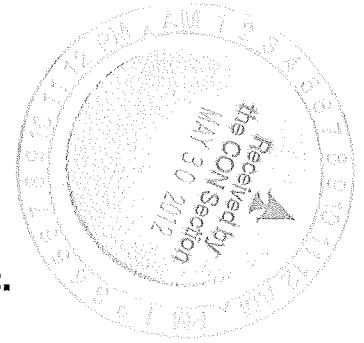


**Comments in Opposition from
HKZ Group, LLC
Regarding a Certificate of Need Application
Submitted by Maxim Healthcare Services, Inc.
in Response to a Need Determination for
One Home Health Agency in the Wake County Service Area
Submitted April 16, 2012 for May 1, 2012 Review Cycle**



I. Introduction

In accordance with N.C.G.S. Section 131E-185(a1)(1), HKZ Group, LLC submit the following comments regarding a Certificate of Need Application submitted by Maxim Healthcare Services, Inc. in response to a need determination for one Home Health Agency in the Wake County Service Area for the May 1, 2012 review cycle.

The following five CON applications were submitted in response to a need determination for one home health agency in the Wake County Service Area in the *2012 State Medical Facilities Plan (2012 SMFP)*:

- J-8813-12 Hillcrest Home Health of the Triangle, LLC
- J-8814-12 HKZ Group, LLC
- J-8817-12 Roberson Herring Enterprises, LLC dba AssistedCare of the Carolinas
- J-8819-12 Maxim Healthcare Services, Inc.
- J-8821-12 Oakland Home Care NC, LLC.

II. Comparative Analysis

The Comparative Analysis in Attachment 1 shows that **HKZ** is the most effective alternative for a new Medicare-certified home health agency in Wake County.

III. CON Application of Maxim Healthcare Services, Inc.

Maxim Healthcare Services, Inc. (Maxim) proposes to develop a Medicare-certified home health agency in Raleigh. Maxim is a Maryland corporation, which is owned by Stephen Bisciotti, Oak Investment Trust, and Oak Investment Trust II.

IV. Maxim Lacks Experience and Knowledge Critical to Operating a Medicare-certified Home Health Agency

A. Experience Operating Home Care and Staffing Agencies Only

Maxim operates a licensed home care agency and unlicensed staffing agencies in North Carolina. Included among them are Raleigh Homecare, a licensed home care agency, Raleigh Pediatrics, a children's home care services provider, and RDU Staffing, a staffing agency.

The following table illustrates the key differences between operation of a non-Medicare home care agency and a Medicare-certified home health agency.

**Comparison of Key Differences between Operation of
a Home Care Agency and a Medicare-certified Home Health Agency**

Home Care Agency	Medicare-certified Home Health Agency
Personal care, custodial care, homemaker, companion, and private duty agencies	
Services are not considered skilled or medical care	The main purpose of this type of agency is to provide skilled care for treatment or rehabilitation services to homebound patients.
Non-skilled, supportive, custodial care that is supplied by certified nursing assistants (CNAs) and home health aides (HHAs) or by non-certified nurse aides, homemakers, personal care aides, personal attendants, caregivers, sitters and companions	Certified Home health agencies send professionals such as nurses, physical therapist, occupational therapists, speech therapist, medical social workers and registered dietitians into a person's home to educate and provide skilled care
Non-medical caregiver agency services include personal care, companionship and supervision, as well as help in the home with tasks such as meal preparation, medication reminders, laundry, light housekeeping, errands, shopping, transportation, and companionship.	Services provided generally include medical services, wound care, pain and medication management, disease management, nursing care services, oxygen services, medical supplies and equipment, physical therapy, speech therapy, occupational therapy and home health aide care.
Unskilled care is not covered under Medicare (except under certain conditions as part of an authorized episode of home health) and is usually paid for privately, or in some cases by private long-term care (LTC) insurance	Medicare certification means that the agency has met specific federal guidelines and criteria
A physician's order is not required as the need for care is not deemed medically necessary	Home health care professionals must strictly adhere to a physician approved plan of care that is deemed medically necessary and updated every 60 days in order for Medicare benefits to continue.
Patient homebound status is not required	Patient must be homebound
A professionally authorized and monitored care plan is generally not required	A physician approved plan of care must be developed

Maxim believes that operating a non-Medicare-certified home care agency in Wake County equips it to operate a Medicare-certified home health agency in Wake County. That is not the case at all.

B. No Experience Operating a Medicare-certified Home Health Agency in Wake County or North Carolina

Maxim's representations confirm its lack of experience and knowledge critical to operating a Medicare-certified home health agency. The following are examples of such representations:

- On page 13, Maxim proposes to provide 24 hour care for pediatric patients through the home health model.
 - Medicaid reimburses home health on a per visit basis.

- Continual 24 hour care is not a visit.
 - Respite care is not reimbursed under home health criteria.
- On page 20, Maxim states that it “strives to carefully match caregivers with patients so that the specific needs of each patient align with the expertise, experience and availability of their caregivers.”
 - A practice of aligning patients with specific individual caregivers is inefficient and results in significantly reducing access.
 - At a minimum, utilizing few staff members per case will reduce management’s scheduling flexibility, lower productivity, and increase cost per visit.
- On pages 22 and 28, Maxim highlights matching the right caregiver with the patient, and the importance of the relationship between the caregiver and the patient.
 - This is more tailored to a non-Medicare certified personal care model.
 - Medicare-certified home health agencies do not focus on matching personalities of clinicians and therapists with patients.
 - It is far more important to ensure the clinician in a Medicare-certified agency is well trained and focuses on a positive outcome.
 - The relationship in Medicare-certified home health services must include the patient’s primary care provider. Patient, clinician/therapist, and the patient’s primary care physician are a team.
- On page 30, Maxim references its Clinical Care system - a not-yet-realized system.
 - Maxim does not describe potential functionality of the system, nor does it discuss the cost of the system.
- On page 31, it appears that Maxim conducts its own patient satisfaction surveys.
 - Third party results are more reliable and valid.
- On page 98, Maxim states that it will not contract for any services.
 - Generally, contract staff is used when rapid growth occurs, vacation, unexpected illnesses, unexpected terminations and other events.
- On page 100, Maxim says that it will “provide an on-call coordinator to provide intake, or assessment, and to educate, reassure, and advise potential patients as needed.”
 - Maxim fails to state that it will provide a nurse who can make visits to patients in the event of an emergency or scheduled weekend visits are required by the plan of care.
 - Maxim’s on-call coverage appears to be nothing more than telephone support for patients, which may work for a non-certified home care agency, but will not work with a Medicare-certified home health agency.

Maxim’s licensed Raleigh agency “currently maintains over 240 clients.” Maxim “estimates that out of its 240+ patients, it would be able to provide at least 100 of them with additional therapy (via Medicare certification).” Maxim further “estimates that it refers over 150 patients to other Medicare-certified home health agencies each year (in addition to the patients it currently serves).”¹

Two issues are raised as a result of Maxim's assumptions regarding these 250 patients. First, as will be discussed in the context of CON Review Criterion (3), Maxim’s existing 100

¹ CON Application J-8819-12 at pages 8 and 46.

home care patients and Maxim's "over 150 patients" that it refers to Medicare-certified home health agencies cannot be included in the projected utilization of the proposed Medicare-certified home health agency because the 150 patients currently are counted in those patients currently using a Medicare-certified home health agency, **so they are not NEW patients.**

Secondly, if the 100 patients are appropriate for home health agency services today, Maxim should be working with each patient's physician or referral source to get the patient the services currently needed not waiting until they have a Medicare-certified Agency to provide necessary care.

V. CON Review Criteria

The following comments are submitted based upon the CON Review Criteria found at G.S.131E-183. While some issues impact multiple Criteria, they are discussed under the most relevant review Criteria and referenced in others to which they apply.

G.S. 131E-183 (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.

There is one *State Medical Facilities Plan (SMFP)* Policy applicable to the review of Wake County Home Health Agencies:

- Policy GEN-3: Basic Principles.

As will be discussed in the context of CON Review Criteria (3), (4), (5), (6), (7), (8), (13c), (18a), and (20), Maxim does not demonstrate:

- A need for the proposed project;
- That the proposed project will promote equitable access; and
- That the proposed project will maximize health care value for resources expended.

As a result, the Maxim CON Application does not conform to Policy GEN-3 and CON Review Criterion (1).

G.S. 131E-183 (3) and (13c)

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.

A. Home Care Patients Served by Maxim's Non-Certified Agency Must be Subtracted from its Medicare-certified Agency Projected Patients

On pages 8 and 46, Maxim states:

Maxim's Raleigh [non-certified home care] agency currently maintains over 240 clients. **Maxim estimates that out of its 240+ patients, it would be able to provide at least 100 of them with additional therapy (via Medicare certification).** Furthermore, Maxim estimates that it refers over 150 patients to other Medicare-certified home health agencies each year (in addition to the patients it currently serves) because of its lack of Medicare certification prevents it from providing needed services. [**Emphasis added.**]

Maxim's existing 100 home care patients and Maxim's "over 150 patients" who it refers to Medicare-certified home health agencies cannot be included in the projected utilization of the proposed Medicare-certified home health agency.

Maxim's home care patients receiving home health services from a Medicare-certified home health agency are not new home health patients for purposes of the Wake County need determination in the 2012 SMFP. A need for a new Medicare-certified home health agency is based on "the projected **additional** number of home health patients who will need home services in 2013."² Therefore, this population cannot be included in Maxim's projected utilization.

When 250 existing patients are subtracted from Maxim's projections, Maxim proposes to serve only 189 unduplicated patients in Project Year 1 and 266 unduplicated patients in Project Year 2, as shown in the following table.

² 2012 SMFP, Step 13 of Medicare-certified home health agency need methodology (page 252).

**Wake County Home Health Agency CON Applications
Unduplicated Patients in Project Years 1 and 2**

CON Application	Applicant	Unduplicated Patients in Project Year 1	Unduplicated Patients in Project Year 2
J-8817-12	AssistedCare	464	500
J-8821-12	Oakland*	372 - 18 = 354	573
J-8814-12	HKZ	348	492
J-8819-12	Maxim	439 - 250 = 189	516 - 250 = 266
J-8813-12	Hillcrest Home Health of the Triangle, LLC	121	538

* Please see HKZ's Comments in Opposition to Oakland Home Care NC, LLC CON application in which HKZ asserts that no Chatham County and only 1 Durham County unduplicated patient should have been included in the Project Year 1 total. When 15 Chatham County and 3 Durham County unduplicated patients are subtracted from Project Year 1 projection of 372, Oakland proposes to serve 354 patients.

Additionally, Maxim does not meet the performance standards in CON Criteria and Standards 10A NCAC 14C .2003 which require an applicant to project in the third year of operation, an annual unduplicated patient caseload for the county in which the facility will be located that meets or exceeds the minimum need used in the applicable *State Medical Facilities Plan*, 275 unduplicated patients, to justify the establishment of a new home health agency office in that county.

Maxim's projected duplicated patients and visits must be adjusted downward to reflect a significant change in the number of projected unduplicated patients shown above.

Maxim's staffing and financial projections must be evaluated in view of the 250 fewer unduplicated patients, and as a result Maxim's proposed project is non-conforming to CON Review Criteria (3) and (5).

B. Maxim Proposes to Serve the Lowest Percentage of Medicaid Patients

As shown in the following table, Maxim proposes to provide the lowest percentage of visits to Medicaid patients in Project Year 2 of the competing CON applications.

**Wake County Medicare-certified Home Health Agency CON Applications
Proposed Percentage of Medicaid Patient Visits
Project Year 2**

CON Application	Applicant	Percentage of Medicaid Visits in Project Year 2
J-8814-12	HKZ	14.8%
J-8813-12	Hillcrest	13.1%
J-8821-12	Oakland	12.99%
J-8817-12	AssistedCare	10.2%
J-8819-12	Maxim*	7.4%

*Medicaid patients and visits will have to be adjusted downward to reflect change in total patients.

The previous table documents that residents of Wake County, in particular, low income persons are less likely to have access to the services proposed by Maxim.

For the reasons set forth above, the Maxim CON Application does not conform to CON Review Criterion (3).

G.S. 131E-183 (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.

As discussed in detail in the context of CON Review Criterion (3), Maxim fails to demonstrate the need for the services proposed. As such, Maxim has not carried its burden to demonstrate it has proposed the least costly or most effective alternative as required by CON Review Criterion (4).

G.S. 131E-183 (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.

A. No Working Capital Projected by Maxim

Maxim does not include any working capital for the proposed project. Maxim's stated assumption for not having a need for working capital is that "Maxim already operates a licensed home care agency in Raleigh, and thus will have no start-up expenses associated with the proposed Medicare certification as a home health agency."

Based on review of Maxim's CON Application, Maxim appears to be moving its home care employees to Medicare-certified home health employees. Maxim does not plan time or expense for retraining its staff of a licensed, non-Medicare-certified home care agency to perform as staff of a Medicare-certified home health agency.

Further, Maxim has not allocated any time or start-up cost to obtain Medicare certification. As part of the Medicare certification process, Maxim must provide services to Medicare patients for which no reimbursement will be received. Medicare certification can take 2 to 6 or more months. Before the initial Medicare certification survey, the agency must provide care for patients so that compliance can be determined. All patient care before the certification/survey date is non-reimbursable. Revenue can be generated beginning on the date the agency is determined to be in compliance. Assignment of the provider number, NPI number, and submitter identifications takes additional time. While revenue is generated from the certification date, claims cannot be filed and payments will not be made until all provider authorizations are approved and processed

by NC DHHS, CMS, NPI Enumerator, and the agency's Fiscal Intermediary. Therefore, start-up capital is required as the cash cycle does not begin quickly.

B. Analysis of Financial Projections

The following table shows the areas of concern in Maxim's financial projections.

Financial Projection/Cost	Page Reference	Comment
Nutritional counseling and interpreter services	Page 12	<ul style="list-style-type: none"> Neither expense is listed as a line item included in Form B Neither expense is listed in Assumptions for Allocation of Corporate Overhead for Form B
Maxim organizational chart includes a large number of employees	Page 17	<ul style="list-style-type: none"> Case manager expense is not a line item included in Form B Case manager expense is not listed in Assumptions for Allocation of Corporate Overhead for Form B
Case managers and therapists will be paid on a per visit rate	Exhibit 3 and Pages 94-95	<ul style="list-style-type: none"> Therapists are in the projected per hour staffing salary cost Therapists are not paid per visit
CHAP and ACHA accreditations	Pages 25-26	<ul style="list-style-type: none"> There is significant cost in CHAP and ACHA accreditations Accreditation expense is not a line item included in Form B. Accreditation expense is not listed in Assumptions for Allocation of Corporate Overhead for Form B
Maxim references the provision of "ancillary therapy to maintain and improve the mental, emotional, and physical health of patients."	Page 29	<ul style="list-style-type: none"> Expenses are not a line item included in Form B.
ProForma Form B - Revenue Worksheets are Missing		<ul style="list-style-type: none"> Agency has no way to determine reasonableness of revenue projections.
ProForma Form C - Cash Flow Statement is Missing		<ul style="list-style-type: none"> Agency has no way to determine reasonableness of financial projections.

The items set forth in the previous table demonstrate that Maxim's financial projections are incomplete and not based upon reasonable projections of the costs for providing Medicare-certified home health services.

In addition, total unduplicated patients and visits are overstated resulting in overstated financial projections. Therefore, the Agency cannot determine the financial viability of the proposed project and must find Maxim non-conforming to CON Review Criterion (5).

C. No Contingency in Financial Projections

Maxim has not included a 5% contingency in its financial projections as directed by the CON Application form. Therefore, total costs are not comparable to HKZ that did include a 5% contingency as instructed.

For the reasons set forth above, the Maxim CON Application does not conform to CON Review Criterion (5).

G.S. 131E-183 (6)

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

As discussed in the context of CON Review Criterion (3), Maxim fails to demonstrate the need for the services proposed. Consequently, Maxim did not demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

In addition, Maxim proposes to provide Medicare-certified home health services to pediatric patients in Wake County, which is duplicative of existing health service capabilities in Wake County.

Based on data reported in the 2012 License Renewal Applications (LRA), Wake County Medicare-certified agencies served a total of 171 patients 0-17 years of age in FY 2011. The following table shows certified agencies provided home health services to Wake County patients 0-17 years of age:

**Medicare-certified Home Health Agencies
Patients 0-17 Years of Age
October 1, 2010 – September 30, 2011**

Certified Agency	Wake County Patients 0-17 Years	Percent of Total
At Home Quality Care	81	47.3%
Pediatric Services of America	27	15.8%
Duke Home Care	21	12.2%
WakeMed Home Health	18	10.5%
Professional Nursing Services and Home Health	11	6.4%

Pediatric Services of America is a specialty Medicare-certified home health agency in Cary serving pediatric patients.

Absent a showing by Maxim that pediatric patients are not being adequately served by existing certified agencies, it is an unnecessary duplication of services for another certified agency to provide pediatric home health services in Wake County.

Maxim has not carried its burden to demonstrate that the proposed project will not result in unnecessary duplication of existing and approved capabilities as required by CON Review Criterion (6).

G.S. 131E-183 (7)

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

Maxim’s projected annual salaries for OT and ST are the lowest of the three competing applicants that propose to employ OT and ST, as shown in the following table.

**Wake County Home Health Agency CON Applications
OT and ST Salaries – Project Year 2**

CON Application	Applicant	OT Salary	ST Salary
J-8819-12	Maxim	\$67,650	\$65,600
J-8813-12	Hillcrest Home Health of the Triangle , LLC	\$70,633	\$70,973
J-8817-12	AssistedCare	\$79,001	\$77,765

Salaries are a significant contributing factor in recruitment and retention of OT and ST staff. PT and OT services are crucial to the profitability of a Medicare-certified home health agency. With the PT and OT salaries proposed by Maxim it will be difficult to recruit necessary personnel. Therefore, Maxim will not be able to achieve volumes projected in Project Year 2, which will negatively impact its Proformas.

For that reason, the Maxim CON Application does not conform to CON Review Criterion (7).

G.S. 131E-183 (8)

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

A. Maxim does not Demonstrate Arrangements for the Provision of Necessary Ancillary and Support Services

Maxim does not include letters of intent and/or agreements for home medical equipment (HME), laboratory services, and infusion services.

B. Maxim does not Demonstrate that the Proposed Service will be Coordinated with the Existing Health Care System

Maxim does not include a letter of support from any acute care hospital in Wake County.

Generally, hospitals make 50% of all referrals to certified home health agencies. The CON Criteria and Standards for Home Health Agencies require documentation of attempts made to

establish working relationships with the sources of referrals at 10A NCAC 14C .2002 (a)(10). Maxim does not provide the required documentation for Wake County hospitals.

There is no demonstrated coordination by Maxim with the existing health care system in Wake County. For that reason, Maxim fails to demonstrate conformity to CON Review Criterion (8).

Please note that a letter included in Exhibit 18 from Nicole Jones, RN DON, Rex Rehabilitation and Health Care Center of Apex is not a letter of support from Rex Healthcare/Rex Hospital.

G.S. 131E-183 (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*

As discussed in detail in the context of CON Review Criterion (3), Maxim fails to document that it will provide adequate access to the medically underserved population, which demonstrates non-conformity to CON Review Criterion (13c).

G.S. 131E-183 (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.

As discussed above, Maxim fails to demonstrate conformity with CON Review Criteria (1), (3), (4), (5), (6), (7), (8), (13c), and (20). Consequently, Maxim fails to demonstrate that its CON Application is conforming to CON Review Criterion (18a).

G.S. 131E-183 (20)

An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

In September 2011, Maxim, one of the nation's leading providers of home health care services, entered into a settlement agreement to resolve criminal and civil charges relating to a nationwide scheme to defraud Medicaid programs and the Veterans Affairs program of more than \$61 million. Maxim was charged in a criminal complaint with conspiracy to commit health care fraud, and entered into a Deferred Prosecution Agreement (DPA) with the United States Department of Justice. The Agreement allows Maxim to avoid a health care fraud conviction on the charges if it complies with the DPA's requirements. Please see Attachment 2 for additional details. As reflected in Attachment 2, Maxim has not demonstrated the quality care has been provided in the past. For that reason, Maxim fails to demonstrate conformity to CON Review Criterion (20).

VI. North Carolina Criteria and Standards for Home Health Services

10A NCAC 14C .2002(a)(3), (4), (5), and (8)

Projections are based on flawed and undocumented assumptions. Please see discussion in the context of CON Review Criteria (3), (5) and (8)

10A NCAC 14C .2003

Projections are based on flawed and undocumented assumptions. Please see discussion in the context of CON Review Criteria (3) and (5).

VII. Conclusion

The Maxim CON Application has not demonstrated conformity with the CON Review Criteria and should be denied.

**HKZ Group
Wake County Medicare-certified Home
Health Agency CON Review**

COMPARATIVE ANALYSIS

Pursuant to N.C.G.S. 131E-183(a)(1) and the *2012 State Medical Facilities Plan (2012 SMFP)*, no more than one new home health agency may be approved for Wake County in this review. Because each applicant proposes to develop a new home health agency in Wake County, all five applicants cannot be approved.

The following comparative analysis of the proposals documents the reasons that **HKZ Group, LLC (HKZ)** should be approved, and the applications submitted by the other four applicants should be denied.

Access by Underserved Groups

The following table compares the percentage of total visits provided to Medicaid recipients in the second year of operation as projected by each applicant in Section VI.12. of the application.

Percentage of Total Visits to Medicaid Recipients – PY 2

CON Application	Applicant	% of Visits
J-8814-12	HKZ	14.8%
J-8813-12	Hillcrest	13.1%
J-8821-12	Oakland	12.99%
J-8817-12	AssistedCare	10.2%
J-8819-12	Maxim	7.4%

Please note that Hillcrest projects no Medicaid patients and visits in its first year of operation. The application submitted by Hillcrest is non-conforming with multiple CON Review Criteria. Please see **HKZ's** Comments in Opposition to the Hillcrest CON application.

As shown in the previous table, **HKZ** projects the highest percentage of total visits provided to Medicaid recipients. Maxim projects the lowest percentage of total visits provided to Medicaid recipients. Therefore, the application submitted by **HKZ** is the most effective alternative with regard to access by Medicaid patients.

The following table compares the percentage of total visits provided to Medicare beneficiaries in the second year of operation as projected by each applicant in Section VI.12. of the application.

Percentage of Total Visits to Medicare Beneficiaries – PY 2

CON Application	Applicant	% of Visits
J-8819-12	Maxim	84.8%
J-8821-12	Oakland	79.99%
J-8814-12	HKZ	69.7%
J-8813-12	Hillcrest	67.4%
J-8817-12	AssistedCare	65.4%

As shown in the previous table, Maxim projects the highest percentage of total visits provided to Medicare beneficiaries. Oakland projects the second highest percentage of total visits provided to Medicare beneficiaries. AssistedCare projects the lowest percentage of total visits provided to Medicare beneficiaries.

Please note that the applications submitted by Maxim and Oakland are non-conforming with multiple CON Review Criteria, so that neither of those applications is approvable. Please see **HKZ's** Comments in Opposition to the Maxim and Oakland CON applications.

HKZ projects the third highest percentage of total visits provided to Medicare beneficiaries. Therefore, the application submitted by **HKZ** is the most effective alternative with regard to access by Medicare beneficiaries.

The following table compares the percentage of total visits provided to Medicaid recipients and Medicare beneficiaries in the second year of operation as projected by each applicant in Section VI.12 of the application.

Percentage of Total Visits to Medicaid Recipients and Medicare Beneficiaries – PY 2

CON Application	Applicant	% of Visits
J-8819-12	Maxim	92.2%
J-8821-12	Oakland	93.0%
J-8814-12	HKZ	84.5%
J-8813-12	Hillcrest	80.5%
J-8817-12	AssistedCare	75.6%

As shown in the previous table, Maxim projects the highest percentage of total visits provided to Medicaid recipients and Medicare beneficiaries. Oakland projects the second highest percentage of total visits provided to Medicaid recipients and Medicare beneficiaries. AssistedCare projects the lowest percentage of total visits provided to Medicaid recipients and Medicare beneficiaries.

Please note that the applications submitted by Maxim and Oakland are non-conforming with multiple CON Review Criteria, so that neither of those applications is approvable. Please see **HKZ's** Comments in Opposition to the Maxim and Oakland CON applications.

HKZ projects the third highest percentage of total visits provided to Medicaid recipients and Medicare beneficiaries. Therefore, the application submitted by **HKZ** is the most effective alternative with regard to access by Medicaid recipients and Medicare beneficiaries.

Average Number of Visits per Unduplicated Patient

The following table shows the average number of visits per unduplicated patient projected by each applicant in the second year of operation of the proposed home health agency.

Average Number of Visits per Unduplicated Patient – PY 2

CON Application	Applicant	Unduplicated Patients	Unduplicated Patient Visits	Average Visits per Unduplicated Patient
J-8821-12	Oakland*	532	11,331	19.8
J-8813-12	Hillcrest	538	9,303	17.3
J-8819-12	Maxim	516	8,537	16.5
J-8814-12	HKZ	493	8,028	16.3
J-8817-12	AssistedCare	500	7,885	15.8

* Please see HKZ's Comments in Opposition to Oakland Home Care NC, LLC CON application in which HKZ asserts that only 7 Chatham County and no Durham County unduplicated patient should have been included in the Project Year 2 total. When 12 Chatham County and 8 Durham County unduplicated patients are subtracted from Project Year 2 projection of 552, Oakland proposes to serve 532 patients.

As shown in the previous table, Oakland projects the highest average number of visits per unduplicated patient. AssistedCare projects the lowest average number of visits per unduplicated patient.

Oakland's average number of visits per unduplicated patient of 19.8 exceeds both the average and median visits per unduplicated patient of Wake County certified agencies in FY 2011, as shown in the following table.

**Wake County Medicare-certified Home Health Agency
Unduplicated Patient Visits
October 1, 2010 – September 30, 2011**

Agency	Unduplicated Patients	Total Visits	Visits per Unduplicated Patients	Avg Total Visits per Unduplicated Patient	Median Visits per Unduplicated Patient
Rex Home Services	2,643	37,174	14.1		
WakeMed Home Health	2,191	34,231	15.6		
Liberty Home Care	1,753	23,603	13.5		
Tar Heel Home Health	1,459	34,320	23.5		
Intrepid USA Healthcare Services	971	17,245	17.8		
Heartland Home Health Care	720	14,400	20.0		
Medi Home Health Agency	623	10,556	16.9		
At Home Quality Care	513	6,370	12.4		
Horizons Home Care	228	7,255	31.8		
Bayada Nurses	225	5,282	23.5		
Professional Nursing Service and Home Health	27	757	28.0		
Pediatric Services of America	27	158	5.9		
United Home Care of Wake	0	0	0.0		
Total	11,380	191,351		16.8	17.4

Please note that the applications submitted by Maxim, Oakland, AssistedCare, and Hillcrest are non-conforming with multiple CON Review Criteria, so that none of those applications is approvable. Please see **HKZ's** Comments in Opposition to the Maxim, Oakland, AssistedCare, and Hillcrest CON applications.

Therefore, the application submitted by **HKZ** is the most effective alternative with regard to projected number of visits to be provided per unduplicated patient.

Net Revenue per Visit

Net revenue per visit in the second year of operation was calculated by dividing projected net revenue from Form B by the projected number of visits from Section IV., as shown in the following table.

Net Revenue per Visit – PY 2

CON Application	Applicant	Total Visits Duplicated Patients	Net Revenue	Net Revenue per Visit
J-8814-12	HKZ	8,028	\$1,315,622	\$164
J-8813-12	Hillcrest	9,303	\$1,364,283	\$147
J-8817-12	AssistedCare	7,885	\$1,156,057	\$147
J-8821-12	Oakland	11,331	\$1,639,140.35	\$145
J-8819-12	Maxim	11,013	\$1,553,615	\$141

As shown in the previous table, **HKZ** projected the highest net revenue per visit. Maxim projects the lowest net revenue per visit.

Please note that the applications submitted by Maxim, Oakland, AssistedCare, and Hillcrest are non-conforming with multiple CON Review Criteria, so that none of those applications is approvable. Please see **HKZ**'s Comments in Opposition to the Maxim, Oakland, AssistedCare, and Hillcrest CON applications.

HKZ adequately demonstrated that the financial feasibility of its proposal is based on reasonable and supported projections of operating costs and revenues. Therefore, the application submitted by **HKZ** is the most effective alternative with regard to net revenue per visit.

Average Total Operating Cost per Visit

The average total operating cost per visit in the second operating year was calculated by dividing projected operating costs from Form B by the total number of home health visits from Section IV., as shown in the following table.

Average Total Operating Cost per Visit – PY 2

CON Application	Applicant	Total Visits Duplicated Patients	Total Operating Costs	Average Total Operating Cost per Visit
J-8819-12	Maxim	11,013	\$1,172,376	\$106
J-8817-12	AssistedCare	7,885	\$1,080,382	\$137
J-8813-12	Hillcrest	9,303	\$1,290,118	\$139
J-8821-12	Oakland	11,331	\$1,616,215.26	\$143
J-8814-12	HKZ	8,028	\$1,291,039	\$161

As shown in the previous table, Maxim projects the lowest average operating cost per visit in the second operating year. **HKZ** projects the highest average operating cost per visit in the second operating year. However, as noted in the comments in opposition submitted by **HKZ**, all of the competitors in the review have neglected to include costs required to operate a Medicare-certified home health agency. Therefore, this comparison is not comparable.

Further, please note that the applications submitted by Maxim, Oakland, AssistedCare, and Hillcrest are non-conforming with multiple CON Review Criteria, so that none of those applications are approvable. Please see **HKZ**'s Comments in Opposition to the Maxim, Oakland, AssistedCare, and Hillcrest CON applications.

HKZ adequately demonstrated that the financial feasibility of its proposal is based on reasonable and supported projections of operating costs and revenues. Therefore, the application submitted by **HKZ** is the most effective alternative with regard to average operating cost per visit.

Average Direct Care Cost per Visit

The average direct care cost per visit in the second operating year was calculated by dividing projected direct care expenses from Form B by the total number of home health visits from Section IV., as shown in the following table.

Average Direct Care Cost per Visit – PY 2

CON Application	Applicant	Total Visits Duplicated Patients	Total Direct Care Costs	Average Direct Care Cost per Visit
J-8819-12	Maxim	11,013	\$843,042	\$77
J-8813-12	Hillcrest	9,303	\$776,267	\$83
J-8814-12	HKZ	8,028	\$704,504	\$88
J-8821-12	Oakland	11,331	\$996,556.34	\$88
J-8817-12	AssistedCare	7,885	\$731,758	\$93

As shown in the table above, Maxim projects the lowest average direct care cost per visit in the second operating year. Hillcrest projects the second lowest average direct care cost per visit in the second operating year. AssistedCare projected the highest average direct care cost per visit.

Please note that the applications submitted by Maxim, Oakland, AssistedCare, and Hillcrest are non-conforming with multiple CON Review Criteria, so that none of those applications is approvable. Please see **HKZ's** Comments in Opposition to the Maxim, Oakland, AssistedCare, and Hillcrest CON applications.

HKZ adequately demonstrated that the financial feasibility of its proposal is based on reasonable and supported projections of operating costs and revenues. Therefore, the application submitted by **HKZ** is the most effective alternative with regard to average direct care cost per visit.

Average Administrative Cost per Visit

The average administrative cost per visit in the second operating year was calculated by dividing projected administrative expenses from Form B by the total number of home health visits from Section IV.1, as shown in the following table.

Average Administrative Cost per Visit – PY 2

CON Application	Applicant	Total Visits Duplicated Patients	Total Administrative Costs	Average Administrative Cost per Visit
J-8819-12	Maxim	11,013	\$329,334	\$30
J-8817-12	AssistedCare	7,885	\$348,624	\$44
J-8813-12	Hillcrest	9,303	\$513,851	\$55
J-8821-12	Oakland	11,331	\$619,658.42	\$55
J-8814-12	HKZ	8,028	\$586,535	\$73

As shown in the table above, Maxim projects the lowest average administrative cost per visit in the second operating year. AssistedCare projects the second lowest average administrative cost per visit in the second operating year. **HKZ** projects the highest average administrative cost per visit. However, other competitors did not reflect all administrative costs in their application as discussed in the individual comments in opposition. Therefore, this cannot be utilized as a comparative factor.

Please note that the applications submitted by Maxim, Oakland, AssistedCare, and Hillcrest are non-conforming with multiple CON Review Criteria, so that none of those applications is approvable. Please see **HKZ's** Comments in Opposition to the Maxim, Oakland, AssistedCare, and Hillcrest CON applications.

HKZ adequately demonstrated that the financial feasibility of its proposal is based on reasonable and supported projections of operating costs and revenues. Therefore, the application submitted by **HKZ** is the most effective alternative with regard to average administrative cost per visit.

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

The ratio in the following table is calculated by dividing the net revenue per visit by the average total operating cost per visit.

Ratio of Net Revenue per Visit: Average Total Operating Cost per Visit – PY 2

CON Application	Applicant	Total Visits Duplicated Patients	Net Revenue per Visit	Average Total Operating Cost per Visit	Ratio of Net Revenue to Average Total Operating Cost per Visit
J-8821-12	Oakland	11,331	\$145	\$143	1.01
J-8814-12	HKZ	8,028	\$164	\$161	1.02
J-8813-12	Hillcrest	9,303	\$147	\$139	1.06
J-8817-12	AssistedCare	7,885	\$147	\$137	1.07
J-8819-12	Maxim	11,013	\$141	\$106	1.33

As shown in the previous table, Oakland projected the lowest ratio of net revenue to the average total operating cost per visit in the second operating year. Please note that the application submitted by Oakland is non-conforming with multiple CON Review Criteria, so that application is not approvable. Please see **HKZ's** Comments in Opposition to the Oakland CON application.

The application submitted by **HKZ** is the most effective alternative with regard to the lowest ratio of net revenue per visit to the average total operating cost per visit.

Number of Owned, Operated, and/or Managed Medicare-certified Home Health Agencies in North Carolina

Experience in the ownership, operation, and/or management of Medicare-certified home health agencies in North Carolina is a key factor in the success of a proposed new agency in Wake County.

The following table shows number of owned, operated, and/or managed Medicare-certified home health agencies in North Carolina of each applicant.

Number of Owned, Operated, and/or Managed Medicare-certified Home Health Agencies in North Carolina

CON Application	Applicant	Owned	Operated	Managed	Total NC Medicare Home Health
J-8813-12	Hillcrest	0	0	0	0
J-8814-12	HKZ	3	0	0	3
J-8817-12	AssistedCare	1	0	0	1
J-8819-12	Maxim	0	0	0	0
J-8821-12	Oakland	0	0	0	0

HKZ owns three Medicare-certified home health agencies in North Carolina, which is the largest number of all applicants. In addition, HealthKeeperz, Inc. existing service area is contiguous to Wake County. Thus, the application submitted by **HKZ** is the most effective alternative with regard to experience.

Letters of Support for Application

Wake County Acute Care Hospitals

Generally, hospitals make 50% of all referrals to Medicare-certified home health agencies.

As shown in the following table, only **HKZ** has letters of support from two Wake County acute care hospitals.

Letter of Support from Wake County Acute Care Hospital(s)

CON Application	Applicant	WakeMed	Duke Raleigh	Rex Hospital
J-8813-12	Hillcrest	N	N	N
J-8814-12	HKZ	Y	Y	N
J-8817-12	AssistedCare	N	N	N
J-8819-12	Maxim	N	N	N
J-8821-12	Oakland	N	N	N

As shown in the previous table, none of the applicants has a letter of support from Rex Hospital. Maxim and Oakland have a letter of support from Rex Rehabilitation and Healthcare Center of Apex, which is a letter of support from a nursing facility, not Rex Hospital.

Acute Care Hospitals in Counties Served by Related Entity of Applicant

As shown in the following table, **HKZ** has letters of support from three acute care hospitals in counties served by its related entity, HealthKeeperz, Inc., which owns three Medicare-certified home health agencies in Cumberland, Robeson, and Scotland counties.

Letter of Support from Acute Care Hospital(s) in Counties Served by Related Entity of Applicant

CON Application	Applicant	Duke Hospital	Scotland	CFVMC	Southeastern Regional
J-8813-12	Hillcrest	Y	N	N	N
J-8814-12	HKZ	N	Y	Y	Y
J-8817-12	AssistedCare	N	N	N	N
J-8819-12	Maxim	N	N	N	N
J-8821-12	Oakland	N	N	N	N

As shown in the previous table, Hillcrest has a letter of support from Duke Hospital, which is in the same county as Hillcrest Convalescent Center, which is the sole member of Hillcrest.

None of the three other applicants has a letter from an acute care hospital in a county served by a related entity of the applicant.

Unique Services Proposed by Applicants

Each applicant's response to Section II., Question 2. is summarized in the following table.

Unique Services Proposed by Applicants

CON Application	Applicant	How will agency differ from existing services in service area?
J-8813-12	Hillcrest	Medication adherence through MedMinder and Maya Med Mgmt System
J-8814-12	HKZ	HealthSync Pharmacy Program, North Carolina's only Native American-owned multi-disciplinary post acute community health system focusing on home health agency services; Veterans Administration
J-8817-12	AssistedCare	SHP to manage patient outcomes; CareAnywhere electronic medical record; ability to combine behavioral health care with home health patients; pilot site for research study conducted by Martha Bruce, PhD, to train home health staff to provide behavioral health services; CCNC
J-8819-12	Maxim	No specific programs discussed - generic response about experience, quality, clinical services delivery, patient-centered care, quality improvement, technology, accreditation, employee engagement and corporate support, Maxim Charitable Foundation provides financial assistance to employees in personal crisis
J-8821-12	Oakland	No specific programs discussed - generic response about case management, medication management, home safety, health literacy/education, social networks/cultural adaptation; relationship with Waltonwood Cary (senior community)

HealthSync Pharmacy Program

HealthSync Pharmacy Program was developed by HealthKeeperz, Inc. in 2009 based on its recognition of a growing problem among its home health patients known as Polypharmacy, the concurrent use of multiple prescription or over-the-counter medications by a single patient.

Pharmacists affiliated with HealthKeeperz, Inc. will review and synchronize each patient's medication to be delivered (free of charge) on one day each month, eliminating multiple trips to the pharmacy. Patients enrolled in the HealthSync Pharmacy Program will have their prescriptions reviewed monthly by a licensed HealthKeeperz, Inc. pharmacist.

HKZ will provide a free delivery program for patients who have eight or more medications. Patients will receive a HealthKeeperz monthly updated pocket card that lists medications and a free item from the HealthKeeperz "Healthy Choice Program." A HealthSync Medication Report will be sent to the patient's physician every three months or sooner as requested. Every time a patient calls the HealthSync Pharmacy Program, he/she will talk with the same pharmacist and technician.

HealthSync pharmacists and technicians have documented that patients who participate in the HealthSync Pharmacy Program are more compliant with their drug regimen, have greater

communication with their physicians regarding medications prescribed, and are more likely to report adverse reactions and other issues encountered with drugs prescribed. HealthSync pharmacists review each patient's medication regimen for duplicate therapy and/or contraindications. Often, HealthSync pharmacists work with the patient and physician to utilize generic medication where appropriate. In instances where a patient has experienced an adverse reaction or other issue, HealthSync pharmacists and technicians will follow up with that patient's physician. Physicians whose patients participate in the HealthSync Pharmacy Program have expressed their satisfaction with the Program, and often contact HealthSync pharmacists and technicians about patient compliance with prescriptions.

HKZ reached out to all Wake County hospitals during the preparation of its application to discuss opportunities to work together to improve the transition of patients from acute care settings to home care and strategies to decrease the readmission of home health patients to inpatient settings. The HealthKeeperz HealthSync Pharmacy Program, which serves to improve medication compliance and help to reduce medication costs, is one program which can have a positive impact on decreasing hospital inpatient readmissions. HealthSync pharmacists and technicians have documented that patients who participate in the HealthSync Pharmacy Program are more compliant with their drug regimen, have greater communication with their physicians regarding medications prescribed, and are more likely to report adverse reactions and other issues encountered with drugs prescribed. Representatives of **HKZ** discussed the HealthKeeperz HealthSync Pharmacy Program with area hospitals (Rex, WakeMed, Duke Raleigh, and WakeMed Rehab), CCNC (Torlen Wade and Dr. Rob Morrell), the North Carolina Academy of Family Physicians (Greg Griggs), the Novant Triangle Medical Group and Windsor Point CCRC. Hospital leaders through Wake County clearly and immediately recognized the value of the HealthSync Pharmacy program as a great tool, combined with home health, to improve clinical outcomes and reduce the risk of patient readmissions.

Veterans Administration

HealthKeeperz, Inc. works with the Veterans Administration Medical Center in Fayetteville to meet the home health care needs of veterans in southeastern North Carolina. **HKZ** intends to pursue a similar arrangement with the Durham Veterans Administration Medical Center under which it will provide home health care services to veterans who are residents of Wake County. **HKZ** will provide the services that Durham VA Medical Center requests, based on a service plan that each veteran, his/her family, and his/her VA health care provider develop. Representatives of **HKZ** have an ongoing relationship with the VA in Fayetteville and will be meeting with it at the end of April to discuss opportunities to serve veterans in Wake County.

Services to "Other Underserved Population" Proposed by Applicants

Basic Assumption 8. of the Medicare-certified Home Health Need Methodology reads as follows:

8. The North Carolina State Health Coordinating Council encourages home health applicants to:
 - [...]
 - d. address special needs populations.

Each applicant's response to Section VI., Question 3(g). is summarized in the following table.

Availability of Proposed Home Health to "Other Underserved Populations"

CON Application	Applicant	Availability of Existing and Proposed Home Health to "Other Underserved Population"
J-8813-12	Hillcrest	No specific population identified
J-8814-12	HKZ	Native American population
J-8817-12	AssistedCare	No specific population identified
J-8819-12	Maxim	No specific population identified
J-8821-12	Oakland	No specific population identified

As shown in the previous table, **HKZ** is the only applicant to identify an "underserved population" to which it will provide Medicare-certified home health services.

HealthKeeperz, Inc. is North Carolina's only Native American-owned multi-disciplinary post acute community health system focusing on home health agency services. With three existing locations, HealthKeeperz, Inc. is experienced in dealing with the health disparities and cultural differences of minority populations. **HKZ** also will be a Native American-owned home health agency, and will utilize the experience of HealthKeeperz, Inc. to address Native American and other minority populations in Wake County.

According to the 2008 US Census, North Carolina has the largest American Indian population east of the Mississippi River and the sixth largest American Indian population in the nation.

According to a report published in July 2010 by the North Carolina Commission of Indian Affairs found that American Indians in North Carolina experience substantially worse health problems than whites. For many health measures, American Indians experience problems similar to those for African Americans in this state. The July 2010 Report made the following findings:

- American Indian death rates were at least twice that of whites for diabetes, HIV disease, motor vehicle injuries, and homicide.

- American Indians were more likely than whites or African Americans to report that they had no health insurance and that they could not see a doctor due to cost.
- American Indians were significantly more likely than whites to smoke, not engage in leisure-time physical exercise, and to be overweight or obese.

The North Carolina American Indian Health Task Force was created in 2004 by the North Carolina Commission of Indian Affairs and the Secretary of the North Carolina Department of Health and Human Services. The purpose of the Task Force was to identify and study American Indian health issues in North Carolina, and to evaluate and strengthen programs and services for American Indians in the state.

HKZ is committed to providing home health services to American Indians and other minority populations in Wake and surrounding counties. Thus, the application submitted by **HKZ** is the most effective alternative with regard to special needs populations.

Registered Nurse, Home Health Aide, and Licensed Practical Nurse Salaries in Year Two

Salaries are a significant contributing factor in recruitment and retention of staff. The following three tables compare the proposed annual salary for nurses and home health aides in the second operating year.

AssistedCare projects the highest annual salary for a registered nurse, as shown in the following table. For comparison purposes, in its 2010 CON application for a Wake County home health agency, AssistedCare Home Health, Inc. projected an annual salary of \$56,650 for a registered nurse, which was the lowest annual salary for a registered nurse¹.

Annual Salary for Registered Nurse – PY 2

CON Application	Applicant	Annual Salary
J-8817-12	AssistedCare	\$71,070
J-8821-12	Oakland	\$69,360
J-8813-12	Hillcrest	\$68,690
J-8819-12	Maxim	\$67,650
J-8814-12	HKZ	\$66,950

As shown in the previous table, **HKZ** projects the lowest annual salary for a registered nurse.

Maxim projects the highest annual salary for a home health aide, as shown in the following table.

¹ 2010 Competitive Wake County Home Health Review, Findings dated October 1, 2010, pages 158-159.

Annual Salary for Home Health Aide – PY 2

CON Application	Applicant	Annual Salary
J-8819-12	Maxim	\$32,800
J-8814-12	HKZ	\$30,900
J-8821-12	Oakland	\$30,090
J-8817-12	AssistedCare	\$29,240
J-8813-12	Hillcrest	\$24,426

As shown in the previous table, **HKZ** projects the second highest annual salary for a home health aide.

Oakland projects the highest annual salary for a licensed practical nurse, as shown in the following table.

Annual Salary for Licensed Practice Nurse – PY 2

CON Application	Applicant	Annual Salary
J-8821-12	Oakland	\$55,080
J-8814-12	HKZ	\$48,410
J-8813-12	Hillcrest	\$44,534
J-8817-12	AssistedCare	\$42,848
J-8819-12	Maxim	no LPN in staffing plan

As shown in the previous table, **HKZ** projects the next highest annual salary for a licensed practical nurse.

Physical Therapist, Occupational Therapist, and Speech Therapist Salaries in Year Two

Physical therapy drives the profitability of a Medicare-certified home health agency. Maxim and **HKZ** project the highest annual salaries for a physical therapist among the four applicants that will employ a physical therapist, as shown in the following table.

Annual Salary for Physical Therapist – PY 2

CON Application	Applicant	Annual Salary
J-8819-12	Maxim	\$103,525
J-8814-12	HKZ	\$103,000
J-8817-12	AssistedCare	\$83,945
J-8813-12	Hillcrest Home Health of the Triangle, LLC	\$76,345

As shown in the previous table, Hillcrest projects the lowest annual salary for a physical therapist.

Maxim projects the lowest annual salary for an occupational therapist among the three applicants that will employ an occupational therapist, as shown in the following table.

Annual Salary for Occupational Therapist – PY 2

CON Application	Applicant	Annual Salary
J-8817-12	AssistedCare	\$79,001
J-8813-12	Hillcrest Home Health of the Triangle , LLC	\$70,633
J-8819-12	Maxim	\$67,650

As shown in the previous table, Hillcrest projects the second lowest annual salary for an occupational therapist.

Maxim projects the lowest annual salary for a speech therapist among the three applicants that will employ a speech therapist, as shown in the following table.

Annual Salary for Speech Therapist – PY 2

CON Application	Applicant	Annual Salary
J-8819-12	Maxim	\$65,600
J-8813-12	Hillcrest Home Health of the Triangle , LLC	\$70,973
J-8817-12	AssistedCare	\$77,765

As shown in the previous table, Hillcrest projects the second lowest annual salary for a speech therapist.

The New York Times

Prescriptions

The Business of Health Care

SEPTEMBER 12, 2011, 3:05 PM

Maxim Healthcare Pays \$150 Million in Fraud Case

By *DUFF WILSON*

Maxim Healthcare Services, a privately held company with 360 offices nationwide offering home health care services, has agreed to pay about \$150 million to settle civil and criminal charges over claims of false billings to Medicaid and the Department of Veterans Affairs, the Department of Justice announced Monday.

In addition, nine current and former Maxim employees, including three senior managers, have pleaded guilty since 2009 to felony charges, the government said.

Federal prosecutors have been highlighting their efforts to root out health care fraud in recent years. The government has added scores of health care investigators and prosecutors since 2009.

Fraudulent billings and false statements to health officials became “a common practice at Maxim from 2003 through 2009,” according to a statement from the United States attorney’s office in Newark, N.J.

The acts included falsification of time sheets, training records and caregiver qualifications, the government said in a criminal complaint. Most of the nine people await sentencing in the United States District Court in Trenton. Two have been sentenced to probation.

Maxim, established in 1988 and based in Columbia, Md., was charged in a criminal complaint unveiled on Monday with conspiracy to commit health care fraud. It entered a deferred prosecution agreement, promising to cooperate with continuing investigations, and a corporate integrity agreement, agreeing to further oversight.

“It is our hope that Maxim, in cleaning up its own house, will be a lighthouse influencing best practices across the industry,” J. Gilmore Childers, acting United States attorney for New Jersey, said in a statement.

Brad Bennett, Maxim chief executive since October 2009, said in a statement: “While we regret the circumstances that led to these agreements, the resulting enhancements have clearly made Maxim a better and stronger company.”

The company said its illegal activities did not compromise patient care.

The payments include a criminal penalty of \$20 million and civil payments of about \$70 million to the federal government and \$60 million to 42 states.

A whistleblower will receive about \$15.4 million of the civil recovery under the False Claims Act, a federal law that encourages people to report fraud.

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FBI — Former Maxim Healthcare Services Senior Manager Sentenced to Prison



Newark Division

Home • Newark • Press Releases • 2011 • Former Maxim Healthcare Services Senior Manager Sentenced to Prison for Health Care Fraud

Former Maxim Healthcare Services Senior Manager Sentenced to Prison for Health Care Fraud

*Eight Others, Including Senior Managers, Previously
Sentenced for Felony Charges Arising out of Maxim's
Activities*

U.S. Attorney's Office
November 21, 2011

District of New Jersey
(973) 645-2700

TRIDENTON, NJ—A former senior manager and 13-year employee of Maxim Healthcare Services, Inc. ("Maxim"), was sentenced today to five months in prison and five months of home confinement with electronic monitoring for his involvement in the unlicensed operation of Maxim office that billed nearly a million dollars to government health care programs. J. Gilmore Childers, First Assistant U.S. Attorney announced.

Bryan Lee Shipman, 38, of Athens, Ga., pleaded guilty in Trenton federal court on June 17, 2010, to an information charging him with one count of health care fraud. Shipman was charged in connection with his role as a regional account manager supervising Maxim's decision to open and operate Maxim's Gainesville, Ga., office without a license from 2008 through 2009, when he and others directed billings from that office to be submitted for reimbursement by the Medicaid program as if they were from another, licensed office. Shipman entered his guilty plea before U.S. District Judge Anne E. Thompson, who also imposed the sentence today in Trenton federal court.

On Sept. 12, 2011, Maxim—one of the nation's leading providers of home healthcare services—entered into a settlement agreement to resolve criminal and civil charges relating to a nationwide scheme to defraud Medicaid programs and the Veterans Affairs program of more than \$61 million. Maxim was charged in a criminal Complaint with conspiracy to commit health care fraud, and entered into a Deferred Prosecution Agreement ("DPA") with the Department of Justice. The agreement allows Maxim to avoid a health care fraud conviction on the charges if it complies with the DPA's requirements. As required by the DPA, Maxim agreed to pay approximately \$150 million—a criminal penalty of \$20 million and approximately \$130 million in civil settlements in the matter, including to settle federal False Claims Act claims.

Shipman is one of nine individuals—eight former Maxim employees, including three senior managers, and the parent of a former Maxim patient—to have pleaded guilty to and been sentenced on felony charges arising out of the submission of fraudulent billings to government health care programs, the creation of fraudulent documentation associated with government program billings, or false statements to government health care program officials regarding Maxim's activities.

According to documents filed in this and related cases and statements made in court:

Shipman had been employed by Maxim for 13 years, the last eight as a regional account manager. As a regional account manager, Shipman reported directly to one of two nationwide vice presidents, who in turn reported to Maxim's president. He also managed 13 offices in 2008 with hundreds of employees and total annual sales of more than \$42 million, much of which derived from government programs. In his last full year of employment, Shipman earned more than \$325,000, and was among the top 25 individuals at Maxim in terms of compensation out of the more than 80,000 individuals employed by Maxim in that year.

Shipman's annual compensation—which ranked him within the top .03 percent of the Company—was based to a significant degree on meeting sales goals. Shipman said his superiors demanded levels of growth based "not on any market analysis, but simply on a belief that dramatic growth was necessary regardless of market conditions." It was in response to that pressure, Shipman said, that he authorized and supervised the unlicensed operation of the Gainesville office.

At one point, when Maxim employees believed a state regulator would be visiting the office, lower-level employees were directed by Shipman and others to provide false information to the state regulator in an effort to prevent the Medicaid program from learning about the unlicensed operation of the office.

In addition to the prison term, Judge Thompson sentenced Shipman to two years of supervised release and ordered him to pay a \$10,000 fine.

The other eight individuals who pleaded guilty were sentenced by Judge Thompson as follows:

Gregory Munzel, 35, of Charleston, S.C., was employed as a regional account manager, reporting directly to a vice president, responsible for Maxim offices throughout the southeastern United States. He pleaded guilty on Dec. 4, 2009, to one count of making false statements relating to health care fraud matters. During his plea hearing, Munzel admitted that he was aware individuals he supervised were submitting time cards for work that had not actually been done—a practice Munzel said was in response to pressure from Maxim superiors to increase revenue. Munzel also acknowledged forging caregiver credentials such as CPR cards throughout his time at Maxim, in order to make it appear that the caregivers were properly credentialed, when they were not. Munzel indicated he learned the practice from his supervisors when he first joined Maxim, and that those under him engaged in the practice when he took on a leadership role with the company. Munzel was sentenced on Sept. 29, 2011, to three months of home confinement as part of a two-year term of probation. Munzel was also ordered to pay a \$1,000 fine.

Matthew Skaggs, 39, was employed as a regional account manager, reporting directly to a vice president, responsible for Maxim's offices in Texas. He pleaded guilty on Sept. 23, 2010, to making false statements relating to health care fraud matters. During his plea hearing, Skaggs acknowledged having knowingly made false statements to a surveyor from Texas' Medicaid Program, who was investigating the operation of an unlicensed Maxim office in Houston. Skaggs was sentenced on June 10, 2011, to a three-year term of probation and ordered to pay a \$4,000 fine.

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FBI — Former Maxim Healthcare Services Senior Manager Sentenced to Prison for I

Andrew Sabbaghzadeh, 30, of Clay, N.Y., was employed as an account manager; and Jason Bouche, 27, of Paradise Valley, Ariz., was employed as a recruiter at Maxim's Tempe, Ariz. office. They pleaded guilty to health care fraud on Nov. 4, 2009, and April 23, 2010, respectively. During their plea hearings, Sabbaghzadeh and Bouche acknowledged creating fraudulent time cards in order to bill government programs. They acknowledged that in some instances, Maxim employees cut signatures from legitimate time cards and pasted them onto forged time cards in order to submit them for reimbursement. Sabbaghzadeh was sentenced on Sept. 26, 2011, to six months of home confinement as part of a three-year term of probation. Sabbaghzadeh was also ordered to pay a \$2,000 fine. Bouche was sentenced on Nov. 17, 2011, to a two-year term of probation and ordered to pay a \$500 fine.

Donna Ocansey, 49, of Medford, N.J., was employed as a director of clinical services (supervising nurse) in Maxim's Cherry Hill, N.J., office. She pleaded guilty on May 28, 2010, to making false statements relating to health care fraud matters. Ocansey, a registered nurse (RN), had responsibility for, among other things, ensuring that Medicaid-required supervisory visits of patients were conducted periodically—meaning that an RN periodically visited each patient to check each patient's condition and the care the patient was receiving from Maxim Home Health Aides, who lack the skills and training of RNs. During her plea hearing, Ocansey acknowledged that she fabricated documentation in order to make it appear that other nurses had conducted Medicaid-mandated supervisory visits, when in fact they had not. Ocansey stated that she fabricated documentation in response to pressure from her superiors at Maxim, who expected her to make sure that all supervisory visits were completed without providing adequate resources for her to do so. Ocansey was sentenced on Oct. 18, 2011, to four months of home confinement as part of a three-year term of probation. Ocansey was also ordered to pay a \$2,000 fine.

Mary Shelly Janvier-Pierre, 43, of Lake Worth, Fla., and Sandy Cave, 39, of West Palm Beach, Fla., pleaded guilty to health care fraud on Feb. 1, 2010, and June 21, 2010, respectively. During their plea hearings, Janvier-Pierre, who had been employed by Maxim's West Palm Beach office as a licensed practical nurse; and Cave, the mother of a former pediatric patient of Maxim, admitted to their roles in a scheme to fraudulently bill Medicaid, through Maxim, for services that were not rendered. Janvier-Pierre and Cave acknowledged that they agreed to submit billings as if Janvier-Pierre was taking care of Cave's child, when she was not. Janvier-Pierre and Cave then split the money. Janvier-Pierre received for purportedly providing the care. As a result of the scheme, Maxim was paid more than \$70,000 by Florida's Medicaid program. Janvier-Pierre was sentenced on Sept. 21, 2011, to six months of home confinement as part of a three-year term of probation. Cave was sentenced on Nov. 17, 2011, to five months of home confinement as part of a three-year term of probation. Cave was also ordered to pay a \$1,000 fine.

Marion Morton, 45, of North Charleston, S.C., was employed as a home health aide and personal care assistant by Maxim's Charleston, S.C., office. He pleaded guilty on May 3, 2010, to one count of making false statements relating to health care fraud matters. During his plea hearing, Morton acknowledged that, at the instruction of Maxim employees, he fabricated timecards reflecting work he had not done. On multiple occasions, Maxim submitted bills to Medicaid based on timecards which showed he worked more than 24 hours on certain days. Morton was sentenced on May 24, 2011, to a three-year term of probation and ordered to pay a \$5,000 fine.

First Assistant U.S. Attorney Childers credited special agents and investigators from HHS/OIG, under the direction of Special Agent in Charge Thomas O'Donnell; the FBI, under the direction of Special Agent in Charge Michael B. Ward; and VA OIG, under the direction of Special Agent in Charge Jeffrey Hughes for conducting the multi-year investigation. The government is represented by Assistant U.S. Attorney Jacob T. Eiberg, of the U.S. Attorney's Office Health Care and Government Fraud Unit.

Defense counsel:

Maxim: Laura Laemmle-Weidenfeld Esq., Robert Luskin Esq., Washington
Gregory Munzel: John Lacey Esq., Roseland, N.J.
Bryan Lee Shipman: Peter Bennett Esq., Middletown, N.J.
Matthew Skaggs: David Sellinger Esq., Florham Park, N.J.
Andrew Sabbaghzadeh: James Hopkins Esq., Syracuse, N.Y.
Jason Bouche: Chester Keller Esq., Assistant Federal Public Defender, Newark
Donna Ocansey: Jeffrey Carney Esq., Hackensack, N.J.
Mary Shelly Janvier Pierre: Michael Salnick Esq., West Palm Beach, Fla.
Sandy Cave: Chester Keller Esq., Assistant Federal Public Defender, Newark
Marion Morton: John Renner Esq., Marlton, N.J.