Competitive Comments on Wake County Acute Care Bed Applications

submitted by

Rex Hospital

In accordance with N.C. GEN. STAT. § 131E-185(a1)(1), Rex Hospital (Rex) submits the following comments related to competing applications to develop additional acute care beds in Wake County to meet a need identified in the *2011 State Medical Facilities Plan* (*SMFP*). Rex's comments include "*discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with the relevant review criteria, plans and standards.*" *See* N.C. GEN. STAT. § 131E-185(a1)(1)(c). In order to facilitate the Agency's ease in reviewing the comments, Rex has organized its discussion by issue, specifically noting the general CON statutory review criteria and specific regulatory criteria and standards creating the non-conformity relative to each issue, as they relate to the following applications:

- **WakeMed, (WakeMed Raleigh), Project ID # J-8660-11**
- **WakeMed, (WakeMed Cary), Project ID # J-8661-11**
- **Holly Springs Hospital II, LLC, (Novant), Project ID # J-8673-11**
- **Rex Hospital, Inc. (Rex Main Campus), Project ID # J-8667-11**
- **Rex Hospital, Inc. (Rex Hospital Holly Springs), Project ID # J-8669-11**
- **Rex Hospital, Inc. (Rex Hospital Wakefield), Project ID # J-8670-11**

WAKEMED RALEIGH

WakeMed Raleigh's application should not be approved as proposed. In summary, WakeMed Raleigh's application failed to account for future major impacts on its utilization and as such it projections are unreasonable.

Rex identified the following specific issues, each of which contributes to WakeMed Raleigh's non-conformity:

(1) Failure to account for the impact of employed physician groups;
(2) Failure to account for the impact of Harnett Health Central Campus;
(3) Material change/amendment resulting from hostile bid to purchase Rex;
(4) Unsupported assumption of shift of charity care to Medicaid; and,
(5) Failure to account for interest expense.

Each of the issues listed above are discussed in turn below. Please note that relative to each issue, Rex has identified the statutory review criteria and specific regulatory criteria and standards creating the non-conformity.

Failure to Account for the Impact of Employed Physician Groups

As Rex noted in its three concurrently filed applications, recent changes in physician employment in Wake County are projected to have an impact on future utilization at both WakeMed and Rex Hospital. Neither of WakeMed's applications addresses this impact.

Prior to WakeMed's hostile bid to purchase Rex, WakeMed's waged a public campaign accusing UNC Health Care (and Rex) of *"predatory actions in Wake County – including efforts to recruit doctors away from existing relationships with WakeMed"* and requested a formal records request to determine *"if public money has been used by the UNC Hospitals or Rex Healthcare . . . in order to unnecessarily duplicate and shift services at great cost to the community and taxpayers"* (see WakeMed November 29, 2010 press release in Exhibit 1). *The News & Observer* identified the source of the conflict: *"WakeMed executives are especially angry about UNC Health's affiliation with Wake Heart"* (article provided in Exhibit 1). WakeMed's accusations are unfounded as UNC Health Care and Rex have repeatedly stated in public responses.

These events continue to play a driving role for WakeMed. In an interview on his first day as Chairman of WakeMed's Board, Tom Oxholm discussed these changes in physician employment: *"UNC Health has been* 'very aggressively' *expanding in Wake County by offering key physician groups the promise of higher reimbursement fees if they affiliate with UNC-Rex, Oxholm said. That's a* 'real threat'

to WakeMed, and creates unfair competition because UNC Health is backed by taxpayer money, he added" (article provided in Exhibit 1). Obviously, WakeMed was well aware of these changes in physician employment. The public and accusatory nature of WakeMed's response and the formal request for records indicate the significant degree to which WakeMed believed it would be impacted. Nonetheless, neither of WakeMed's applications mentions these issues. Rather, the applications, in particular the utilization projections, indicate that WakeMed believes simply that things will continue as they have been, with no adjustments for these well-known events. This is inconsistent with WakeMed's public discussions and is simply unreasonable.

WakeMed's applications should have accounted for these changes; instead, WakeMed's applications project future utilization using FFY 2010 market share as a baseline. As a result, Rex believes that WakeMed's utilization projections for its acute care beds are unreasonable and unsupported as shown in the data and analysis below, and its application should be found non-conforming with Criterion 3. The Agency took the same position in a similar review of Park Ridge Hospital's proposal to add 11 new licensed acute care beds in which the CON Section noted that:

> *"[i]n 2003, Park Ridge's utilization decreased to 13,380 patient days of care, due to* 'loss of key physicians responsible for many of PRH's inpatient admissions.' *On page 43 the applicant states that an internist left in September 2003, and a neurosurgeon, responsible for 189 admissions and 1,021 days of care in FY2002, left in November 2002. The applicant provides in Exhibit 19 of the application its five year physician recruitment plan which includes the following 26 specialists through 2009:*
>
> - *8 Internists*
> - *3 Hospitalists*
> - *3 Pulmonologists*
> - *1 Endocrinologist*
> - *4 Family Practitioners*
> - *1 Cosmetic Surgeon*
> - *2 Cardiologists*
> - *2 Orthopedists*
> - *1 ENT*
> - *1 Neurologist*
>
> *However, the applicant did not discuss whether or to what extent it has been successful in recruiting new physicians since the departure of the neurosurgeon in November 2002."*

See pages 7-8 of CON Findings for Project ID # B-7132-04.

Similar to the Park Ridge application, which was found non-conforming on this basis, WakeMed Raleigh's application failed to note the loss of key physicians and failed to acknowledge such loss as a factor in their projections.

As noted in its applications, Rex believes that the 21 Wake Heart & Vascular physicians that have joined Rex's employed physician group will shift all of their patient days to Rex in future years, beginning with a 20 percent shift in Federal Fiscal Year (FFY) 2011 and culminating with a 100 percent shift by FFY 2015 (please see Rex Main Campus, page 143). These patient days will be shifted primarily from WakeMed Raleigh as noted in Exhibit 37, which shows 23,183 patient days provided at WakeMed Raleigh by the Wake Heart & Vascular Associates' physicians in FFY 2010. Rex assumes these patient days will grow 2.4 percent annually in future years. As a result, WakeMed Raleigh will have greater capacity to serve the remainder of its patients. The following table summarizes the projected impact on WakeMed Raleigh from this physician group.

FFY	*Wake Heart & Vascular Days Historically Provided at WakeMed Raleigh*	*Percent Shifted to Rex*	*Wake Heart & Vascular Days Shifted from WakeMed Raleigh to Rex*
2010	23,183	NA	0
2011	23,734	20%	(4,747)
2012	24,299	40%	(9,720)
2013	24,877	60%	(14,926)
2014	25,468	80%	(20,375)
2015	26,074	100%	(26,074)
2016	26,694	100%	(26,694)
CAGR	**2.4%**	**NA**	**NA**

Source: Page 143 and Exhibit 40 of Rex Main Campus application.

Similarly, WakeMed has recently employed several cardiologists that formerly practiced at Rex (Carolina Cardiology Consultants, as well as J. Richard Daw, M.D. and Jimmy Locklear, M.D.). Rex conservatively assumed in its application that these physicians would immediately shift their patient days from Rex to WakeMed Raleigh.

FFY	*WakeMed Employed Physician Days to Shift from Rex to WakeMed Raleigh*
2010	1,143
2011	1,170
2012	1,198
2013	1,227
2014	1,256
2015	1,286
2016	1,316
CAGR	**2.4%**

Source: Page 144 of Rex Main Campus application.

The net impact of this change in physician employment on WakeMed Raleigh is summarized below.

FFY	*Wake Heart & Vascular Days Shifted from WakeMed Raleigh to Rex*	*WakeMed Employed Physician Days to Shift from Rex to WakeMed Raleigh*	*Net Days Impact of Physician Employment at WakeMed Raleigh*
2011	(4,747)	1,170	(3,577)
2012	(9,720)	1,198	(8,521)
2013	(14,926)	1,227	(13,699)
2014	(20,375)	1,256	(19,119)
2015	(26,074)	1,286	(24,788)
2016	(26,694)	1,316	(25,378)

The following table shows the projected patient days in WakeMed Raleigh's application when adjusted to account for this shift from WakeMed Raleigh to Rex.

FFY	*WakeMed Raleigh Patient Days per Application*	*Net Days Impact of Physician Employment at WakeMed Raleigh*	*WakeMed Raleigh Adjusted for Impact of Physician Employment*	*Average Daily Census (ADC)*
2011	178,831	(3,577)	175,254	480.1
2012	185,191	(8,521)	176,670	484.0
2013	191,542	(13,699)	177,843	487.2
2014	186,239	(19,119)	167,120	457.9
2015	189,727	(24,788)	164,939	451.9
2016	194,453	(25,378)	169,075	463.2

As the table below demonstrates, WakeMed Raleigh will operate at 81.7 percent occupancy of its existing and previously approved 567 beds in FFY 2016. Assuming the other WakeMed facilities are unaffected by this shift, WakeMed's total 784 existing and previously approved acute care beds will operate at 83.2 percent occupancy in FFY 2016. However, it should be noted that two applications in this review propose the development of acute care beds in Holly Springs, and should they be approved, WakeMed Cary's projected utilization may be impacted.

Facility	*Beds*	*ADC*	*Percent Occupancy*
WakeMed Cary	156	145.1	93.0%
WakeMed North	61	44.0	72.1%
WakeMed Raleigh	567	463.2	81.7%
Total for System	**784**	**652.3**	**83.2%**

Source: Calculations above for WakeMed Raleigh, WakeMed Raleigh application, page 41 for WakeMed Cary and WakeMed North.

Based on the analysis shown above, overall utilization of WakeMed Raleigh will not be adversely affected by the projected shift of patients as it is projected to operate at 81.7 percent of its existing and previously approved capacity; the facility operated at 85.9 percent in FFY 2010. If WakeMed Raleigh can successfully operate its facility today at 85.9 percent occupancy then it surely can do so in the future at 81.7 percent occupancy. However, if WakeMed Raleigh were to add 79 beds and WakeMed Cary were to add 22 beds, as proposed, WakeMed's total acute care beds would operate at only 73.7 percent occupancy, which is below the 75.2 percent capacity threshold required for additional acute care beds for applicants with a projected ADC greater than 200 patients.

Facility	*Beds*	*ADC*	*Percent Occupancy*
WakeMed Cary	178	145.1	81.5%
WakeMed North	61	44.0	72.1%
WakeMed Raleigh	646	463.2	71.7%
Total for System	**885**	**652.3**	**73.7%**

Source: Calculations above for WakeMed Raleigh, WakeMed Raleigh application, page 41 for WakeMed Cary and WakeMed North.

As such, neither of WakeMed's applications should be approved to add acute care beds as their total acute care beds will operate below 75.2 percent occupancy and therefore would not be in compliance with the applicable performance standard for additional acute care beds, 10A NCAC 14C .3803 (a), when

reasonable assumptions based on known facts are used to project future patient days.

Moreover, the additional capacity available at WakeMed Raleigh due to the shift of patient days could be relocated to WakeMed Cary, if WakeMed believed that was the most effective alternative. If, as WakeMed Cary's application suggests, there are a substantial number of delicensed acute care beds within its facility that can be opened as licensed beds with minimal cost, then WakeMed could relocate beds from Raleigh to Cary to address the need at Cary.

It is important to note that these changes in physician employment occurred prior to the filing of all of the acute care bed applications at issue in these comments. As Rex noted in its applications, UNC Health Care and Rex announced an affiliation agreement with Wake Heart & Vascular Associates in March 2011. These physicians, as noted in their letters of support provided in Rex's application and during the public comment period, intend to shift their patients to Rex. This shift is the choice of these physicians in order to provide the best care to their patients. These physicians will shift their patients regardless of the approval or denial of all of the applications at issue in these comments. Therefore, WakeMed cannot contend that its applications were submitted with the assumption that they would be approved and somehow these shifts would not occur as a result.

Rex believes that physician practice patterns are important to consider in projecting future utilization and as such has provided substantial documentation of both the support and impact of physicians in the form of support letters, historical data, assumed shifts, as well as estimates of physician need for its proposed community hospitals in Holly Springs and Wakefield. As such, Rex believes WakeMed's failure to consider the physician impact detailed above renders its utilization projections unreasonable and unsupported.

As a result of this issue, the WakeMed Raleigh application should be found non-conforming with Criterion 3.

Failure to Account for the Impact of Harnett Health Central Campus (HHCC)

WakeMed Raleigh's utilization methodology fails to account for the opening of the new hospital in Lillington, Harnett Health Central Campus (HHCC). As noted on page 52 of the application, HHCC is expected to open in FFY 2013 and existing WakeMed Cary patients from Lillington and Angier are projected to shift to the new facility. However, WakeMed does not provide any information regarding the shift of patients from WakeMed Raleigh to HHCC in its 2011 Wake bed application. While HHCC's CON application does not quantify its impact

on other providers, it does state *"WakeMed, the manager of this project will work with Harnett Health to redirect patients appropriate for care at Harnett Health – Central Campus who otherwise would utilize the **WakeMed facilities** in Wake County"* (emphasis added) (page 99 of Project ID # M-7351-05). Clearly, WakeMed and HHCC, which were co-applicants in the HHCC CON, assume that patients would be shifted from multiple WakeMed facilities to HHCC and not solely from WakeMed Cary.

As shown on pages 48-49, WakeMed Raleigh served 1,482 acute care discharges from Harnett County in FFY 2010 or 16.2 percent of discharges in the county. If WakeMed Cary patients from Harnett County would shift to HHCC then the same would be true for WakeMed Raleigh patients from Harnett County, especially given that was the assumption that the HHCC CON was predicated upon. At that time, 2005, there were only two WakeMed hospitals from which to shift patients – Raleigh and Cary. WakeMed's application fails to address this potential impact.

Based on the assumptions provided for the shift of WakeMed Cary patients to HHCC, Rex believes that it is reasonable to assume that as many as 722 discharges and 3,626 patient days would be shifted to HHCC from WakeMed Raleigh (please see Exhibit 2 for this analysis). This reduction in utilization would also affect the projected patient origin for WakeMed Raleigh. As such, Rex believes WakeMed Raleigh's application fails to correctly identify the population to be served by its project in addition to its failure to provide supported utilization projections.

As such, WakeMed Raleigh's application should be found non-conforming with Criterion 3.

Material Change/Amendment Resulting from Hostile Bid to Purchase Rex

On May 12, 2011, WakeMed submitted an official offer to purchase Rex from UNC Health Care. Rex was not aware of this proposal before its announcement and has publicly responded that it is not for sale.

According to the public statements of Dr. Bill Atkinson, CEO of WakeMed, this hostile bid of $750 million is to be financed through a combination of cash reserves and bonds. Such a significant capital outlay would surely affect WakeMed's ability to pursue other capital projects, such as those proposed in WakeMed's applications. Even though its currently proposed projects contemplate bond financing, the ability of WakeMed to issue bonds for these projects is dependent on several factors, including its available cash on hand and

other financial ratios, which will all be negatively impacted with a substantial capital expenditure to acquire Rex as WakeMed has recently proposed.

Rex contends this action by WakeMed represents a material change to its application which particularly affects the availability of financing and as such the application should be found non-conforming with Criterion 5.

Unsupported Assumption of Shift of Charity Care to Medicaid

On page 129 of its application, WakeMed Raleigh states *"[i]t was assumed that beginning in FY 2014, 50% of the self pay/charity cases would shift to Medicaid, due to the impact of healthcare reform. Otherwise, it was assumed that there would be no other material change in payor mix."* Rex contends that this assumption is unsupported. Specifically, there is no support for the assumption that 50 percent of these patients would shift to Medicaid. WakeMed Raleigh provides no quantitative basis for this calculation so it could have as easily assumed 10 percent or 100 percent. Moreover, if such a shift were to occur based on federal mandates, then it would impact all providers, and the Medicaid percentage for all applicants should be adjusted accordingly. The bottom line is that WakeMed has posited a guess regarding its payor mix without providing any rational basis for its calculations, rendering its assumptions unsupported and unreasonable.

Given WakeMed Raleigh's unsupported assumption regarding its proposed payor mix, its financial projections are not supported and do not demonstrate the long-term financial feasibility of the project. **As such, WakeMed Raleigh should be found non-conforming with Criterion 5. In addition, the Agency should not accept WakeMed Raleigh's proposed payor mix as a reasonable basis for comparing the competitive applications in this review.**

Failure to Account for Interest Expense

On page 150 of its application, WakeMed Raleigh notes that its capital costs will be financed through a bond issue. However, its Form C financial statement does not include any interest expense. As such, the financial feasibility of WakeMed Raleigh's application cannot be determined and any comparisons of operating expenses with other applicants would be invalid. **WakeMed Raleigh's application should be found non-conforming with Criterion 5, as its financial feasibility is not based on reasonable assumptions of costs.**

WAKEMED CARY

WakeMed Cary's application should not be approved as proposed. In summary, WakeMed Cary's application failed to account for future major impacts on utilization across the WakeMed System and as such it projections are unreasonable.

Rex identified the following specific issues, each of which contributes to WakeMed Cary's non-conformity:

(1) Failure to account for the impact of WakeMed North;
(2) Unreasonable utilization projections/failure to account for the impact of employed physician groups;
(3) Material change/amendment resulting from hostile bid to purchase Rex
(4) Unsupported assumption of shift of charity care to Medicaid;
(5) Failure to adequately demonstrate that the proposed project represents the least costly and/or most effective and reasonable alternative; and,
(6) Failure to account for interest expense.

Each of the issues listed above are discussed in turn below. Please note that relative to each issue, Rex has identified the statutory review criteria and specific regulatory criteria and standards creating the non-conformity.

Failure to Account for the Impact of WakeMed North

WakeMed Cary's utilization methodology fails to account for the opening of WakeMed North. As shown on page 45 of the application, WakeMed North is projected to open in FFY 2014 and existing WakeMed Raleigh patients from Wake, Harnett, and Johnston counties, among others, are expected to shift to the new facility. However, WakeMed does not provide any information regarding the shift of patients from WakeMed Cary to WakeMed North. WakeMed Cary's service area includes Wake, Harnett, and Johnston counties as shown on page 79. Clearly if patients in Harnett and Johnston counties, which would be closer to WakeMed Raleigh than to WakeMed North are projected to shift, WakeMed believes that patients are willing to travel greater distances to WakeMed North, presumably due to its proposed specialty focus. If patients from these counties are shifting from WakeMed Raleigh to WakeMed North than it can also be assumed that WakeMed Cary patients from these counties might also shift. Given the failure of WakeMed Cary's application to address this impact, its utilization projections are unreasonable. **As such, Rex believes that WakeMed Cary should be found non-conforming with Criterion 3.**

Unreasonable Utilization Projections/Failure to Account for the Impact of Employed Physician Groups

Please see the discussion above on WakeMed Raleigh's "Failure to Account for the Impact of Employed Physician Groups." These same comments apply to both WakeMed applications. If WakeMed Cary had accounted for the impact of Employed Physician Groups in the methodology, then the WakeMed system's total acute care beds will operate below 75.2 percent occupancy and therefore would not be in compliance with the applicable performance standard for additional acute care beds, 10A NCAC 14C .3803 (a).

Material Change/Amendment Resulting from Hostile Bid to Purchase Rex

Please see the discussion above on WakeMed Raleigh's "Material Change Resulting from Hostile Bid to Purchase Rex." These same comments apply to both WakeMed applications.

Unsupported Assumption of Shift of Charity Care to Medicaid

On page 117 of its application, WakeMed Cary states "*[i]t was assumed that beginning in FY 2014, 50% of the self pay/charity cases would shift to Medicaid, due to the impact of healthcare reform. Otherwise, it was assumed that there would be no other material change in payor mix.*" Please see the discussion above of the same assumption made by WakeMed Raleigh. These same comments apply to both WakeMed applications.

Failure to Adequately Demonstrate that the Proposed Project Represents the Least Costly and/or Most Effective and Reasonable Alternative

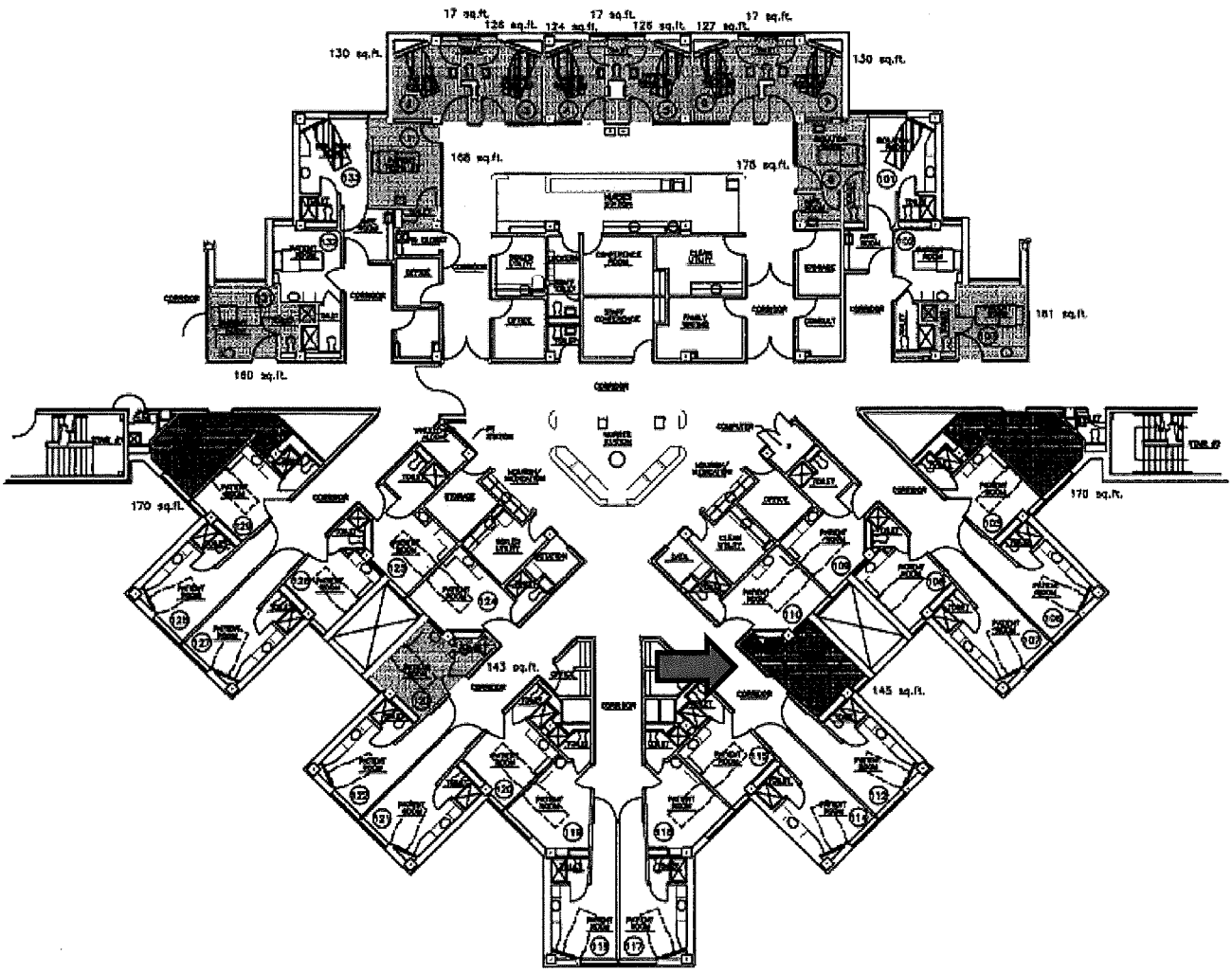
WakeMed Cary's application involves the conversion of 22 existing beds on Nursing Unit 1 East A to licensed acute care beds. While Rex acknowledges that use of existing space is recognized as a cost effective alternative, there was no discussion of substance regarding the existing space. That is, there was no discussion regarding the limitations of the existing space proposed to house the additional beds proposed in the current project.

In particular, the space proposed by WakeMed Cary to be utilized for the 22 additional acute care beds involves space originally constructed in 1991 that it has previously referred to as inadequate. As discussed in WakeMed Cary's 2005 Bed Replacement/Renovation Application, Project ID # J-7439-05 (which proposed to construct 40 replacement acute care beds, increasing the number of ICU beds from eight to 12, and converting vacated rooms into observation rooms and support space), the space located in 1A Telemetry, which is also the subject

of WakeMed Cary's current proposal, was described as "*not adequate to care for telemetry patients*" and "*[t]he unit is based on a snowflake design[,] the rooms are small, awkwardly shaped, and cannot be adequately viewed from the nursing stations.*"[1] Please see pages 15 and 22 of Project ID # J-7439-05. In addition, as noted on page 16 of Project ID # J-7439-05, and as demonstrated in the line drawing provided below, "*Rooms 104, 111, and 130 will be used as storage.*" One of the rooms, Room 111, which is comprised of 145 square feet and is indicated in the line drawing below by a blue arrow, is involved in the current proposal.

[1] Please note that the second comment relates directly to the medical/surgical unit on the second floor; however, this unit is the same footprint and configuration as the telemetry unit located on the first floor.

PATIENT UNIT ICU WAKEMED CARY



EXISTING PATIENT UNIT 1A TELEMETRY WAKEMED CARY

The rooms WakeMed Cary proposes to utilize in its current proposal are awkwardly configured and consist of a range of 143 square feet to 183 square feet, which renders a number of the rooms less than the current American Institute of Architect (AIA) standards for medical/surgical units which recommends that private patient rooms measure, at a minimum, 160 square feet (exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules). As noted below, there is no indication from WakeMed Cary that its current proposal is a temporary solution. Further, WakeMed Cary has provided no explanation for why space it has previously described as inadequate and space it took out of

service (in particular Room 111, which is identified as Room 17 on its current line drawings) represents the most effective alternative for development of 22 additional acute care beds.

Please note that while Rex's Main Campus application involves the development of 11 additional acute care beds in space vacated by services relocated to the proposed new bed tower, Rex included discussion in its application regarding developing the 11 additional acute care beds in new construction. In particular, as noted on page 195 of its application, "*Rex considered developing the additional acute care beds in new construction, rather than using space vacated to develop the new bed tower. However, this option seemed to offer a short sided vision of campus development. There is currently no need to develop additional inpatient space in the main hospital, as Rex's Vision 2030 will result in new construction and the replacement of the acute care beds remaining at the main hospital over time. As such, given the small number of additional beds, it was more reasonable to utilize existing inpatient space for the near future.*" In contrast, there is no indication in WakeMed Cary's application that its use of existing space is a temporary or short-term solution.

WakeMed Cary's proposal does not include discussion of an alternative to develop a portion of its proposed additional acute care beds in new construction rather than existing space which speaks to whether WakeMed Cary has proposed the least costly and/or most effective alternative and as such the application should be found non-conforming with Criterion 4. In addition, WakeMed Cary has failed to demonstrate that the design proposed represents the most reasonable alternative and as such, should be found non-conforming with Criterion 12.

Failure to Account for Interest Expense

On page 135 of its application, WakeMed Cary notes that its capital costs will be financed through a bond issue. However, its Form C financial statement does not include any interest expense. As such, the financial feasibility of WakeMed's application cannot be determined and any comparisons of operating expenses with other applicants would not be valid. **WakeMed Cary's application should be found non-conforming with Criterion 5, as its financial feasibility is not based on reasonable assumptions of costs.**

NOVANT

Novant's application should not be approved as proposed. In summary, Novant failed to adequately demonstrate support sufficient to justify the services proposed in its application.

Rex identified the following specific issues, each of which contributes to Novant's non-conformity:

(1) Unsupported service area and market share assumptions;
(2) Failure to adjust for inpatient services to be provided;
(3) Unreasonable outpatient visit and ED projections;
(4) Unreasonable and inconsistent outpatient surgical use rate;
(5) Unreasonable and understated construction costs;
(6) Failure to adequately demonstrate that HSH II is the most effective and reasonable alternative for construction of a new acute care hospital;
(7) Failure to adequately document the availability of health manpower for the provision of services proposed; and,
(8) Failure to demonstrate coordination with existing health care system and adequate support.

Each of the issues listed above are discussed in turn below. Please note that relative to each issue, Rex has identified the statutory review criteria and specific regulatory criteria and standards creating the non-conformity.

Unsupported Service Area and Market Share Assumptions

Novant identifies seven zip codes in Wake County as its service area but provides no justification for the reasonableness of that assumption. By contrast, Rex's Holly Springs and Wakefield applications provide substantial discussion of the service areas of comparable facilities in order to justify its service area. While the service areas for Novant's hospital and the proposed Rex Hospital Holly Springs are similar, there is one very notable difference. Novant includes the entirety of zip code 27603 which stretches from southern Wake County to central Raleigh. Rex deliberately adjusted its service area to account for those residents of 27603 who would be closer to existing acute care providers in Raleigh than to a proposed Holly Springs site by excluding residents outside of five miles of its proposed facility. Novant made no such adjustment and instead included the entirety of this zip code. Notably, in 2010, Novant criticized Rex Hospital for the inclusion of zip code 27603 in Rex's proposed Holly Springs surgery center stating "[*i*]*t is not reasonable for Rex to assume that 25% of these ambulatory surgical cases from* [zip codes 27529 and 27603] *will shift to Rex's proposed Holly Springs ASC, due to the fact that serving these cases at the proposed Holly Springs ASC would*

not be 'closer to home' *than serving these cases at Rex Hospital in Raleigh."* Novant's inclusion of this zip code in the proposed application and its criticism of Rex for the very same assumption historically are incompatible and indicates that its assumptions lack credibility.

Given that Novant fails to justify the reasonableness of its proposed service area, it cannot have reasonably justified its projected market share within that service area. In fact, Novant's attempts to quantitatively justify its market share assumptions would be unreasonable even if it had demonstrated the reasonableness of its proposed service area. Novant projects 28 percent acute care inpatient market share of six census tracts in southern Wake County and offers as justification, the market share of Presbyterian Hospital Huntersville (PHH) in its single home zip code (see page 160). According to the population data provided on pages 153-154 of the Novant application, the population of the six census tracts (107,181) is more than two times as large as the PHH's home zip code of 28078 (40,688). However, Novant provides more comparable data in another methodology in its application which clearly demonstrates that its market share assumption is not supported by PHH's experience. On page 171 in discussing its inpatient surgery projections, Novant notes that *"[i]n 2010, PHH captured over 40% inpatient [surgery] market share in its home zip code and over 20% of the total PHH Primary Service Area."* Assuming Novant's argument that the PHH Primary Service Area is comparable to the proposed hospital's primary service area, Novant's own statements suggest that its proposed 28 percent market share of inpatient services is above the historical share achieved by PHH. As shown in the Rex Hospital Holly Springs application, Rex calculated that PHH has a 22.7 percent market share of the Rex-defined service area for PHH. Again, an examination of more comparable data suggests that Novant failed to demonstrate that its market share assumptions were supported and reasonable.

Finally, Novant states throughout its utilization methodologies that *"[d]ocumented physician support is the most concrete means by which to determine market share and to confirm market share estimates derived from data used by [Novant's Holly Springs Hospital]*. Rex agrees with the statement. However, Novant provides no basis by which the CON Section could confirm the reasonableness of the market share estimates. There is no nexus established between its utilization projections and physician support. By contrast, the Rex Holly Springs and Wakefield applications provide an analysis of the estimated community physician need for each service area as well as the estimated physician need to support its proposed market share assumptions. Novant's omission of a similar analysis may be due to a desire to conceal the insufficient physician support its project has garnered, as noted below in "Failure to Demonstrate Coordination with Existing Health Care System and Adequate Support."

Lastly, Novant's use of PHH as a comparison facility is problematic as PHH was developed in Mecklenburg County where Novant already had a substantial history of the provision of health care, most significantly through its three acute care hospitals that exited at the time PHH was proposed. By contrast, Novant's presence in Wake County prior to the development of its proposed Holly Springs hospital will only be a small number of physicians and (potentially) an ambulatory surgery center that will only have been in operation for a short period of time. Thus, assuming that the proposed Holly Springs hospital's experience will be similar to that of PHH is unreasonable. By comparison, the proposed Rex Hospital Holly Springs will build upon Rex and UNC Health Care's existing and substantial health care system and reputation in Wake County. As such, Rex believes its more sophisticated and supported use of PHH's historical experience in determining projected utilization in its applications is reasonable.

Based on the above factors, Rex believes Novant has failed to demonstrate the need for its proposed project and should be found non-conforming with Criterion 3.

Failure to Adjust for Inpatient Services to be Provided

In 2008, Novant filed an application, Project ID # J-8190-08, to develop Holly Springs Hospital, a new 41-bed acute care hospital in Holly Springs, hereinafter referred to as HSH I. Following a competitive review, HSH I was denied. In the current review, Novant proposes to develop a new 50-bed acute care hospital in Holly Springs, Holly Springs Hospital, hereinafter referred to as HSH II.

HSH II "*will be a community hospital with obstetrics and other medical surgical services appropriate in a community hospital setting. Tertiary level services, such as cardiac surgery, NICU, transplant, etc, will not be provided*" (page 158). However, Novant makes no attempt in its utilization projections to account for this limited service offering. Its utilization projections are based on market discharge estimates regardless of acuity or service. By contrast, even though it was ultimately disapproved, HSH I, which proposed a similar community hospital service mix as HSH II, adjusted its utilization projections to exclude NICU, diagnostic cardiac cath, and DRGs with FY2005 Relative Weight >= 2.0, per page 127 of that application. **As such, Rex believes Novant's application fails to appropriately identify the population it proposes to serve and fails to demonstrate the need of the population and should be found non-conforming with Criterion 3.**

Unreasonable Outpatient Visit and ED Projections

On page 183 of its application, Novant states that it used *"the North Carolina Emergency Department Visit Use Rate for community hospitals defined by the American Hospital Association (AHA) to project emergency department visits . . . [t]he North Carolina Emergency Department Visit 2008 Use Rate was 45.1 visits per 1,000 population as reflected in Exhibit 5, Table 73. The North Carolina Emergency Department Visit 2008 Use Rate is the most current data that is publicly available."* First, it should be noted that Novant misstates the use rate, which is actually 451 visits per 1,000 as shown in Exhibit 3, but uses the correct figure in its calculations. More importantly, Novant, as an operator of multiple acute care facilities in North Carolina, is clearly aware of the Hospital License Renewal Application, on which acute care providers report emergency department utilization. As Rex notes in its Holly Springs and Wakefield hospital applications, the ED use rate in Wake County is far lower than suggested by the AHA:

In FFY 2010, Wake County hospitals provided 300,432 total ED visits.

Total ED Visits for Wake County Providers

Provider	*ED Visits*
Duke Raleigh	*34,099*
Rex Hospital	*61,299*
WakeMed	*111,157*
WakeMed North Healthplex	*34,019*
WakeMed Cary	*41,498*
WakeMed Apex	*18,360*
Total	***300,432***

Source: 2011 HLRAs.

In 2010, NC OSBM reports that Wake County's population was 919,938. As such, for every 1,000 Wake County residents, Wake County facilities provided 326.6 ED visits (326.6 ED visits per 1,000 = 300,432 total ED visits ÷ 919,938 people ÷ 1,000). This calculation results in what Rex will refer to as a facility-based use rate, rather than a population use rate, as it reflects visits to Wake County providers regardless of the county from which the patient originates.

See page 199 of Rex Hospital Holly Springs.

The use rate employed by Novant is 38 percent higher than the facility-based use rate calculated by Rex. While some of the discrepancy between use rates used by

Novant and Rex could be explained by the outmigration of Wake County residents to EDs in other counties or states, that effect would be counterbalanced by the inmigration of residents of other counties to EDs in Wake County and, indeed, it is more likely that there is a net inmigration to Wake County ED services, given the availability of providers, rather than net outmigration. Given that the HLRA data used by Rex is reported by providers in Wake County, Rex believes its ED projection methodology is superior to Novant's and demonstrates by contrast the unreasonableness of Novant's projections and Novant's failure to adequately show its assumptions to be reasonable when compared to empirical data for the service area.

Assuming that Novant's proposed hospital would experience a facility-based use rate equal to that of other Wake County providers, Novant would provide only 14,995 ED visits in 2017 which would justify only 11 emergency treatment rooms rather than the 16 proposed by Novant.

	2017
Total PSA Population (Census Tract) per pg. 184	133,078
Facility Based Use Rate per 1,000 per Rex calculation above	326.6
Novant Market Share per pg. 185	34.5%
Novant Projected ED Visits	14,995
No assumed inmigration as a facility based use rate includes inmigration	0%
ED Treatment Spaces Needed at 1,333 Visits per Treatment Room per pg. 186	11

As such, Novant has failed to demonstrate the need for the proposed project and should be found non-conforming with Criterion 3.

On page 180 of its application, Novant states that it used *"the North Carolina Hospital Outpatient Visit Use Rate for community hospitals defined by the American Hospital Association (AHA) to project outpatient visits ... [t]he North Carolina Hospital Outpatient Visit 2008 Use Rate was 191.8 visits per 1,000 population as reflected in Exhibit 5, Table 81,"* and lists the source as www.statehealthfacts.org. In the note to Exhibit 5, Table 81 on page 835 Novant states *"AHA Statistics report Visits/Procedures and includes Emergency Visits; Emergency Visit use rate subtracted for these projections."* Again, Novant misstates the AHA use rate, which is actually 1,918 visits per 1,000 as shown in Exhibit 3, however, in this case, Novant uses its misstated figure in its calculations and thus assumes a use rate that is ten times less than what is actually reported in its data source. Moreover, Novant did not subtract the Emergency Department Visit Use Rate as it states but uses the misstated use rate without adjustment. While it may appear that Novant's projections are conservative as a result of this error, Rex contends that the error is so substantial as to render Novant's projection meaningless. If

Novant had used the correct use rate, its outpatient use rate projections would be ten times higher. If Novant believes its outpatient projections are reasonable, then they have no valid data source for their assumptions given that they are off by a factor of ten. In addition, this issue also casts doubt on Novant's expenses and staffing projections. **Rex believes Novant's outpatient visit utilization projections are unsupported and unreasonable and its application should be found non-conforming with Criterion 3.**

Unreasonable and Inconsistent Outpatient Surgical Use Rate

In comments and testimony against Rex's 2010 Wake OR CON application, Novant repeatedly criticized Rex for projected operating room utilization based on the shift of surgical cases previously performed in minor procedure rooms to operating rooms. For example, Novant stated in its comments that "*Rex includes surgical volume currently performed in a non-surgical procedure rooms* [sic] *as the base-year data for Rex's future OR cases projections to achieve projected utilization. As a result, projected utilization in the Rex Holly Springs ASC CON Application is overstated and cannot be used to justify Rex's total operating room need in Wake County*" (page 5 and similar comments on pages 6-15 of Novant's Comments on Rex's 2010 Wake OR Applications). As Rex noted in its testimony, Novant's HSSC, the competing application in that instance, employed an outpatient surgery use rate that was based in part on these same Rex surgical cases previously performed in minor procedure rooms. As such, Novant was well aware that such an approach was entirely contrary to their repeated public statements that projections based on these cases was unreasonable. However, in this application, Novant projected outpatient surgery cases based on historical data presented in the 2011 HLRAs, which contain surgical cases performed in locations other than operating rooms as Novant was well aware. Novant made no mention of this fact in its application nor did it adjust its outpatient surgical projections to account for what it has repeatedly, publicly stated are cases that are inappropriate for operating rooms. Clearly, Novant believes that the standard it applies to other applications should not be applied to its own applications. **As such, Novant should be found non-conforming with Criterion 3.**

Unreasonable and Understated Construction Costs

The following table compares Novant's Holly Springs Hospital projects by capital cost. Of note relative to the discussion that follows are the differences between the site and construction costs. While Rex acknowledges that the footprint proposed in HSH II, 15.22 acres and 141,750 square feet, is smaller than that proposed in HSH I, 20 acres and 180,200 square feet, such differences do not in and of themselves account for the total difference in cost. That is, while the

total reduction in square feet may have reduced Novant's cost, that does not explain, particularly, the per square foot reductions in some of the line items listed in the table below. In particular, while Novant also provides documentation in its current application regarding escalation in construction costs, such escalations are not reflected when viewed in light of HSH I.

Novant's Holly Springs Hospital Projects – Project Capital Cost Comparison

A. Site Costs	*HSH I*	***HSH II***	***Difference***
	A	***B***	***A-B***
(1) Full purchase price of land # Acres 20/15.22 Price per acre $210,000/$200,000	$4,200,000	$3,044,000	$1,156,000
(2) Closing costs	$200,000	$100,000	$100,000
(3) Site inspection and survey	$172,250	$50,000	$122,250
(4) Legal Fees and Subsoil Investigation	$200,000	$50,000	$150,000
(5) Site preparation costs	$4,701,598	$3,405,489	$1,296,109
(6) Other (Testing and Survey)			
(7) Subtotal Site Costs	$9,473,848	**$6,649,489**	**$2,824,359**
B. Construction Contract(s)			
(8) Cost of Materials	$22,186,556	$23,206,631	-$1,020,075
(9) Cost of Labor	$33,279,834	$18,987,243	$14,292,591
(10) Other (Construction Contingency)	$1,599,563		$1,599,563
(11) Subtotal construction contract(s)	$57,065,953	**$42,193,874**	**$14,872,079**
C. Miscellaneous Project Costs			
(12) Building purchase			
(13) Fixed Equipment Purchase/Lease (14) Movable Equipment Purchase/Lease	$15,919,700	$15,438,409	$481,291
(15) Furniture	$1,316,000	$1,051,520	$264,480
(16) Other (IT)	$4,500,000	$3,800,000	$700,000
(17) Consultant fees			
Architect & engineering fees	$4,941,404	$3,375,000	$1,566,404
CON Consultant and Testing and Special Inspections	$366,000	$62,500	$303,500
Subtotal consultant fees	*$5,307,404*	*$3,437,500*	*$1,869,904*
(18) Financing costs (bond, loan, etc.)			
(19) Interest during construction	$2,848,597	$2,129,481	$719,116
(20) Other (Project Contingency)	$2,880,087	$3,000,000	-$119,913
(21) Subtotal Miscellaneous Project Costs	$32,771,788	**$28,856,910**	**$3,914,878**
D. Total Capital Cost of the Project [sum of A – C]	$99,311,589	**$77,700,273**	**$21,611,316**

Source: 2011 application page 282 and 2008 application page 265.

Novant provides communication from its General Contractors with Brasfield & Gorrie, Exhibit 19, page 2365, which notes that "*current increases in material prices*

(commodity market) are the sharpest in the industry since 2007." They went on to note that items such as *"steel, PVC pipe, copper, asphalt, copper, and others are common to most every job and have/are increased in price in the last few months and year."*

Upon review of the itemized construction costs provided relative to HSH I and HSH II, Rex discovered that price increases, such as those referenced by Brasfield & Gorrie, were not reflected in HSH II. As demonstrated in the table below, Novant's construction costs are based on concrete estimates of $20.00 per square foot, a -23.1 percent decrease from its 2008 cost of $26.00 per square foot.

Concrete	*HSH I*	*HSH II*	*Difference*	*Percent Change*
	A	*B*	*C = B-A*	*C/B*
Quantity	180,200	141,750	-38,450	-27.1%
Cost Per Sq. Ft.	$26.00	$20.00	-$6.00	-30.0%
Total Cost	$4,685,200	$2,835,000	-$1,850,200	-65.3%
Total Concrete Costs as a Percent of Total Construction Cost	8.2%	6.7%	-1.5%	-22.2%
Total Construction Cost	$57,065,953	$42,193,874	-$14,872,079	-35.2%

Source: 2011 application page 2363 and 2008 application Exhibit 19.

As demonstrated in the table below, Novant's construction costs are based on steel estimates of $18.95 per square foot, a -29.2 percent decrease from its 2008 cost of $26.75 per square foot. Such estimates are contrary to language provided in Novant's HSH II application from Brasfield & Gorrie which states *"Steel and copper are also continuing to climb with rebar at 2007 levels now on cost, over a 70 percent increase in the last year."*

Structural Steel/Miscellaneous Steel	*HSH I*	*HSH II*	*Difference*	*Percent Change*
	A	*B*	*C = B-A*	*C/B*
Quantity	180,200	141,750	-38,450	-27.1%
Cost Per Sq. Ft.	$26.75	$18.95	-$7.80	-41.2%
Total Cost	$4,820,350	$2,686,163*	-$2,134,188	-79.5%
Total Steel Costs as a Percent of Total Construction Cost	8.4%	6.4%	-2.1%	-32.7%
Total Construction Cost	$57,065,953	$42,193,874	-$14,872,079	-35.2%

Source: 2011 application pages 2363 and 2008 application Exhibit 19.
*Incorrectly calculated as $2,685,550 on page 2363 of HSH II.

Rex contends that Novant's failure to provide reasonable construction costs may undervalue the total project cost thereby raising concerns regarding the availability of adequate financing to fund the proposed project and as such the

application should be found non-conforming with Criterion 5. In addition, Novant has failed to demonstrate that the design proposed represents the most reasonable alternative and as such, should be found non-conforming with Criterion 12.

In addition, it should be noted that there is no basis or explanation provided for why equipment costs would have decreased, along with IT costs, especially given that Novant's current proposal involves 50 acute care beds instead of 41 acute care beds as proposed in 2008.

Moreover, any comparison of the projects in this review relative to capital costs is improper. As discussed in detail below relative to the comparative analysis, the Agency is on record stating that applications are not compared based solely on capital costs. *See, e.g.*, Lee Hoffman's deposition testimony in the Scotland MOB contested case hearing (07 DHR 1354 and 07 DHR 1356) (noting the Agency's position regarding capital costs, "*we do not do a separate evaluation of capital costs*"). Further, while the Agency has deemed construction costs to be a valid factor to use in a comparative analysis (*see, e.g.*, the Administrative Law Judge's Recommended Decision in the 2010 Wake County Operating Rooms Case, pages 80-81 (10 DHR 5274 and 10 DHR 5275)), any comparison of the applicant's construction costs per acute care bed in the current review would be invalid given that Novant's construction costs are unsupported, unreliable, and likely understated.

Failure to Adequately Demonstrate that HSH II is the Most Effective and Reasonable Alternative for Construction of a New Acute Care Hospital

Failure to Adequately Address Design Changes Between HSH I and II

The design of HSH II represents a complete departure from the design proposed in HSH I. In particular, while the scope of the proposals are similar, the space allotted (see table below) and design configuration (see HSH I and HSH II project line drawings) for a number of the departments is quite different.

	HSH I	*HSH II*
Total Square Feet for Inpatient Services*	50,895	38,150
Total Square Feet for ED**	17,413	11,805
Total Square Feet for Surgical Services***	21,975	18,910

*HSH I included 41 acute care beds while HSH II includes 50 acute care beds.
**HSH I and HSH II include the same number of ED treatment rooms, 16.
***Note HSH I included four operating rooms while HSH II includes two operating rooms and one C-Section room.

Although Novant notes on page 41 of its application that HSH II reflects its new "prototypical hospital" design that reflects 18 months of research which it claims produces a more efficient footprint, there is no discussion of substance relative to the particular aspects of the proposed new design that when compared to aspects of the previously proposed design under HSH I result in efficiencies. In particular, while the total square feet allotted to inpatient services in HSH I (which included 41 acute care beds) equaled 50,895 square feet, the total square feet allotted to inpatient services in HSH II (which includes 50 acute care beds) equaled 38,150 square feet. Without any discussion of substance regarding the new design, it is unclear how a reduction in patient space reflects a better model.

Absent a discussion of the reasoning for Novant's new design, such a departure raises concerns regarding whether the design proposed in HSH II is the most effective and reasonable alternative for development of a new acute care hospital which speaks to whether Novant has proposed the most effective and reasonable alternative and as such the application should be found non-conforming with Criteria 4 and 12. Please note that although HSH II is less costly than HSH I, as discussed above, Rex maintains that Novant's costs relative to HSH II are unreasonable and unsupported.

Failure to Address Previously Approved Holly Springs Surgery Center

Novant's proposed HSH II will include two shared inpatient/outpatient operating rooms. As noted on page 3 of its application, Novant proposes to relocate two of the three operating rooms previously approved under its Holly Springs Surgery Center (HSSC) application, Project ID # J-8471-10, to the proposed HSH II and convert the two relocated operating rooms from two dedicated outpatient operating rooms to two shared inpatient/outpatient operating rooms.

In its 2010 HSSC application, Novant proposed to develop a new freestanding ambulatory surgery center with one procedure room and three dedicated outpatient operating rooms to be located in southern Wake County in Holly Springs. As noted previously, in 2008 Novant submitted a certificate of need application to develop a 41-bed acute care hospital in Holly Springs, HSH I, which was subsequently denied. As Rex noted in its comments on Novant's HSSC application, the HSSC is merely a means to an end—Novant's clear long-term goal to develop a hospital in Holly Springs. Novant's submission of HSH II validates Rex's concerns submitted relative to its HSSC's application. Novant touted the benefits of a freestanding ambulatory surgery center in its HSSC application—namely, lower co-pays and charges—to give its HSSC proposal a competitive advantage. Later, given the chance to develop an acute care hospital, Novant has proposed to relocate the majority of its operating rooms, which

negates the advantages of the freestanding ambulatory center it proposed in the 2010 Wake County Operating Room Review. Novant should not be able to propose utilizing operating rooms in one manner in order to gain an advantage and secure approval in a competitive review on that basis and then in a subsequent review propose use of the operating rooms in such a manner that eliminates any advantage it relied upon (and the Agency used to find it comparatively superior) in a prior competitive review.

Moreover, Novant's current application confirms that the development of a new acute care hospital in Holly Springs, not the development of a freestanding ambulatory surgery center (HSSC), was always the end goal. As noted in the following excerpt from page 210 of Novant's HSH II application, Novant Health leaders have been "working with leaders from Holly Springs **for a few years** on the way to make Holly Springs desire for a local community hospital into a reality." (emphasis added). Therefore, by Novant's own admission, plans to develop a hospital in Holly Springs were underway at the time Novant submitted its application to develop a freestanding ambulatory surgery center in Holly Springs in 2010.

Holly Springs' leaders contacted Novant Health five years ago regarding their desire for a local community hospital. Once Holly Springs leadership secured a local High School for Holly Springs, its next goal -- to foster the continued improved in the quality of life in its town was to partner with a health system to seek the State's approval for a local community hospital. Leaders from Novant Health have been working with leaders from Holly Springs for a few years on the way to make Holly Springs desire for a local community hospital into a reality. When need determination for 101 beds in Wake County was identified in the *2011 SMFP*, it was apparent that those assets could be part of Novant's April 15, 2011 Application to seek the State's approval for Holly Springs Hospital.

The excerpted language above raises concerns regarding whether Novant ever intended to develop HSSC as proposed. Further, as discussed below, Novant failed to discuss the impact of its current proposal on HSSC patients.

Novant's HSH II proposal does not include discussion of an alternative to develop an acute care hospital without relocating any of the three HSSC operating rooms which speaks to whether Novant has proposed the least costly and/or most effective alternative and as such the application should be found non-conforming with Criterion 4.

Consideration of such an alternative is critical, particularly given that Novant's previously approved HSSC is currently under appeal. In fact, the Administrative Law Judge (ALJ) issued a Recommended Decision on May 17, 2011 reversing the HSSC approval. On page 88 of the Recommended Decision, the ALJ stated the

following, *"it is hereby recommended that the decision and findings of the Certificate of Need Section approving HSSC's application and disapproving WakeMed's application be* ***REVERSED****, that WakeMed's application be approved, that the application of Rex and HSSC be disapproved, and that a certificate of need be awarded to WakeMed authorizing the development of three shared operating rooms at WakeMed Cary Hospital as proposed in WakeMed's application, identified as Project ID No. J-8463-10."* As such, Novant failed to address the impact of a reversal of its prior approval relative to Project ID # J-8471-10 on its current proposal. Until such litigation is ultimately resolved, the Agency should not approve HSH II as proposed given that its scope involves two of the operating rooms approved under Project ID # J-8471-10, which have now been determined by the Court to have been awarded in error. If the Agency were to approve Novant's hospital application, which relies on the two operating rooms from the HSSC review, and the HSSC review ultimately be overturned, as now appears quite possible, then the Agency would risk denying additional access to acute care beds for Wake County residents, as Novant's hospital would not be able to function without operating rooms.

Failure to Demonstrate Impact on HSSC Patients

Under its current application, Novant will relocate two of the three previously approved HSSC operating rooms to its proposed hospital. However, Novant fails to demonstrate the impact of this relocation on the proposed HSSC's patients. In fact, as the analyses below demonstrate, many of HSSC's patients will no longer be served by Novant and those that are will pay higher charges and be served at a higher cost facility. Clearly, HSSC's patients' needs will not be adequately met under the currently proposed project. **Thus, Novant should be found non-conforming with Criterion 3a.**

In its current application, Novant projects to serve 1,565 outpatient surgery cases at its hospital and 1,103 cases at HSSC for a total of 2,668 cases (pages 173-174). By contrast, HSSC's application proposed to serve 3,310 outpatient surgery cases. Thus, Novant is no longer proposing to serve 642 outpatient surgery patients which were part of the demonstrated need upon which it was approved to develop three operating rooms in 2010. Novant says nothing in its application about how these patients will receive outpatient surgery care due to reduction in the capacity of HSSC. In fact, Novant stated in its comments on Rex's 2010 application for operating rooms in Holly Springs that Rex's proposed two operating rooms were insufficient for the area: *"Holly Springs Needs More Than Two Operating Rooms . . . based upon Novant's conservative Wake County outpatient surgical use rate five operating rooms are needed by the population of the Holly Springs Submarket. Rex's proposed 2-OR ASC for Holly Springs meets less than half the need for Rex's defined Holly Springs Submarket"* (page 17).

In its current application, Novant will charge its outpatient surgery patients substantially higher amounts (281 to 607 percent) than under its previously approved HSSC project. The following table provides a comparison of average reimbursement for those procedures provided by both the proposed hospital and HSSC projects (see pages 81 and 22 of those applications respectively). In order to provide the most direct comparison, the third project year for HSSC (October 1, 2014 to September 30, 2015) and the first project year for the proposed hospital (July 2014 to June 2015) are used.

	PY3 HSSC	*PY 1 HSH II*	*Percent Difference*
Repair of Rotator Cuff	$1,733	$12,260	607%
Laparoscopic cholecyste	$2,196	$8,363	281%
Cruciate Ligament Repair	$3,260	$19,086	485%
Shoulder Arthoplast	$1,859	$12,855	592%

In fact, Novant's proposed hospital-based outpatient surgery charges exceed on average the charges proposed by Rex in its Rex Healthcare of Holly Springs application for two hospital-based ORs by 42 percent, indicating that Novant's proposed hospital-based outpatient charges are significantly less effective than those proposed for Rex's hospital-based outpatient surgery center.

	PY 1 HSH II	*PY3 Rex HS ASC*	*Percent Difference*
Laparoscopic cholecyste	$8,363	$5,198	61%
Shoulder Arthoplast	$12,855	$4,338	196%
Excis knee semulin cart	$5,262	$3,952	33%
D& C NEC	$3,225	$3,636	-11%
Myringotomy w intub	$3,088	$4,079	-24%
Tonsillectomy/adenoidec	$3,889	$4,547	-14%
Tu remov ureter obstruc	$7,726	$4,628	67%
Carpal tunnel release	$4,022	$3,084	30%
Aspirat curet-post deli	$3,803	$2,764	38%
Average			**42%**

The pro forma financial statements provided in Novant's proposed hospital application are not directly comparable with the pro forma financial statements previously provided for HSSC. Nonetheless, a comparison of expense per case between these two applications suggests that expenses at the proposed hospital will be higher than at HSSC.

	HSSC PY3 for Outpatient Surgery per pg. 158	*Hospital PY1 for Outpatient (incl. surgery, imaging, and other) per pg. 314-315*	*Hospital PY1 for Surgery (IP+OP) per pg. 322-232*
Expense per Case	$1,178	$1,598	$8,596

As shown, the pro forma financial statements provided in Novant's hospital application suggest that the shift of patients from the previously approved ASC to the hospital will be a shift to a higher cost environment.

Novant should have justified the reduction in the number of outpatient surgery patients served, and the shift to higher costs and patient charges in its application. Its failure to do so clearly demonstrates that it has not adequately demonstrated the impact on patients it previously proposed to serve. **Thus, Novant should be found non-conforming with Criterion 3a.**

Moreover, Novant was awarded the three operating rooms at HSSC directly as a result of its lower charges and costs as shown in the excerpt below from the findings in its review:

> *The following is a summary of the reasons Holly Springs Surgery Center is determined to be the most effective alternative in this review:*
>
> *Holly Springs Surgery Center*
> - *Proposes a more effective alternative with regard to improving geographic access to the proposed services than the other applications in this review, except for Rex Healthcare Holly Springs.*
> - *Projects the highest percentage of total services to be provided to Medicaid recipients of all the applicants.*
> - *Projects the third highest percentage of total services to be provided to Medicare recipients of all the applicants.*
> - ***Projects the lowest gross revenue and lowest net revenue per surgical case of the two proposed outpatient surgical facilities in the third full fiscal year of operation.***
> - ***Projects the lowest operating expense per surgical case of the two proposed outpatient surgical facilities in the third full fiscal year of operation.***
> - *The application is conforming to all applicable Criteria and Standards for Surgical Services and Operating Rooms, as promulgated in 10A NCAC 14C .2100.*
>
> **[emphasis added]**

See pages 127-128 of findings for 2010 Wake County OR Review (Project ID # J-8463-10, J-8467-10, J-8468-10, J-8469-10, and J-8471-10.

In 2010 Wake County OR Review, the Agency found HSSC comparatively superior than all other applicants on three factors: the percentage of Medicaid recipients[2], gross/net revenue, and operating expenses. As noted above, Novant is projecting in proposed application to raise the gross/net revenue and operating expenses for the very same ORs approved in that review by the Agency. Thus, two of the three factors on which Novant was awarded the HSSC ORs will be invalidated by the proposed project, as clearly evidenced by the data provided in Novant's submission.

As discussed in detail above, Novant should be found non-conforming with Criterion 3a.

Failure to Adequately Document the Availability of Health Manpower for the Provision of Services Proposed

Obstetric Services

Novant's HSH II includes obstetrical services, with four labor and delivery (LDR) rooms, two triage rooms, ten post-partum beds, a normal newborn nursery with 10 bassinets, and one dedicated C-Section operating room. In its justification for these proposed resources, Novant projects to achieve 40 percent market share of its primary service area. However, Novant has failed to provide adequate documentation of its ability to provide the obstetrics services it proposes. In particular, Novant's physician support letters, contained in Exhibit 14, which include documentation from Novant's proposed Medical Directors and surgeons do not provide adequate documentation from physicians capable of providing obstetric and/or gynecological services (OB/GYN), in particular, **the application does not contain any letters from Wake County obstetricians** (or obstetricians from Novant's proposed service area in southern Wake County for that matter). Such a conclusion, also identified relative to Novant's HSH I application in the 2008 Acute Care Beds and Operating Rooms competitive review, was a contributing factor to Novant's finding of non-conformity under Criterion 3. Please see page 80 of the 2008 Wake County Acute Care Beds and Operating

[2] Rex noted in comments and in testimony in the appeal hearing in this case that Novant's proposed percentage of total services to be provided to Medicaid was unreasonable and unsupported. The ALJ's recommended decision also found fault with Novant's proposed Medicaid percentage and stated *"HSSC was nonconforming with Criterion 13(c) because its projections of payor mix were not based on reasonable assumptions"* (page 41).

Rooms Findings, where the Analyst stated *"However, the applicant's market share assumptions are not supported or reliable. Specifically, the applicant provided letters from only 11 Wake County family medicine physicians expressing their support for the proposed hospital. The application does not contain any letters from physicians who practice in the applicant's proposed service area in southern Wake County, from which the applicant projects 90 percent of its admissions will originate. See additional discussion above. Therefore, the applicant's utilization projections for the proposed obstetrics beds, which are based on its market share assumptions, are not reliable. Therefore, the applicant adequately [sic] did not adequately demonstrate the need for the obstetrics beds."*

The excerpt provided below from page 54 of Novant's application suggests that (as noted in the third bullet point of the excerpt) Novant was aware of the fact that it might not receive support from any OB/GYN surgeons, but nonetheless chose to propose the scope of obstetrics services noted above.

Exhibit 14 also includes letter from physicians and tables summarizing these letters as follows:

- **11 HSH Medical Director/Chief of Service letters + physician CVs, including a letter from the proposed HSH Chief of the Medical Staff**
- **15 non-surgical specialist physician letters of support from physicians practicing in specialties including but not limited to cardiology, gastroenterology & hepatology, medical oncology, neurology, pathology, radiology, and pulmonology**
- **30 surgeon letters of support from physicians practicing in specialties including but not limited to ENT, general surgery, orthopedic surgery, and vascular surgery (NOTE: possibly add podiatry and ob/gyn)**
- **42 primary care physician support letters including letters from family medicine physicians, internal medicine physicians, and pediatricians**

Although the language *"NOTE: possibly add podiatry and ob/gyn"* is likely an internal note that was not caught and addressed in the editing process, the inclusion of such language indicates a complete lack of regard on the part of Novant for the impact of support on the scope of services proposed. While Novant did receive support from one obstetric surgeon (ostensibly at some point after the internal note was added), the internal note excerpted above, when read in context with the remainder of the application, seems to suggest that Novant's proposed services would have remained unchanged regardless of whether it received any support from OB/GYN surgeons—a clear disconnect between utilization projections/services to be performed and the physician support needed for those services.

The portion of letters from Novant's proposed surgeons includes only one letter from an obstetrician.[3] Not only is the obstetrician not based in Wake County, but also the letter provided is general and indicates no intention on the surgeon's part to seek privileges, refer, or perform cases at the proposed HSH II. Please note that Novant's Exhibit 14 also contains a letter of support from its proposed obstetric Medical Director. Although the proposed obstetric Medical Director's letter states that he will recruit obstetricians and gynecologists to care for the residents of the Holly Springs area, there is no evidence provided demonstrating Novant's ability to adequately do so. As noted on page 165 of its application, even Novant maintains that documentation of physician support is critical:

Please see Exhibit 14 for letters from physicians stating their intent to refer their obstetric patients and to provide obstetric care at HSH in each Project Year. Documented physician support is the most concrete means by which to determine market share and to confirm market share estimates derived from data used by HSH in its obstetric methodology.

However, contrary to its statement excerpted above, Novant failed to provide such documentation from obstetricians and, yet, still projected to achieve 40 percent market share of its primary service area. According to data provided in Exhibit 5, Table 45 of Novant's application, WakeMed Cary provided 925 of the total 2,448 OB cases in the HSH II zip code service area, or 37 percent. According to page 131 of WakeMed Cary's application, it currently has 20 OB/GYNs on its medical staff. It is unreasonable to believe that Novant as a new provider in the market, with two supporting OB/GYN's based outside Wake County in Forsyth and Durham counties, could achieve 40 percent share of OB services in its service area, when the nearest existing provider, which has served the market for many years and has 20 OB/GYNs on its staff, only has a 37 percent share. Clearly, Novant has failed to establish a nexus between its obstetrics projections and its physician support.

Similarly, according to data provided in Exhibit 5, Table 45 of Novant's application, Rex provided 751 of the total 2,448 OB cases in the HSH II zip code service area, or 31 percent. Please note this service area is different from the service area proposed by Rex Hospital Holly Springs. Rex has 49 OB/GYNs on its medical staff, as shown on page 316 of the Holly Springs application. Furthermore, as an existing provider with substantial current market share, Rex projects only 26.9 percent market share of its proposed Holly Springs Service Area and included 13 letters of support from OB/GYNs in its Holly Springs application as part of the justification for that assumption. Rex's Holly Springs

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[3] Although the table at the beginning of Novant's proposed surgeon support letters states that there are two letters from obstetricians, there is no letter included from Michael Fried, MD in the exhibit.

application, as well as its Wakefield and Main Campus applications, demonstrate a tie between substantial physician support and reasonable market share assumptions, whereas Novant's does not.

It is important to note that Rex is not suggesting that an applicant must have a letter of support from each specialty; rather, an applicant must provide adequate support for the services proposed which goes to the reasonableness of its projections. Of note relative to Novant's proposal is the fact that an acute care hospital does not have to have obstetrics services; in fact, Novant's existing hospital in the Triangle, Franklin Regional Medical Center, the only hospital in Franklin County, has not provided obstetrics services for many years, and Novant's acquisition of the facility did not change this fact. Novant demonstrates its application's utter and complete disconnect between the services proposed and the support provided by proposing to offer obstetrics services without even being able to identify who will deliver babies at HSH II. Novant's lack of support from obstetricians renders its projections unreasonable and unsupported.

While this demonstration of support is critical in general, it is particularly essential for obstetrics. Unlike some other services, which can be referred to a hospitalist or other hospital-based provider, obstetrics care is a special event, following months of visits and development of a patient-physician relationship. Without demonstrated support and commitment from obstetricians who are willing to deliver babies at the facility, round on their patients and take emergency call, obstetrics care will not occur outside of an unplanned, emergency event, which certainly will not constitute 40 percent of the obstetrics market share. While this lack of support clearly shows that Novant failed to reasonably demonstrate its need for and ability to provide obstetrics services, it is not a service that is of threshold necessity for a hospital, as noted above. In the five or more years since Novant states it was contacted by Holly Springs officials regarding the development of a hospital (see discussion above), it has been unable to garner any support from a single obstetrician in Wake County—similar to one of the reasons its 2008 CON application was disapproved. A reasonable approach, therefore, would have been to propose a hospital with other services, but not obstetrics, since there is no apparent support for Novant for obstetrics services. Instead, Novant chose the untenable position of proposing one-fifth of its acute care utilization (10 of 50 beds) based on a service for which it has no demonstration or documentation of support.

Given the lack of support from obstetricians, Novant has failed to demonstrate the availability of health manpower for the provision of obstetrics services and should be found non-conforming with Criterion 7, and by extension, Criterion

8. The lack of obstetrics support also renders Novant's utilization projections unreasonable and the application non-conforming with Criterion 3.

Mobile Catheterization Services

As noted on page 30 of Novant's application and as indicated in the line drawings, its proposed hospital will include mobile catheterization services. Not only has Novant failed to adequately document the need for these services, but also it failed to provide an agreement or letter from a vendor documenting a commitment to provide such services. Also, given that the primary mobile vendor in North Carolina was just bought by a competitor (Duke), it is highly unlikely that Novant will be able to provide such services. In fact, at a public forum in Holly Springs on May 25, 2011, Novant officials stated definitively that catheterization services would not be provided at the proposed hospital. In addition to representing a potential amendment to its application, this statement confirms that Novant will not operate its hospital as proposed. Given these facts, Novant's financial statements which include revenue and expenses associated with cardiac catheterization services are unreasonable (see page 330).

Given the lack of documentation, Novant has failed to demonstrate the availability of health manpower for the provision of mobile catheterization services and should be found non-conforming with Criterion 7. In addition, Novant has failed to demonstrate that the design proposed (which includes the mobile cath) represents the most reasonable alternative and as such, should be found non-conforming with Criterion 12, and by extension, Criterion 4. In addition, Novant's application should be found non-conforming with Criterion 5, as its financial feasibility is not based on reasonable assumptions of revenues and costs.

Failure to Demonstrate Coordination with Existing Health Care System and Adequate Support

Physician Support

As noted previously, Novant provides no means by which the Agency could confirm the reasonableness of its market share estimates. By contrast, the Rex Holly Springs and Wakefield applications provide an analysis of the estimated community physician need for each service area as well as the estimated physician need to support its proposed market share assumptions. Novant's omission of a similar analysis may be due to a desire to conceal the insufficient physician support its project has garnered, as discussed below.

Of the 93 physician letters of support provided by Novant, 60 are based out of Wake County and only 38 of those are located within Novant's proposed service area.

	Located in Wake County	*Located in Novant's Proposed Service Area*
Medical Directors	2*	1
Chief of Medical Staff	1	1
Primary Care Physicians	24**	15**
Surgeons	25	23
Specialists	11***	0
Total	***60***	***38***

*One of the physicians identified as located in Wake County provided two letters, committing to serve as Medical Director of Radiology and Medical Director of CT. As such, for purposes of counting the total number of Medical Directors located in Wake County, this individual was only counted once.
**Two of the identified Primary Care Physicians are excluded from the total count given that one is the same individual identified above in the Medical Director row and the other is the individual identified above in the Chief of Medical Staff row.
***One of the identified Specialists is excluded from the total count given that one is the same individual identified above in the Medical Director row.

As detailed in the table above, only one of Novant's ten[4] proposed Medical Directors is located within Novant's proposed service area. Moreover, there are no medical specialists in Novant's proposed service area and the only surgeons in Novant's proposed service area are orthopaedic surgeons. Please see the table provided below for a breakdown of physicians located in Novant's proposed service area by specialty.

Specialty	*Located in Novant's Proposed Service Area*
Family Practice	12
Pediatrics	3
Orthopaedic Surgery	23
Total	***38***

Novant has failed to provide any concrete data for the Agency to confirm the market share estimates and has failed to demonstrate coordination with the existing health care system and should be found nonconforming with Criteria 3 and 8.

[4] Please note that a total of eleven Medical Director letters are provided in Exhibit 14; however, one physician provided two letters, committing to serve as Medical Director of Radiology and Medical Director of CT. As such, for purposes of counting the total number of Medical Directors, this individual was only counted once.

Surgeon Support

Novant fails to demonstrate adequate surgeon support from all of the specialties proposed in the application necessary to support the provision of surgical services proposed in its application, its volume projections, and demonstrate coordination with the existing health care system. On page 77 of its application, Novant states that its surgical procedures will include *"most of the referenced specialties"* in 10A NCAC 14C .2102(a), which includes gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopaedic, oral surgery, and other specialty areas identified by the applicant.

Novant provides the following table on page 92 of its application in response to 10A NCAC 14 .2105(b).

Holly Springs Hospital
Projected Physician Utilization of Surgical Operating Rooms

Physician & Surgeon Specialty	# Projected to Utilize the Two Shared Use Surgical Operating Rooms*
Anesthesia	17**
ENT	2
General Surgery	5
Obstetrical & Gynecological Surgery	1-3
Orthopedics	26
Pathology	3***
Vascular Surgery	1

Physicians, Surgeons, Pathologist, and Anesthesiologists projected only as of the day the HSH CON Application was filed, 4/15/2011. The surgical specialties listed are not intended to limit the types of surgeons who will be credentialed to practice at the HSH surgical program in the future.
****Based on data on Regional Anesthesia, PLLC web site in April 2011.***
*****Based on web site data in April 2011.***

Although Novant states that *"most of the referenced specialties"* in 10A NCAC 14C .2102(a)[5] will be performed in the relocated operating rooms; Novant fails to provide adequate documentation of surgeon support necessary to support its proposed project. In particular, Exhibit 14 does not contain adequate documentation of surgeon support in the specialties Novant purports to provide. Further, Exhibit 14 does not contain adequate documentation of surgeon support necessary to support its proposed volume projections. While Novant may file additional letters of support during the public comment period, the Agency has

[5] Includes gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopaedic, oral surgery, and other specialty areas identified by the applicant.

stated that an applicant must conform with criteria and standards within the application, and may not submit information during the public comment period to conform with those rules. Please see Exhibit 4 for a July 10, 2003 letter from CON regarding Letters of Support Submitted for Certificate of Need Applications (noting that *"all information the applicant intends to rely on to demonstrate conformance of the application with the review criteria must be provided by the applicant in its application when first submitted to the agency"*). Further, pursuant to 10A NCAC 14C .0204, "[a]*n applicant may not amend an application.*" Exhibit 14 contains the following surgeon support:

Surgeon Specialty	*Documented Support in Exhibit 14*
Otolaryngology	2
General Surgery	4*
Obstetrical and Gynecological Surgery	1
Orthopaedic Surgery	23
Vascular Surgery	1
TOTAL	**31**

*Please note that these four general surgeons (with Regional Surgical Associates) are the same four general surgeons Novant represented in its North State Surgery Center Single Specialty Ambulatory Surgery Center (NSSC) application, Project ID # J-8621-10, as performing all of their volume at NSSC in Orange County. While NSSC was initially denied by the Agency, in the event Novant appeals this decision, it is seeking to have all of the general surgeons who support HSH II practice exclusively at NSSC. Note: these same four general surgeons also submitted letters of support for Novant's HSSC, Project ID # F-8471-10, currently under appeal. Upon review of the support provided in Novant's recent applications, it is clear that these four general surgeons are overcommitted.

Although Novant claims to provide surgical services in most of the following specialties: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, orthopaedic, oral surgery; it has failed to provide documentation of support from any surgeons in the following specialties: plastic surgery, ophthalmology, and oral surgery. Without documentation from plastic surgeons, ophthalmologists, and oral surgeons, it is unreasonable to expect that a physician from these specialties will perform cases at HSH II. Such an interpretation is consistent with the Administrative Law Judge's Recommended Decision in the 2010 Wake County Operating Rooms Case (10 DHR 5274 and 10 DHR 5275) in which it was determined that Novant's application, Project ID # J-8471-10, was nonconforming with all of Criterion 3, as noted in finding of fact # 61: *"Although there is no rule requiring a specific number of physician support letters, the Agency has used lack of physician support letters to find an applicant nonconforming with Criterion 3. Each applicant must demonstrate that its projections are reasonable. With documentation from only two surgical specialties, orthopedics and general surgery,*

it is unreasonable to expect that a physician from every surgical specialty will perform cases at HSSC."

Furthermore of the 31 surgeon letters of support, only the orthopaedic surgeons and the two otolaryngologists that provided a letter are based in Wake County. None of the other surgical specialties for which there was a letter of support—general surgery, obstetrical and gynecological surgery, and vascular surgery—are based in Wake County. Moreover, only the orthopaedic surgeons are located in Novant's proposed service area. This lack of coordination is a cause for concern. Not only are the orthopaedic surgeons the only surgeons who submitted letters of support that are located in the proposed service area, but also none of the surgeons who submitted letters in support of HSH II proposed to expand their presence into the proposed service area by opening an office. If the physicians on staff at Novant's proposed facility are new to the community, they may be unfamiliar with the physicians at the existing hospitals, making referrals and coordination of care difficult if not impossible. Thus, patients in need of more than the level of care available at Novant's proposed facility would have to be transferred to a completely different system with a separate medical staff. **Therefore, Novant has failed to demonstrate coordination with the existing health care system and should be found nonconforming with Criterion 8, and by extension, Criterion 3.**

GENERAL COMPARATIVE COMMENTS

The WakeMed Raleigh, WakeMed Cary, Novant, and Rex applications each propose to develop acute care beds in response to the *2011 SMFP* need determination for Wake County. Rex acknowledges that each review is different and therefore, that the comparative review factors employed by the Project Analyst in any given review may be different depending upon the relevant factors at issue. Given the nature of the review, the Analyst must decide which comparative factors are most appropriate in assessing the applications.

In order to determine the most effective alternative to meet the identified need for three additional operating rooms in Wake County, Rex reviewed and compared the following factors in each application:

- Access[6]
- Demonstration of Need
- Financial Feasibility
- Coordination
- Revenue
- Operating Expenses
- Physician Support

Rex believes that the factors presented above and discussed in turn below should be used by the Analyst in reviewing the competing applications. The factors are appropriate and/or have been used in previous competitive acute care bed review findings.[7]

Access

Under N.C. GEN. STAT. § 131E-175(3), the General Assembly of North Carolina found "[t]*hat, if left to the market place to allocate health service facilities and health care*

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6 Access includes geographic access and access to the underserved.

7 Please note that in developing comparative review factors, Rex looked to a number of acute care bed reviews for guidance, such as: the 2008 Wake County Acute Care Beds and Operating Rooms Review and 2010 Hoke County Hospitals and Ambulatory Surgery Center Review. Where appropriate, Rex included relevant comparative factors used in those reviews. See, e.g., the 2008 Wake County Acute Care Beds and Operating Rooms Review (using the following comparative factors: geographic accessibility, demonstration of need, financial feasibility, coordination with existing health care system, access by underserved groups, revenue, operating expenses, and documentation of physician support); the 2010 Hoke County Hospitals and Ambulatory Surgery Center Review (using the following comparative factors: geographic access, facility design, scope of services, charges/revenues, operating costs, access by underserved groups, coordination with existing health care system, and community support).

services, geographical maldistribution of these facilities and services would occur and, further, less than equal access to all population groups, especially those that have traditionally been underserved, would result." This Finding of Fact captures the notion that geographic access to health care services is an important factor in health planning. Therefore, geographic access and specifically, access to the medically underserved, were deemed appropriate comparative review factors and included in this analysis.

Geographic Access

The *2011 SMFP* identifies a need for 101 additional acute care beds in Wake County. The following table identifies the location of the existing and approved acute care beds in Wake County.

Provider	*Location within Wake County*	*City/Town*
Duke Raleigh Hospital	Central	Raleigh
Rex Hospital	Central	Raleigh
WakeMed Cary Hospital	Southwestern	Cary
WakeMed Raleigh Campus	Central	Raleigh
WakeMed North*	Northern	N. Raleigh

*WakeMed Raleigh was previously approved (Project ID # J-7843-07) to relocate 20 acute care beds from WakeMed Raleigh Campus to WakeMed North Healthplex. Most recently, WakeMed was approved (Project ID # J-8180-08) to develop 41 new acute care beds at WakeMed North Healthplex.

In this review, three of the six applications propose to locate additional acute care beds at existing hospitals: WakeMed Raleigh proposes to develop 79 additional acute care beds at its WakeMed Raleigh campus and 22 additional acute care beds at WakeMed Cary hospital while Rex proposes to develop 11 additional acute care beds at its main campus in Raleigh. In the remaining three applications Novant proposes to develop a new 50-bed hospital in Holly Springs and Rex proposes to develop a new 50-bed hospital in Holly Springs and a 40-bed hospital in Wakefield. The table below details the locations proposed by the six applications discussed in these comments.

Applicant	*Proposed Site*	
	City	*Address*
WakeMed Raleigh	Raleigh	3000 New Bern Avenue Raleigh, NC 27610
WakeMed Cary	Cary	1900 Kildaire Farm Road Raleigh, NC 27518
Novant	Holly Springs	1621 Little Moccasin Lane

		Holly Springs, NC 27540
Rex Main Campus	Raleigh	4420 Lake Boone Trail Raleigh, NC 27607
Rex Hospital Holly Springs	Holly Springs	704 Avent Ferry Road Holly Springs, NC 27540
Rex Hospital Wakefield	Raleigh	11200 Governor Manly Way Raleigh, NC 27614

In the 2007 Forsyth County Acute Care Bed Review, the Analyst compared the applicants in this manner and found that *"because both applicants propose to locate the additional acute care beds at their existing hospitals in Forsyth County, the two applications are comparable with regard to geographic access."* *See* Forsyth County Acute Care Bed Review Findings page 45. Please see Exhibit 5 for a relevant excerpt from these Findings. According to this interpretation, WakeMed Raleigh, WakeMed Cary, and Rex Main Campus are comparable with regard to geographic access given that they propose to develop the additional acute care beds at an existing facility. Further, given the Findings in the 2010 Wake County Operating Rooms Review relative to geographic accessibility, Rex Hospital Holly Springs, Rex Hospital Wakefield, and Novant will expand geographic access as they all propose to develop acute care beds in new facilities. *See* 2010 Wake County Operating Rooms Review Findings p. 124. Please see Exhibit 6 for a relevant excerpt from these Findings. However, while Novant is expanding geographic access, it is nonetheless not the most effective alternative since the application is nonconforming with a number of review criteria as discussed in detail above. Please note that this analysis does not prevent the Agency from approving all three of Rex's proposed projects, which as noted in its applications, are complementary.

Access to Underserved

The Department of Health and Human Resources has recognized the need to ensure access to health care in as equitable a manner as possible. *See, e.g.,* N.C. GEN. STAT. §§ 131E-175(3), (3a) and 131E-183(a)(3), (13). The following table illustrates each applicant's projected percentages of acute care inpatient cases to be provided to Medicaid and Medicare recipients in the second year of operation following completion of the project. While each application provides multiple services, acute care beds are applicable across all applications. For Rex's Holly Springs and Wakefield applications, Rex has aggregated its inpatient medical, surgical, and obstetrics beds projections. For Rex's Main Campus application, Rex has aggregated its 11-bed and 115-bed projections.

	Medicare as Percent of Total Cases	*Medicaid as Percent of Total Cases*	*Government Payors as Percent of Total Cases*
WakeMed Raleigh	49.57%	25.94%	75.51%
WakeMed Cary	49.45%	9.93%	59.38%
Novant	47.85%	9.13%	56.98%
Rex Main Campus	68.77%	2.84%	71.61%
Rex Hospital Holly Springs	50.08%	5.38%	55.46%
Rex Hospital Wakefield	50.10%	4.37%	54.47%

Sources: Form D for each applicant.

As shown in the table above, Rex's Main Campus application projects the second highest Medicare and Medicaid recipients as a percent of total but is comparable with the first highest, WakeMed. However, as noted above WakeMed's Medicaid projections are based on unreasonable assumptions as discussed in detail above. Therefore with regard to access to the underserved, Rex's Main Campus application is the most effective alternative. Rex's Holly Springs and Wakefield applications project comparable Medicare and Medicaid recipients as a percent of total to the other applicants. However, as noted above WakeMed Cary's Medicaid projections are based on unreasonable assumptions.

Demonstration of Need

Not only did WakeMed, WakeMed Cary, and Novant fail to adequately demonstrate the need the population projected to be served has for their respective proposals, see discussion above by issue, but also, the applications submitted by Rex demonstrate a greater need for and are more effective in addressing the need for additional acute care beds than the proposals submitted by WakeMed, WakeMed Cary, and Novant.

Coordination with Existing Health Care System

Rex is an existing tertiary care hospital with well established relationships with physicians and area health care providers. WakeMed and WakeMed Cary are existing facilities with established relationships with physicians and area health care providers. Novant proposes to develop a new acute care hospital without established relationships with physicians and area health care providers. Further, Novant failed to demonstrate that its proposed HSH II will be coordinated with the existing health care system. Therefore, with regard to coordination with the existing health care system, Rex, WakeMed, and WakeMed Cary are the more effective alternatives.

Revenue

Rex believes patient day and adjusted patient day statistics should be reviewed in order to provide a more comparable basis for financial statements offering a range of services: for example, Rex Hospital Holly Springs will offer radiation oncology, and its income statement is the only one which includes the charges and expenses for this service. As such, its charges and expenses should be viewed on an adjusted patient day basis (which accounts for outpatients as well as inpatients) in order to be validly compared to other applications. The Agency has in fact requested this data from all applicants since the development of the new acute care/medical equipment form in 2008, in which Section X.3 was added to request financial statistics on an adjusted patient day basis. This approach does have its limitations, however, specifically for Rex's main campus application's financial statements. While the financial statements of the other applications include all of the outpatient services for those facilities, Rex's main hospital application financial statements only includes those outpatient services which are affected by the project. As a result, Rex's main hospital application has by far the lowest ratio of adjusted patient days to patient days of any of the applicants (131 percent) which in turn drives higher statistics on a per adjusted patient day basis.

	Adjusted Patient Days	*Patient Days*	*Ratio*
WakeMed Raleigh	288,003	194,453	148%
WakeMed Cary	92,459	51,203	181%
Novant	23,500	12,955	181%
Rex Holly Springs	27,202	14,295	190%
Rex Wakefield	20,544	12,078	170%
Rex Hospital	51,383	39,166	131%

The following table compares the applicants' gross patient revenue per patient day and adjusted inpatient day in project year 3.

	Gross Patient Revenue	*Patient Days*	*Gross Patient Revenue per Patient Day*	*Adjusted Patient Days*	*Gross Patient Revenue per Adjusted Patient Day*
Novant	$153,114,900	12,955	$11,819	23,500	$6,516
Rex Holly Springs	$196,469,881	14,295	$13,744	27,202	$7,223
Rex Wakefield	$156,523,022	12,078	$12,959	20,544	$7,619

WakeMed Cary	$752,038,798	51,203	$14,687	92,459	$8,134
Rex Hospital	$557,542,122	39,166	$14,235	51,383	$10,851
WakeMed Raleigh	$3,276,628,567	194,453	$16,850	288,003	$11,377

Source: Forms B and C and Section X.3

In order to account for differences in time period caused by different project development schedules, Rex adjusted the statistics above for WakeMed Raleigh and WakeMed Cary to be reflective of FFY 2017, as their third project years are FFY 2016 and 2015, respectively. Novant's statistics were also adjusted by one quarter of a year as its third project year is state fiscal year 2017.

	PY 3 Gross Patient Revenue per Patient Day	*PY 3 Gross Patient Revenue per Adjusted Patient Day*	*Annual Inflation Factor*	*FFY 2017 Gross Patient Revenue per Patient Day*	*FFY 2017 Gross Patient Revenue per Adjusted Patient Day*
Novant	$11,819	$6,516	4.00%	$11,935	$6,580
Rex Holly Springs	$13,744	$7,223	NA	$13,744	$7,223
Rex Wakefield	$12,959	$7,619	NA	$12,959	$7,619
WakeMed Cary	$14,687	$8,134	7.10%	$15,642	$8,663
Rex Hospital	$14,235	$10,851	NA	$14,235	$10,851
WakeMed Raleigh	$16,850	$11,377	6.80%	$17,457	$11,787

Source: Inflation factor for WakeMed Raleigh and WakeMed Cary based on gross revenue per case increase from PY 2 to PY3 as noted in financial assumptions. Inflation factor for Novant provided in financial assumptions.

The following table compares the applicants' net patient revenue per patient day and adjusted patient day in project year 3.

	Net Patient Revenue	*Patient Days*	*Net Patient Revenue per Patient Day*	*Adjusted Patient Days*	*Net Patient Revenue per Adjusted Patient Day*
WakeMed Cary	$201,311,717	51,203	$3,932	92,459	$2,177
WakeMed Raleigh	$710,192,617	194,453	$3,652	288,003	$2,466
Rex Holly Springs	$70,009,002	14,295	$4,897	27,202	$2,574
Rex Wakefield	$53,632,689	12,078	$4,441	20,544	$2,611
Novant	$64,102,938	12,955	$4,948	23,500	$2,728
Rex Hospital	$168,791,538	39,166	$4,310	51,383	$3,285

Source: Forms B and C and Section X.3

Again, Rex adjusted the statistics above to account for differences in time periods.

	PY 3 Net Patient Revenue per Patient Day	*PY 3 Net Patient Revenue per Adjusted Patient Day*	*Annual Inflation Factor*	*FFY 2017 Net Patient Revenue per Patient Day*	*FFY 2017 Net Patient Revenue per Adjusted Patient Day*
WakeMed Cary	$3,932	$2,177	7.10%	$4,508	$2,496
Rex Holly Springs	$4,897	$2,574	NA	$4,897	$2,574
Rex Wakefield	$4,441	$2,611	NA	$4,441	$2,611
WakeMed Raleigh	$3,652	$2,466	6.80%	$3,900	$2,634
Novant	$4,948	$2,728	4.00%	$4,997	$2,755
Rex Hospital	$4,310	$3,285	NA	$4,310	$3,285

As noted above, Rex believes its Holly Springs application should be compared on an adjusted patient day basis where it ranks as the second lowest. Rex believes its main hospital application's ranking in the adjusted patient day statistics is reflective of the limited nature of the outpatient services that are included in the financial statements. Given these factors, Rex believes that each of applicants is comparable with regard to net revenues. Of the community hospital applications, Rex Holly Springs, Rex Wakefield, Novant, and WakeMed Cary, the highest and lowest net revenue per adjusted patient day is separated by only 10 percent. Similarly, of the tertiary hospital applications, Rex Hospital and WakeMed Raleigh, projected net revenue per patient day differs only by 10 percent.

Operating Expenses

As noted above, Rex believes that the applicants' financial statistics should be compared on a per patient day and a per adjusted patient day basis given the differences in the services included in the financial statements.

As noted above, WakeMed's applications fail to include any interest expense to account for the cost of their proposed bond financing. As such, total operating expenses for WakeMed are understated and cannot be compared appropriately.

The following table compares the applicants' operating costs per patient day and adjusted inpatient day in project year 3.

	Operating Expenses	*Patient Days*	*Operating Expenses per Patient Day*	*Adjusted Patient Days*	*Operating Expenses per Adjusted Patient Day*
WakeMed Cary	$172,851,617	51,203	$3,376	92,459	$1,869
WakeMed Raleigh	$690,406,305	194,453	$3,551	288,003	$2,397
Novant	$57,903,869	12,955	$4,470	23,500	$2,464
Rex Holly Springs	$68,155,407	14,295	$4,768	27,202	$2,506
Rex Wakefield	$52,383,001	12,078	$4,337	20,544	$2,550
Rex Hospital	$151,207,160	39,166	$3,861	51,383	$2,943

In order account for differences in time period, Rex adjusted the statistics above for WakeMed Raleigh and WakeMed Cary to be reflective of FFY 2017, as their third project years are FFY 2016 and 2017, respectively. Novant's statistics were also adjusted by one quarter of a year as its third project year is state fiscal year 2017.

	PY 3 Operating Expense per Patient Day	*PY 3 Operating Expense per Adjusted Patient Day*	*Annual Inflation Factor*	*FFY 2017 Operating Expense per Patient Day*	*FFY 2017 Operating Expenses per Adjusted Patient Day*
WakeMed Cary	$3,376	$1,869	3.20%	$3,595	$1,991
Novant	$4,470	$2,464	3.00%	$4,503	$2,482
WakeMed Raleigh	$3,551	$2,397	3.60%	$3,678	$2,484
Rex Holly Springs	$4,768	$2,506	NA	$4,768	$2,506
Rex Wakefield	$4,337	$2,550	NA	$4,337	$2,550
Rex Hospital	$3,861	$2,943	NA	$3,861	$2,943

Source: Inflation factor for WakeMed Raleigh and WakeMed Cary based on actual expense increase from PY 2 to PY3. Inflation factor for Novant provided in financial assumptions,

Rex believes the operating expense statistics of its Holly Springs and Wakefield facilities as well as that of the Novant application are significantly burdened by the costs associated with constructing entirely new facilities, which is not least costly, but is more effective as a means of expanding geographic access. As such, Rex believes that a more relevant comparison between the applications would exclude depreciation and interest expense. The Agency has consistently avoided comparing competitive applicants on capital costs, and Rex believes that similarly it should examine operating expenses excluding depreciation and interest. This adjustment also allows a more valid comparison with WakeMed's proposals, which, as noted above, fail to include interest expense, even though its projects propose the use of bond financing. The table below provides this

comparison. With no interest expense, the WakeMed Raleigh and WakeMed Cary operating expenses are only adjusted for depreciation.

	Operating Expenses	*Depreciation and Interest*	*Operating Expenses Excl Dep & Int*	*Operating Expenses Excl Dep & Int per Patient Day*	*Operating Expenses Excl Dep & Int per Adjusted Patient Day*
WakeMed Cary	$172,851,617	$13,500,129	$159,351,488	$3,112	$1,723
Rex Holly Springs	$68,155,407	$16,433,701	$51,721,706	$3,618	$1,901
Rex Wakefield	$52,383,001	$11,941,034	$40,441,967	$3,348	$1,969
Novant	$57,903,869	$7,289,093	$50,614,776	$3,907	$2,154
WakeMed Raleigh	$690,406,305	$41,891,554	$648,514,751	$3,335	$2,252
Rex Hospital	$151,207,160	$29,755,691	$121,451,469	$3,101	$2,364

Rex then adjusted for differences in project year three time periods.

	PY3 Operating Expenses Excl Dep & Int per Patient Day	*PY3 Operating Expenses Excl Dep & Int per Adjusted Patient Day*	*Annual Inflation Factor*	*FFY 2017 Operating Expense Excl Dep & Int per Patient Day*	*FFY 2017 Operating Expenses Excl Dep & Int per Adjusted Patient Day*
WakeMed Cary	$3,112	$1,723	3.20%	$3,315	$1,836
Rex Holly Springs	$3,618	$1,901	NA	$3,618	$1,901
Rex Wakefield	$3,348	$1,969	NA	$3,348	$1,969
Novant	$3,907	$2,154	3.00%	$3,936	$2,170
WakeMed Raleigh	$3,335	$2,252	3.60%	$3,455	$2,333
Rex Hospital	$3,101	$2,364	NA	$3,101	$2,364

As noted above, Rex believes its Holly Springs application should be compared on an adjusted patient day basis where it ranks as the second lowest. Rex believes its main hospital application's ranking in the adjusted patient day statistics is reflective of the limited nature of the outpatient services that are included in the financial statements. Given these factors, Rex believes that each of applicants is comparable with regard to operating expenses. Of the community hospital applications, Rex Holly Springs, Rex Wakefield, Novant, and WakeMed Cary, the highest and lowest operating expense excluding depreciation and interest per adjusted patient day is separated by 18 percent. Similarly, of the tertiary hospital applications, Rex Hospital and WakeMed Raleigh, projected operating expenses excluding depreciation and interest per patient day differs only by 11 percent.

Documentation of Physician Support

Rex maintains that documentation of support from Wake County physicians should be considered an important factor in this review, much like the 2008 Wake County Acute Care Beds and Operating Rooms Competitive Review and the 2010 Wake County Operating Room Review. As noted in the 2008 Wake County Acute Care Beds and Operating Rooms Competitive Review:

> Documentation of support from Wake County physicians for a proposed project to add new acute care beds is considered an important factor in this review. In Exhibit 29, WakeMed North provided letters from 160 Wake County physicians expressing their support for the proposed project to add 41 acute care beds to the WakeMed North Healthplex facility in northern Wake County. In Exhibit 22, Rex Hospital provided letters from 93 Wake County physicians expressing their support for the proposed project to add 41 acute care beds to the Rex Hospital main campus in Raleigh. In Exhibit 14 of the application, HSH provided letters from 11 Wake County physicians expressing their support for the proposed project to construct a new 41-bed hospital in southern Wake County. Therefore, with regard to documentation of physician support from Wake County physicians, WakeMed North is determined to be the most effective alternative, and HSH is determined to be the least effective alternative.

See page 211 of the 2008 Wake County Acute Care Beds and Operating Rooms Competitive Review Findings.

In Exhibit 14, Novant provided support from 93 physicians, 60 of which are Wake County based. In Exhibit 49 of its application, WakeMed provided support from 256 physicians. In Exhibit 49 of its application, WakeMed Cary provided support from 240 physicians. In Exhibit 66 Rex provided 316 physician letters of support for Rex Hospital Holly Springs. In Exhibit 62 Rex provided 313 physician letters of support for Rex Hospital Wakefield. In Exhibit 54 Rex provided 292 physician letters of support for Rex Hospital Main Campus. It should also be noted that relative to Rex Hospital Holly Springs and Rex Hospital Wakefield a number of the letters of support provided indicate that the physician/practice intends to develop an office in the area and/or to recruit additional physicians to the area.

With regard to documentation of physician support, the concurrently filed applications submitted by Rex and WakeMed are comparable. While Novant has physician support, Novant is the least effective alternative, given that it provides appreciably less support than Rex and WakeMed and is missing critical specialties such as obstetrics.

Specialty	Applicant					
	WakeMed	WakeMed Cary	Novant	Rex Main Campus	Rex Hospital Holly Springs	Rex Hospital Wakefield
Allergy and Immunology	1	2	0	0	0	0
Anesthesiology	2	3	1	48	48	48
Cardiology	21	17	2	26	26	26
Dermatology	1	1	0	0	0	0
Emergency Medicine	70	70	1	19	19	19
Endocrinology	1	1	0	1	1	1
Family Practice	12	6	20	32	32	31
Gastroenterology	3	5	3	7	7	7
General Surgery	1	1	4	17	17	17
Gynecology	1	1	0	3	4	4
Gynecology Oncology	1	1	0	3	3	3
Hematology/Oncology	10	10	1	2	4	3
Infectious Diseases	1	1	0	0	0	0
Internal Medicine	20	13	20	59	59	59
Maternal/Fetal	0	1	0	8	8	8
Nephrology	2	2	0	0	0	0
Neurology	4	3	1	1	1	1
Neuropsychiatry	1	1	0	0	0	0
OB/GYN	4	1	2	3	13	13
Ophthalmology	2	3	0	1	1	1
Oral and Maxillofacial Surgery	2	1	0	0	0	0
Orthopedics	10	17	23	33	39	38
Otolaryngology	1	1	2	2	2	2
Pathology	2	2	1	3	3	3
Pediatrics	6	1	3	0	0	0
Physiatry	0	0	0	8	10	8
Physical Medicine and Rehab	6	6	0	0	0	0
Plastic Surgery	0	5	0	0	0	1
Podiatry	3	2	0	0	0	0
Proctology	1	1	0	0	0	0
Psychiatry	4	2	0	0	0	0
Pulmonology	2	2	2	2	2	2
Radiation Oncology	3	3	0	1	4	3
Radiology	47	46	6	3	3	3
Thoracic Surgery	6	4	0	2	2	3
Urology	3	3	0	7	7	8
Vascular Surgery	2	1	1	1	1	1
TOTAL	*256*	*240*	*93*	*292*	*316*	*313*

SUMMARY

As noted previously, Rex maintains that the WakeMed Raleigh, WakeMed Cary, and Novant applications cannot be approved as proposed. Of note and in particular, the WakeMed applications failed to account for recent changes in physician employment in Wake County while Novant failed to adequately demonstrate support sufficient to justify the services proposed in its application. In contrast, each of the Rex applications took into account the impact of recent changes in physician employment and provided adequate documentation of support necessary to justify the services proposed in each of its complementary applications. As such, Rex maintains that it has the only approvable applications based on its comments.

Although the CON Section cannot approve all the applications, because of the numerous beds available in the *2011 SMFP*, the CON Section can approve multiple applications. In addition to being able to approve all three of Rex's complementary applications, if the CON Section chooses to approve another provider for some beds, it can still approve Rex's applications with the condition that Rex develop fewer beds. For example, although Rex Holly Springs and Wakefield hospitals are projected to be well-utilized, they are not projected to operate at full occupancy; therefore, the CON Section could approve them with fewer beds. In addition, the CON Section could approve Rex's main campus bed tower, but condition fewer than the 11 beds proposed for the existing tower. Rex believes that it has provided sufficient information in its capital cost and financial assumptions to enable the CON Section to more easily approve its projects, even if they are conditioned for fewer beds than originally proposed.

In summary, based on both its comparative analysis and the comments on the competing applications, as well as the analysis presented in its application, Rex Hospital believes that its concurrently filed applications represent the most effective alternative for meeting the need identified in the *2011 SMFP* for 101 additional acute care beds in Wake County.

Exhibit 1

WakeMed

MEDICAL STAFF UPDATE
November 29, 2010

WakeMed Files Records Request of UNC Health Care

Today, WakeMed filed a request with UNC Health Care for public records to determine if public money has been used by UNC Hospitals or Rex Healthcare, both of which are owned by the state of North Carolina, in order to unnecessarily duplicate and shift services at great cost to the community and taxpayers. This request for records, which was unanimously approved by the WakeMed Board of Directors, comes as a result of UNC and Rex's recent predatory actions in Wake County – including efforts to recruit doctors away from existing relationships with WakeMed – that could jeopardize our mission of providing care to everyone in the community. Because these predatory actions represent unnecessary duplication or shifting of existing services, they do not improve the quality of health care in our community.

These recent actions have raised serious public policy questions, including whether UNC and Rex have improperly used taxpayer dollars to compete with WakeMed, other hospitals and physician practices by investing in physicians and other facilities. UNC and Rex's predatory actions come at a time when the State of North Carolina is currently facing a $4 billion deficit and drastic steps are under consideration to balance the budget, including teacher layoffs, the closing of state parks, eliminating 2,000 positions from the University of North Carolina System and cuts in health care.

"We believe that leaders of our state need to carefully consider whether public money should be used to compete with a strong system like WakeMed, which plays a critical role in providing vital health-care services to Wake County and the entire state," Dr. Atkinson said. "While competition is healthy, these recent actions are not enhancing access or adding new physicians to meet demand, but are instead shifting and duplicating existing services, which is not good for the community."

WakeMed continues to care for the vast majority of the uninsured and medically underserved in Wake County without any taxpayer support other than the limited payments for services received from government-funded Medicare and Medicaid programs. While our financial position is incredibly strong today, our concern is that UNC and Rex's predatory actions may impact our long-term financial strength and therefore, our ability to provide state-of-the-art care to the residents of Wake County and beyond.

"Building and maintaining relationships with physicians is critical to WakeMed's ability to support the growing health care needs of our community," explains Dr. Susan Weaver, senior vice president, Medical Affairs and WakeMed Physician Practices. "We strongly value these relationships and want to protect these important partnerships in the best interest of our community."

One purpose of the request is to determine the legal status of Rex Healthcare. Rex often is described as a private institution, although it is owned by UNC. Of particular

concern is the fact that Rex has been consistently one of the lowest providers of charity care in the state and does not provide its fair share. WakeMed has historically provided more than 80 percent of all charity care in Wake County.

We appreciate the support of our Medical Staff on this important matter. All members of the WakeMed Medical Staffs are invited to several open forums with Dr. Bill Atkinson, president & CEO, to discuss our public records request. Please plan to join us for one of the following meetings:

Cary Hospital
Conference Center
Tuesday, November 30
7:30 am

Raleigh Campus
Conference Dining
Tuesday, November 30
11:30 am
5:30 pm

The public records request is specifically seeking the following information:

- "All records constituting or reflecting correspondence or communications, other than correspondence or communications relating to identifiable patients" between UNC Health Care, Rex Healthcare, certain officials at UNC Health Care and (two?) subsidiary organizations with members of WakeMed's medical staff

- "Audited financial statements" for UNC Health Care, Rex Healthcare, Rex Physicians LLC and Triangle Physicians Network

- "All records made or received by Dr. Cam Patterson in preparation for or in connection with any meeting in which he met with one or more members of the WakeMed medical staff since January 1, 2010." (Patterson is chief of cardiology and physician-in-chief of the UNC Center for Heart and Vascular Care.)

- "All records reflecting the amounts and purposes of all expenditures of public funds by or on behalf of Triangle Physicians Network, LLC or Rex Physicians, LLC since January 1, 2009."

- Records, including 990 IRS forms filed by the named organizations.

Pursuant to North Carolina Public Records Law, WakeMed has requested the records be provided as promptly as possible.

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newsobserver.com Blogs

New WakeMed chair Oxholm says Rex deal is top priority

Submitted by AlanMWolf on 05/25/2011 - 14:28
Tags: .biz | health care | Hospitals | Rex Healthcare | Tom Oxholm | UNC Health Care System | WakeMed

Tom Oxholm is an alumni of UNC Chapel Hill, has been a "loyal" donor to the school and three of his four children are also graduates.

But in the brawl between the UNC Health Care System and WakeMed, it's clear where his loyalties lie. Oxholm, who has served on WakeMed's board for eight years, began a two-year term as the hospital's chairman today.

He replaces Billie Redmond, a Raleigh real-estate executive who was chairwoman since May 2009.

WakeMed made an unsolicited, $750 million offer to buy rival Rex Healthcare from UNC Health this month and Oxholm said in a phone interview this morning that the proposal will consume much of his attention in the coming months. The union would improve medical care in this region, and help reduce health costs by creating new efficiencies, Oxholm said.

"We're not trying to do a hostile takeover," he said. "We just think a combination would be the best thing for Wake County."

Oxholm, 55, is also a Certified Public Accountant and the chief financial executive at Knightdale-based Wake Stone Corp. Here are some other highlights from this morning's interview:

On the increasing animosity between WakeMed and UNC-Rex:

UNC Health has been "very aggressively" expanding in Wake County by offering key physician groups the promise of higher reimbursement fees if they affiliate with UNC-Rex, Oxholm said. That's a "real threat" to WakeMed, and creates unfair competition because UNC Health is backed by taxpayer money, he added.

"It's been very much that 'we're the big dog and you can play with us or we'll punish you,'" Oxholm said.

In the months before WakeMed announced its $750 million bid, Rex leaders were spreading rumors that WakeMed was struggling financially, Oxholm said. Several Rex board members met individually with their counterparts at WakeMed and suggested it might make sense for UNC-Rex to buy WakeMed, he added.

"That didn't make any sense," Oxholm said. "It was an outlandish campaign to spread rumors with no facts. WakeMed is in the healthiest financial condition in its history."

Rex chairman Dale Jenkins said that Rex board members don't have intimate knowledge of WakeMed's finances, and he dismissed the idea that Rex officials were circulating any rumors about WakeMed struggling.

But he added that in August, he and Rex board member Jim Hyler met with Oxholm and Redmond. Jenkins said he had requested the meeting because Rex's board "had been getting signals that our relationship with WakeMed was getting frosty."

At that meeting, they discussed more ways WakeMed and UNC-Rex could collaborate.

"It came up, what our landscape would look like if our systems were one, and WakeMed was part of the UNC system," Jenkins said. "It was really more of a brainstorming idea. It could have been an affiliation or an outright purchase. We didn't get much traction."

On his efforts to make the Rex bid succeed:

Since the UNC Health board has said they will consider the bid, but that they aren't interested in selling Rex, Oxholm and other WakeMed board members are contacting state lawmakers to make their case.

"UNC has pretty much said 'no,'" Oxholm said. "The only other entity that could have an impact is the legislature. If they want it to happen, they could make it happen."

WakeMed officials argue that the $750 million purchase would provide a rich return for the state and help boost its coffers during a tough budget year. But several key lawmakers have said they don't want to use that type of non-recurring revenue to solve the state's budget woes.

"I'm a CPA and I understand why one-time revenue is not a good way to fix things," Oxholm said.

About the blogger

Assistant Business Editor Alan M. Wolf joined the N&O in 1999 covering the business of health care. He became an editor in 2001, and helps oversee the paper's daily business coverage and Sunday Work&Money section. He lives in Clayton with his wife and two children. Reach him at 919-829-4572 or e-mail him.

Want to post a comment?

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On how WakeMed would pay for Rex:

Oxholm previously led the finance committee of WakeMed's board, and helped decide that the hospital could afford to do the deal. The money would come from WakeMed's more than $600 million in cash reserves, as well as debt that would be repaid with increased cash flow from the combined hospitals.

"We've done our projections," he said. "We'd have to do things well, but we can handle the cost."

WakeMed has also said it would assume Rex's $158 million in long-term debt, and invest about $50 million to build a mental-health facility in Wake County -- but only if the acquisition is approved. That would drive the deal's total cost to more than $950 million.

WakeMed reported net income of $45.9 million for its last fiscal year, and will likely more than double that figure for the current year, Oxholm said. Part of that increase comes from changes spurred during the past year when WakeMed brought in a consulting firm to streamline its operations and boost financial results.

"All hospitals are dealing with the health-care reform and trying to figure out how to become more efficient," Oxholm said. "Everyone has to figure out how to do what we do better."

Comments

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ALUMNUS

New Wed, 05/25/2011 - 16:21 — ThePRGuy

Shouldn't that be "he's an alumnus of UNC Chapel Hill"? "Alumni" is the plural form.

reply

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newsobserver.com Blogs

WakeMed affiliates with heart doctors, other physicians

Submitted by AlanMWolf on 12/27/2010 - 15:38
Tags: .biz | Carolina Cardiology | doctors | health care | Hospitals | UNC Health Care System | WakeMed

SHARE

WakeMed continues to bulk up its network of affiliated physicians in Wake County, racing against rivals such as the UNC Health Care System to secure such partnerships.

The Raleigh-based hospital system announced today that it's added three new doctors' practices with 13 physicians: Carolina Cardiology Consultants, Holly Springs Medical Group and North Wake Cardiovascular Center. Financial terms of the deals weren't disclosed.

Affiliating with the cardiology practices are partly WakeMed's response to recently losing one of the county's largest heart groups. In October, UNC Health announced an affiliation with Wake Heart & Vascular Associates, a huge cardiology practice long associated with WakeMed.

"Linking cardiology practices closer to the WakeMed Heart Center is a win for patients in our community because direct relationships between cardiologists and hospitals allow for better coordination of patient care," said Dr. Susan Weaver, senior vice president of Medical Affairs & Physician Practices.

WakeMed officials have accused UNC Health of using "predatory" tactics in its efforts to expand in Wake County's fast-growing medical market. WakeMed executives are especially angry about UNC Health's affiliation with Wake Heart and have requested various financial records and other documents related to UNC Health's communications with heart physicians on WakeMed's staff.

UNC Health has said it can't step aside while changes reshape the Triangle's key markets, especially Wake County. UNC Health also is planning various expansions at Rex Healthcare, the Raleigh hospital system it's owned since 2000.

WakeMed also is seeking audited financial statements and federal tax forms for UNC Health, Rex and Triangle Physicians Network, a nonprofit subsidiary UNC and Rex set up in October to operate a network of local doctors' practices.

Carolina Cardiology will continue to practice from its existing sites in Raleigh, North Raleigh and Garner, and will be aligned with WakeMed as of March 1. WakeMed also will assume ownership of Carolina Cardiology Consultants' cardiac testing clinic, Park Place Diagnostics.

The practices will join Wake Specialty Physicians, a network of more than 150 doctors associated with WakeMed. In most cases, WakeMed doesn't "own" the physicians, but takes over management and owns some of the practices' assets.

In October, WakeMed also affiliated with another large heart group, Raleigh Cardiology, and now has 17 cardiologists.

Its network also includes Wake Specialty Physicians - City Center Medical Group, one of the first primary care practices to open in downtown Raleigh in recent years. That practice will include three doctors, including Weaver, Mary Forbes and Theresa Amerson.

Comments

Post new comment

Your name:

Subject:

Comment:

About the blogger

Assistant Business Editor Alan M. Wolf joined the N&O in 1999 covering the business of health care. He became an editor in 2001, and helps oversee the paper's daily business coverage and Sunday Work&Money section. He lives in Clayton with his wife and two children. Reach him at 919-829-4572 or e-mail him.

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Exhibit 2

WakeMed Cary assumed loss of Harnett County market share to Harnett Health Central Campus (HHCC) would = 31.43 percent of its existing share (3.5 percent / 2.4 percent - 1). See page 53 of WakeMed Raleigh application.

WakeMed Raleigh's current Harnett County market share is 16.2 percent. See page 48 of its application.

If the WakeMed Cary loss of Harnett County market share is equivalent for WakeMed Raleigh, then WakeMed Raleigh will have future Harnett County share of 11.11 percent or a loss of 5.09 percentage points = 16.2 percent x (1 - 31.43 percent) = 11.11 percent share.

WakeMed projects 14,185 inpatient discharges in Harnett County in FFY 2016 (see page 47 of the WakeMed Raleigh application). The loss of 5.09 percentage points for WakeMed Raleigh is equivalent to 722 discharges (14, 185 discharges x 5.09 percent = 722 discharges).

WakeMed Raleigh projects an ALOS of 5.02 days in FFY 2016 per page 55 of its application. Thus, the 722 discharges shifted to HHCC could result in a loss of up to 3,626 days (722 discharges x 5.02 ALOS = 3,626 days)

Exhibit 3

Category	Providers & Service Use
Subcategory	Hospitals
Topic	Emergency Room Visits
Full Title	Hospital Emergency Room Visits per 1,000 Population, 2008
Data Type	Number

Alabama	485.6809
Alaska	476.8959
Arizona	334.2088
Arkansas	453.7786
California	275.2463
Colorado	328.4673
Connecticut	435.2197
Delaware	415.4011
District of Columbia	740.4461
Florida	388.6862
Georgia	396.2991
Hawaii	280.4453
Idaho	341.0402
Illinois	398.9029
Indiana	476.0509
Iowa	409.6771
Kansas	367.7398
Kentucky	545.5755
Louisiana	535.074
Maine	591.7097
Maryland	403.3497
Massachusetts	476.7379
Michigan	442.6969
Minnesota	338.9655
Mississippi	576.3683
Missouri	480.2299
Montana	358.1172
Nebraska	359.0204
Nevada	298.3823
New Hampshire	471.9171
New Jersey	386.775
New Mexico	387.8042
New York	416.795
North Carolina	450.5956
North Dakota	450.6712
Ohio	522.5249
Oklahoma	451.5954
Oregon	351.6112
Pennsylvania	478.0093
Rhode Island	469.6878
South Carolina	433.9646
South Dakota	297.3058
Tennessee	521.0504
Texas	362.8689
United States	404.1859
Utah	313.9601
Vermont	490.6489
Virginia	396.5315
Washington	363.3426
West Virginia	651.9233
Wisconsin	367.2348
Wyoming	439.7605

Notes	Data are for community hospitals, which represent 85% of all hospitals. Federal hospitals, long term care hospitals, psychiatric hospitals, institutions for the mentally retarded, and alcoholism and other chemical dependency hospitals are not included.
Definitions	Community Hospitals: All nonfederal, short-term general, and specialty hospitals whose facilities and services are available to the public.
Sources	1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 AHA Annual Survey Copyright 2011 by Health Forum LLC, an affiliate of the American Hospital Association, special data request, April 2011. Available at http://www.ahaonlinestore.Population data from Annual Population Estimates by State, U.S. Census Bureau; available at http://www.census.gov/popest/states/NST-ann-est.html.

Category	Providers & Service Use
Subcategory	Hospitals
Topic	Outpatient Visits
Full Title	Hospital Outpatient Visits per 1,000 Population, 2008
Data Type	Number

Alabama	1928.079
Alaska	2460.806
Arizona	1186.937
Arkansas	1734.017
California	1336.158
Colorado	1703.67
Connecticut	2305.107
Delaware	1918.574
District of Columbia	3992.826
Florida	1325.993
Georgia	1462.604
Hawaii	1568.281
Idaho	1924.975
Illinois	2412.744
Indiana	2664.604
Iowa	3467.159
Kansas	2332.974
Kentucky	2252.554
Louisiana	2507.32
Maine	3859.523
Maryland	1428.452
Massachusetts	3126.685
Michigan	2799.134
Minnesota	1912.999
Mississippi	1705.866
Missouri	3161.102
Montana	3258.43
Nebraska	2596.645
Nevada	1114.894
New Hampshire	3380.451
New Jersey	2093.857
New Mexico	2139.943
New York	2700.34
North Carolina	1917.683
North Dakota	2643.443
Ohio	2853.197
Oklahoma	1490.555
Oregon	2262.274
Pennsylvania	3060.263
Rhode Island	2500.447
South Carolina	1315.533
South Dakota	2309.362
Tennessee	1802.271
Texas	1432.631
United States	2050.427
Utah	1945.281
Vermont	5323.404
Virginia	1707.979
Washington	1732.855
West Virginia	3644.943
Wisconsin	2523.883
Wyoming	1893.114

Notes	Data are for community hospitals, which represent 85% of all hospitals. Federal hospitals, long term care hospitals, psychiatric hospitals, institutions for the mentally retarded, and alcoholism and other chemical dependency hospitals are not included.
Definitions	Community Hospitals: All nonfederal, short-term general, and specialty hospitals whose facilities and services are available to the public.
Sources	1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009 AHA Annual Survey Copyright 2011 by Health Forum LLC, an affiliate of the American Hospital Association, special data request, April 2011. Available at http://www.ahaonlinestore.comPopulation data from Annual Population Estimates by State, U.S. Census Bureau; available at http://www.census.gov/popest/states/NST-ann-est.html.

Exhibit 4

NC Division of Health Service Regulation

Certificate of Need Section

Letters of Support Submitted for Certificate of Need Applications

To: Interested Parties

From: Lee B. Hoffman, Chief, CON Section

Date: July 10, 2003

The purpose of this memorandum is to clarify procedures relative to acceptance of letters of support for a project after the application has been filed to assure conformance with the Certificate of Need law and administrative rules regarding the written comment period and amendments to the application.

From this date forward, any letters of support or petitions for a project must be received by the CON Section no later than the last day of the written comment period for the application. Any letters or petitions received after that date, including letters and petitions brought to the public hearing, will not be considered by the agency in the review of the project. This procedure is consistent with G.S. 131E-185(1) which states, "Any person may file written comments and exhibits concerning a proposal under review with the department, not later than 30 days after the date on which the application begins review." Additionally, G.S. 131E-185(2) states that at the public hearing "oral arguments may be made regarding the application or applications under review..." Therefore, the law provides for the public to make oral comments at the public hearing. There is no provision in the law allowing the submittal of written comments at the hearing given that it is held more than 30 days after the review begins. However, a speaker may provide the agency a transcript of his/her oral remarks made at the hearing in accordance with G.S. 131E-185(2) which states "any person may submit a written synopsis or verbatim statement that contains the oral presentation made at the hearing." In addition, an applicant may submit a written response or rebuttal to the

written comments made on its application, to the Certificate of Need Section at the public hearing.

As has always been the case, please note that nothing contained in oral or written comments can be used to amend (i.e. revise, change or supplement) the application filed with the Certificate of Need Section. Specifically, 10A NCAC 14C .0204 states, "An applicant may not amend an application. Responding to a request for additional information made by the agency after the review has commenced is not an amendment." Therefore, the application cannot be amended with information contained in any letters or materials received during the written comment period or at the public hearing, even if the applicant states in the application that such letters will be submitted. Consequently, all information the applicant intends to rely on to demonstrate conformance of the application with the review criteria must be provided by the applicant in its application when first submitted to the agency.

If you have any questions regarding this matter, please submit them in writing to Lee Hoffman, Certificate of Need Section, to assist the agency in making consistent responses to all inquiries.

Denotes link to site outside of N.C. DHHS.

This page was last modified on May 27, 2008.

Division of Health Service Regulation

Exhibit 5

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS
C = Conforming
CA = Conditional
NC = Nonconforming
NA = Not Applicable

DECISION DATE: March 28, 2008

TEAM LEADER: Martha J. Frisone
CHIEF: Lee B. Hoffman

PROJECT I.D. NUMBERS: G-7991-07/ North Carolina Baptist Hospital/ Add 26 new acute care beds for a total of 815 acute care beds upon project completion/ Forsyth County

G-7995-07/ Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center/ Add 26 new acute care beds for a total of 816 acute care beds upon completion of this project and Project I.D. #G-7604-06 (develop 39 new acute care beds and relocate 11 existing acute care beds from FMC to establish a satellite campus of FMC in Kernersville)/ Forsyth County

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

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

C – Both Applications

The 2007 State Medical Facilities Plan (2007 SMFP) includes a methodology for determining the need for additional acute care beds in North Carolina by service area. Application of the need methodology in the 2007 SMFP identified a need for 26 additional acute care beds in Forsyth County. The 2007 SMFP states:

COMPARATIVE ANALYSIS

Pursuant to N.C. Gen. Stat. §131E-183(a)(1), no more than 26 new acute care beds may be approved in this review for Forsyth County. Because the two applicants who propose to develop new acute care beds collectively propose 52 new acute care beds, both applications cannot be approved as proposed. Therefore, after considering all of the information in each application and reviewing each application individually against all applicable review criteria, the Project Analyst also conducted a comparative analysis of the proposals to decide which proposal should be approved. For the reasons set forth below and in the rest of the findings both applications are conditionally approved, but the application submitted by **FMC**, Project I.D. #G-7995-07, is approved to develop only 13 acute care beds and the application submitted by **Baptist**, Project I.D. #G-7991-07, is approved to develop only 13 acute care beds.

Geographic Access

The following table identifies the existing acute care hospitals in Forsyth County.

PROVIDER	CITY	# OF EXISTING AND APPROVED ACUTE CARE BEDS
North Carolina Baptist Hospital	Winston-Salem	789
Forsyth Medical Center	Winston-Salem	790
Medical Park Hospital	Winston-Salem	22
Total		**1,601**

As shown in the table above, all three hospitals are located in Winston-Salem. Baptist and FMC both propose to add 26 acute care beds to their existing hospitals, which are located approximately 3.8 miles from each other. Neither applicant proposes to expand geographic access to acute care services in Forsyth County by developing acute care services in a new location within the county. Therefore, because both applicants propose to locate the additional acute care beds at their existing hospitals in Forsyth County, the two applications are comparable with regard to geographic access.

Inpatient Charges

In Section X.2 of the application, Baptist and FMC provided the projected daily charge for room and board and the total charge per inpatient day for the first three years of the proposed project. For Baptist, the first three project years are projected to be FY 2009 – FY 2011. For FMC, the first three project years are projected to be FY 2010 –FY 2012.

DAILY ROOM AND BOARD CHARGES

BAPTIST		FMC	
OPERATING YEAR	DAILY ROOM &BOARD CHARGE	OPERATING YEAR	DAILY ROOM & BOARD CHARGE
2009	$924	2009	NA
2010	$979	2010	$389
2011	$1,038	2011	$406
2012	NA	2012	$425

Exhibit 6

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS
C = Conforming
CA = Conditional
NC = Nonconforming
NA = Not Applicable

DECISION DATE: July 28, 2010
FINDINGS DATE: August 4, 2010

PROJECT ANALYST: Michael J. McKillip
SECTION CHIEF: Craig R. Smith

PROJECT I.D. NUMBER: J-8463-10/WakeMed/Add three shared surgical operating rooms at WakeMed Cary Hospital/Wake County

J-8467-10/Duke University Health System d/b/a Duke Raleigh Hospital/Add two shared surgical operating rooms at Duke Raleigh Hospital/Wake County

J-8468-10/Rex Hospital, Inc. d/b/a Rex Healthcare/Develop two ambulatory surgical operating rooms at Rex Healthcare of Holly Springs/Wake County

J-8469-10/Rex Hospital, Inc. d/b/a Rex Healthcare/Add one shared surgical operating room at Rex Hospital/Wake County

J-8471-10/Holly Springs Surgery Center, LLC/Construct an ambulatory surgery center with three ambulatory surgical operating rooms and one minor procedure room in Holly Springs/Wake County

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

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

C
All Applicants

COMPARATIVE ANALYSIS

Pursuant to N.C. General Statute 131E-183(a)(1) and the 2010 SMFP, no more than three operating rooms may be approved for Wake County. Because the five applications in this review propose a total of twelve operating rooms, all of the applications cannot be approved. Therefore, after considering all of the information in each application and reviewing each application individually against all applicable review criteria, the analyst conducted a comparative analysis of the proposals to decide which proposal should be approved. For the reasons set forth below and in the rest of the findings, the application submitted by Holly Springs Surgery Center, LLC, Project I.D. #J-8471-10, is approved and the other applications are denied.

Geographic Accessibility

The 2010 SMFP identifies a need for three operating rooms for Wake County. The following table identifies the location of the existing and approved operating rooms in Wake County.

Facility	Surgical Facility Type*	Location Within Wake County	City/Town
Orthopedic Surgery Center of Raleigh**	SS	Central	Raleigh
Duke Raleigh Hospital	MS	Central	Raleigh
Blue Ridge Surgery Center	MS	Central	Raleigh
Raleigh Plastic Surgery	SS	Central	Raleigh
Raleigh Women's Health	SS	Central	Raleigh
Southern Eye Associates	SS	Central	Raleigh
Rex Healthcare of Wakefield	MS	Northern	N. Raleigh
Rex Hospital	MS	Central	Raleigh
Rex Surgery Center of Cary	MS	Southwestern	Cary
WakeMed Raleigh Surgery Center**	MS	Central	Raleigh
WakeMed Cary Hospital	MS	Southwestern	Cary
WakeMed North Healthplex	MS	Northern	N. Raleigh
WakeMed Raleigh Campus	MS	Central	Raleigh

*MS = Multispecialty; SS = Single-specialty.
**Approved by the Certificate of Need Section, but not currently operational.

In this review, three of the applications propose to locate additional operating rooms at existing hospitals: WakeMed proposes to locate three additional operating rooms at WakeMed Cary Hospital, Duke Raleigh Hospital proposes to locate two additional operating rooms at its existing hospital campus in Raleigh, and Rex Hospital proposes to add one operating room at Rex Hospital-Main Campus in Raleigh. Two of the applications propose to locate the operating rooms in new ambulatory surgical facilities to be located in Holly Springs: Rex Healthcare of Holly Springs proposes to develop a new ambulatory surgical facility with two operating rooms, and Holly Springs Surgery Center proposes to develop a new ambulatory surgical facility with three operating rooms. Therefore, with regard to improving geographic access to the proposed services, the Rex Healthcare of Holly Springs and Holly Springs Surgery Center applications are determined to be more effective than the other applications in this review.