



# Liberty Healthcare Management



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Craig Smith, Chief  
Martha Frisone, Assistant Chief  
Greg Yakaboski, Analyst  
Certificate of Need Section, NC DHSR, NC DHHS  
809 Ruggles Drive  
Raleigh, NC 27603

RE: Comments in opposition from Carolina Bay Properties, LLC/Carolina Bay Healthcare Center of Wilmington, LLC/Liberty Commons Nursing and Rehabilitation Center, Inc. (the "Party") regarding Davis Health and Wellness Center at Cambridge Village, project ID O-010232-13.

Dear Mr. Smith, Ms. Frisone, and Mr. Yakaboski,

In accordance with NC G.S. § 131E-185(a1)(1), the Party submits the following comments opposing a Certificate of Need Application ("Application") submitted by Cornelia Nixon Davis, Inc. d/b/a The Davis Community ("Cornelia Nixon Davis") proposing to develop a new freestanding skilled nursing facility, Davis Health and Wellness Center at Cambridge Village ("Davis Center at Cambridge"), by relocating 20 nursing facility beds from an existing skilled nursing facility, Health Care Center at The Davis Community ("The Davis Community"). This application was filed on November 15, 2013 for the December 1, 2013 review cycle.

The comments highlight information contained in the Application that is materially inaccurate and/or unsubstantiated. The errors and inaccuracies contained in the Application result in the Application being nonconforming to several statutory review criteria contained in N.C. G.S. § 131E-183(a) and therefore unapprovable. Specifically, these comments discuss why the Application is non-conforming with Criteria (3), (4), (5), (6), (7), (13a), (13c), and (18a).

Thank you for your time and consideration in this matter and I hope that these comments assist you in your review. Please feel free to contact me if you have any questions.

With Regards,

Hunter Diefes, Director of Financial Planning  
Liberty Healthcare Management, Inc.  
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## Comments in Opposition to Davis Health and Wellness Center

### at Cambridge Village

### CON Application O-010232-13

#### **Introduction**

The first section of these comments highlights specific inaccuracies and errors contained in the various sections of the Certificate of Need application (the "Application") submitted by Cornelia Nixon Davis, Inc. d/b/a The Davis Community ("Davis" or the "Applicant"). These issues show that the facility will not materially comply with statutory regulations as proposed, will not meet the needs of the medically underserved population, and will not be a financially viable project. . Following the comments below regarding Davis' Application, Carolina Bay Properties, LLC/Carolina Bay Healthcare Center of Wilmington, LLC/Liberty Commons Nursing and Rehabilitation Center, Inc. (the "Party") has provided a discussion of specific Certificate of Need Review criteria and why Davis' Application is nonconforming with those criteria.

#### **Section II – Scope of Services**

- In Section II, on pages 22 and 23, the Application discusses the administrative personnel at the existing facility, The Davis Community. Specifically, the CEO, Administrator, and Director of Nursing are discussed. However, the Application makes no mention of the individuals who will operate the proposed facility, other than to say that Charles Long, the CEO, will provide oversight and direction. In fact, this proposal does not project to employ either an Administrator or a Director of Nursing, which would seem to be in violation of **10A NCAC 13D .2201 – Administrator**. This is discussed in greater detail in the comments regarding Section VII.
- Question II.4 (a) – In identifying the staff position or proposed provider of Administration the Applicant lists "CEO, Administrator, Director of Nursing." There is an asterisk which indicates that these positions are, "Positions to be shared with Davis' existing Porters Neck Road Campus, expenses for which are allocated to the proposed 20-bed facility in the proforma financial statements following Section XII." 10A NCAC 13D .2201 (c) states, "The administrator shall be responsible for the operation of a facility on a full-time basis." What the Applicant proposes is in direct conflict with this general standard of administration set forth in the NC Administrative Code. Furthermore, there are no expenses allocated for Administrator or Director of Nursing in the proforma financial statements following Section XII of the Application.

### Section III – Need/Demand

- Question III.1(a) and (b) – In justifying the need for nursing facility beds at the proposed location the Applicant cites only broad growth trends in the populations of North Carolina, New Hanover County, and surrounding counties. According to the 2013 and proposed 2014 NC State Medical Facilities Plan (SMFP) New Hanover County has a surplus of nursing facility beds and this surplus is expected to continue for the foreseeable future. The Applicant fails to address the surplus of nursing facility beds in the county and further fails to perform any detailed analysis on the distribution of nursing facility beds in the county. The Application makes no mention of the specific population that will utilize the proposed services, other than stating that the beds will be available to the residents of Cambridge Village and to estimate the approximate geographic origins of its patient population. The Applicant provides no reasonable justification for the need to relocate 20 nursing facility beds to the proposed location, nor does it demonstrate a need for the proposed services. Therefore, this Application is non-conforming to Criterion 3 of § 131E-183 of the North Carolina General Statutes.
- Question III.2 (a) – The Applicant discusses several alternatives to the proposed project that were considered in the course of developing this Application. According to the Application, maintaining the status quo was considered and rejected because the 20 nursing facility beds that are the subject of this Application would go unused and would eventually be de-licensed. However, since the Applicant failed to address the surplus of nursing facility beds in the county, it cannot be assumed that de-licensing 20 beds would be a less effective alternative. For example, the proposed 2014 SMFP shows a surplus of 76 nursing facility beds in New Hanover County. If the Applicant were to surrender the license for the 20 beds there would still be a surplus of 56 nursing facility beds in New Hanover County. Since the Applicant did not adequately demonstrate a need for the proposed project it also did not demonstrate that the proposed project is the least costly or most effective alternative. Therefore this Application is non-conforming with Criterion 4 of the CON Review Criteria.
- The Applicant states numerous times in Section III that the 20 nursing facility beds that are the subject of this Application will be displaced and will go unused if left at the current location due to ongoing renovations. However, in response to Question II.1 on page 18 of the Application the Applicant states, “Should the proposed lease arrangement fall through for any reason, Davis has the option of operating the 20 existing beds on its existing Porters Neck Road campus.” The Applicant has provided contradicting information regarding the fate of the 20 nursing facility beds which further calls into question their assertion that the proposed project is the “least costly or most effective alternative.”
- The Applicant fails to address the availability of existing nursing facility beds located in close proximity to the location of the proposed facility. There is an existing nursing facility (“NF”) with 100 licensed nursing facility beds approximately 1.6 miles away as

well as 18 NF beds that will be relocated from that existing facility to a planned Continuing Care Retirement Community that will be located less than a mile from the proposed facility. Failure to address this availability of existing NF beds leaves this Application nonconforming to several CON Review Criteria.

**Section V – Coordination With Existing Health Care Providers**

- In response to Question V.3 (b) the Applicant refers to Exhibit 14 for copies of support letters from physicians. The Applicant submitted only 3 letters of support from physicians for this proposed project. This should call into question the overall support for the project from area physicians and the ability of the proposed facility to attract referrals for new patients.

**Section VI – Accessibility**

- The Applicant states that the historical Medicaid utilization at the existing Davis Community is 36.7%. The Applicant also projects this utilization to continue at the proposed facility. **This Application is non-conforming with Criterion 13(a).** An examination of the 2013 License Renewal Applications for New Hanover County nursing facilities shows that this historical utilization is **well below** the county average:

**Occupancy Data as reported in 2013 License Renewal Applications**

Facility	Number of Beds	Total Days	Occupancy Rate	MCR Days	MCR %	MCD Days	MCD %	PVT Days	PVT %	Other Days	Other %
Kindred - Cypress Pointe	90	29,273	89%	5,721	20%	19,010	65%	1,441	5%	3,101	11%
Wilmington Health & Rehab	120	39,189	89%	9,859	25%	24,215	62%	634	2%	4,481	11%
Northchase Nursing & Rehab	140	44,651	87%	7,784	17%	27,469	62%	3,652	8%	5,746	13%
Autumn Care of Myrtle Grove	90	30,046	91%	8,890	30%	15,584	52%	1,767	6%	3,805	13%
Silver Stream Health & Rehab	110	38,041	95%	14,705	39%	15,857	42%	4,112	11%	3,367	9%
Liberty Commons	100	29,803	82%	7,960	27%	12,215	41%	5,657	19%	3,971	13%
Davis Health Care Center	199	69,273	95%	14,191	20%	24,244	35%	17,815	26%	13,023	19%
Trinity Grove	100	30,587	84%	8,108	27%	9,145	30%	12,969	42%	365	1%
<b>County Totals</b>	<b>949</b>	<b>310,863</b>	<b>90%</b>	<b>77,218</b>	<b>25%</b>	<b>147,739</b>	<b>48%</b>	<b>48,047</b>	<b>15%</b>	<b>37,859</b>	<b>12%</b>

\*Note: Azalea Health & Rehab Center was omitted because it is a new facility and License Renewal data was not available at the time these comments were submitted.

- As can be seen in the table above, Davis Health Care Center is second only to Trinity Grove in terms of the least amount of Medicaid days served as a percentage of total patient days. At 35% Medicaid utilization, Davis is 13% below the county average. The Applicants do not demonstrate that Davis Health Care Center provided adequate access to

medically underserved populations. Therefore, the Application is nonconforming to Criterion 13(a).

- The Applicant projects that it will serve approximately 36.7% Medicaid patients. This is 11.3% below the New Hanover County average. The Applicant does not demonstrate that the medically underserved populations will have adequate access to the services to be provided in the 20 relocated nursing facility beds, and therefore is nonconforming to Criterion 13(c).

## Section VII – Staffing

- Table VII.3 – The Application lists the proposed staff for the second full federal fiscal year of the project. However the Application **does not** propose to employ an Administrator or a Director of Nursing. Regulations contained in 10A NCAC 13D .2201(a) state that “the facility must be under the direct management control of an administrator. The administrator shall not serve simultaneously as the director of nursing.” The Application does propose a “Unit Director” position but does not state whether this position will be held by a Licensed Nursing Home Administrator or whether this position will serve as the administrator to satisfy the above referenced regulation. If the “Unit Director” is intended to serve as the administrator then the facility will not have an employee to serve as the director of nursing. 42 CFR §483.3(b)(2) states, “the facility must designate a registered nurse to serve as the director of nursing on a full time basis.” **The proposed staffing for this facility is insufficient and will not satisfy state and federal regulations.** Therefore the pro forma financial projections provided in this Application have understated expenses and overstated net income, calling into question the overall financial viability of this proposal. This Application is nonconforming with Criteria 5 and 7.

## Section X – Charges and Rates/Operating Costs

- The Applicant overstated the anticipated Medicaid rate by using the 2012 state average. The Medicaid rate will be decreased by 3% effective 1/1/2014 and so the Applicant has overstated projected revenue. This announcement was made prior to July 1, 2013 with the release of the NC Appropriations Act of 2013, well in advance of the Applicant’s submission of this Application, which was submitted November 15, 2013. Section 12H.18.(b) states, “During the 2013-2015 fiscal biennium, the Department of Health and Human Services shall withhold three percent (3%) of payments for the following services rendered to Medicaid and NC Health Choice recipients on or after January 1, 2014:...(9) Nursing Home.” As a current provider and participant in the NC Medicaid program, the Applicant was made aware of this rate reduction and should have incorporated that into the pro forma statements to give an accurate portrayal of the financial viability of the proposed facility. This omission results in a significant overstatement of revenue, as is illustrated in the attached tables.

## **Section XI – Site Information/Construction Design**

- Question XI.9 – Applicant provides a break out of the square footage of the proposed facility. In response to the line titled “Physical Therapy” the Applicant’s response was “NA”. Although the Applicant proposes to provide physical, speech, and occupational therapy and projects revenue from this therapy there is no square footage allocated to a space to provide these services. The Applicant will need to rent additional space to provide therapy and therefore the projected lease payment is understated.

## **Section XII – Proposed Schedule**

- No Comment

## **Financial Pro Formas**

- Examination of Forms A, B, and C provided by the Applicant reveal several significant errors and inconsistencies. Noteworthy is the absence of any Laundry & Linen or Housekeeping staff in the proposed facility. The Applicant does state that the “homemaker” employees will be responsible for these duties as well as dietary duties but the expenses for these three departments are grossly understated. The combined cost per patient day (PPD) for Dietary, Laundry & Linen, and Housekeeping at the existing 199 bed Davis facility (The Davis Community) is \$32.65. This same combined cost PPD for the proposed 20 bed facility is \$22.64 for a difference of \$10.01. Due to the small size of the proposed 20 bed facility it will be inherently less efficient in terms of operating costs than the large existing facility. The Applicant provides no explanation or justification for why these costs will be 30% less at a smaller more inefficient facility. The Dietary PPD costs for the new smaller facility are projected to be \$1.74 less than the historical cost at the existing Davis facility. Yet these Dietary employees will also be serving duties in the Laundry & Linen and Housekeeping departments. Even if the proposed facility could achieve efficiency equal to that of the larger existing facility then expenses for Dietary, Laundry & Linen, and Housekeeping are understated by \$69,350 annually (\$10.00 PPD x 6,935 patient days). Clearly proposed staff is insufficient and therefore the Applicant’s expenses are also severely understated. The financial viability of this project is questionable and therefore the Application is nonconforming to Criterion 5.
- The Applicant understated expenses by using an incorrect Bed Tax amount. The Applicant used a bed tax amount of \$7.18 per non-Medicare patient day. This amount applies to facilities that have over 48,000 Medicaid days annually. This proposed facility can have a maximum of 7,300 patient days per year and only projects 2,542 Medicaid days in the second full year. Therefore the Applicant should have used the \$13.68 bed tax amount. This equates to an understatement of expenses in the amount of \$18,308 in the first partial year and \$34,502 per year for the first and second full years of operation. This error in conjunction with the staffing insufficiency cited above results in

\$103,921.35 of additional expenses in the second full year. Form B projects a net profit of only \$98,043 in the second full year and thus this project is **not financially feasible**.

- As was noted above, the Application does not project any expense for an Administrator. A reasonable average salary for a New Hanover County Administrator is \$85,280. This is based on salary information contained in the 2011 New Hanover County Licensure Application data, adjusted for inflation, as well as the Party's experience in existing nursing facilities in New Hanover County. Using the Applicant's projection of 23.1% benefits as a percentage of salary the total expense for an administrator would be \$104,980. This added expense would also increase start-up costs and the working capital needed for the project.
- Several expense areas are projected to be lower at the new facility than what is historically experienced at the existing large facility. As was previously discussed, rational logic would suggest that a smaller facility would not be able to achieve the same economies of scale as a large one and therefore it would be expected that routine expenses would be higher on a per patient day basis. The following departments are projected to be more efficient and less expensive than the larger existing facility:
  - Routine Services
  - Dietary
  - Laundry & Linen
  - Housekeeping
  - Plant Operation & Maintenance

On the following pages we have included adjusted Cash Flow and Pro Forma tables that include a few of the material omissions and inaccuracies identified above.

Davis Health & Wellness Center at Cambridge Village  
Adjusted Cash Flow

TABLE IX.4A - Cash Flow by Quarter

	First Partial Federal Fiscal Year of Operation				
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	TOTAL
<b>ROUTINE SERVICE CASH RECEIPTS:</b>					
Private Pay	\$ 43,495	\$ 146,205	\$ 148,931	\$ 148,931	\$ 487,562
Commercial Insurance	\$ -	\$ -	\$ -	\$ -	\$ -
Medicare	\$ 31,653	\$ 183,743	\$ 182,906	\$ 182,906	\$ 581,208
Medicaid	\$ 17,675	\$ 102,602	\$ 102,134	\$ 102,134	\$ 324,545
Veterans Admin.	\$ -	\$ -	\$ -	\$ -	\$ -
County Assistance	\$ -	\$ -	\$ -	\$ -	\$ -
Other Revenue	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTAL ROUTINE CASH RECEIPTS</b>	<b>\$ 92,823</b>	<b>\$ 432,550</b>	<b>\$ 433,971</b>	<b>\$ 433,971</b>	<b>\$ 1,393,315</b>
Ancillary Service Cash Receipts	\$ 17,705	\$ 59,513	\$ 60,623	\$ 60,623	\$ 198,464
Miscellaneous Income Cash Receipts	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTAL CASH RECEIPTS</b>	<b>\$ 110,528</b>	<b>\$ 492,063</b>	<b>\$ 494,594</b>	<b>\$ 494,594</b>	<b>\$ 1,591,779</b>
<b>CASH PAYMENTS FOR:</b>					
Salary & Fringe Benefit	\$ 269,888	\$ 269,888	\$ 237,416	\$ 221,181	\$ 998,373
Mort Pmt/Lease Pmt	\$ 37,042	\$ 37,042	\$ 37,042	\$ 37,042	\$ 148,168
Operating or capital reserves	\$ -	\$ -	\$ -	\$ -	\$ -
Raw Food Expenses	\$ 13,838	\$ 13,838	\$ 14,755	\$ 15,213	\$ 57,644
Medical/Pharm Expense	\$ 6,047	\$ 6,047	\$ 6,447	\$ 6,647	\$ 25,188
Other Exp (Specify)	\$ 95,948	\$ 95,948	\$ 135,189	\$ 154,809	\$ 481,894
<b>TOTAL CASH PAYMENTS</b>	<b>\$ 422,763</b>	<b>\$ 422,763</b>	<b>\$ 430,849</b>	<b>\$ 434,892</b>	<b>\$ 1,711,267</b>
<b>CASH FLOW</b>	<b>\$ (312,235)</b>	<b>\$ 69,300</b>	<b>\$ 63,745</b>	<b>\$ 59,702</b>	<b>\$ (119,488)</b>
<b>CUMULATIVE CASH FLOW</b>	<b>\$ (312,235)</b>	<b>\$ (242,935)</b>	<b>\$ (179,190)</b>	<b>\$ (119,488)</b>	<b>\$ (119,488)</b>
<b>CASH PAYMENT ADJUSTMENTS:</b>					
Full Time Administrator (\$104,980 annually)	\$ (26,245)	\$ (26,245)	\$ (26,245)	\$ (26,245)	\$ (104,980)
Medicaid Bed Tax Adjustment (\$6.50/non-Medicare day)	\$ (2,012)	\$ (8,523)	\$ (8,585)	\$ (8,585)	\$ (27,705)
3% Reduction in Medicaid reimbursement	\$ (530)	\$ (3,078)	\$ (3,064)	\$ (3,064)	\$ (9,736)
\$10ppd additional Housekeeping/Laundry/Dietary expense	\$ (13,620)	\$ (17,670)	\$ (17,670)	\$ (17,670)	\$ (66,630)
<b>TOTAL ADJUSTMENTS</b>	<b>\$ (42,407)</b>	<b>\$ (55,516)</b>	<b>\$ (55,564)</b>	<b>\$ (55,564)</b>	<b>\$ (209,051)</b>
<b>ADJUSTED CASH FLOW</b>	<b>\$ (354,642)</b>	<b>\$ 13,784</b>	<b>\$ 8,181</b>	<b>\$ 4,138</b>	<b>\$ (328,539)</b>
<b>ADJUSTED CUMULATIVE CASH FLOW</b>	<b>\$ (354,642)</b>	<b>\$ (340,858)</b>	<b>\$ (332,677)</b>	<b>\$ (328,539)</b>	<b>\$ (328,539)</b>



Davis Health & Wellness Center at Cambridge Village  
Adjusted Pro Forma

**PRO FORMA ADJUSTMENTS:**

Full Time Administrator (\$104,980 annually)  
 Medicaid Bed Tax Adjustment (\$6.50/non-Medicare day)  
 3% Reduction in Medicaid reimbursement  
 \$10ppd additional Housekeeping/Laundry/Dietary expense  
**TOTAL ADJUSTMENTS**  
 Current Projected Net Profit  
**ADJUSTED TOTAL NET PROFIT**

	1st Partial Yr	1st Full Yr	2nd Full Yr
\$	(61,238)	(104,980)	(104,980)
\$	(18,311)	(34,502)	(34,502)
\$	(6,451)	(12,156)	(12,156)
\$	(36,800)	(69,350)	(69,350)
\$	(122,800)	(220,988)	(220,988)
\$	(17,900)	98,043	98,043
<b>\$</b>	<b>(140,700)</b>	<b>(122,945)</b>	<b>(122,945)</b>

## **Discussion of Specific Certificate of Need Review Criteria**

***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 Applicant did not perform a detailed need analysis, but rather gave a generic and broad overview of growth trends in the state and county populations. It is well established that the "Baby Boomer" generation is aging and that the number of residents aged 65 and older will increase dramatically over the next decade. However, the Applicant gave no rationale or reasoning for the need for the proposed project in the specific location it proposes. The Applicant does not adequately demonstrate that it is reasonable to only cite broad growth trends as evidence of the need for a specific proposal.

The Applicant states that the 20 beds to be relocated would otherwise go unused at The Davis Community due to ongoing renovations and would eventually be de-licensed. According to the proposed 2014 NC State Medical Facilities Plan there is a projected surplus of 76 NF beds in 2017. The Applicant does not address this projected surplus of beds, but if the Applicant were to surrender the license for the 20 NF beds there would still be a surplus of 56 NF beds.

For these reasons, the Applicant did not adequately demonstrate the need that the population has for the 20 relocated NF beds. Therefore, this Application should be found nonconforming with this Criterion.

***Criterion (4) - Where alternative methods of meeting the needs for the proposed project exist, the Applicant shall demonstrate that the least costly or most effective alternative has been proposed.***

The Applicant did discuss various alternatives to the proposed project. However, the Applicant did not adequately demonstrate the need to relocate and replace the 20 NF beds. Particularly since there is a projected surplus of 76 NF beds in New Hanover County in 2017. A project that is not needed cannot be the least costly or most effective alternative.

The Application is nonconforming to various other statutory review criteria and therefore is not approvable. A project that cannot be approved cannot be an effective alternative.

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

The Applicant made several significant and substantive omissions and errors in its calculation of the revenues and expenses associated with the proposed project, see discussion in introductory section above. Staff positions that are mandated by state and federal regulations<sup>1</sup> were not accounted for and several cost centers are not based on reasonable and sound assumptions. The Applicants did not adequately demonstrate that the financial feasibility of the proposal is based on reasonable assumptions regarding revenues and operating costs. Therefore, the Application should be found nonconforming to this Criterion.

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

The Applicant does not demonstrate the need to relocate the 20 NF beds to the proposed location. The need analysis is simply an illustration of broad population growth trends in the area but does nothing to document the availability of resources already in the vicinity nor does it take into account the projected surplus of 76 NF beds in New Hanover County in 2017. The Applicant also fails to include a discussion of the Party's approved Certificate of Need Application to relocate 18 NF beds to a new facility less than one mile from the Applicant's proposed location. These 18 NF beds will be providing the same skilled nursing services that the Application proposes, to the same population, and both located within one mile of each other.

Therefore, the Applicant did not adequately demonstrate that the proposed project will not result in the unnecessary duplication of existing or approved NF beds in New Hanover County. The Application should be found nonconforming to this Criterion.

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

The Applicant proposes to develop a separately licensed, free standing skilled nursing facility with 20 licensed and relocated NF beds. According to state and federal regulations a licensed nursing facility must be under the direct management control of an administrator on a full-time basis. The Applicant has not proposed a full-time administrator staff position nor has it allocated any expense to the administrator position.

The Applicants also project the new 20 bed facility to be able to achieve greater efficiencies than the existing, much larger, Davis Community in many departments. The Applicant provided no

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<sup>1</sup> 10A NCAC 13D .2201(a); 10A NCAC 13D .2201(c); 42 CFR §483.3(b)(2)

basis or justification for this assumption and has not projected adequate health manpower and management personnel for the provision of the services proposed to be provided. Therefore the Application should be found nonconforming with this Criterion.

***Criterion (13a) - The extent to which medically underserved populations currently use the Applicant's existing services in comparison to the percentage of the population in the Applicant's service area which is medically underserved***

According to the most recent available License Renewal data the New Hanover County Medicaid average is 48%. As illustrated in the table above, The Davis Community's Medicaid average was 35%. Comparing The Davis Community's average to that of the county, The Davis Community's average is 13% lower than the New Hanover County average.

The Applicant does not demonstrate that The Davis Community provided adequate access to medically underserved populations. Therefore, the Application should be found nonconforming with this Criterion.

***Criterion (13c) - 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 Applicant projects to serve approximately 36.7% Medicaid patients in the proposed facility. A comparison to the New Hanover County Medicaid average shows that this is 11.3% below the county average. The Applicant did not demonstrate that medically underserved populations would have adequate access to the services to be provided in the 20 relocated NF beds. Therefore the Application should be found nonconforming to this Criterion.

***Criterion (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 does not adequately demonstrate how any enhanced competition will have a positive impact on the cost effectiveness of nursing facility services in New Hanover County because the Applicant does not adequately demonstrate the need to relocate the 20 NF beds. The Applicant does not adequately demonstrate how any enhanced competition will have a positive impact on access to nursing facility services in New Hanover County. The Applicant's existing facility served 13% fewer Medicaid residents than the county average and the proposed facility proposes to serve Medicaid residents at a level 11.3% below the county average. The Applicant does not demonstrate that the 20 relocated NF beds would provide adequate access to medically

underserved groups, specifically Medicaid recipients. Therefore the Application should be found nonconforming with this Criterion.