

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

DECISION DATE: July 26, 2013

FINDINGS DATE: July 31, 2013

PROJECT ANALYST: Gregory F. Yakaboski

ASSISTANT CHIEF: Martha J. Frisone

PROJECT I.D. NUMBER: O-10086-13/ Carolina Bay Healthcare Center of Wilmington, LLC, Carolina Bay Properties of Wilmington, LLC, Kempton Properties, LLC, and Kempton Assisted Living, LLC/ Relocate 52 licensed adult care beds within New Hanover County to the proposed Carolina Bay at Autumn Hall facility/ New Hanover 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 for this proposed project are:

- Carolina Bay Healthcare Center of Wilmington, LLC
- Carolina Bay Properties of Wilmington, LLC
- Kempton Properties, LLC
- Kempton Assisted Living, LLC

The applicants may be referred to collectively as either the applicants or Liberty.

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a “new institutional health service” and is not subject to review. The CCRC will consist of 122 independent living units and a 100-bed combination nursing

facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds. Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

- Project I.D. # O-10086-13- relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds) (this application).
- Project I.D. # O-10087-13- relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds).
- Project I.D. #O-10088-13- develop 30 NF beds pursuant to Policy NH-2 (30 NH-2 beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

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, the following policies are applicable:

- Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities
- Policy LTC-2: Relocation of Adult Care Home Beds

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

“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 for 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, page 40, Liberty provides a written statement describing the proposed project's plan to assure improved energy efficiency and water conservation. The application is consistent with Policy GEN-4.

Policy LTC-2: Relocation of Adult Care Home Beds states:

“Relocations of existing licensed adult care home beds are allowed only within the host county and to contiguous counties currently served by the facility. Certificate of need applicants proposing to relocate licensed adult care home beds to contiguous counties shall:

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

Both the existing and proposed locations are in New Hanover County. The application is consistent with Policy LTC-2.

In summary, the application is conforming to all applicable policies in the 2013 SMFP. Therefore, the application is 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.

NC

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- Kempton Assisted Living, LLC

The applicants may be referred to collectively as either the applicants or Liberty.

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a “new institutional health service” and is not subject to review. The CCRC will consist of 122 independent living units and a 100-bed combination nursing facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds. Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

- Project I.D. # O-10086-13- relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds) (this application).
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- Project I.D. #O-10088-13- develop 30 NF beds pursuant to Policy NH-2 (30 NH-2 beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

Population to be Served

In Section III.9, page 49, the applicants provide projected patient origin for the ACH beds, as shown in the table below.

County	Projected % of Total ACH Residents
New Hanover	95.0%
Brunswick	3.0%
Pender	2.0%
Total	100.0%

On page 49, Liberty states “*It is anticipated that 95% of the ACH admissions will originate from New Hanover County with the other 5% coming from contiguous counties, which is in line with Liberty’s experience at its existing New Hanover County facilities.*” The applicants adequately identified the population to be served.

Demonstration of Need

In Section III.1, pages 33-36, the applicants state that the need to relocate 52 ACH beds is based on the following:

- There are existing but underutilized ACH beds at The Kempton.
- Replacing and relocating these underutilized ACH beds would increase operational efficiency at The Kempton and improve service to its current residents.
- At the new 100-bed facility, the 52 relocated ACH beds will be in private rooms.

- Once the 52 ACH beds have been relocated, Liberty will be able to increase the number of private rooms at The Kempton.
- There is a strong demand for assisted living services in New Hanover County which Liberty cannot meet with its existing facilities due to a lack of private rooms and size constraints of the existing facilities.

Projected Utilization

In Section IV.2, pages 51-53, the applicants provide projected utilization of the 52 ACH beds for the first two full federal fiscal years (FFYs), as illustrated in the table below.

Projected Utilization- 52 Relocated ACH Beds

	1st Full FFY 10/1/15 to 9/30/16	2nd Full FFY 10/1/16 to 9/30/17
Patient Days	17,568	17,520
Occupancy Rate	92%	92%
# of Beds	52	52

As shown in the table above, in both the first two full federal fiscal years of operation, Liberty projects the 52 ACH beds will operate at 92% of capacity [$17,568/365/52 = 0.926$; $17,720/365/52 = 0.923$]. In Section III, pages 35-39, 46-49, the applicants provide the assumptions and methodology utilized to project utilization for the 52 ACH beds.

In Section III.2, page 37, Liberty identifies all existing ACH facilities in New Hanover County and provides the occupancy rates, as illustrated in the table below. Liberty does not state where it obtained the data.

ACH Facilities – New Hanover County

Facility	# of Beds	# of Residents	Occupancy Rate *
Spring Arbor of Wilmington	66	66	100.0%
Clare Bridge of Wilmington	38	37	97.0%
Port South Village / Tara L. Villa	12	10	93.0%
Pacifica Senior Living Wilmington	101	94	93.0%
Champions Assisted Living	148	128	86.0%
Sherwood Manor Rest Home	40	33	83.0%
Hermitage House	84	59	70.0%
Fannie Norwood Memorial Home	16	11	69.0%
The Commons at Brightmore (Liberty)	201	107	53.0%
The Kempton at Brightmore (Liberty)	136	65	48.0%
Total	842	610	72.4%

Source: It appears that the source is 2012 License Renewal Applications (LRAs). If so, the number of residents is the number in the facility on August 1, 2011.

* Calculated by dividing the # of residents by the # of beds. Example: $610 / 842 = 0.724$.

As shown in the table above, the average occupancy rate for the 842 ACH beds identified in the table above was 72.4% as of August 1, 2011. On page 37, the applicants state the average occupancy rate would have been 84% if the two Liberty facilities are excluded from the calculation. However, if the Liberty facilities are excluded, the occupancy rate would have been 86.7% [$(610 - (107 + 65)) / (842 - (201 + 136)) = 0.867$].

As shown in the table above, the two Liberty facilities had the lowest occupancy rates. The applicants state that the reason for this is due to the fact that patients prefer a private room as compared to a semi-private room which has led Liberty to “*single occupy rooms that are licensed as semi-private.*” The occupancy rates in the table above are calculated based on licensed capacity. If the occupancy rate were calculated based on the number of beds in use (functional capacity), not the number licensed, the occupancy rate would be higher. The applicants do not provide a functional capacity for The Commons at Brightmore. Assuming that 52 ACH beds are not in use at The Kempton, the number of operational beds at that facility would be 84 [136 – 52 = 84] and the occupancy rate for 84 ACH beds would be 77.4% [65 / 84 = 0.774].

However, as shown in the table above, Liberty identified only 10 facilities with a total of 842 ACH beds and provided occupancy rates for only 10 facilities. However, there are 20 facilities with a total of 1,103 ACH beds in New Hanover County, as illustrated in the following table.

ACH Facilities – New Hanover County

Facility	# of Beds
The Commons at Brightmore (Liberty)	201
Fannie Norwood Memorial Home	16
Sherwood Manor Rest Home	40
Spring Arbor of Wilmington	66
Clare Bridge of Wilmington	38
Champions Assisted Living	148
The Kempton at Brightmore (Liberty)	136
Port South Village / Tara L. Villa	12
Pacifica Senior Living Wilmington	101
Hermitage House	84
Cedar Grove Assisted Living (GlenCare)	64
New Hanover House	61
Port South Village / Carmen D. Villa	12
Port South Village / Catherine S. Villa	12
Port South Village / Crystal L. Villa	12
Port South Village / Lorraine B. Villa	12
Port South Village / Teresa C. Villa	12
Autumn Care of Myrtle Grove	20
Wilmington Health and Rehabilitation Center	16
Liberty Commons Rehabilitation Center	40
Total	1,103

Source: Page 253 of the 2013 SMFP.

Shaded facilities are the ones identified by Liberty.

Therefore, Liberty’s assertions regarding the average occupancy rate for ACH beds in New Hanover County are questionable. Occupancy data was not provided for 261 ACH beds in 10 facilities.

On page 37, Liberty states “*Clearly there is a strong demand for ... assisted living within the county.*” Also on page 37, Liberty states that due to “*room and size constraints*” at Liberty Commons the applicants feel it is not possible to meet this strong demand at the current

facility. Therefore, Liberty determined that it should relocate 52 ACH beds to the new facility.

On page 34, Liberty states that it determined there is an unmet need for 144 ACH beds in the 3-mile radius surrounding the proposed site of the 100-bed facility. To support this conclusion, Liberty references Exhibit 8 which includes population data by age group for the 3-mile radius surrounding the proposed site and a table, on page 684 of Exhibit 8, which is reproduced below:

Carolina Bay, 1202 Eastwood Road, Wilmington, NC 3 mile radius

AL Beds

<i>Age Group</i>	<i>2012 Pop</i>	<i>Beds</i>	<i>2017 Pop</i>	<i>Beds</i>
<i><35</i>	<i>28,605</i>	<i>3</i>	<i>29,990</i>	<i>4</i>
<i>35-64</i>	<i>19,082</i>	<i>31</i>	<i>20,275</i>	<i>33</i>
<i>65-74</i>	<i>3,960</i>	<i>26</i>	<i>5,080</i>	<i>33</i>
<i>75-84</i>	<i>2,308</i>	<i>51</i>	<i>2,459</i>	<i>55</i>
<i>85+</i>	<i>950</i>	<i>73</i>	<i>1,198</i>	<i>91</i>
	<i>Total:</i>	<i>184</i>	<i>Total:</i>	<i>216</i>

As shown in the table above, Liberty states that a total of 184 ACH beds are needed in 2012 to serve the residents of the 3-mile radius surrounding the site of the 100-bed facility and 216 are needed by 2017. It appears the applicants used the methodology in the 2013 SMFP to calculate this bed need. That methodology is described on pages 237-240 of the 2013 SMFP. On page 34, Liberty states that there is an unmet need for 144 ACH beds in the 3-mile radius surrounding the proposed 100-bed facility. According to the applicants, Liberty Commons Nursing and Rehabilitation Center, which is currently licensed for 100 NF and 40 ACH beds, is the only facility located in that 3-mile radius. The applicants subtracted Liberty Commons 40 ACH beds from the 184 beds it says are needed in the 3-mile radius in 2012 [184 – 40 = 144].

However, the applicants do not adequately demonstrate that it is reasonable to limit their analysis to just the 3-mile radius surrounding the site of the proposed 100-bed facility. Section III.1(b) of the application form requests that the applicant “*Provide statistical or other data that substantiates the existence of an unmet need for each project component.*” In response, Liberty states:

“See Exhibit 6 for documentation regarding the historical census at The Kempton See Exhibit 7 for a copy of the market/need assessment conducted for Carolina Bay. See Exhibit 8 for Claritas data regarding 3 mile radial [sic] bed need. All beds proposed to be relocated are currently located within the Wilmington Township and will be located in the Wilmington township [sic] post project completion. The project will result in more effective bed distribution within the main population center of New Hanover County.” (Emphasis in original.)

See discussion above regarding the “historical census” at The Kempton and the Exhibit 8 Claritas data. Exhibit 7 is a 261 page document prepared by Retirement DYNAMICS, Inc. in July 2011. The address for the company is in Charlotte, North Carolina. The title of the

document is *Liberty Healthcare, Inc. Carolina Bay of Wilmington Market Assessment Update*. On page 418, the document states

“The Engagement

In October 2010 Retirement DYNAMICS (RD) completed a market assessment to consider the prospects for developing a new equity model continuing care retirement community in Wilmington. The project demographics generally supported the project concept with the acknowledgement that the community would always depend heavily on attracting residents from outside the New Hanover County area.

In April, RD completed a preliminary survey mailed to over 4,000 households in New Hanover and Brunswick County. The response rate and content of the responses was generally encouraging. ... However, concern developed that the number of people who were interested was simply not large enough to support a community that was large enough to be economically viable.

Liberty is still evaluating the possibility of an equity model community but would like to compare that opportunity with the development of a smaller rental model community on the same site. ...

The essential research question is whether the market geography could support a new rental retirement [sic] with 100 to 150 independent living residences. An important corollary question is whether Carolina Bay and Brightmore would be direct competitors to the disadvantage of either community.” (Emphasis in original.)

On page 419, the report states that *“The most fundamental decision in assessing market potential is to define the market.”* On pages 419-431, it appears that RD evaluated a 5-mile radius and a 10-mile radius, but not a 3-mile radius. On page 431, the report states *“The 5-mile radius Primary Market Area might be the safest assumption of the area from which Carolina Bay could be expected to draw. However, that area is close to being saturated. ... RD believes a 10-mile PMA should be workable for Carolina Bay.”* It is not just that the size of the radius is larger in the Market Assessment Update; it is also relevant that the Market Assessment Update does not appear to address the utilization of ACH beds at all. Rather, it is about the potential purchase or rental of independent living units (i.e., houses, condominiums, townhouses or apartments). Thus, the Market Assessment Update included in Exhibit 7 does not support the applicants’ conclusion that there is an unmet need for 144 ACH beds in the 3-mile radius surrounding the site of the proposed 100-bed facility.

Moreover, in Section III.9, the applicants are requested to project patient and resident origin by percentage and by county for NF and ACH admissions during the first full federal fiscal year of operation. On page 49, in response, Liberty states that 95% of the patients utilizing the 52 relocated ACH beds are projected to be residents of New Hanover County, 3% are projected to be residents of Brunswick County and 2% are projected to be residents of Pender County. Nothing is said in the response to Section III.9 about serving only residents of the 3-mile radius surrounding the site of the proposed 100-bed facility. The applicants do

not adequately demonstrate that 100% of the ACH patients projected to use the 52 relocated ACH beds will live within that 3-mile radius.

The 2013 SMFP shows a surplus of 242 ACH beds in New Hanover County in 2016. In Section XII, page 118, the applicants state that the proposed project will be completed by April 1, 2015. Section III.3 of the application requests that the applicant “*Describe how the project is consistent with the applicable need determination in the State Medical Facilities Plan.*” In response on page 39, Liberty states “*The 2012 and proposed 2013 NC SMFP show no need determination for new skilled or assisted living beds in New Hanover County.*”

Why the applicants reference a “proposed 2013 NC SMFP” is not clear since the application was submitted on February 15, 2013. The Governor signed the 2013 SMFP on December 21, 2012, which is eight weeks before this application was submitted. More importantly, the applicants do not address the surplus of 242 ACH beds in New Hanover County in 2016. Although the proposal to relocate 52 existing ACH beds will not increase the inventory of ACH beds in New Hanover County, the applicants are required to show that there is an unmet need to replace these 52 licensed but unutilized beds which are included in the planning inventory. The following illustrates how those 52 unutilized ACH beds contribute to the 242-bed surplus. If Liberty surrendered the license for the 52 unutilized ACH beds, the planning inventory would be reduced by 52 ACH beds and the 242-bed surplus would be reduced to a 190-bed surplus [242 – 52 = 190]. Since the 52 ACH beds are not currently in use, access by New Hanover County residents would not be negatively impacted if Liberty surrendered the license for the 52 beds.

In summary, although the applicants adequately identify the population to be served, they did not adequately demonstrate the need that that population has for the 52 relocated ACH beds. Therefore, the application is nonconforming with 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 replace and relocate 52 licensed but unutilized ACH beds from The Kempton, which is currently licensed for 136 ACH beds. The patient census at The Kempton as of August 1, 2011 was 65 patients which is an occupancy rate of 47.8% [65/136 = 0.478]. According to Map Quest, the distance from The Kempton to the proposed site is approximately 6.6 miles and 13 minutes driving time. Thus, the replacement facility would be geographically accessible to the same population formerly served. Because the 52 ACH beds to be relocated are currently not occupied no patients will be displaced as a result of the proposed project. At present, no medically underserved residents are being served by the 52 ACH beds to be replaced and relocated. 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.

NC

In Section III.2, pages 36-39, the Liberty describes the alternatives considered, which include the following:

1. Maintain the Status Quo- The applicants considered maintaining the status quo, however, the applicants concluded that to do nothing would not allow the applicants to meet the needs of the population in need of the proposed services in New Hanover County.
2. Construct a new, traditional combination nursing facility- The applicants determined that this alternative would be financially infeasible due to the lack of available licensed nursing facility beds. The applicants state that Liberty Commons Nursing and Rehabilitation Center has only approximately 20 underutilized nursing facility beds. (Note: there is no need determination for additional NF beds in New Hanover County in the 2013 SMFP. In fact, there is a projected surplus of 50 NF beds in 2016 in the 2013 SMFP.)
3. Construct a Continuing Care Retirement Community (CCRC) with no licensed beds available to the general public- The applicants determined this alternative was not the least costly or most effective alternative for three reasons: 1) it would not solve Liberty's issue of unutilized beds at existing facilities; 2) a small healthcare facility (30 beds) is operationally inefficient; and 3) the facility would need to be fully staffed and operational, even though the first resident could not be admitted until living in an independent living unit for 30 days.
4. Construct a Continuing Care Retirement Community (CCRC) with a full service healthcare center with beds open and available to the general public- This proposal addressed the issues identified by the applicants in considering a traditional CCRC and was deemed the least costly and most effective alternative.

However, the applicants did not adequately demonstrate the need to relocate and replace the 52 licensed but unutilized ACH beds. Particularly since there is a projected surplus of 242 ACH beds in New Hanover County in 2016. The applicants' projected "deficit" in the 3-mile radius around the proposed location is not reasonable given the applicants projected service area consists of three counties not just the 3-mile radius surrounding the proposed 100-bed facility. A project that is not needed cannot be the least costly or most effective alternative.

Furthermore, the application is not conforming to all other applicable statutory review criteria, and thus, is not approvable. See Criterion (3), (5), (6), and (18a). A project that cannot be approved cannot be an effective alternative.

Therefore, the applicants did not adequately demonstrate that the proposal is their least costly or most effective alternative to meet the stated need. Consequently, the application is nonconforming to this criterion.

- (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.

NC

In Section VIII.1, page 86, the applicants project the total capital expenditure for the proposal to relocate 52 ACH beds will be \$11,811,862. This proposed project is part of a larger project with a total capital cost of \$57,176,626.

The \$11,811,862 capital cost for this project includes:

Site Costs	\$1,757,347
Construction Costs	\$8,468,058
Equipment and Furniture	\$ 676,000
Consultant Fees	\$ 595,338
Financing Costs	\$ 91,974
Interest during Construction	\$ 223,146
Total:	\$11,811,862

In Section VII.2, page 89, the applicants indicate that the capital cost of the project will be financed with a commercial loan and owner's equity. In Section IX, page 92, the applicants state that total working capital needed is \$1,187,108 (\$296,810 in start up expenses and \$890,298 in initial operating expenses). On page 94, the applicants state that the working capital will be financed by owner equity.

Exhibit 23 contains a copy of a letter signed by a Senior Vice President of Branch Banking and Trust Co., which states:

“BB&T has been informed that Carolina Bay Properties, LLC and Carolina Bay of Wilmington, LLC are submitting a Certificate of Need application to construct a proposed continuing care retirement community (CCRC) at 630 Carolina Bay Drive, Wilmington, NC 28403 in the Autumn Hall development. It is my understanding that this project will consist of 122 independent living units and a health care center with a bed compliment [sic] of 70 licensed adult care home beds and 30 non-Medicaid certified skilled nursing beds.

I have been informed that the estimated project cost for this proposed CCRC is \$57,176,626 and that credit estimated in the amount of approximately \$46,000,000 will be required to finance the land purchase and construction of this new CCRC. As you know, the Bank cannot offer a commitment until a formal application is submitted with all project details and is satisfactorily reviewed and approved by the Bank.

However, please be aware that McNeill's [sic] and Liberty Healthcare have a material banking relationship with BB&T which includes credit, deposit and other services. At this time, the Bank has outstanding loans to the Liberty Healthcare organization to permanently finance property and equipment including past skilled nursing facility projects. Typical loan terms would include a 20 year amortization and 5 year balloon at prevailing market rates.

Overall, the McNeill's [sic] and Liberty Healthcare are considered clients in good standing with the Bank and have handled all obligations as agreed."

Exhibit 25 contains a letter dated January 30, 2013 signed by Joel M. White, CPA of Cherry Bekeart, LLP, which states

"I have been informed that Carolina Bay Properties, LLC and Carolina Bay of Wilmington, LLC are submitting a Certificate of Need application to construct a proposed continuing care retirement community (CCRC) at 630 Carolina Bay Drive, Wilmington, NC 28403 in the Autumn Hall development. It is my understanding that this project will consist of 122 independent living units and a health care center with a bed compliment [sic] of 70 licensed adult care home beds and 30 non-Medicaid certified skilled nursing beds.

I am the CPA for both John A. McNeill, Jr. and Ronald B. McNeill. I understand that they have agreed to provide funding for the proposed CCRC in the amount of approximately \$11,500,000 for construction and approximately \$850,000 in working capital.

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

Exhibit 25 also contains a letter signed by both John A. McNeill, Jr. and Ronald B. McNeill, which states

"Please accept this letter as a commitment to contribute personal funds for the capital costs and working capital requirements for Carolina Bay, estimated to be approximately \$11,500,000 and \$1,200,000, respectively.

We jointly have in excess of the estimated equity amounts available to fund the project and will do so, if approved."

The applicants adequately demonstrate the availability of sufficient funds for the capital and working capital needs for this project and the two related projects.

In Section X, pages 102-103, the applicants projected charges/rates for the first two operating years following completion of the project. The private pay charge for a private room is projected to be \$224.98 in each of the first two full federal fiscal years.

Furthermore, in Form B, the applicants project that revenues will exceed operating costs in each of the first two full fiscal years following completion of the proposed project for the 100-bed facility as shown in the table below.

	18 Relocated NF Beds	30 Policy NH-2 NF Beds	52 ACH Beds	Total Facility
1 st Full FFY (2017)	\$812,856	\$459,065	\$415,288	\$1,687,209
2 nd Full FFY (2018)	\$792,785	\$450,966	\$406,286	\$1,650,037

However, projected utilization of the 52 ACH beds is not based on reasonable, credible and supported assumptions. See Criterion (3) for discussion which is incorporated hereby as if set forth fully herein. Consequently, operating costs and revenues that are based on this projected utilization are unreliable. Therefore, the applicants did not adequately demonstrate that the financial feasibility of the proposal is based on reasonable assumptions regarding revenues and operating costs.

In summary, the applicants adequately demonstrated the availability of sufficient funds for the capital and working capital needs of the proposal. However, the applicants did not adequately demonstrate that the financial feasibility of the project is based on reasonable projections of revenues and operating costs. Therefore, the application is not conforming to this 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.

NC

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a “new institutional health service” and is not subject to review. The CCRC will consist of 122 independent living units and a 100-bed combination nursing facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds. Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

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- Project I.D. # O-10087-13- relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds).

- Project I.D. #O-10088-13- develop 30 NF beds pursuant to Policy NH-2 (30 NH-2 beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

Liberty proposes to replace and relocate 52 licensed but unutilized ACH beds from The Kempton, which is located at 2298 S. 41st Street in Wilmington approximately 6.6 miles from the proposed 100-bed facility. The 52 ACH beds are licensed but not currently being utilized.

The applicants do not propose to offer any new services and do not propose to increase the number of ACH beds in New Hanover County.

The following table identifies the existing facilities with ACH beds in New Hanover County.

ACH Facilities – New Hanover County

Facility	# of Beds
The Commons at Brightmore (Liberty)	201
Fannie Norwood Memorial Home	16
Sherwood Manor Rest Home	40
Spring Arbor of Wilmington	66
Clare Bridge of Wilmington	38
Champions Assisted Living	148
The Kempton at Brightmore (Liberty)	136
Port South Village / Tara L. Villa	12
Pacifica Senior Living Wilmington	101
Hermitage House	84
Cedar Grove Assisted Living (GlenCare)	64
New Hanover House	61
Port South Village / Carmen D. Villa	12
Port South Village / Catherine S. Villa	12
Port South Village / Crystal L. Villa	12
Port South Village / Lorraine B. Villa	12
Port South Village / Teresa C. Villa	12
Autumn Care of Myrtle Grove	20
Wilmington Health and Rehabilitation Center	16
Liberty Commons Rehabilitation Center	40
Total	1,103

Source: Page 253 of the 2013 SMFP.

The applicants do not adequately demonstrate the need to relocate the 52 licensed but unutilized ACH beds to the campus of the CCRC. On page 34, Liberty states that it determined there is an unmet need for 144 ACH beds in the 3-mile radius surrounding the proposed site of the 100-bed facility. However, the applicants do not adequately demonstrate that it is reasonable to limit their analysis to just the 3-mile radius surrounding the site of the proposed 100-bed facility. In the Market Assessment Update provided in Exhibit 7, Retirement DYNAMICS, Inc. looked at a 5-mile and a 10-mile primary market area, not a 3-mile primary market area. Moreover, the Market Assessment Update does not appear to address the utilization of ACH beds at all. Rather, it is about the potential purchase or rental

of independent living units (i.e., houses, condominiums, townhouses or apartments). Thus, the Market Assessment Update included in Exhibit 7 does not support the applicants' conclusion that there is an unmet need for 144 ACH beds in the 3-mile radius surrounding the site of the proposed 100-bed facility.

Moreover, in Section III.9, the applicants are requested to project patient and resident origin by percentage and by county for NF and ACH admissions during the first FFY of operation. On page 49, in response, Liberty states that 95% of the patients utilizing the 52 relocated ACH beds are projected to be residents of New Hanover County, 3% are projected to be residents of Brunswick County and 2% are projected to be residents of Pender County. Nothing is said in the response to Section III.9 about serving only residents of the 3-mile radius surrounding the site of the proposed 100-bed facility. The applicants do not adequately demonstrate that 100% of the ACH patients projected to use the 52 relocated ACH beds will live within that 3-mile radius.

The 2013 SMFP shows a surplus of 242 ACH beds in New Hanover County in 2016. The proposed project is estimated to be completed in April 2015. Section III.3 of the application requests that the applicant "*Describe how the project is consistent with the applicable need determination in the State Medical Facilities Plan.*" In response on page 39, Liberty states "*The 2012 and proposed 2013 NC SMFP show no need determination for new skilled or assisted living beds in New Hanover County.*" Why the applicants reference a "proposed 2013 NC SMFP" is not clear since the application was submitted on February 15, 2013. The Governor signed the 2013 SMFP on December 21, 2012, which is eight weeks before this application was submitted. More importantly, the applicants do not address the surplus of 242 ACH beds in New Hanover County in 2016. Although the proposal to relocate 52 existing ACH beds will not increase the inventory of ACH beds in New Hanover County, the applicants are required to show that replacing these 52 licensed but unutilized beds which are included in the planning inventory would not result in an unnecessary duplication of existing and approved ACH beds in New Hanover County. The following illustrates how those 52 unutilized ACH beds contribute to the 242-bed surplus. If Liberty surrendered the license for the 52 unutilized ACH beds, the planning inventory would be reduced by 52 ACH beds and the 242-bed surplus would be reduced to a 190-bed surplus [242 – 52 = 190]. Since the 52 ACH beds are not currently in use, access by New Hanover County residents would not be negatively impacted if Liberty surrendered the license for the 52 beds.

Therefore, the applicants did not adequately demonstrate the proposed project will not result in the unnecessary duplication of existing or approved ACH beds in New Hanover County. Consequently, the application is nonconforming 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

Liberty proposes to provide personal care staff twenty-four hours per day, seven days per week. In Section VII.2, page 73, the applicants state that in FY 2017 the direct care staffing

for the 52 relocated ACH beds will be 19.98 full-time equivalent (FTE) positions. Adequate costs for the health manpower and management positions proposed by the applicants are budgeted in the pro forma financial statements.

In Section VII.6 and in Section III.4, the applicants describe the recruitment and staff retention plan. Exhibit 22 contains a letter from Dr. Mary K. Rudyk stating that if the proposed project is approved she “*would consider serving as the Medical Director for the Carolina Bay Health Care Center.*”

The applicants adequately demonstrate the availability of adequate health manpower and management personnel to provide the proposed services, and 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 29-31, and in Section III, pages 33-35, the applicants describe the ancillary and support services that will be provided by the facility or made available through agreements with other providers including physician services, podiatry, pharmacy, audiology, laboratory services, optometry, barber/beauty, mental health services, x-ray/radiology services, dialysis services and dietary services. In Section II.4, pages 30-31, Liberty states:

“Carolina Bay, through Senior Living Management Services, LLC, projects to have third party contracts to provide the following services See Exhibit 4 for copies of contracts in place at The Kempton and Liberty Commons Nursing and Rehabilitation Center. Should this proposal be approved, Senior Living Management Services, LLC will contract these or similar providers to provide services at the new facility.”

Exhibit 21 contains correspondence from local physicians and letters of support. The applicants adequately demonstrate the availability of the necessary ancillary and support services and that the proposed services would 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 75,471 square foot building at 630 Carolina Bay Drive, Wilmington. The area in the facility for the ACH beds will consist of 7,638 square feet. Construction costs for the 52 relocated ACH beds are projected to be \$8,468,058. See Section VIII.1, page 86. Exhibit 32 contains a letter dated February 13, 2013 from Sarah Gregory, AIA of LS3P LTD, which states that the construction costs for the total building will be \$39,768,023 which corresponds to the estimated construction costs for the full project found in Section VIII.1, page 88, of the application.

In Section XI.8, page 112, the applicants identify the number of private rooms as illustrated in the table below.

	Number of Private Beds
Nursing Facility	48
Adult Care Home	52

In Section XI.14, page 116, and Section III.4, page 40, the applicants describe the energy efficiency and sustainability plan and water conservation plan. Exhibit 31 contains the site and floor plans. See Criterion (1) for additional discussion regarding energy conservation which is incorporated hereby as if set forth fully herein. The applicants adequately demonstrate that applicable energy saving features have been incorporated into the construction plans.

The applicants adequately demonstrate that the cost, design and means of construction represent the most reasonable alternative for the proposed development of a 100-bed facility, including the relocated 52 ACH beds. Furthermore, the applicants adequately demonstrate that the project will not unduly increase costs and charges. 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 develop a new 100-bed facility, including 52 ACH beds to be relocated from The Kempton. As of August 1, 2011, The Kempton was licensed for 136 ACH beds. The patient census as of August 1, 2011 was 65 patients. All 65 patients were private pay at that time.

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 for New Hanover, Brunswick and Pender counties and statewide.

	2010 Total # of Medicaid Eligibles as % of Total Population *	2010 Total # of Medicaid Eligibles Age 21 and older as % of Total Population *	2009 % Uninsured (Estimate by Cecil G. Sheps Center) *
New Hanover County	13%	5.7%	20.4%
Brunswick County	7%	2.8%	19.8%
Pender County	17%	7.4%	21.0%
Statewide	17%	6.8%	19.7%

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

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 services offered by nursing facilities or adult care homes. 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 are available by age, race or gender. However, a direct comparison to the applicants' current payor mix would be of little value. The population data by age, race or gender do 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.

The application is 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;

C

In Section V1.6, page 69, Liberty states:

“The Kempton and Liberty Commons have not had any civil rights access complaints filed against the facility.

...

There have been no civil rights access complaints filed against any entities related to the applicants.”

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.2, page 67, the applicants project the following payor mix during FFY 2017(second full FFY):

Projected Days as a % of Total Days

Payor Source	ACH Beds
Private Pay	100.0%
Total	100.0%

As shown in the table above, the applicants project 100% private pay for the 52 relocated ACH beds. As of August 1, 2011, all of the patients at The Kempton were private pay. The 52 ACH beds are presently unutilized and thus are not providing access to anyone. Once relocated, they will be in a combination nursing facility on the same campus as a CCRC. In Section VI.5(a), page 68, the applicants state “*Services provided by Carolina Bay will be non-restrictive with respect to social, racial, or gender related issues and will be provided on a first come, first served basis. Carolina Bay will admit anyone over the age of 18 who qualifies for and is in need of adult care services to its 52 licensed adult care beds. Carolina Bay will not admit persons for whom the appropriate care cannot be provided by the facility which include, but are not limited to, mental illness disorders, alcoholism or drug addiction, or anyone in need of maternity care.*”

The applicants demonstrated that medically underserved populations would have adequate access to the proposed ACH services. 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.

C

In Section VI.7, page 69, Liberty states “*Carolina Bay anticipates receiving referrals from the following:*

- *New Hanover Regional Medical Center*
- *Cape Fear Hospital*
- *Local physicians practices*
- *Liberty Home Care*
- *Liberty’s in-house marketing team”*

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.

C

In Section V.1, page 63, Liberty states “*Liberty will accommodate the clinical health needs of health professional training programs in the area and will make the facility available to host health professional students.*” Exhibit 19 contains a sample health professional training agreement with Cape Fear Community College. The applicants adequately demonstrate that the proposed facility would accommodate the clinical needs of area 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.

NC

The proposal in this application is part of a larger project to develop a new continuing care retirement community (CCRC) to be known as Carolina Bay of Wilmington at Autumn Hall (Carolina Bay) which will be located at 630 Carolina Bay Drive, Wilmington. Development of the CCRC is not a “new institutional health service” and is not subject to review. The CCRC will consist of 122 independent living units and a 100-bed combination nursing facility with 48 nursing facility (NF) beds and 52 adult care home (ACH) beds. Development of the 100-bed combination nursing facility is a “new institutional health service” and is subject to review. The applicants submitted three separate applications in order to develop the new 100-bed facility:

- Project I.D. # O-10086-13- relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds) (this application).
- Project I.D. # O-10087-13- relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds).
- Project I.D. #O-10088-13- develop 30 NF beds pursuant to Policy NH-2 (30 NH-2 beds).

The applicants plan to include a secure, dedicated wing for a 24-bed Alzheimer’s/Dementia Memory Support Unit but it will not be a licensed special care unit.

The following table identifies the existing facilities with ACH beds in New Hanover County.

ACH Facilities – New Hanover County

Facility	# of Beds
The Commons at Brightmore (Liberty)	201
Fannie Norwood Memorial Home	16
Sherwood Manor Rest Home	40
Spring Arbor of Wilmington	66
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Total	1,103

Source: Page 253 of the 2013 SMFP.

Enhanced Competition

In Section V.6, pages 64-65, the applicants discuss the expected effects on competition of the proposed relocation of 52 licensed but unutilized ACH beds within New Hanover County, including how any enhanced competition will have a positive impact on the cost effectiveness, quality and access to the services proposed. See also Sections II, III, VI and VII of the application.

Impact on Cost Effectiveness

The applicants do not adequately demonstrate that any enhanced competition will have a positive impact on the cost effectiveness of adult care home services in New Hanover County because the applicants do not adequately demonstrate the need to relocate the 52 licensed but unutilized ACH beds to the campus of the CCRC.

On page 34, Liberty states that it determined there is an unmet need for 144 ACH beds in the 3-mile radius surrounding the proposed site of the 100-bed facility. However, the applicants do not adequately demonstrate that it is reasonable to limit their analysis to just the 3-mile radius surrounding the site of the proposed 100-bed facility. In the Market Assessment Update provided in Exhibit 7, Retirement DYNAMICS, Inc. looked at a 5-mile and a 10-mile primary market area, not a 3-mile primary market area. Moreover, the Market Assessment Update does not appear to address the utilization of ACH beds at all. Rather, it is about the potential purchase or rental of independent living units (i.e., houses, condominiums,

townhouses or apartments). Thus, the Market Assessment Update included in Exhibit 7 does not support the applicants' conclusion that there is an unmet need for 144 ACH beds in the 3-mile radius surrounding the site of the proposed 100-bed facility.

Moreover, in Section III.9, the applicants are requested to project patient and resident origin by percentage and by county for NF and ACH admissions during the first FFY of operation. On page 49, in response, Liberty states that 95% of the patients utilizing the 52 relocated ACH beds are projected to be residents of New Hanover County, 3% are projected to be residents of Brunswick County and 2% are projected to be residents of Pender County. Nothing is said in the response to Section III.9 about serving only residents of the 3-mile radius surrounding the site of the proposed 100-bed facility. The applicants do not adequately demonstrate that 100% of the ACH patients projected to use the 52 relocated ACH beds will live within that 3-mile radius.

The 2013 SMFP shows a surplus of 242 ACH beds in New Hanover County in 2016. The proposed project is estimated to be completed in April 2015. Section III.3 of the application requests that the applicant "*Describe how the project is consistent with the applicable need determination in the State Medical Facilities Plan.*" In response on page 39, Liberty states "*The 2012 and proposed 2013 NC SMFP show no need determination for new skilled or assisted living beds in New Hanover County.*" Why the applicants reference a "proposed 2013 NC SMFP" is not clear since the application was submitted on February 15, 2013. The Governor signed the 2013 SMFP on December 21, 2012, which is eight weeks before this application was submitted. More importantly, the applicants do not address the surplus of 242 ACH beds in New Hanover County in 2016. Although the proposal to relocate 52 existing ACH beds will not increase the inventory of ACH beds in New Hanover County, the applicants are required to show that replacing these 52 licensed but unutilized beds which are included in the planning inventory would not result in an unnecessary duplication of existing and approved ACH beds in New Hanover County. The following illustrates how those 52 unutilized ACH beds contribute to the 242-bed surplus. If Liberty surrendered the license for the 52 unutilized ACH beds, the planning inventory would be reduced by 52 ACH beds and the 242-bed surplus would be reduced to a 190-bed surplus [242 – 52 = 190]. Since the 52 ACH beds are not currently in use, access by New Hanover County residents would not be negatively impacted if Liberty surrendered the license for the 52 beds.

In summary, the applicants do not adequately demonstrate that any enhanced competition includes a positive impact on cost effectiveness. Therefore, the application is nonconforming with 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, page 11, the applicants state that affiliates own and operate only two adult care home facilities in North Carolina. They did not identify The Kempton in response to

Section I.12. In Section II.6, page 31, the applicants identify three adult care home facilities, including The Kempton. One of those facilities, The Commons at Brightmore (the applicants identify it as Liberty Commons Assisted Living but the name of the facility according to the records in the Division of Health Service Regulation is The Commons at Brightmore) was found to have a Type B violation and a Type A violation during the 18 months immediately preceding the submittal of the application. The facility also paid a fine of \$20,000 during that same time period. No penalties or fines were reported for The Kempton.

According to the Adult Care Licensure Section, DHSR, during the 18 months immediately preceding submittal of the application through the date of this decision, no penalties or fines related to quality of care were imposed by the State on The Kempton at Brightmore. During the same time period, a Type A1 penalty was imposed on The Commons at Brightmore. A fine of \$20,000 was imposed and has been paid in full. According to the Adult Care Licensure Section, the facility has abated the violations.

The applicants adequately demonstrate that quality care has been provided in the past. The application is conforming to this criterion.

(21) Repealed effective July 1, 1987.

G.S. 131E-183(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, promulgated in 10A NCAC 14C .1100, are not applicable because the applicants do not propose to establish new adult care home beds.