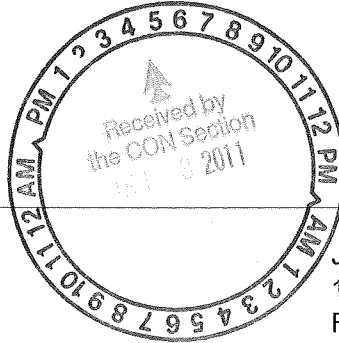


Consensus Consulting LLC
Making Sense of CON



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October 3, 2011

Mr. Craig R. Smith, Chief
Certificate of Need Section
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, N.C. 27603

RE: Public Written Comments, Wake County Nursing Facility Competitive Review

Dear Mr. Smith:

The following public written comments are submitted on behalf of Care-One and its proposals to develop two 120 bed nursing facilities in Wake County. These comments should be viewed as Public Written Comment. Throughout the comments we have attempted to point out deficiencies noted within the competing CON applications. I believe these comments will demonstrate the superiority of the proposals by Care-One.

If you have any questions I can be reached at the number/email above.

Sincerely,

A handwritten signature in cursive that reads "Jim Swann".

Jim Swann
Consensus Consulting, LLC

Re: Hillcrest Convalescent Center Inc.
120-beds Wake Forest Township
("Hillcrest-Wake")
Project ID # J-8711-11

CON Review Criteria:

- (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.*

As documented in the comments regarding CON Review Criterion 3, the application does not provide reasonable utilization projections; consequently, the financial projections are unreliable. Hillcrest-Wake fails to adequately demonstrate the need for its proposal and therefore, does not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this Criterion.

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

The Hillcrest-Wake application does not conform to CON Review Criterion 3 for multiple reasons:

- **The application fails to explain how the admissions projections and assumptions take into account the fact that 30 beds of the 120 total will be licensed but not certified.**
- **Steps 1 through 6 of the Hillcrest-Wake need methodology calculate the projected number of nursing facility patients in Wake County but do not relate to the later steps of the methodology.**
- **Step 7 of the need methodology, on page 89, is based on unsupported assumptions regarding the ramp-up of Medicare admissions from an initial 4 admissions per week to 7 admissions per week by the end of the first year. The Year 1 fill-up projections for Medicaid and private pay are not adequately explained in terms of admissions per week.**
- **The application fails to provide an average length of stay assumption for Medicaid patients.**

- Page 89 of the application unreasonably projects that Medicaid admissions will represent 14.29 percent of the total admissions in Year 1 and drop to 1.22 percent and 2.41 percent in Years 2 and 3 respectively.

	YR 1	YR 2	YR 3
Medicaid Admissions	54	5	10
Total Admissions	378	410	415
Medicaid Admissions / Total Admissions	14.29%	1.22%	2.41%

- (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.*

The Hillcrest-Wake application is not conforming to all applicable statutory and regulatory review criteria. See Criteria (1), (3), (5) and (6). Consequently, the proposed project is also nonconforming to Criterion 4.

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

The Hillcrest-Wake application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3.

Hillcrest-Wake projects an exceedingly high \$311 per day charge for private pay patients. This is an unreasonable charge assumption based on the applicant's comparative data for existing facilities provided in Exhibit 14. The Hillcrest-Wake application is based on an unreasonably high number of private pay patient days and exceedingly high charges.

The application fails to provide adequate explanation and assumptions regarding the other revenue rates of \$50.95 per patient day for pharmacy and \$21.90 per day for therapy charges as indicated in the Form B assumptions on page 146. Medicare and Medicaid reimbursement are inclusive of the ancillary charges. It is entirely unreasonable for Hillcrest-Wake to assume that the facility will be reimbursed by all patients, including Medicaid and Medicare, for these overstated pharmacy and therapy charges. Therefore, the revenue projections are overstated and unreasonable.

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

The Hillcrest-Wake application does not conform to all applicable statutory and regulatory review criteria. See Criteria (1), (3), and (5). Consequently, the proposed project is also nonconforming to Criterion 6.

(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:*

(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*

Hillcrest-Wake reserves 30 of its 120 beds for private pay patients thereby restricting access to the facility for Medicaid and Medicare patients.

As discussed in the comments regarding Criterion 3, Hillcrest fails to explain the average length of stay for Medicaid patients. The applicant projects only 5 Medicaid admissions in Year 2 and 10 Medicaid admissions in Year 3. These projections demonstrate that the proposed facility will restrict access to medically underserved patients. Consequently, the Hillcrest-Wake application does not conform to Criterion 13(c).

(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.*

Hillcrest-Wake did not adequately demonstrate that its proposal will have a positive impact on the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), (6) and (13) (c). Therefore, the application is not conforming to this Criterion.

**Re: Wake County Health & Rehabilitation
120-beds, Cedar Fork Township
("WCHR")
Project ID # J-8712-11**

CON Review Criteria:

- (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.*

The Wake County Health & Rehabilitation (“WCHR”) application does not provide reasonable utilization projections; consequently, the financial projections are unreliable. WCHR fails to adequately demonstrate the need for its proposal and therefore, does not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this Criterion.

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

The need determination for 240 nursing home beds in the 2011 State Medical Facilities Plan arose from a petition that demonstrated that the average occupancy of Wake County nursing facilities includes chronically underutilized facilities and some additional nursing facility beds that are in development. Based on this circumstance, it is unreasonable for the applicant to assume that the fill-up rate for the proposed project would be similar to the fill-rates for other facilities.

- (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.*

The WCHR application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6). Consequently, the proposed project is also nonconforming to Criterion 4.

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

The WCHR application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3.

WCHR ancillary revenues are overstated and unreasonable. Medicare and Medicaid reimbursement already includes ancillary services and comprise the majority of the total facility utilization. In Year 2, the applicant projects a total of 2,190 patient days for private pay patients representing only 5.4 percent of utilization. This level of utilization does not correspond to the Form B Year 2 revenue projections for:

Drugs	\$1,095,000
Physical Therapy	\$ 869,968
Occupational Therapy	\$ 854,582

These three revenue line items represent approximately 29.4 percent of the total facility revenue. Therefore, the applicant has failed to provide reasonable financial projections for the ancillary revenue.

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

The WCHR application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Consequently, the proposed project is also nonconforming to Criterion 6.

- (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.*

WCHR did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), (6) and (13) (c). Therefore, the application is not conforming to this Criterion.

**Re: Britthaven, Inc. and Spruce LTC Group LLC 120-bed facility in Cedar Fork Township
– Brier Creek / NW Raleigh
("Britthaven Cedar Fork")
Project ID # J-8713-11**

CON Review Criteria:

- (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.*

The Britthaven Cedar Fork application fails to adequately demonstrate the need for its proposal and therefore, does not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this Criterion.

- (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.*

Section IV of the Britthaven Cedar Fork application provides utilization projections based on unreasonable fill-up rates and occupancy projections. The fill-up rate for the 120-bed facility is overstated and unreasonable because Britthaven-affiliated facilities in Wake County have underutilized beds. It is unrealistic for the applicant to project to achieve 95 percent occupancy in the third quarter of the first fiscal year given that the average occupancy of all nursing facility beds in Wake County is less than 90 percent.

Britthaven's assumption that their fill-up will reach 95 percent fails to consider:

- 1) **The need determination in the 2011 SMFP for 240 beds relates to an adjusted need determination and not the standard methodology; existing nursing facilities in Wake County have available beds which could diminish the fill-rate and annual occupancy for the proposed project.**
- 2) **Previously-approved nursing facility projects being developed in Wake County by other entities are seeking referrals and admissions from Wake County; this will diminish the fill-up rate for the proposed project.**
- 3) **The existing City of Oaks (Tower Nursing & Rehab Center), which is a Britthaven affiliated facility in Wake County, has only achieved 70 percent occupancy. Therefore, the proposed project is duplicative of this underutilized facility.**

- 4) **Other CON proposals for additional nursing facility beds (including a second Britthaven 100-bed project) will be seeking referrals from Wake County and will also diminish the projected fill-up rate for this Britthaven 120-bed project.**
- 5) **The previously-approved Britthaven of Holly Springs facility will be seeking referrals and admissions from Wake County and will also diminish the projected fill-up rate for the Britthaven 120-bed project.**

(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.*

The Britthaven Cedar Fork 120-bed application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6). The applicant fails to consider the option of transferring underutilized nursing facility beds from its affiliated facility City of Oaks n/k/a Tower Nursing and Rehab Center. Consequently, the proposed project is also nonconforming to Criterion 4.

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

The Britthaven Cedar Fork application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3.

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

The Britthaven Cedar Fork 120-bed application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Operational projections and fill-up assumptions are overstated and unreasonable and fail to consider the impact of other approved and proposed projects. The proposed project is duplicative of the Britthaven affiliated City of Oaks Health and Rehab facility, which is severely underutilized. Consequently, the proposed project is also nonconforming to Criterion 6.

(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.*

Britthaven Cedar Fork did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See

Criteria (1), (3), (5), (6) and (13) (c). Therefore, the application is not conforming to this Criterion.

Re: Universal Properties / North Raleigh, LLC d/b/a/Universal Health Care / North Raleigh, Inc.

**Add 20 beds to Universal Healthcare / North Raleigh (Neuse Township) for a total of 132 beds ("Universal")
Project ID # J-8714-11**

CON Review Criteria:

- (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.*

As discussed in the comments regarding CON Review Criterion 3, the application does not provide reasonable utilization projections; consequently, the financial projections are unreliable. Universal fails to adequately demonstrate the need for its proposal and therefore, does not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this Criterion.

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

The Universal application is nonconforming to Criterion 3 because the utilization projections are overstated and unreasonable.

Universal unreasonably projects to reach 96.21 percent occupancy for the 132 nursing facility beds in the second quarter following completion of the project. This projection is excessive and unjustified. As seen on page 56, the occupancy of the existing 112 nursing facility beds over the previous 12 months has ranged from 88.08 percent to 94.05 percent. For the nine month period prior to submitting the application, Universal averaged 9 vacant nursing facility beds. At no time did the monthly occupancy reach or exceed 96 percent for the existing 112 nursing facility beds. The applicant does not provide other data to demonstrate a trend of increasing occupancy or a waiting list of patients seeking admission to the facility.

Furthermore, the 9 month historical occupancy of the existing 20 Adult Care Home ("ACH") beds has ranged between 60.65 percent and 70.36 percent. On average, Universal has 6

vacant beds in its 20 bed ACH unit. The applicant projects that the occupancy of these 20 beds will soar to 95 percent in the first quarter following completion of the project. However, the application provides no information to support the projected increase in ACH patient utilization.

- (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.*

The Universal application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6). Therefore, the proposed project is also nonconforming to Criterion 4.

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

The Universal application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3. The projected nursing facility occupancy is overstated and unrealistic; the adult care occupancy and utilization is also overstated and unreasonable.

The staffing tables and the pro forma expense statements fail to show adequate staff will be added for housekeeping and laundry services to accommodate the increase in square footage, the increased number of licensed beds, and the higher occupancy projections.

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

The Universal application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Operational projections are overstated and unreasonable. Consequently, the proposed project is also nonconforming to Criterion 6.

- (7) *The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of services proposed to be provided.*

The Universal application is not conforming to CON Review Criterion 7 because the staffing tables and the pro forma expense statements fail to show adequate staff will be added for housekeeping and laundry services. The project involves the addition of 10,574 S.F to accommodate 20 additional nursing facility beds. However, the staffing tables for housekeeping and laundry positions show no increases.

- (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:

- (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*

Universal unreasonably projects to serve a higher percentage of Medicare patients, 22.83 percent in 2015, as compared to its historical 20.22 percent that was reported for 2009. The application does not provide an explanation for the projected increase in Medicaid percentage.

As discussed in the comments regarding Criterion 3, the Universal application provides overstated and unreasonable utilization projections. Therefore, the patient projections and payor mix percentages are unreliable.

- (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.*

Universal did not adequately demonstrate that its proposal will have a positive impact on the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), (6) and (13) (c). Therefore, the application is not conforming to this Criterion.

**Re: Britthaven, Inc. and Redwood LTC Group LLC
100-bed facility in St. Mary's Township (Garner)
("Britthaven-St. Mary's")
Project ID # J-8715-11**

CON Review Criteria:

- (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.*

The Britthaven-St. Mary's 100-bed application fails to adequately demonstrate the need for its proposal and therefore, does not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this Criterion.

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

The application does not conform to Criterion 3 because Section IV provides utilization projections based on unreasonable fill-up rate projections to reach 95 percent occupancy. It is unreasonable for the applicant to project to achieve 95 percent occupancy in the third quarter of the first fiscal year given the average occupancy of all nursing facility beds in Wake County is less than 90 percent.

Britthaven's assumption that their fill-up will reach and maintain 95 percent occupancy fails to consider:

- 1) **The need determination in the 2011 SMFP for 240 beds relates to an adjusted need determination and not the standard methodology; existing nursing facilities in Wake County have available beds which could diminish the fill-rate for the proposed project.**
 - 2) **The existing City of Oaks (Tower Nursing & Rehab Center), which is a Britthaven affiliated facility in Wake County, has only achieved 70 percent occupancy. Therefore, the proposed project is duplicative of this underutilized facility.**
 - 3) **The previously-approved Britthaven of Holly Springs will be seeking referrals and admissions from Wake County and will diminish the projected fill-up and 95 percent occupancy for Britthaven's 100-bed project. Britthaven of Holly Springs is only 18 to 20 miles from the proposed location for Britthaven-St. Mary's in Garner.**
 - 4) **Previously-approved nursing facility projects that are being developed in Wake County by other entities are also seeking referrals and admissions from Wake County; this will also diminish the fill-up rate for the proposed project.**
 - 5) **Other CON proposals for additional nursing facility beds (including the proposed 120-bed project Britthaven project ID J-8713-11) will be seeking referrals from Wake County and will also diminish the projected fill-up rate for Britthaven-St. Mary's.**
- (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.*

Britthaven-St. Mary's application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6). The applicant failed to consider the option of relocating some beds from City of Oaks, which is underutilized.

Consequently, the proposed project is also nonconforming to Criterion 4.

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

The Britthaven-St. Mary's 100-bed application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3.

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

The Britthaven-St. Mary's 100-bed application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Operational projections and fill-up assumptions are overstated and unreasonable and fail to consider the impact of other approved and proposed projects. The proposed project is duplicative of the Britthaven affiliated City of Oaks Health and Rehab facility which is severely underutilized. Consequently, the proposed project is also nonconforming to Criterion 6.

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

The applicant did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), and (6). Therefore, the application is not conforming to Criterion (18a).

**Re: AH North Carolina Owner, LLC (Brookdale)
Develop a 90-bed facility on the campus of The Heritage of Raleigh
("Brookdale")
Project ID # J-8717-11**

CON Review Criteria:

- (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.*

The AH North Carolina Owner, LLC (“Brookdale”) 90-bed application fails to adequately demonstrate the need for its proposal and therefore, does not demonstrate that the project is a cost-effective approach. Brookdale proposes an exceedingly large-sized facility with 74,720 total square feet or 830 square feet per bed. The facility includes elevators and stairs and duplicative support space due to the three story design concept. With a projected capital cost of \$20,961,007, the per-bed capital cost is \$232,900, which far exceeds other proposals. Therefore, the application is not consistent with Policy GEN-3 with regard to value and access and thus, is not conforming to Criterion 1.

The Brookdale application does not conform to GEN-4 because the financial pro forma Form C includes plant operations and maintenance costs of \$13.38 per patient day in Year 1 and \$10.75 per patient day in Year 2. Brookdale’s claim that this facility design represents energy efficiency is unreasonable due to the high square footage per bed and the high cost of utilities that are included in the Form C plant operations and maintenance calculations.

The application does not conform to Policy NH-8 because the three story building with elevators is an institutional design and not a homelike environment. The three story design isolates patients within their individual 30 bed units. Consequently, patients are not free to routinely interact with patients and staff in the other two units.

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

The CON application does not conform to Criterion 3 because the proposed project offers priority access to residents of The Heritage, resulting in less convenient access to the medically underserved population of Wake County.

The Brookdale application states that the project will be developed on the campus of The Heritage of Raleigh. On page 67, the applicant states that, during the past 12 months, The Heritage transferred three residents to skilled nursing facilities and that approximately 40 to 50 residents are transferred on a temporary basis to a nursing facility for rehabilitative care and then returned to The Heritage for independent living. Based on these statements, it is apparent that Brookdale residents have appropriate and timely access to existing facilities.

Brookdale fails to adequately demonstrate that the project is needed at the proposed location. A tremendous concentration of nursing facility beds are within a few miles of the proposed project, as seen on page 62 of the CON application. Also, as seen on page 2 of the Brookdale petition, most of these nearby facilities have experienced low occupancy:

Capital Nursing and Rehab	125 beds	76%
City of Oaks Health and Rehab	180 beds	74%

Mayview Convalescent Ctr.	139 beds	86%
The Cypress CCRC	18 beds	23%
Springmoor CCRC	86 beds	70%

Brookdale's projection that it will achieve 93% occupancy in the third quarter of Year 1 is unreasonable based on the far lower occupancy of the existing nursing facilities that are in the immediate vicinity.

- (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.*

The Brookdale 90-bed application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6). Consequently, the proposed project is also nonconforming to Criterion 4.

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

The Brookdale application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criteria 3.

The financial pro forma statements are unreasonable and inaccurate as follows:

Brookdale's payor percentages are miscalculated and incorrect. The Medicaid and Medicare percentages are lower than the actual Wake County nursing facility provider averages, excluding the CCRC's. Consequently, the patient days' projections by payor category are incorrect.

The ancillary revenue projections of \$2,045,744 in Year 1 and \$2,627,231 in Year 2 are not reasonable projections because the application fails to demonstrate that the Brookdale patient population has a need for such aggressive ancillary services.

The ancillary service expense line item "Other" is \$659,856 in Year 1 and \$847,410 in Year 2 and has no assumptions or explanations. These projections have no quantitative basis in terms of patient days or units of service.

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

The Brookdale application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Occupancy and operational projections are overstated and unreasonable and fail to consider the low occupancy of numerous nursing facilities in close

proximity to the proposed project. Consequently, the proposed project is also nonconforming to Criterion 6.

- (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.*

The Brookdale application does not conform to Criterion 12 because the total capital cost of \$20,961,007 for the 90-bed nursing facility design makes this an extraordinarily costly proposal. The design includes 74,720 total square feet of space, which translates to 830 S.F. per bed, which will directly contribute to higher heating and cooling expenses. High energy costs are also reflected in the Form C Total Plant Operations and Maintenance expense of \$13.28 per patient day in Year 1 and \$10.75 per patient day in Year 2.

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

The applicant did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), and (6) Therefore, the application is not conforming to Criterion (18a).

**Re: UniHealth Post-Acute Care-Raleigh, LLC
and Wake Healthcare Properties, Inc.**

Add 20 special care Alzheimer's beds to existing facility (Swift Creek Township) for a total of 170 beds

("UniHealth Post-Acute Care-Raleigh")

Project ID # J-8719-11

CON Review Criteria:

- (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.*

The UniHealth Post-Acute Care-Raleigh proposal to add 20 beds to its existing facility in Raleigh does not conform to CON Review Criterion 1. The application provides inconsistent information regarding the payor percentages for Medicaid and Medicare

causing the application to be nonconforming to both CON Review Criterion (13) (c) and Policy GEN-3.

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

The UniHealth Post-Acute Care-Raleigh application fails to provide reasonable utilization projections and does not conform to Criterion 3. Page 168 provides historical data for the existing facility. During the nine month period prior to filing the application, the utilization of the existing 130 “regular” nursing facility beds was between 92 and 93 percent. The proposed project does not change the number of regular nursing facility beds. Therefore, the projection for future years’ occupancy at 96 percent is not adequately explained.

The utilization projections for the special care Alzheimer’s beds are unreasonable due to the inconsistent information regarding the payor type (Medicaid or Medicare) for the proposed 20 additional beds. Page 189 indicates that the special care Alzheimer’s unit will be 100 percent Medicare. However, page 176 shows 100 percent Medicaid days of care in the special care Alzheimer’s unit. In addition to this error, the applicant fails to explain why no patients with private pay, commercial insurance or other payor categories are projected to utilize the Alzheimer’s beds.

- (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.*

The UniHealth Post-Acute Care-Raleigh application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

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

The UniHealth Post-Acute Care-Raleigh application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3.

The application erroneously omits equipment depreciation expenses for the facility. Form A on page 261 shows \$132,883 in equipment depreciation for the most recent fiscal year. Form C on pages 267 (Year 1) and 271 (Year 2) inaccurately show no equipment

depreciation expense. Based on this inconsistency the expense projections for the proposed project are unreliable.

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

The application does not conform to all applicable CON Review Criteria. See Criteria (1), (3), and (5). Consequently, the proposed project is also nonconforming to Criterion 6.

- (7) *The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of services proposed to be provided.*

The UniHealth Post-Acute Care-Raleigh application is not conforming to CON Review Criterion 7 because the staffing table VII.2 on page 200 shows an incorrect staffing configuration for the evening shift and the night shift.

The evening shift shows that no RNs are assigned to the 40 bed Alzheimer's unit. Based on this representation it appears that the LPNs and Aides are responsible for medication administration and treatments with no Registered Nurses assigned to directly supervise this unit.

Again, the night shift section of the VII.2 staffing table shows that no RNs are assigned to the 130 nursing bed portion of the facility. Based on this representation, it appears that the LPNs and Aides are responsible for medication administration and treatments with no Registered Nurses assigned to the unit.

- (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:*

- (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*

The application does not conform to Criterion (13) (c) because UniHealth Post-Acute Care-Raleigh provides inconsistent information regarding its projected patient days for Medicare and Medicaid. Page 189 states that the special care Alzheimer's unit will be 100 percent Medicare. However, page 176 shows 100 percent Medicaid days of care for the special care Alzheimer's unit. Page 188 of the application fails to provide information regarding the

Medicare and Medicaid certification for the existing licensed beds. Furthermore, the application fails to provide the historical payor mix for the existing 20-bed Alzheimer's unit.

UniHealth Post-Acute Care-Raleigh's projected 46.3 percentage for Medicaid patients is substantially below the actual Wake County nursing facilities' (excluding CCRC's) combined average of 60.1 percent. According to the UniHealth 2011 License Renewal application, the facility provided 20,084 Medicaid patient days out of a total 51,955 days of care. Therefore, the actual historical percentage was only 38.7 percent.

(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.

UniHealth Post-Acute Care-Raleigh did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), (6), and (13) (c). Therefore, the application is not conforming to Criterion (18a).

**Re: UniHealth Post-Acute Care-Cary, LLC
and Wake Healthcare Properties, Inc.
Develop a 100-bed facility in Morrisville (Cedar Fork)
("UniHealth Post-Acute Care-Cary")
Project ID # J-8720-11**

CON Review Criteria:

(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.

The UniHealth Post-Acute Care-Cary application does not conform to CON Review Criterion 1. The application provides unreasonable payor percentages for Medicaid causing the application to be nonconforming to both CON Review Criterion (13) (c) and Policy GEN -3.

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

The UniHealth Post-Acute Care-Cary application does not conform to Criterion 3 because the applicant does not explain how the utilization projections for the UniHealth – Raleigh project would impact referrals to UniHealth Post-Acute Care-Cary. The applicant does not explain how the utilization projections and assumptions consider the need the population has for the project based on the proximity of UniHealth- Durham, which is approximately 18 miles from the proposed project.

- (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.*

The UniHealth Post-Acute Care-Cary application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

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

The UniHealth Post-Acute Care-Cary 100-bed application does not conform to CON Review Criterion 5 because the financial pro forma statements are inaccurate:

The pro forma expense statements for the UniHealth Post-Acute Care-Cary 100-bed application are unreasonable because no expenses are budgeted for line items of “General” and “Administration”, including line item 147 (promotions, public relations and want ads) and line item 159 (data processing). Both of these line item expenses are included in Form A (page 261) in the UniHealth – Raleigh application (project ID # J-8720-11), which is an existing facility. The application provides no explanation for these omissions.

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

The application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Consequently, the proposed project is also nonconforming to Criterion (6).

- (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:*

- (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*

The application does not conform to Criterion (13) (c). UniHealth's commitment to provide Medicaid access at the proposed Cary location is not credible. Since UniHealth – Raleigh is an existing nursing facility provider in Wake County, its historical payor mix data is relevant to evaluate the reasonableness of the UniHealth Post-Acute Care-Cary projections. According to the UniHealth-Raleigh 2011 License Renewal application, the facility provided 20,084 Medicaid patient days out of a total 51,955 days of care. Therefore, the actual historical Medicaid percentage for UniHealth Raleigh was only 38.7 percent. The applicant unreasonably projects 60% Medicaid utilization in Year 1 and 64.6% Medicaid in Year 2. These projections are inconsistent with historical data.

(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.

UniHealth Post-Acute Care-Cary did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), (6), and (13) (c). Therefore, the application is not conforming to Criterion (18a).

**Re: Universal Properties / Fuquay Varina LLC Universal Health Care / Fuquay Varina, Inc. (Middle Creek Township)
Add 60 beds to facility for a total of 109 NF beds and 31 ACH beds and convert 24 ACH beds to an Alzheimer's ACH unit
("Universal Fuquay")
Project ID # J-8721-11**

CON Review Criteria:

- (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.*

The applicant proposes to add 60 beds to a previously-approved project. The Universal Fuquay application fails to adequately demonstrate the need for its project and therefore,

did not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this Criterion.

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

The Universal Fuquay application does not conform to Criterion 3 because the applicant does not adequately explain the assumptions for the utilization projections:

The application provides no rationale for the mix of 7 regular adult care home beds and 24 Alzheimer's ACH beds in the dedicated unit. Furthermore, Universal Fuquay's Exhibit 31 shows that in 2009 the existing ACH facilities in Wake had an average total 79 percent occupancy and the special care unit totaled only 82 percent occupancy. Based on these statistics, the applicant fails to demonstrate that its occupancy projections of 93 percent for ACH and 95 percent for ACH Alzheimer's are based on reasonable assumptions.

- (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.*

The Universal Fuquay application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

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

The Universal Fuquay application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3.

The application erroneously omits financial information from the previously-approved project because the Form A is incomplete. Portions of the form and numerous line items of expenses are omitted from the application.

The pro forma Form C expenses are inaccurate and understated as follows:

The proposed project increases the total facility square footage by over 30 percent. However, the utilities expense is projected to increase by less than 20 percent as compared to the previous utilities cost projection. Universal Fuquay fails to explain this inconsistency.

Previous CON S.F.	CON Page 115	87,637
Additional S.F – Current Proposed Project	CON Page 115	26,551
Percentage Increase		30.30%
Previous CON Utilities Expense (Form A)	CON Page 123	\$112,237
Current Proposed Project YR 1	CON Page 133	\$134,393
Percentage Increase		19.74%

The proposed project includes an additional \$3.5 million in capital cost. However, the real estate taxes for the proposed project on CON page 135 shows \$43,200 and reflects no change from the \$43,200 amount shown in the previous CON on page 125. Not increasing the real estate taxes to reflect the additional building value is clearly an error.

The previously-approved project expenses show a central office expense on page 124 in the amount of \$112,547. Form C pages 135 and 139 for the proposed project include no expenses for central office overhead. Universal Fuquay fails to explain this omission.

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

The application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Consequently, the proposed project is also nonconforming to Criterion (6).

- (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:*

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

The application does not conform to Criterion (13)(c) because the projected Medicare payor percentage of 17.14 percent is significantly below the Wake County combined average of 21.5 percent for nursing facility beds, excluding the CCRCs. The projected payor percentage of 50 percent private for the ACH beds is also not adequately explained.

- (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.

Universal Fuquay did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), (6), and (13) (c). Therefore, the application is not conforming to Criterion (18a).

The application does not conform to 10A NCAC 14C.1102 (a) because the applicant provides no data to demonstrate 90 percent occupancy for the existing licensed beds. This rule is applicable to the applicant as an existing licensed facility based on the plain language of the rule.

**Re: Comments Regarding Liberty Healthcare Properties of W. Wake County
d/b/a Liberty P and
Liberty Commons Nursing & Rehab CNTR of W. Wake Co. LLC
d/b/a Wake Co Rehab CNTR
Develop a 130-bed facility in Garner (St. Mary's Township) by relocating 10 NF beds from
Capital plus 120 additional beds
("Liberty St. Mary's")
Project ID # J-8723-11**

CON Review Criteria:

- (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.*

As documented in the comments regarding CON Review Criterion 3, the application does not provide reasonable utilization projections; Consequently, the financial projections are unreliable. The Liberty St. Mary's application fails to adequately demonstrate the need for its proposal and therefore, does not demonstrate that the project is a cost-effective approach. Therefore, the application is not consistent with Policy GEN-3 and thus, is not conforming to this Criterion.

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

The Liberty St. Mary's application is nonconforming to Criterion 3 because utilization projections are overstated and unreasonable. Liberty St. Mary's unreasonably projects that the 130-bed nursing facility will reach and maintain 95 percent occupancy in the first full year following project completion. However, according to the 2011 Licensed Renewal

applications, none of the existing Wake County nursing facilities with 130 or more beds have maintained 95 percent occupancy.

The 2011 need determination for 240 additional nursing facility beds arose from a petition request that recognized some existing nursing facilities will likely remain underutilized even though the overall demand is increasing. Capital Nursing, a co-applicant in this project, reported only an 84.3 percent annual occupancy in 2010. The proposed transfer of 10 vacant beds from Capital Nursing to the proposed project is not adequately explained or justified.

The application does state that nursing facilities with 120 to 130 beds are best able to achieve economies of scale. This is the supposed rationale for the proposed 130 bed project. However, the proposed transfer of 10 beds from the 125 bed Capital Nursing facility will cause the facility to no longer operate with these economies of scale. The applicants also provide no future utilization projections for Capital Nursing as required. Accordingly, the proposed project fails to demonstrate that Capital Nursing will achieve 90 percent occupancy in the second year following completion of the project.

(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.*

Criterion 3a requires the applicants to demonstrate that the needs of the patient population at Capital Nursing will be adequately met with the proposed reduction of 10 beds. It is reasonable to assume that the occupancy levels at Capital Nursing fluctuate over time and that the existing 125 bed facility has at some time served more than 115 patients. The Liberty St. Mary's application is nonconforming to criterion 3a because the application provides no operational projections to demonstrate that the transfer of 10 beds from Capital Nursing will not adversely affect its patients.

Page 61 of the application states that nursing facilities with 120 to 130 beds are best able to achieve economies of scale. Decreasing the number of beds at Capital Nursing will cause the facility to have only 115 beds. Diminishing the operational efficiency and capacity of Capital Nursing without explanation is inconsistent with CON Criterion 3a.

(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.*

The Liberty St. Mary's application does not conform to all applicable CON criteria. See Criteria (1), (3), (3a) (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

(5) *Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial*

feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

The Liberty St. Mary's application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3. The application is based on understated expenses. The projected rent expense of \$300,000 per year is unreasonably low and does not allow for sufficient revenues for the lessor to properly insure and maintain the building, parking lot and site improvements over the life of the facility. With the understated rental expense, the financial pro forma statements are unreliable.

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

The Liberty St. Mary's application is not conforming to Criterion 3 and 3a. Consequently, the application does not conform to Criterion 6.

(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.*

Liberty St. Mary's did not adequately demonstrate that its proposal would have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), and (6). Therefore, the application is not conforming to Criterion (18a).

10A NCAC 14C .1102 PERFORMANCE STANDARDS

(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated

The Liberty St. Mary's application does not conform to 10A NCAC 14C.1102 (b) because the applicants provide no occupancy data to demonstrate 90 percent future occupancy for the licensed beds at Capital Nursing. The total number of nursing beds to be operated by the applicants is provided in the two tables in Section I page 8 of the application shown below.

8. Identify the existing and projected bed complement by licensure category below.

Wake County Rehabilitation Center

	NF	ACH*	Other Licensed Beds (specify)	
a.	10	0		Total Number of Beds Currently Licensed. (Beds currently licensed at Capital Nursing to be relocated)
b.	0	0		Total Number of Beds Previously Approved By The CON Section But Not Yet Licensed.
c.	120	0		Number of Licensed Beds Proposed To Be Added.
d.	0	0		Number of Licensed Beds Proposed To Be Deleted.
e.	130	0		TOTAL NUMBER OF BEDS TO BE LICENSED AFTER COMPLETION OF THE PROJECT.

* Adult Care Home

Capital Nursing

	NF	ACH*	Other Licensed Beds (Specify)	
a.	125	0	0	Total Number of Beds Currently Licensed. (Beds currently licensed at Capital Nursing)
b.	0	0	0	Total Number of Beds Previously Approved By The CON Section But Not Yet Licensed.
c.	0	0	0	Number of Licensed Beds Proposed To Be Added.
d.	10	0	0	Number of Licensed Beds Proposed To Be Relocated.
e.	115	0	0	TOTAL NUMBER OF BEDS TO BE LICENSED AFTER COMPLETION OF THE PROJECT.

Sections III and IV of the application include no utilization projections for the beds that are to be operated by the applicant Capital Nursing.

Re: Liberty Healthcare Properties of W. Wake County d/b/a Liberty Properties and Liberty Commons Nursing & Rehab CNTR of W Wake Co. LLC d/b/a Wake Co Rehab CNTR

Develop a 130-bed facility in Morrisville (Cedar Fork Township) by Relocating 10 NF beds from Capital plus 120 additional beds

("Liberty Cedar Fork")

Project ID # J-8726-11

CON Review Criteria:

- 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.*

As documented in the comments regarding CON Review Criterion 3, the application does not provide reasonable utilization projections; consequently, the financial projections are unreliable. The Liberty Cedar Fork application fails to adequately demonstrate the need for its proposal and therefore, did not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this criterion.

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

The Liberty Cedar Fork application is nonconforming to Criterion 3 because the utilization projections are overstated and unreasonable. Liberty Cedar Fork unreasonably projects the 130-bed nursing facility to reach and maintain 95 percent occupancy in the first full year following project completion. However, according to the 2011 Licensed Renewal applications, none of the existing Wake County facilities with 130 or more beds have maintained 95 percent occupancy.

The 2011 need determination for 240 additional nursing facility beds arose from a petition request that recognized some existing nursing facilities will likely remain underutilized even though the overall demand is increasing. Capital Nursing, a co-applicant in this project, reported an 84.3 percent annual occupancy in 2010. The proposed transfer of 10 vacant beds from Capital Nursing to the proposed project is not adequately explained or justified.

The application does state that nursing facilities with 120 to 130 beds are best able to achieve economies of scale. However, the proposed transfer of 10 beds from the 125 bed Capital Nursing will cause the facility to no longer operate with these economies of scale. The applicants also provide no future utilization projections for Capital Nursing as required. Therefore, the proposed project does nothing to enhance access to services at Capital Nursing.

- (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.*

Criterion 3a requires the applicants to demonstrate that the needs of the patient population at Capital Nursing will be adequately met with the proposed reduction of 10 beds. It is reasonable to assume that the occupancy levels at Capital Nursing fluctuate over time and that the existing 125 bed facility has at some times served more than 115 patients. The Liberty St. Mary's application is nonconforming to Criterion 3a because the application provides no operational projections to demonstrate that the transfer of 10 beds from Capital Nursing will not adversely affect patients.

Page 61 of the application states that nursing facilities with 120 to 130 beds are best able to achieve economies of scale. Decreasing the number of beds at Capital Nursing will cause the facility to have only 115 beds. Diminishing the operational efficiency of Capital Nursing is certainly not consistent with the CON criteria.

- (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.*

The Liberty Cedar Fork application does not conform to all applicable CON criteria. See Criteria (1), (3), (3a) (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

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

The Liberty Cedar Fork application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3. The application is based on understated expenses. The projected rent expense of \$300,000 per year is unreasonably low and does not allow for sufficient revenues for the lessor to properly insure and maintain the building, parking lot and site improvements over the life of the facility. With the understated rental expense, the financial pro forma statements are unreliable.

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

The Liberty application is not conforming to Criterion 3 and 3a. Consequently, the application does not conform to Criterion 6.

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

The Liberty Cedar Fork application did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), and (6). Therefore, the application is not conforming to Criterion (18a).

10A NCAC 14C .1102 PERFORMANCE STANDARDS

- (b) *An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds*

proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated

The Liberty Cedar Fork application does not conform to 10A NCAC 14C.1102 (b) because the applicants provide no occupancy data to demonstrate 90 percent future occupancy for the licensed beds operated at Capital Nursing. The total number of nursing beds to be operated by the applicants is provided in the two tables in Section I page 8. These tables show the 130 beds for the proposed new facility and the 115 licensed nursing facility beds to remain at Capital Nursing. Sections III and IV of the application include no utilization projections for the beds that are to be operated by Capital Nursing.

Re: Comments Regarding Liberty Healthcare Properties of W. Wake County d/b/a Liberty Properties and Liberty Commons Nursing & Rehab CNTR of W Wake Co. LLC d/b/a Wake Co Rehab CNTR and Liberty Healthcare Properties and Liberty Commons Nursing

**Develop a 130-bed facility in North Raleigh (House Creek Township) by relocating 10 NF beds from Capital plus 120 additional beds
("Liberty House Creek")
Project ID # J-8727-11**

CON Review Criteria:

- (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.*

As documented in the comments regarding CON Review Criterion 3, the application does not provide reasonable utilization projections; Consequently, the financial projections are unreliable. The Liberty House Creek application fails to adequately demonstrate the need for its proposal and therefore, did not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this criterion.

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

The Liberty House Creek application is nonconforming to Criterion 3 because utilization projections are overstated and unreasonable. Liberty House Creek unreasonably projects the 130-bed nursing facility to reach and maintain 95 percent occupancy in the first full year following project completion. However, according to the 2011 Licensed Renewal

applications, none of the existing Wake County facilities with 130 or more beds have maintained 95 percent occupancy.

The 2011 need determination for 240 additional nursing facility beds arose from a petition request that recognized some existing nursing facilities will likely remain underutilized even though the overall demand is increasing. Capital Nursing, a co-applicant in this project, reported an 84.3 percent annual occupancy in 2010. The proposed transfer of 10 vacant beds from Capital Nursing to the proposed project is not adequately explained or justified.

The application does state that nursing facilities with 120 to 130 beds are best able to achieve economies of scale. However, the proposed transfer of 10 beds from the 125 bed Capital Nursing will cause the facility to no longer operate with these economies of scale. The applicants also provide no future utilization projections for Capital Nursing as required. Therefore, the proposed project does nothing to enhance the operations of Capital Nursing.

(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.*

Criterion 3a requires the applicants to demonstrate that the needs of the patient population at Capital Nursing will be adequately met with the proposed reduction of 10 beds. It is reasonable to assume that the occupancy levels at Capital Nursing fluctuate over time and that the existing 125 bed facility has at some times served more than 115 patients. The Liberty House Creek application is nonconforming to Criterion 3a because the application provides no operational projections to demonstrate that the transfer of 10 beds from Capital Nursing will not adversely affect patients.

Page 61 of the application states that nursing facilities with 120 to 130 beds are best able to achieve economies of scale. Decreasing the number of beds at Capital Nursing will cause the facility to have only 115 beds. Diminishing the operational efficiency of Capital Nursing is certainly not consistent with the CON criteria.

(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.*

The Liberty House Creek application does not conform to all applicable CON criteria. See Criteria (1), (3), (3a) (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

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

The Liberty House Creek application is nonconforming to CON Review Criterion 5 because the financial projections are based on unreasonable operational projections as discussed in the comments regarding Criterion 3. The application is based on understated expenses. The projected rent expense of \$300,000 per year is unreasonably low and does not allow for sufficient revenues for the lessor to properly insure and maintain the building, parking lot and site improvements over the life of the facility. With the understated rental expense, the financial pro forma statements are unreliable.

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

The Liberty House Creek application is not conforming to Criterion 3 and 3a. Consequently, the application does not conform to Criterion 6.

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

The Liberty House Creek application did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness, and access to the proposed services. See Criteria (1), (3), (5), and (6). Therefore, the application is not conforming to Criterion (18a).

10A NCAC 14C .1102 PERFORMANCE STANDARDS

(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated

The Liberty House Creek application does not conform to 10A NCAC 14C.1102 (b) because the applicants provide no occupancy data to demonstrate 90 percent future occupancy for the licensed beds to be operated at Capital Nursing. The total number of nursing beds to be operated by the applicants is provided in the two tables in Section I page 8 of the application. These tables show the beds for the proposed new facility and the licensed beds to remain at Capital Nursing. However Sections III and IV of the application include no utilization projections for the 115 beds that are to be operated by the applicant Capital Nursing.

**Re: UniHealth Post-Acute Care-North Raleigh, LLC
and North Raleigh Healthcare Properties
Develop a 120-bed facility in Northwest Raleigh (Cedar Fork)
including a 20-bed Special Alzheimer's Unit
("UniHealth-North Raleigh")
Project ID # J-8722-11**

CON Review Criteria:

- (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.*

The UniHealth-North Raleigh 120-bed application does not conform to CON Review Criterion 1. The application provides unreasonable payor percentages for Medicaid causing the application to be nonconforming to both CON Review Criterion (13) (c) and Policy GEN-3.

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

The UniHealth-North Raleigh application does not conform to Criterion 3 because the applicant does not explain how the utilization projections for UniHealth – Raleigh (project ID # J-8719-11) to add 20 beds to its existing facility will likely diminish referrals to UniHealth-North Raleigh. The applicant does not explain how the utilization projections and assumptions consider the need the population has for the project based on the proximity of its existing facility.

- (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.*

The UniHealth-North Raleigh application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

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

The pro forma expense statements in the UniHealth–North Raleigh 120-bed application are unreasonable because no expenses are budgeted for line items of Form C Year 2 “General” and “Administration” including line item 147 (promotions, public relations and want ads) and line item 159 (data processing). Both of these line item expenses are included in the Form A for UniHealth – Raleigh (project ID # J-8720-11, page 261), which is an existing facility. The application provides no explanation for these omissions.

As discussed in the comments regarding Criterion 7, the staffing projections wrongly omit the RN position for the evening shift for the Alzheimer’s unit. Based on this omission, the salary expenses in the pro forma statements are incorrect and unreasonable.

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

The application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Consequently, the proposed project is also nonconforming to Criterion (6).

(7) *The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of services proposed to be provided.*

The UniHealth-North Raleigh application is not conforming to CON Review Criterion 7 because the staffing table VII.2 on page 205 shows an incorrect staffing configuration for the facility for the evening shift.

No RNs are assigned to the 20 bed Alzheimer’s unit for the evening shift. Based on this representation it appears that the LPNs and Aides are responsible for medication administration and treatments with no Registered Nurses assigned to directly supervise this special care unit.

(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:*

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

The application does not conform to Criterion (13) (c). UniHealth-North Raleigh’s projections for Medicaid access at the proposed North Raleigh location are not reasonable as compared to its historical Medicaid percentage for its existing facility, UniHealth – Raleigh, located at 2420 Lake Wheeler Road. This is an existing nursing facility in Wake

County and its historical payor mix data is certainly relevant to evaluate the reasonableness of the projections for the North Raleigh facility. The applicant states that its payor projection is supposedly based on its operating experience.

According to the UniHealth-Raleigh 2011 License Renewal application, the facility provided 20,084 Medicaid patient days out of a total 51,955 days of care. Therefore, the actual historical Medicaid percentage for UniHealth Raleigh was only 38.7 percent.

UniHealth-North Raleigh unreasonably projects 64.4% Medicaid in Year 2. These projections are inconsistent with historical data for its existing nearby facility.

(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.

UniHealth-North Raleigh did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness to and access to the proposed services. See Criteria (1), (3), (5), (6), and (13) (c). Therefore, the application is not conforming to Criterion (18a).

Re: E.N.W., LLC and BellaRose Nursing and Rehab Center, Inc.
Develop a 100-bed facility in SE Raleigh (St. Mary's Township)
("BellaRose")
Project ID # J-8729-11

CON Review Criteria:

(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.*

The BellaRose application fails to adequately demonstrate the need for its proposal and therefore, did not demonstrate that the project is a cost-effective approach. The application is not consistent with Policy GEN-3 and thus, is not conforming to this criterion. Also, the applicant fails to adequately document that the proposed project will comply with Policy GEN-4: energy efficiency and sustainability for health service facilities. Consequently, the application does not conform to Criterion 1.

- (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.*

As discussed in the comments regarding criterion (13)(c), BellaRose projects to serve a significantly lower percentage of Medicare patients as compared to the Wake County combined average of 21.5 percent for all nursing facility beds, excluding the CCRCs. Based on the unreasonable payor percentages, the operational projections are not based on reasonable assumptions.

- (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.*

The BellaRose application does not conform to all applicable CON criteria. See Criteria (1), (3), (5) and (6) and (13) (c). Therefore, the application is not the most effective alternative and does not conform to Criterion 4.

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

The application does not conform to Criterion 5. The capital budget for the project fails to include any description of design features or building system costs related to 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 financial projections are inaccurate because the Form C pro forma statements omit the expenses for the amortization of start-up cost.

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

The application does not conform to all applicable CON review criteria. See Criteria (1), (3), and (5). Consequently, the proposed project is also nonconforming to Criterion (6).

- (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.*

The application does not conform to Criterion 12. The BellaRose facility plans and construction estimate indicate a very inexpensive building design with no substantive energy efficiency plan or building system features.

The CON application and Exhibit 27 include no documentation of 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.

(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:

(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

The application does not conform to Criterion (13)(c) because the projected Medicare payor percentage of 17 percent is significantly below the Wake County combined average of 21.5 percent for all nursing facility beds, excluding the CCRCs.

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

The applicant did not adequately demonstrate that its proposal will have a positive impact upon the cost effectiveness of and access to the proposed services. See Criteria (1), (3), (5), (6), and (13) (c). Therefore, the application is not conforming to Criterion (18a).

Comparative Comments:

The following discussion relates to three comparative factors that are suggested by the facts of this review:

- **Conformity to CON Review Criteria and Regulatory Standards**
- **Geographic Location**
- **Salary Comparisons of Key Staff**

These factors focus on measures of access and quality.

Conformity to CON Review Criteria and Regulatory Standards

The following table provides a summary of the comments from the previous pages regarding the fourteen CON applications. Not one of these applications conforms to all of the CON review criteria; therefore, not one of these applications is clearly comparatively superior.

Conformity to CON Criteria and Regulatory Standards

CON #	Applicants	# License NF Beds	CON Criteria - NC
J-8711-11	Hillcrest Convalescent Center Inc.	120	NC for CON Criteria (1), (3), (4), (5), (6), (13c), (18a)
J-8312-11	Wake County Health & Rehab	120	NC for CON Criteria (1), (3), (4), (5), (6), (18a)
J-8713-11	Britthaven- Spruce	120	NC for CON Criteria (1), (3), (4), (5), (6), (18a)
J-8722-11	UniHealth North Raleigh	120	NC for CON Criteria (1), (3), (4), (5), (6), (7) (13c), (18a)
J-8723-11	Liberty - St Mary's	120 + 10 transfer	All three Liberty applications are NC for CON Criteria (1), (3), (3a), (4), (5), (6), (18a) and performance standard NCAC.14C 1102(b)
J-8726-11	Libert - Cedar Fork	120 + 10 transfer	
J-8727-11	Liberty-House Creek	120 + 10 transfer	
J-8715-11	Britthaven Redwood	100	NC for CON Criteria (1), (3), (4), (5), (6), (18a)
J-8720-11	UniHealth Cary	100	NC for CON Criteria (1), (3), (4), (5), (6), (13c), (18a)
J-8729-11	BellaRose	100	NC for CON Criteria (1), (3), (4), (5), (6), (12), (13c), (18a)
J-8717-11	Brookdale	90	NC for CON Criteria (1), (3), (4), (5), (6), (12) (18a)
J-8721-11	Universal - Fuquay Varina	Add 60, for 109 Total	NC for CON Criteria (1), (3), (4), (5), (6), (13c), (18a)
J-8719-11	UniHealth	Add 20 for 170 Total	NC for CON Criteria (1), (3), (4), (5), (6), (7), (13c), (18a)
J-8714-11	Universal - North Raleigh	Add 20 for 132 Total	NC for CON Criteria (1), (3), (4), (5), (6), (7), (13c), (18a)

Geographic Location

The need determination for 240 nursing home beds in the 2011 State Medical Facilities Plan arose from a petition that demonstrated that the average occupancy statistics for Wake County nursing facilities include chronically underutilized facilities and some additional nursing facility beds that are in development. There were no applications submitted for the development of a single nursing facility that was comprised of 240 beds. Based on this circumstance, it is potential that two or more locations could be selected as comparatively superior locations.

As explained on page 67 of the Care One CON applications Project ID # J-8730-11 and #J-8730-12, the townships with the largest projected deficits of nursing facility beds are House Creek, St. Mary's, Raleigh, Cary, Cedar Fork and Leesville.

<u>Location</u>			
CON #	Applicants	# License NF Beds	Township Locations
J-8711-11	Hillcrest Convalescent Center Inc.	120	Wake Forest
J-8312-11	Wake County Health & Rehab	120	Cedar Fork
J-8713-11	Britthaven- Spruce	120	Cedar Fork
J-8722-11	UniHealth North Raleigh	120	Cedar Fork
J-8730-11	CareOne - Cary	120	Cary
J-8731-11	CareOne-Raleigh	120	Raleigh
J-8723-11	Liberty - St Mary's	120 + 10 transfer	St. Mary's
J-8726-11	Liberty - Cedar Fork	120 + 10 transfer	Cedar Fork
J-8727-11	Liberty-House Creek	120 + 10 transfer	House Creek
J-8715-11	Britthaven Redwood	100	St. Mary's
J-8720-11	UniHealth Cary	100	Cedar Fork
J-8729-11	BellaRose	100	St. Mary's
J-8717-11	Brookdale	90	Neuse
J-8721-11	Universal - Fuquay Varina	Add 60, for 109 Total	Middle Creek
J-8719-11	UniHealth	Add 20 for 170 Total	Swift Creek
J-8714-11	Universal - North Raleigh	Add 20 for 132 Total	Neuse

The CareOne CON applications project # J-8730-11 and #J-8730-12 propose effective locations that address geographically underserved populations in the Cary and Raleigh townships.

The least effective applications are located in townships that have no significant deficits of nursing facility beds:

- Brookdale - Project ID # J-8717-11, located in the Neuse Township
- Universal - North Raleigh, Project ID # J-8714-11 located in the Neuse Township
- UniHealth - Project ID # J-8719-11, located in the Swift Creek Township

- **Universal - Fuquay Varina, Project ID # J-8721-11, located in the Middle Creek Township**

Comparison of Salaries for Key Positions

The following table provides comparative salary information for the CON applications in this review.

Staffing YR 2 Salaries

CON #	Applicants	# License NF Beds	RN Salaries	LPN Salaries	Aides Salaries	DON Salaries	ADON Salaries
J-8711-11	Hilcrest Convalescent Center Inc.	120	\$50,462	\$39,808	\$22,196	\$74,991	\$48,565
J-8312-11	Wake County Health & Rehab	120	\$56,160	\$49,920	\$25,350	\$81,120	NA
J-8713-11	Britthaven- Spruce	120	\$58,240	\$47,320	\$22,425	\$83,000	\$63,000
J-8722-11	UniHealth North Raleigh	120	\$60,342	\$48,138	\$23,054	\$90,311	\$70,000
J-8730-11	CareOne - Cary	120	\$61,194	\$54,309	\$26,874	\$89,502	NA
J-8731-11	CareOne-Raleigh	120	\$61,194	\$54,309	\$26,874	\$89,502	NA
J-8723-11	Liberty - St Mary's	120 + 10 transfer	\$57,000	\$47,000	\$27,000	\$85,234	\$70,000
J-8726-11	Liberty - Cedar Fork	120 + 10 transfer	\$57,000	\$47,000	\$27,000	\$85,234	\$70,000
J-8727-11	Liberty-House Creek	120 + 10 transfer	\$57,000	\$47,000	\$27,000	\$85,234	\$70,000
J-8715-11	Britthaven Redwood	100	\$58,240	\$47,320	\$22,425	\$83,000	\$63,000
J-8720-11	UniHealth Cary	100	\$60,342	\$48,138	\$23,054	\$90,311	\$70,000
J-8729-11	BellaRose	100	\$57,000	\$47,000	\$25,000	\$85,000	\$70,000
J-8717-11	Brookdale	90	\$54,237	\$45,488	\$24,619	\$89,747	NA
J-8721-11	Universal - Fuquay Varina	Add 60, for 109 Total	\$62,691	\$48,256	\$25,175	\$89,627	\$67,018
J-8719-11	UniHealth	Add 20 for 170 Total	\$66,253	\$50,453	\$24,716	\$94,483	\$76,960
J-8714-11	Universal - North Raleigh	Add 20 for 132 Total	\$62,400	\$53,498	\$30,654	\$99,009	\$69,618

The following applications are comparatively superior regarding salaries:

CareOne CON applications Project ID # J-8730-11 and #J-8730-12 propose RN salaries that are the highest among the six applicants proposing 120-bed facilities.

The CareOne CON applications Project ID # J-8730-11 and #J-8730-12 propose the highest LPN salaries of all sixteen applicants.

The CareOne CON applications Project ID # J-8730-11 and #J-8730-12 propose Nurses' Aides salaries that are the highest among the six applicants proposing 120-bed facilities.

The following applications are the least effective:

Hillcrest Convalescent Center, Project ID # J-8711-11, because the applicant projects the lowest RN, LPN and Nurse Aide salaries of all applications in the review.

UniHealth- North Raleigh, Project ID # J-8722-11, because the application is nonconforming to CON Review Criterion 7 regarding adequacy of staffing.

UniHealth (Swift Creek), Project ID # J-8719-11, because the application is nonconforming to CON Review Criterion 7 regarding adequacy of staffing.

Universal-North Raleigh, Project ID # J-8714-11, because the application is nonconforming to CON Review Criterion 7 regarding adequacy of staffing.