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December 28, 2012

Craig Smith, Chief CON Section  
Tanya Rupp, Project Analyst ✓  
DHSR - Certificate of Need Section  
2704 Mail Service Center  
Raleigh, NC 27699-2704



RE: Universal Health Care – Lillington  
UNIVERSAL PROPERTIES/LILLINGTON, LLC  
UNIVERSAL HEALTHCARE/LILLINGTON, INC.  
Relocate Existing 129 Bed Facility  
Project ID Number M-10070-12

Dear Mr. Smith and Ms. Rupp:

Harnett Health Investors, LLC, owner of a nursing home now under construction in Lillington, in Harnett County, NC, is opposed to the CON application filed by the above-referenced applicants (hereinafter referred to as Universal). The existing facility's FID# as listed in the CON application is: 26-3579943. All public comments contained herein pertain to the above-referenced proposed project, which is in the December 1 Review Cycle.

Harnett Health Investors, LLC raises objection to the approval of the proposed CON application for the following reasons:

1. The CON application contains omissions, errors, and inaccuracies which render the application to be in severe conflict with a number of important Review Criteria.
2. The CON application fails to adequately address the project's impact on the existing health care system, including access to services by the medically under-served in Harnett County.
3. The CON application fails to address the applicable SMFP Policies NH-8 and GEN-4.
4. Harnett Health Investors, LLC believes that the CON application submitted by Universal fails to determine that a public need exists for authorization of an almost \$10 million capital expenditure, and is inconsistent with a number of North Carolina Review Criteria.

Thank you for allowing Harnett Health Investors, LLC to submit these comments during the Public Comment Period for this project's review. Please feel free to contact me with any questions.

Sincerely,

Frank Peck, President  
Premier Consulting Services, Inc.  
Consultant to Harnett Health Investors, LLC

CON APPLICATION OMISSIONS, ERRORS, AND INACCURACIES:

**SECTION II: SCOPE OF SERVICES/QUALITY CARE**

**10A NCAC 14C.1101 – INFORMATION REQUIRED OF APPLICANT**

**1.(c).** Universal failed to provide any analysis which insures the application's compliance with the requirement that at least 85% of the anticipated patient population in the entire facility lives within a 45 mile radius of the facility.

**10a NCAC 14C.1102 – REQUIRED PERFORMANCE STANDARDS**

**(b).** Universal has misrepresented compliance with this standard.

According to Universal's CON application page 55, actual occupancy for the nine months immediately preceding the November 15, 2012 submission date was only 89.13%, not 92% as indicated on CON application page 14.

**6. (a) and (b).** As disclosed on CON application page 40, Universal facilities incurred two serious Substandard Quality of Care incidents involving two nursing homes and total fines in excess of \$517,715 within the 18 months immediately preceding the submission of the CON application. A single fine of \$500,000 is particularly egregious, and provides indication that Universal should not be approved.

**SECTION III: NEED/DEMAND**

**1.** Universal has provided no evidence-based need analysis which reflects that a public need exists in Harnett County to relocate an existing 25 year old facility by a distance of only 2.5 miles.

**4. (b). 4.** Universal proposes no change in services or service areas, yet is requesting CON authorization to replace a facility only 25 years old at a cost of \$9,625,380.

*Approval of Universal's CON application is likely to result in a statewide proliferation of like-minded projects which do not replace aged facilities (this facility is years away from being fully depreciated) and do not serve new populations with new services.*

**4. (b). 6.** Universal makes no mention of the fact that its site will be the *second* nursing home constructed very near Betsy Johnson Hospital, as Harnett Health Investors, LLC's 98 bed project is well under construction.

**4. (b). 8.** There is no evidence in Universal's CON application that Ms. Milton and Ms. Kelly with Harnett County DSS, and Mr. Strong, Ombudsman, Mid-Carolina Council of Governments, are aware that Universal is planning to restrict access to its proposed new 31 private room beds by Medicaid and Hospice payer sources.

All of Universal's 129 beds are currently Medicare and Medicaid Certified. All 129 new beds are claimed to become Certified for both Medicare and Medicaid services, yet Universal proposes to offer zero Medicaid or Hospice patient access to the new 31 private room beds at any time during the first two years of operation. See CON application pages 60-61.

Furthermore, Universal fails to disclose the number of private rooms it currently has available.

**2. (a). Discuss the various alternatives that were considered in development of the proposed project and the reason the alternative chosen is the most effective alternative of those considered.**

1. Maintain status quo, and not replace the nursing home. Universal's sole reason to discard this alternative is "this is not a viable option primarily due to the fact that the assisted living portion of the facility is anticipated (*sic*) and cannot adequately provide the needed assisted living services to the residents of Harnett County." See CON application page 44.

*Yet, this application is to replace the much newer nursing home portion of the facility. Also, Universal fails to mention that its 106 bed AL facility is less than 21% occupied, according to their 2012 License Renewal Application. There is no information in the CON application which describes the need to replace the nursing home, other than "the assisted living facility is anticipated (*sic*)". See page 44.*

*There are no apparent Life Safety Code issues caused by the existing physical plant. There are no physical plant issues raised in the CON application.*

2. Replace total facility: Universal discards this alternative by saying, "... the nursing home portion is relatively new and can continue to provide a quality environment and services ..."
3. Develop the project as described within the CON application, which is the alternative selected by Universal:
  - New location will be adjacent to the new Betsy Johnson Hospital (*actually, the new nursing home will be the second new nursing home location near Betsy Johnson Hospital*).
  - The assisted living residents would be up-graded to utilize the current nursing home facility once the nursing home residents are transferred. *The assisted living residents, themselves, cannot be "up-graded".*

- Nursing home residents would benefit by being closer to the new hospital which would increase accessibility and foster a closer union between the two organizations.

*There is no evidence in the Universal CON application which shows that authorization of a capital expenditure of over \$9.6 million is warranted to move the nursing home only 2.5 miles will result in anything except placement of a second new nursing home within .25 miles of the new hospital.*

**(b). Describe why the proposed site for the facility in the county is the best alternative in terms of meeting the needs of the residents of the county and providing geographic access to the proposed services.**

Universal has made no mention of population distribution within Harnett County; nor even mentioned the names of existing nursing facilities, or facilities under construction; nor plotted those facilities on a map.

The only comments Universal offers to support its contention that the proposed site is the “best alternative” in terms of meeting the needs of the residents of the county and providing geographic access to the proposed services, are these:

*“Universal of Lillington chose the specific site because of its close proximity to the new Betsy Johnson Hospital which will foster increase accessibility for residents in Harnett County. The site will have water and sewer coupled with the fact that the site is not in a flood plain.”* See CON application page 45, at top.

**SECTION XI. 8.** The Table on page 117 is incomplete.

## SUMMARY AND CONCLUSION

The replacement and relocation project proposed by Universal simply makes no sense from a health planning perspective.

1. Universal seeks state authorization to relocate its 129 bed nursing facility only 2.5 miles from its present location.

Universal has provided no analysis to show that this very capital intensive, 2.5 mile “relocation” will benefit the Harnett County health care system in general, nor Harnett County citizens directly.

2. Universal seeks state authorization to replace its 25 year old building (which is far from being fully depreciated) and load the new building with substantial new debt. In fact, Universal says that the primary reason to request this authorization is because its

“assisted living portion of the facility is anticipated (*sic*) and cannot provide the needed assisted living services to the residents of Harnett County”.

Yet, Universal’s CON application contains no analysis, no facts, no details, to support its claim pertaining to the assisted living operation.

The only reasons Universal offers to support its request to the state to authorize relocation of its nursing home to a new site only 2.5 miles away from its current site, and to load over \$7.1 million in new debt on the nursing home, is to enable the facility to become “neighborhood” oriented, and to offer 31 private room beds.

3. Universal alleges that all 129 beds will be dually Certified by Medicare and Medicaid, and claims that it will not discriminate regarding admissions. However, Universal reveals its intentions regarding those 31 private rooms (24% of total capacity) in Section IV, pages 60-61. As reflected in Table IV. 3, Universal reserves exclusive use of all private room beds for private pay, Medicare, and commercial insurance payor sources. Conversely, Universal reflects zero utilization by Medicaid and Hospice payor sources of any of the 31 private rooms.

Clearly, Universal’s intention with this CON application is to restrict all Medicaid and Hospice payor sources from using any of the 31 private rooms, which is a primary accommodation touted by Universal as being beneficial to patients, and which Universal uses as a reason to approve its relocation project.

Curiously, one would think that Hospice patients would especially benefit from the associated privacy afforded by Universal’s private rooms. Yet, Universal inexplicably bars utilization of any private room by Hospice and Medicaid payor sources for at least the first two years of service.

## COMMENTS RELATED TO NORTH CAROLINA CON REVIEW CRITERIA

Harnett Health Investors, LLC offers the following comments concerning Universal's CON application and its multiple failures to satisfy mandated Review Criteria:

### **§ 131E – 183. Review criteria.**

**(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.**

- (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.**

#### POLICY NH-8: INNOVATIONS IN NURSING FACILITY DESIGN.

Universal's CON application calls for no new services or approaches to care practices.

Universal espouses the benefits of adding 31 private patient rooms "interspersed throughout the facility", then goes on to bar access to those 31 private room beds by Medicaid and Hospice payor sources. See pages 60-61 of the CON application.

#### POLICY GEN 3: BASIC PRINCIPLES

Universal will not offer its scope of services to Medicaid and Hospice patients in all 129 Medicaid Certified beds. Restricting access by Medicaid patients from receiving services in all 129 Medicaid Certified rooms is discriminatory.

#### POLICY GEN-4: ENERGY EFFICIENCY AND SUSTAINABILITY FOR HEALTH SERVICE FACILITIES.

The proposed project has neglected to provide a policy statement for compliance with this policy.

- (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.**

Universal proposes that the new facility will serve the same patient population with the same services as the current facility, with one very important exception.

Universal will limit access to its 31 private room beds (24% of total beds) exclusively to private pay, Medicare, and Commercial Insurance payor sources. See pages 60-61 of the CON application.

**(3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.**

Universal has offered no explanation for why it is proposing to restrict access to its 31 private rooms (24% of total capacity), which appears to be a significant and contributing reason for why Universal is proposing this project in the first place.

**(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.**

Universal has not selected the least costly or most effective alternative. Furthermore, the selected alternative will eliminate access to needed Medicaid Certified private room accommodations by Medicaid and Hospice payor sources.

**(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.**

Universal's operating statements are based on inaccurate interest expenses and overly ambitious (and discriminatory) revenues for its 31 private room utilization, which denies access by Medicaid and Hospice payor sources.

For example: The Lancaster Pollard Mortgage letter (page 315) refers to a loan of \$8,305,136 for a term of 40 years at an interest rate of 3.25% (fixed). Yet, Universal's amortization table (pages 392-402) reflects a loan amount of \$7,125,380 for a term of 40 years at an interest rate of 2.60% (fixed).

There is no evidence in the record that mortgage financing is available to Universal at the 2.6% interest rate on which the financial statements are built upon and which is reflected in the amortization table. The difference in interest rates is a substantial 20% increase.

A key financial reason for Universal to restrict Medicaid and Hospice payor sources to semi-private rooms only is the increased daily revenue paid by private pay, Medicare, and Commercial Insurance for private rooms.

Private Room Average Rates - Daily

Private Pay -	\$195.00
Medicare -	\$375.00
Commercial Insurance -	<u>\$394.11</u>
Average Private Room Rate -	\$321.37 per patient day
Medicaid and Hospice Rate -	\$158.72 per patient day

Net increase in daily private room revenue by excluding Medicaid and Hospice - \$162.65

Total net profit earned per day (Form C year 2) -  $\$180,708/365 = \$495.09$  profit per day.

If private room revenue were to substitute three Medicaid/Hospice patients for three patients of the higher pay sources, the projected net profit of \$495.09 / day is wiped out.

$\$495.09/162.65 = 3.04$  Medicaid/Hospice patients.

The project as proposed is discriminatory to Medicaid and Hospice payor sources for financial reasons.

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

Universal has provided no data, commentary, names, locations or even a single mention of any existing nursing homes and nursing homes under construction in Harnett County.



Yet, Universal seeks state authorization to invest over \$9.6 million in relocating its existing nursing home enterprise to a site only 2.5 miles away from its current site.

**(13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:**

- a. The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;**
- b. Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of an civil rights access complaints against the applicant;**
- 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**
- d. That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.**

(c & d): Universal will bar Medicaid and Hospice payor sources from receiving services in any of its proposed 31 private rooms, which is 24% of total bed capacity, and which are proposed to be Medicaid Certified.

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

**impact on cost effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.**

Universal has provided no information regarding the expected effects of the proposed services on competition in the proposed service area, nor has the applicant identified any of the other three existing nursing homes and one replacement facility already under construction in Harnett County.

In particular, Universal has failed to make mention of the replacement nursing facility owned by Harnett Health Investors, LLC, and now under construction in the same development as its proposed site near Betsy Johnson Hospital.

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

Universal's CON application pages 40 and 41 outline substantial breaches in the company's quality of care record, resulting in fines in excess of \$517,715.

END OF COMMENTS