposed services. Therefore, the application is conforming to this criterion.

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

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In Exhibit 24, the applicants provide copies of letters sent to Winston-Salem State University’s Undergraduate and Graduate Programs in Nursing, Wake Forest School of Medicine, and the Practical Nursing Program at Forsyth Technical Community College offering the replacement nursing facility as a clinical training site. The applicants adequately demonstrate that the proposed project will accommodate the clinical needs of health professional training programs. Therefore, the application is conforming to this criterion.

- (15) Repealed effective July 1, 1987.  
(16) Repealed effective July 1, 1987.  
(17) Repealed effective July 1, 1987.  
(18) Repealed effective July 1, 1987.
- (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.

C

The applicants propose to relocate 100 nursing facility beds from its Springwood facility to a replacement facility it will construct approximately two miles away, in Forsyth County. Currently, there are a total of 13 nursing facilities in Forsyth County, as illustrated below:

**Nursing Facilities in Forsyth County\***

**FFY 2012**

<b>Facility</b>	<b>Number of NF Beds</b>	<b>Total Available NF Bed Days</b>	<b>Total Actual Patient Census</b>	<b>Total Patient Days</b>	<b>Occupancy Rate</b>
Arbor Acres United Methodist Retirement Community, Inc.	65	23,725	59	21,707	91.49%
Brookridge Retirement Community	85	31,025	57	22,588	72.81%
Brian Center Health & Retirement/Winston-Salem	40	14,600	36	12,996	89.01%
Piney Grove Nursing and Rehabilitation Center	92	33,580	83	31,901	95.00%
Clemmons Nursing & Rehab Center	120	43,800	78	27,925	63.76%
Winston-Salem Nursing & Rehabilitation Center	230	83,950	192	70,080	83.48%
Oak Forest Health & Rehabilitation	170	62,050	162	59,836	96.43%
UniHealth Post-Acute Care-High Point	100	36,500	79	30,183	82.69%
Trinity Glen	117	42,705	110	37,727	88.34%
Salemtowne	84	30,660	84	30,285	98.78%
Kindred Transitional Care and Rehabilitation-Silas Creek	90	32,850	82	29,764	90.61%
Springwood Care Center of Forsyth	200	73,000	147	58,242	79.78%
The Oaks	151	55,115	138	51,530	93.50%
<b>Totals</b>	<b>1,544</b>	<b>563,560</b>	<b>1,307</b>	<b>484,764</b>	<b>86.02%</b>

\*Data is from the 2013 License Renewal Applications for nursing homes.

In Section III.4, pages 54-55, the applicants discuss how any enhanced competition will have a positive impact on the cost-effectiveness, quality and access to the proposed services. See also Sections II, III, V, VI and VII where the applicants discuss the impact of the project on cost-effectiveness, quality and access.

The information provided by the applicants in those sections is reasonable and credible and adequately demonstrates that any enhanced competition includes a positive impact on cost-effectiveness, quality and access to nursing facility services in Forsyth County. This determination is based on the information in the application, and the following:

- ◆ The applicants adequately demonstrate the need to relocate 100 nursing facility beds and construct a replacement nursing facility, and that it is a cost-effective alternative;
- ◆ The applicants will continue to provide quality services; and

- ◆ The applicants will continue to provide adequate access to medically underserved populations.

Therefore, the application is conforming to this criterion.

- (19) Repealed effective July 1, 1987.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

### C

In Section I.12, pages 13-14, the applicants state they own or operate 19 nursing facilities in North Carolina. In Section II.6, pages 42-44, the applicants state that only one of the 19 nursing facilities, Springwood Care Center of Forsyth, was found to have provided substandard quality of care, as defined in 42 CFR 488.301, at the Immediate Jeopardy level, during the 18 months immediately preceding the submittal of the application.

According to the Nursing Home Licensure and Certification Section, DSHR, there was one incident for which licensure penalties, suspension of admission, provisional licensure or certification deficiencies constituting substandard quality of care was imposed at Springwood Care Center of Forsyth since May 15, 2012. The applicants state, in Section II.6, page 44, that efforts have been undertaken since then to improve the facility's quality assurance program.

After reviewing and considering the information provided by the applicants and by the Nursing Home Licensure and Certification Section, and considering the quality of care provided at all 19 facilities, the applicants have provided evidence that quality care has been provided in the past and demonstrated that there is no pattern of substandard quality of care. Therefore, the application is conforming to this criterion.

- (21) Repealed effective July 1, 1987.
- (b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

### NA

The Criteria and Standards for Nursing Facility or Adult Care Home Facility Services in 10A NCAC 14C .1100 are not applicable because the applicants do not propose to establish new nursing facility or adult care home beds.