

## 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-10087-13 / Carolina Bay Healthcare Center of Wilmington, LLC, Carolina Bay Properties of Wilmington, LLC, and Liberty Commons Nursing and Rehabilitation Center, Inc. / Relocate 18 licensed but unutilized nursing facility 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
- Liberty Commons Nursing and Rehabilitation Center, Inc.

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-10087-13 – Relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds) (this application).
- Project I.D. # O-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).
- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF 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 NH-6: Relocation of Nursing Facility Beds
- Policy NH-8: Innovations in Nursing Facility Design

**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 42, 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 NH-6: Relocation of Nursing Facility Beds** states:

*“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 nursing facility 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 nursing facility 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 relocating the 18 licensed NF beds within the same county. The application is consistent with Policy NH-6.

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

*“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, pages 43-48, Liberty describes how the proposed project will incorporate innovative approaches in work place practices, environmental design and care practices to address quality of life and quality of care issues of the residents. Privacy, autonomy, resident choice and more home-like settings are all included in the proposed project. The application is consistent with Policy NH-8.

In summary, the application is consistent with 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

The applicants for this proposed project are:

- Carolina Bay Healthcare Center of Wilmington, LLC
- Carolina Bay Properties of Wilmington, LLC
- Liberty Commons Nursing and Rehabilitation Center, Inc.

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-10087-13 – Relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds) (this application).
- Project I.D. # O-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).
- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF 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 51, the applicants provide projected patient origin for the NF beds, as shown in the table below.

County	Projected % of Total NF Residents
New Hanover	100.0%
Total	100.0%

On page 51, Liberty states admission to the NF beds “will come from New Hanover County because by definition 30 of those beds will be reserved fro the Independent Living residents

*of Carolina Bay with whom the applicants will have continuing care contracts in place. The other 18 beds will be utilized by New Hanover County residents, primarily for short term rehabilitation and therapy.”* The applicants adequately identified the population to be served.

### **Demonstration of Need**

In Section III.1, pages 35-38, the applicants state that the need to relocate 18 licensed but unutilized NF beds is based on the following:

- There are approximately 20 licensed but unutilized NF beds at Liberty Commons Nursing and Rehabilitation Center in Wilmington (Liberty Commons).
- Replacing and relocating these unutilized NF beds would increase operational efficiency at Liberty Commons and improve service to its current residents.
- At the new 100-bed facility, the 18 relocated NF beds will be in private rooms.
- Once the 18 NF beds have been relocated, Liberty will be able to increase the number of private rooms at Liberty Commons.

### **Projected Utilization**

In Section IV.2, pages 53-55, the applicant projects utilization of the 18 NF beds for the first two full federal fiscal years (FFYs), as illustrated in the table below.

#### **Projected Utilization – 18 Relocated NF Beds**

	<b>1<sup>st</sup> Full FFY 10/1/15 to 9/30/16</b>	<b>2<sup>nd</sup> Full FFY 10/1/16 to 9/30/17</b>
Patient Days	6,222	6,205
Occupancy Rate	94.0%	94.0%
# of Beds	18	18

As shown in the table above, in both the first two full federal fiscal years of operation, Liberty projects the 18 relocated NF beds will operate at 94% of capacity [ $6,222 / 365 / 18 = 0.947$ ;  $6,205 / 365 / 18 = 0.944$ ]. In Section III, pages 35-41, the applicants provide the assumptions and methodology utilized to project utilization for the 18 relocated NF beds.

On page 38, Liberty identifies all existing nursing facilities in New Hanover County and provides the occupancy rates, as illustrated in the table below. Liberty states the data in the table below was obtained from the 2013 License Renewal Applications (LRAs) which means the data was as of September 30, 2011.

**Nursing Facilities – New Hanover County (as of September 30, 2011)**

Facility	# of Beds	# of Residents	Occupancy Rate *
Kindred Transitional Care and Rehabilitation – Cypress Pointe	90	85	94.0%
Autumn Care of Myrtle Grove	90	83	92.0%
Davis Health Care Center	199	182	91.0%
North Chase Nursing and Rehabilitation Center	140	125	89.0%
Silver Stream Health and Rehabilitation Center	110	96	87.0%
Wilmington Health and Rehabilitation Center	120	102	85.0%
Liberty Commons Nursing and Rehabilitation Center	100	77	77.0%
Trinity Grove	100	37	37.0%
<b>Total</b>	<b>949</b>	<b>787</b>	<b>82.9%</b>

\* Calculated by dividing the # of residents by the # of beds. Example:  $787 / 949 = 0.829$

As shown in the table above, the average occupancy rate for the eight nursing facilities listed in the table above was 82.9% as of September 30, 2011. The applicants state the average occupancy rate would have been 90% if Trinity Grove (a new nursing facility in the fill up stage as of September 30, 2011) and Liberty Commons are excluded from the calculation  $[(787 - (37 + 77)) / (949 - (100 + 100) = 0.8985]$ .

At 77%, Liberty Commons had the second lowest occupancy rate of the eight nursing facilities listed in the table above. 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 rate of 77% is 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. However, the applicants did not provide the exact number of operational beds. On page 39, the applicants state that Liberty Commons has “*approximately 20 underutilized skilled nursing beds*” because semi-private rooms are being used as private rooms. Assuming the number of unutilized NF beds is 20, the number of operational beds would be 80  $[100 - 20 = 80]$  and the occupancy rate for 80 NF beds would be 96.3%  $[77 / 80 = 0.963]$ .

On page 39, Liberty states “*Clearly there is a strong demand for ... skilled nursing ... within the county.*” Also on page 39, 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 18 NF beds to the new facility.

On page 36, Liberty states that it determined there is an unmet need for 104 NF 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

...

*SNF Beds*

<i>Age Group</i>	<i>2012 Pop</i>	<i>Beds</i>	<i>2017 Pop</i>	<i>Beds</i>
<i>&lt;65</i>	<i>47,687</i>	<i>28</i>	<i>50,265</i>	<i>30</i>
<i>65-74</i>	<i>3,960</i>	<i>31</i>	<i>5,080</i>	<i>39</i>
<i>75-84</i>	<i>2,308</i>	<i>59</i>	<i>2,459</i>	<i>63</i>
<i>85+</i>	<i>950</i>	<i>86</i>	<i>1,198</i>	<i>108</i>
	<b><i>Total:</i></b>	<b><i>204</i></b>	<b><i>Total:</i></b>	<b><i>240</i></b>

As shown in the table above, Liberty states that a total of 204 NF beds are needed in 2012 to serve the residents of the 3-mile radius surrounding the site of the 100-bed facility and 240 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 215-218 of the 2013 SMFP. On page 36, Liberty states that the unmet need for NF beds in the 3-mile radius is 104 NF beds. 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 the 3-mile radius. The applicants subtracted Liberty Commons 100 NF beds from the 204 beds it says are needed in the 3-mile radius in 2012 [204 – 100 = 104].

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 ... Liberty Commons. 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 Liberty Commons 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 NF 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 104 NF 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 51, in response, Liberty states that 100% of the patients utilizing the 18 relocated NF beds are expected to be residents of New Hanover 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 NF patients projected to use the 18 relocated NF beds will live within that 3-mile radius.

The 2013 SMFP shows a surplus of 50 NF beds in New Hanover County in 2016. In Section XII, page 120, 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 41, 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 50 NF beds in New Hanover County in 2016. Although the proposal to relocate 18 existing NF beds will not increase the inventory of NF beds in New Hanover County, the applicants are required to show that there is an unmet need to replace these 18 licensed but unutilized beds which are included in the planning inventory. The following illustrates how those 18 unutilized NF beds contribute to the 50-bed surplus. If Liberty surrendered the license for the 18 unutilized NF beds, the planning inventory would be reduced by 18 NF beds and the 50-bed surplus would be reduced to a 32-bed surplus [50 – 18 = 32]. Since the 18 NF beds are not currently in use, access by New Hanover County residents would not be negatively impacted if Liberty surrendered the license for the 18 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 18 relocated NF 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 18 NF beds from Liberty Commons, which is currently licensed for 100 NF beds and 40 ACH beds. The patient census at Liberty Commons as of September 30, 2011 was 77 NF patients and 0 ACH patients. The occupancy rate for the 100 NF beds was 77% [ $77/100 = 0.77$ ]. According to Map Quest, the distance from Liberty Commons to the proposed site is approximately 1.5 miles and 6 minutes driving time. Thus, the replacement facility would be geographically accessible to the same population formerly served. Because the 18 NF 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 18 NF 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.

In Section III.2, pages 38-41, 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 NF beds. The applicants state that Liberty Commons Nursing and Rehabilitation Center has only approximately 20 underutilized NF 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 – Liberty states that this proposal addresses the issues with the other alternatives and was deemed the least costly and most effective alternative by the applicants.

However, the applicants did not adequately demonstrate the need to relocate and replace the 18 licensed but unutilized NF beds. Particularly since there is a projected surplus of 50 NF beds in New Hanover County in 2016. The applicants’ projected “deficit” in the 3-mile radius surrounding the proposed site of the 100-bed facility is not reasonable since the applicants represent in Section III.9, page 51, that the projected service area consists of all of New Hanover County 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 Criteria (3), (5), (6), (13a), (13c) 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 88, the applicants project the total capital expenditure for the proposal to relocate 18 NF beds will be \$4,088,721. This proposed project is part of a larger project with a total capital cost of \$57,176,626.

The \$4,088,721 capital cost for this project includes:

Site Costs	\$ 608,312
Construction Costs	\$2,931,251
Equipment and Furniture	\$ 234,000
Consultant Fees	\$ 206,078
Financing Costs	\$ 31,837
Interest during Construction	\$ 77,243
Total:	\$4,088,721

In Section VIII.2, page 91, 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 94, 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 96, 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."*

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

In Section X, pages 104-105, the applicants projected charges/rates for the first two operating years following completion of the project as illustrated in the following table:

**18 Relocated NF Beds- Charges/Rates**

Payor Source	First Full FFY (2017)	Second Full FFY (2018)
Private Pay	\$295.02	\$295.02
Medicare	\$458.00	\$458.00

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

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

However, projected utilization of the 18 NF 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-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).
- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF beds).

Liberty proposes to replace and relocate 18 licensed but unutilized NF beds from Liberty Commons, which is located at 121 Racine Drive, Wilmington approximately 1.5 miles from

the proposed 100-bed facility. The 18 NF beds to be relocated and replaced are licensed but are not currently being utilized. 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 applicants do not propose to offer any new services and do not propose to increase the number of NF beds in New Hanover County as part of this application.

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

<b>Nursing Facilities – New Hanover County</b>	<b># of NF Beds</b>
Autumn Care of Myrtle Grove	90
Azalea Health & Rehab Center (formerly Britthaven of Wrightsville)	80
Davis Health Care Center	199
Kindred Transitional Care and Rehab – Cypress Pointe	90
Liberty Commons Rehabilitation Center	100
North Chase Nursing and Rehabilitation Center	140
Silver Stream Health and Rehabilitation Center	110
Trinity Grove (new)	100
Wilmington Health and Rehabilitation Center	120
Total	1,029

Source: Division of Health Service Regulation website.

As shown in the table above, there are nine nursing facilities in New Hanover County with a total of 1,029 licensed NF beds. There are no approved but not yet developed NF beds in New Hanover County.

The applicants do not adequately demonstrate the need to relocate the 18 licensed but unutilized NF beds to the campus of the CCRC. On page 36, Liberty states that it determined there is an unmet need for 104 NF 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 NF 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 104 NF 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 51, in response, Liberty states that 100% of the patients utilizing the 18 relocated NF beds are expected to be residents of New Hanover 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 NF patients projected to use the 18 relocated NF beds will live within that 3-mile radius.

The 2013 SMFP shows a surplus of 50 NF 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 41, 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 50 NF beds in New Hanover County in 2016. Although the proposal to relocate 18 existing NF beds will not increase the inventory of NF beds in New Hanover County, the applicants are required to show that replacing these 18 licensed but unutilized beds which are included in the planning inventory would not result in an unnecessary duplication of existing and approved NF beds in New Hanover County. The following illustrates how those 18 unutilized NF beds contribute to the 50-bed surplus. If Liberty surrendered the license for the 18 unutilized NF beds, the planning inventory would be reduced by 18 NF beds and the 50-bed surplus would be reduced to a 32-bed surplus [ $50 - 18 = 32$ ]. Since the 18 NF beds are not currently in use, access by New Hanover County residents would not be negatively impacted if Liberty surrendered the license for the 18 beds.

Therefore, the applicants did not adequately demonstrate the proposed project will not result in the unnecessary duplication of existing or approved NF 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 75, the applicants state that in FFY 2017, the direct care staffing for the 18 relocated NF Beds will be 7.73 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, pages 85-86, 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 35-37, 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 NF beds will consist of 4,320 square feet. Construction costs for the 18 relocated NF Beds are projected to be \$2,931,251. See Section VIII.1, page 88. 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 new 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 114, the applicants provide the projected number of private rooms as illustrated in the table below.

	<b>Number of Private Beds</b>
Nursing Facility	48
Adult Care Home	52

In Section XI.14, page 118, and Section III.4, page 42, 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 18 NF 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;

NC

Liberty proposes to develop a new 100-bed facility, including 18 NF beds to be relocated from Liberty Commons. Liberty Commons is licensed for 100 NF beds and 40 ACH beds. The table below illustrates the FFY 2011 payor mix for the NF 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 Payor Mix  
Existing New Hanover County Nursing Facilities**

Facility	# of Beds	Total Patient Days	Occupancy Rate	Medicaid Days	Medicaid as % of Total	Medicare Days	Medicare as % of Total
Liberty Commons Nursing Center	100	30,947	85%	13,069	42.2%	8,927	28.8%
County Totals/Averages	1,159	282,206	67%	138,874	49.2%	72,077	25.5%
Statewide Totals/Averages	47,633	12,884,904	74%	8,608,987	66.8%	2,343,731	18.2%

Source: DMA, DHHS

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 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%
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.

As of September 30, 2011, there were 10 nursing facilities in New Hanover County. There are no existing CCRCs with NF beds and neither hospital has any NF beds. The following table illustrates the payor mix during FFY 2011 as reported to DMA.

**Federal Fiscal Year 2011 Payor Mix  
Existing New Hanover County Nursing Facilities**

Facility	# of Beds	Total Patient Days	Occupancy Rate	Medicaid Days	Medicaid as % of Total	Medicare Days	Medicare as % of Total
Britthaven of Wrightsville *	80	1,145	4%	1,028	89.8%	47	4.1%
Wilmington Health & Rehabilitation Ctr	120	39,762	91%	25,312	63.7%	10,303	25.9%
North Chase Nursing & Rehab Center	140	45,051	88%	28,260	62.7%	6,694	14.9%
Autumn Care of Myrtle Grove	90	26,879	82%	16,090	59.9%	7,211	26.8%
Kindred Transitional Care & Rehab	90	30,360	92%	16,957	55.9%	9,030	29.7%
Liberty Commons Nursing Center	100	30,947	85%	13,069	42.2%	8,927	28.8%
Silver Stream Health & Rehab Center	110	35,749	89%	14,129	39.5%	15,698	43.9%
Davis Health Care Center	199	69,699	96%	23,557	33.8%	13,013	18.7%
Trinity Grove	100	2,614	7%	472	18.1%	1,154	44.1%
County Totals / Averages	1,159	282,206	67%	138,874	49.2%	72,077	25.5%
Statewide Totals / Averages	47,633	12,884,904	74%	8,608,987	66.8%	2,343,731	18.2%

Source: DMA, DHHS

\* Britthaven of Wrightsville (a/k/a Bowden Nursing Home) was closed during calendar year 2011. The replacement facility did not open until after the end of FFY 2011.

As illustrated in the table above, during FFY 2011, 42.2% of total patient days were provided to Medicaid recipients at Liberty Commons. The New Hanover County average during that same time period was 49.2% and the statewide average was 66.8%. Excluding Britthaven of Wrightsville, the New Hanover County average was 49%, a difference of only two tenths of a percent. Comparing Liberty Common's percentage to the lower of the two averages, Liberty Common's percentage was 7% lower than the New Hanover County average, including Britthaven of Wrightsville and 6.8% lower excluding Britthaven of Wrightsville.

The applicants do not demonstrate that Liberty Commons provided adequate access to medically underserved populations. Therefore, the application is nonconforming 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 VI.6, pages 70-71, 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

NC

In Section VI.5(a), page 70, the applicants state *“Carolina Bay will admit to its 18 licensed skilled nursing “open” beds anyone over the age of 18 that qualifies for and is in need of skilled nursing services. 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.”*

In Section VI.2, page 69, the applicants project the following payor mix during FFY 2017 (second full FFY year) for the 18 relocated NF beds. These beds, unlike the 30 Policy NH-2 NF beds proposed in a different application can be utilized by anyone. They are often referred to as “open” NF beds. The Policy NH-2 beds are often referred to as “closed” beds because only residents of a CCRC can use them. The 18 NF beds to be relocated 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.

**Projected Days as a % of Total Days**

Payor Source	18 Relocated NF Beds ("Open" Beds)
Medicare	100.0%
Total	100.0%

As shown in the table above, the applicants project that 100% of the patients utilizing the 18 relocated NF beds will be Medicare patients. In Section VI.1, page 68, the applicants state that the 18 relocated NF beds will be "*Dually Certified for Title XVIII and Title XIX.*" By certifying the beds for Title XIX, the facility would be able to serve Medicaid recipients. However, the applicants do not project to serve any Medicaid recipients.

As of September 30, 2011, there were 10 nursing facilities in New Hanover County. There are no existing CCRCs with NF beds and neither hospital has any NF beds. The following table illustrates the payor mix during FFY 2011 as reported to DMA.

**Federal Fiscal Year 2011 Payor Mix  
Existing New Hanover County Nursing Facilities**

Facility	# of Beds	Total Patient Days	Occupancy Rate	Medicaid Days	Medicaid as % of Total	Medicare Days	Medicare as % of Total
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Source: DMA, DHHS

\* Britthaven of Wrightsville (a/k/a Bowden Nursing Home) was closed during calendar year 2011. The replacement facility did not open until after the end of FFY 2011.

As illustrated in the table above, 42.2% of total patient days were provided to Medicaid recipients at Liberty Commons during FFY 2011. During that same time period, the statewide average was 66.8% and the New Hanover County average was 49.2%. Comparing Liberty Common's projected percentage of zero percent Medicaid to the lower of the two averages, the projected percentage at the 100-bed facility is 49.2% lower than the New Hanover County average [49% - 0% = 49%].

The applicants did not demonstrate that medically underserved populations would have adequate access to the services to be provided in the 18 "open" relocated NF beds. The application is nonconforming 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 71, 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 65, 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 100-bed 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-10087-13 – Relocate 18 existing but unutilized NF beds within New Hanover County (18 relocated NF beds) (this application).
- Project I.D. # O-10086-13 – Relocate 52 existing but unutilized ACH beds within New Hanover County (52 relocated ACH beds).
- Project I.D. #O-10088-13 – Develop 30 NF beds pursuant to Policy NH-2 (30 Policy NH-2 NF 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 NF beds in New Hanover County.

<b>Nursing Facilities – New Hanover County</b>	<b># of NF Beds</b>
Autumn Care of Myrtle Grove	90
Azalea Health & Rehab Center (formerly Britthaven of Wrightsville)	80
Davis Health Care Center	199
Kindred Transitional Care and Rehab – Cypress Pointe	90
Liberty Commons Rehabilitation Center	100
North Chase Nursing and Rehabilitation Center	140
Silver Stream Health and Rehabilitation Center	110
Trinity Grove (new)	100
Wilmington Health and Rehabilitation Center	120
<b>Total</b>	<b>1,029</b>

Source: Division of Health Service Regulation website.

As shown in the table above, there are nine nursing facilities in New Hanover County with a total of 1,029 licensed NF beds. There are no approved but not yet developed NF beds in New Hanover County.

Enhanced Competition

In Section V.6, pages 66-67, the applicants discuss the expected effects on competition of the proposed relocation of 18 licensed but unutilized NF 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 how any enhanced competition will have a positive impact on the cost effectiveness of nursing facility services in New Hanover County because the applicants do not adequately demonstrate the need to relocate the 18 licensed but unutilized NF beds to the campus of the CCRC.

On page 36, Liberty states that it determined there is an unmet need for 104 NF 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 NF 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 104 NF 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 51, in response, Liberty states that 100% of the patients utilizing the 18 relocated NF beds are expected to be residents of New Hanover 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 NF patients projected to use the 18 relocated NF beds will live within that 3-mile radius.

The 2013 SMFP shows a surplus of 50 NF 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 41, 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 50 NF beds in New Hanover County in 2016. Although the proposal to relocate 18 existing NF beds will not increase the inventory of NF beds in New Hanover County, the applicants are required to show that there is an unmet need to replace these 18 licensed but unutilized beds which are included in the planning inventory. The following illustrates how those 18 unutilized NF beds contribute to the 50-bed surplus. If Liberty surrendered the license for the 18 unutilized NF beds, the planning inventory would be reduced by 18 NF beds and the 50-bed surplus would be reduced to a 32-bed surplus [50 – 18 = 32]. Since the 18 NF beds are not currently in use, access by New Hanover County residents would not be negatively impacted if Liberty surrendered the license for the 18 beds.

It is not cost effective to relocate and replace NF beds that are not needed.

*Impact on Access*

The applicants do not adequately demonstrate how any enhanced competition will have a positive impact on access to nursing facility services in New Hanover County. In Section VI.2, page 69, the applicants state that the facility would be certified to serve Medicaid recipients. However, the applicants do not project to serve any Medicaid recipients, which are a medically underserved group. During FFY 2011, 42.2% of total patient days were provided to Medicaid recipients at Liberty Commons. During that same time period, the statewide average was 66.8% and the New Hanover County average was 49.2%. Comparing Liberty Common's projected percentage of zero percent Medicaid to the lower of the two averages, the projected percentage at the 100-bed facility is 49.2% lower than the New Hanover County average [49% - 0% = 49%]. The applicants do not demonstrate the 18 relocated NF beds would provide adequate access to medically underserved groups, specifically Medicaid recipients.

In summary, the applicants do not adequately demonstrate that any enhanced competition includes a positive impact on cost effectiveness or access by medically underserved groups. 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 9, the applicants state that affiliates own and operate 19 nursing facilities in North Carolina, including Liberty Commons in New Hanover County, which is licensed for 100 NF beds. In Section II.6, pages 29-31, the applicants identify three nursing facilities, including Liberty Commons in New Hanover County, that were found to have provided substandard quality of care, as that term is defined in 42 CFR 488.301, during the 18 months immediately preceding the submittal of the application. The applicants also identified two nursing facilities that paid fines during that same time period.

According to the Nursing Home Licensure and Certification Section, DHSR, during the 18 months immediately preceding the date of the decision through the date of the decision, two deficiencies were identified at Liberty Commons in New Hanover County at

*“harm level 2 (potential for harm, not harm and not jeopardy) ... for privacy, vaccinations, food palatability, kitchen sanitation, quality assurance, pressure sores and self administration of medications and grievances. They received a G level (actual harm occurred) at supervision to prevent accidents and it was past non compliance (facility identified their own problem and systemically corrected it before the survey)”*

However, none of these deficiencies amount to substandard quality of care as defined in 42 CFR 488.301. 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 nursing facility beds as part of this application.