



July 3, 2017

**Comments in Opposition from Novant Health, Inc.
Regarding a Certificate of Need Application
Submitted on 5/15/17 for 6/1/2017 Review Cycle
by Union Health Services, LLC & Union West Surgery Center
in Response to a Need Determination for
One Additional Operating Room in the Union County Service Area**

I. Introduction

In accordance with N.C.G.S. § 131E-185(a1)(1), Novant Health, Inc. submits the following comments regarding a Certificate of Need application submitted by Union Health Services, LLC (UWSC) in response to a need determination for one operating room in the Union County Service Area for the June 1, 2017 review cycle.

Overview of applications

The following two CON applications were submitted in response to a need determination for one operating room in the Union County Service Area in the *2017 State Medical Facilities Plan (2017 SMFP)*.

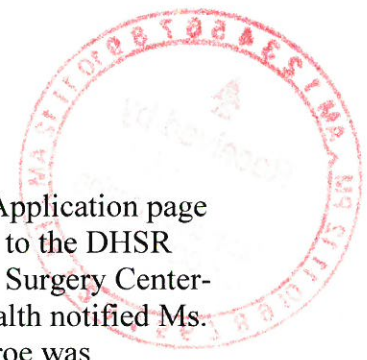
- F-11343-17: Novant Health Monroe Outpatient Surgery, LLC (NHMOS) – Add one new operating room to an existing ambulatory surgery center for a total of two operating rooms in Monroe, NC.
- F-11348-17: Union Health Services, LLC (UHS) and The Charlotte-Mecklenburg Hospital Authority (CMHA) – Add one new operating room to an existing ambulatory surgery center for a total of three operating rooms in Indian Trail, NC.

The two CON applicants proposed a total of two new operating rooms in Union County. It is not possible for the Agency to approve both CON applications. Both applicants also proposed to add a procedure room at their respective ASCs.

II. Union Health Services CON Application

The application submitted by UHS and CMHA, Project I.D. #F-11348-17, includes the development of one additional operating room at an existing facility for a total of three operating rooms. On page 5 of the application UHS explains that CMHA is included as a co-applicant to the extent that it is the lessee and sublessor/sublandlord of the property where Union Health Services, LLC d/b/a Union West Surgery Center UWSC is located and will fund the capital costs associated with the proposed project. Further, UHS is a limited liability company (LLC) that is wholly owned by CMHA d/b/a Carolinas HealthCare System (CHS).

The proposed project does not provide an additional separately licensed outpatient surgery center provider choice for residents of Union County. Therefore, the project does not improve access to residents of Union County in need of outpatient surgical services.



In Section III of the Union Health Services, LLC/Union West Surgery at CON Application page 28, the applicant makes incomplete and unsupported assertions regarding notice to the DHSR Licensure and Certification Section about the closure of Presbyterian Same Day Surgery Center-Monroe (SDSC Monroe) for patient care in 2013. In February 2013, Novant Health notified Ms. Azzie Conley, Chief of the Licensure and Certification Section that SDSC Monroe was temporarily closing via a letter that was sent by FedEx to Ms. Conley. A copy of that letter is attached to these comments as **Attachment 1**. In addition, during January and February 2013, Novant Health representatives also notified The Joint Commission and payors that the Presbyterian Same Day Surgery Center Monroe¹ was temporarily closing for patient care.

Novant Health’s February 12, 2013 letter also notified the DHSR Licensure and Certification Section that SDSC-Monroe proposes to maintain this facility as a licensed surgery center until next steps are determined as to the operation of the facility. Thus, SDSC-Monroe was licensed and operational for patient care from July 2009 through January 31, 2013 and, as noted in NHMOS CON Application, the surgery center filed annual surgical facility licensure renewal applications each year from 2010 through 2017 and also submitted to DHSR Licensure & Certification Section LRA fees associated with the applications. More recently in spring CY 2017 Ms. Conley notified Novant Health that she could not find the February 2013 letter in the DHSR Licensure Section files, as she had purged most of her historical documents on SDSC-Monroe. Novant Health offered to send Ms. Conley a copy of the February 12, 2013 letter. Further, Novant Health continually has stated, and is on record doing so, that a one OR facility is not the most effective alternative for providing outpatient surgical services in a community setting.

III. CON Review Criteria

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

G.S. § 131E-183 (1)

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

There are two *State Medical Facilities Plan (SMFP)* Policies, SMFP Policies GEN-3 and GEN-4, applicable to the review of the two competing CON applications for a new operating room in Union County, Policy GEN-3 and Policy GEN-4.

A. Policy GEN-3: Basic Principles

¹In April 2017 Presbyterian SameDay Surgery Center - Monroe, LLC was re-named as Novant Health Monroe Outpatient Surgery Center based on the necessary documentation sent to the NC Secretary of State’s office. See Novant Health Monroe Outpatient Surgery, LLC CON application, **Exhibit 1**.

“A certificate of need applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing healthcare value for resources expended. A certificate of need applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the availability of capacity to provide these services. A certificate of need applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the State Medical Facilities Plan as well as addressing the needs of the residents in the proposed service area.

As will be discussed in the context of CON Review Criteria (3), (4), (5), and (18a), UWSC:

- Does not demonstrate need for the proposed project.
- Does not demonstrate that the proposed project will promote equitable access; and
- Does not demonstrate that the proposed project will maximize health care value for resources expended.

Therefore, the UWSC CON application does not conform to Policy GEN-3 and CON Review Criterion (1).

G.S. § 131E-183 (3)

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

UWSC seeks to justify expanding an existing ambulatory surgical facility with two operating rooms in northwestern Union County, based upon the following reasons reflected on page 28 in the UWSC CON application.

1. Demand for freestanding ambulatory surgery services;
2. Population growth and distribution in Union County; and
3. Growth and capacity constraints at Union County facilities

These issues are discussed below. In addition, the methodology utilized by UWSC is based upon unreasonable assumptions as discussed below.

A. No Need for a Third Operating Room at UWSC in Indian Trail

UWSC does not need a third operating room. On page 38 UWSC discusses utilization of the Indian Trail location and based upon assumptions in the 2017 SMFP indicates that the existing two operating rooms are utilized at 88% of capacity. However, a review of surgical case information provided in the most current LRA shows that nearly 90% of current patients are ophthalmology and otolaryngology patients with an average case time of 30 minutes per case. Based upon actual case time reported in the 2017 LRA, utilization of the existing two operating

rooms at Union West Surgery Center in FFY 2016 was less than 30% of total capacity in FFY 2016 as shown in the following table.

Current and Projected Operating Room Need and Utilization at UWSC Indian Trail

	FFY 2016	CY 2022	CY 2022
Outpatient Cases	2,744	3,894	3,894
Average Time per Case*	30 Minutes	30 Minutes	45 Minutes
Total Surgical Hours	1,372	1,947	2,921
SMFP Capacity @ 80%	1,872	1,872	1,872
OR Need	0.7	1.04	1.56
OR Need Rounded	1	1	2
Utilization at Capacity of 2,340 Hours per Operating Room	29.3%	41.6%	62.4%

Source: 2017 LRA; UWSC CON Application Page 41

* All variables used in the above methodology are based upon the 2017 SMFP except case time which reflects actual case time at UWSC.

The previous table shows that projected surgical volume at UWSC, provided on page 41 of the application does not justify the need for a third operating room considering FFY 2016 case time reported. If case time remains the same, CY 2022 projected volume justifies only one operating room as shown in the above table.

Surgical volume estimates provided by UWSC on pages 42 and 43 of the application show that nearly 75% of total volume will continue to be ophthalmology and otolaryngology patients in the future. Therefore, it is reasonable to assume that average time per case will not increase significantly. The previous table also shows **that even if average case time increases to 45 minutes per case**, which is unlikely with 75% ophthalmology and otolaryngology cases, projected utilization will not justify a third operating room at UWSC in Indian Trail.

As the Agency is aware, the SHCC is in the process of changing the Operating Room Need Methodology for the 2018 SMFP. The following table illustrates what would happen if the new methodology is applied to the projected UWSC CY 2022 surgical volume with current time per case and with 45-minute time per case.

Current and Projected Operating Room Need and Utilization at UWSC Indian Trail

	CY 2022	CY 2022
Outpatient Cases	3,894	3,894
Average Time per Case	30 Minutes	45 Minutes
Total Surgical Hours	1,947	2,921
SMFP Capacity @ 75%	1,313	1,313
OR Need	1.48	2.2
OR Need Rounded	2	2
Utilization at Capacity of 1,750 Hours per Operating Room	55.6%	83.5%

Source: 2017 LRA; UWSC CON Application Page 41

* Variables used in the above methodology are based upon the proposed changes in the operating need methodology for time per case, capacity, and utilization of an operating room proposed for the 2018 SMFP

As reflected in the previous table, UWSC does not justify the need for a third operating room.

B. Proposed Project Does Not Meet the Needs of Union County Residents

The 2017 SMFP identified a need for an additional operating room in Union County. However, the SMFP does not specify where in the county the new operating room should be located. UWSC divides Union County into eastern, central and western locations to help justify the need for another OR at UWSC Indian Trail. However, the map on page 36 shows the actual location of the facility is in north or northwest Union County. CHS determined that the addition of one operating room to its existing ambulatory surgical facility in northwestern Union County was the most reasonable alternative for development of this additional operating room. However, a review of patient origin reflected in the most current LRA filed for UWSC shows that only 47.8% of current patients, **not even 50.0% of current patients**, are from Union County. The 2017 LRA also shows that 26.3% of UWSC patients are from Mecklenburg County, which is northwest of Union County. The proposed location of the additional operating room appears to be designed to target residents of Mecklenburg County.

Further, a comparison of Union County residents choosing outpatient surgery at Novant Health Matthews Medical Center (NHMMC) or UWSC shows that more residents of Union County choose NHMMC, just across the Mecklenburg County border, for services as reflected in the following table.

Outpatient Surgery on Union County Residents

Surgical Facility	FFY 2014	FFY 2015	FFY 2016	Change 2014-2016
UWSC Indian Trail	1,344	1,215	1,311	-33
NHMMC	1,372	1,471	1,594	222

Source: LRAs

In fact, the percent of Union County residents choosing to leave Union County for outpatient surgical procedures at Novant Health surgical facilities in Mecklenburg County continues to increase as discussed in the NHMOS CON application.

On page 35 and 36 UWSC divides Union County zip codes into three subgroups, western, central, and eastern. Of the four western zip codes identified, NHMMC has a larger market share of outpatient surgical cases than UWSC in three of these zip codes. Residents of the zip codes identified by UWSC with the greatest population growth – implying the greatest need – do not currently choose to have outpatient surgical procedures at UWSC. Zip code market share information is based upon Truven data and is included in **Attachment 2**.

Therefore, the proposed location of UWSC project does not improve access to meet the needs of residents of Union County.

C. Union Health Services is Non-Conforming to the CON Surgical Services Criteria and Standards

For the reasons set forth above, UWSC fails to document a need for a an additional operating room at the existing UWSC surgical center in Indian Trail, and has not demonstrated conformity with CON Review Criterion (3).

G.S. § 131E-183 (4)

Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

UWSC discusses alternatives on pages 51 through 56. Several issues arise in the evaluation of the alternatives identified by UWSC.

First, as discussed above, UWSC Indian Trail does not have capacity constraint issues. See the discussion above under Criterion (3), Paragraph B. CHS Union was the facility which was identified in the 2017 SMFP with the greatest need. UWSC was not the most effective alternative to meeting the need for an additional operating room in Union County. In addition, CHS choose not to apply for an additional operating room in a hospital OR setting, CHS Union in Monroe.

While UWSC briefly discussed the alternative of a new ambulatory surgery center, this was dismissed due to capital costs, capacity constraints at UWSC, and Novant's underutilization of its one-operating room ASC. As discussed above, UWSC does not have capacity constraints. As discussed in detail in the NHMOS CON Application, the Novant Health facility was closed as a result of having only one operating room, which created hardship for physicians and staff and was not reasonably financially sustainable.

One of the reasons identified by UWSC for the need for another operating room on page 28 was the "Demand for freestanding ambulatory surgery services," in Union County.

A review of patient origin at CHS Union in the 2017 LRA, reflects over 3,000 patients from Union County seeking outpatient surgical services at the hospital-based outpatient surgical location in Monroe. Therefore, the most effective alternative to meeting the needs of the residents of Union County in a low-cost environment would have been to develop a new ASC near CHS Union, minimizing the cost of new ancillary services development. CHS could have proposed the development of a two-operating room ASC in Monroe using the one new operating room and moving one operating room from CHS Union to expand ASC services to residents of south and central Union County.

Finally, as discussed in the context of CON Statutory Review Criterion (3), UWSC failed to demonstrate a need of the identified population for the proposed project.

Consequently, UWSC fails to demonstrate that it is the least costly or most effective alternative proposed, which demonstrates non-conformity with CON Review Criteria (4).

G.S. § 131E-183 (5)

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

A. CON ProForma Financial Projections Are Non-Conforming

As discussed in the Criterion (3) section of these comments above, a third operating room is not needed at UWSC. Thus, any CON Proforma Financial Projections based on these unsupported and unreasonable surgical projections, are likewise unreasonable. Therefore, the UWSC Application is non-conforming with Criterion (5).

B. Total Project Capital Cost is Inconsistent Regarding the Inclusion of Capital Funding of Procedure Room in the Existing ASC, Union West Surgery Center

In UWSC CON Application, Section VII, pages 83-84 UWSC provides the capital cost components for the addition of one new OR at UWSC with a total capital cost of \$4,100,000. The capital cost dollar amount for the proposed one new procedure room to be constructed in the existing UWSC existing space is provided in CON Application Exhibit 8, Attachment 1, where UWSC provides a projected capital cost for the proposed procedure room in the current ASC at a capital cost of \$1,500,000, which is certified by an architect. It is unclear whether the procedure room will be constructed as part of the renovation/construction of the existing ASC facility to add a third OR or whether the procedure room construction will be completed either after or before the UWSC construction/renovation for the third OR is completed. Furthermore, it is not clear if the equipment capital cost (\$465,000) for the new ASC procedure room equipment (in CON Application Exhibit 8, Attachment 1) is part of the equipment capital cost (\$1,601,500) for the equipment related to the addition of a third OR found in CON Application Section VIII (pages 83-84) in the Project Capital Cost table.

The UWSC line drawings in CON Application Exhibit 7 include a line drawing for the "Procedure Room Project" and a line drawing is often used to develop the projected capital cost for CON Application Section VIII. In UWSC CON Application Section VIII at page 82 in response to Question VIII.1, the applicant fails to provide "*all assumptions and methodologies used to project the capital costs.*" Thus, the capital cost amount for which UWSC is seeking the state's approval is unclear and unapprovable based on the discussion above in this paragraph. The funding letter in UWSC CON Application Exhibit 25 does not reference the \$1,500,000 capital cost for the addition of a new procedure room at UWSC.

C. Depreciation Expense Understated in Project Years 1-3

In Form B for UWSC, the last CY and the first interim calendar year both reflect depreciation for the facility. While UWSC does not provide any assumptions regarding historical expenses, it is reasonable to assume that this is for the depreciation of equipment associated with the two existing operating rooms. In the second interim year, CY 2018, depreciation expense increases \$67,744 in CY 2018 and then remains constant through the third complete year of operation of

the third operating room at UWSC. In Assumption 15 for Form B, UWSC states that the increase in CY 2018 is for depreciation and amortization of the equipment associated with the new procedure room. However, Form B does not include any depreciation for fixed assets for the proposed operating room. It is reasonable to assume that if the facility is depreciating the equipment associated with the procedure room, it should be depreciating the equipment costs associated with the new operating room. No assumptions were provided for this change in accounting for equipment. Assumption 16 states that that UWSC will amortize the total cost of the project which implies that CHS will own the equipment and depreciate the equipment, however: the CON Application does not include a Form B for CHS showing the impact of the project. It is not clear why Form B treated the proposed project differently from the procedure room project, and CHS did not provide any explanation.

The UWSC Application has unreliable projections and does not provide reasonable documentation for the projected capital expenditure for the project, therefore it is non-conforming to Criterion (5).

G.S. § 131E-183 (7)

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

The Applicant's UWSC projected Project Year 2 staffing projections are found in a table in the response to CON Application Question VII.2. The applicant did not address the ASC hours of operation per day related to how they developed their future ASC staffing. On page 30 of the UWSC CON Application, UWSC states that "*the average OR is anticipated to be staffed nine hours per day.*" Elsewhere in the CON Application the applicant in the response to Question II.5 at page 18 the application states that "*UWSC's current hours of operation are from 6:00am to 5:00pm, Monday through Friday, but are expected to extend to 6:00pm in the future.*" The future hours of operation for UWSC would be 12 hours per day based on what the applicant states on page 18 of its CON Application. The applicant failed to clarify whether the PY 2 future staffing projections in CON Application Question VII.2 are based on 9 hours per day, 11 hours per day (the current UWSC operating hours), or 12 hours per day (the expected future hours of operation). The applicant failed to provide any assumptions about its consideration of hours per operation when developing the PY 2 ASC staffing table in Section VII. No assumptions about the projected FTEs and ASC hours of operation were included in either the response to CON Application Question VII.2 or UWSC ProForma Form B/C in the Form B/C assumptions. Therefore, it is not clear whether the projected staffing costs in ProForma Form B/C are overstated or understated.

G.S. § 131E-183 (18a)

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

demonstrate that its application is for a service on which competition will not have a favorable impact.

As discussed above, UWSC fails to demonstrate conformity with CON Review Criteria (1), (3), (4) and (5). Consequently, UWSC fails to demonstrate that its CON application is conforming to CON Review Criterion (18a).

IV. North Carolina Criteria and Standards for Surgical Services

10A NCAC 14C .2103(a)(c)(f) PERFORMANCE STANDARDS

- (a) *A proposal to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating rooms in an existing facility (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall:*
- (1) *demonstrate the need for the number of proposed operating rooms in the facility which is proposed to be developed or expanded in the third operating year of the project based on the following formula: {[(Number of facility's projected inpatient cases, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours) plus (Number of facility's projected outpatient cases times 1.5 hours)] divided by 1872 hours} minus the facility's total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-section operating rooms or demonstrate conformance of the proposed project to Policy AC-3 in the State Medical Facilities Plan titled "Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects;" and*
 - (2) *The number of rooms needed is determined as follows:*
 - (A) *in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;*
 - (B) *in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative number or a positive number less than 0.3, then the need is zero; and*
 - (C) *in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest*

whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero.

As previously discussed, UWSC did not justify the need for the proposed project.

- (c) *A proposal to increase the number of operating rooms (excluding dedicated C-section operating rooms) in a service area shall:*
- (1) *demonstrate the need for the number of proposed operating rooms in addition to the rooms in all of the licensed facilities identified in response to 10A NCAC 14C .2102(b)(2) in the third operating year of the proposed project based on the following formula: {[(Number of projected inpatient cases for all the applicant's or related entities' facilities, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours) plus (Number of projected outpatient cases for all the applicant's or related entities' facilities times 1.5 hours)] divided by 1872 hours} minus the total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-Section operating rooms in all of the applicant's or related entities' licensed facilities in the service area; and*
 - (2) *The number of rooms needed is determined as follows:*
 - (A) *in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;*
 - (B) *in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative number or a positive number less than 0.3, then the need is zero; and*
 - (C) *in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero.*

As previously discussed, UWSC did not justify the need for the proposed project.

For the reasons set forth above, UWSC does not demonstrate conformity with North Carolina Criteria and Standards for Surgical Services.

V. Comparative Analysis

A. Demonstration of Need

The two CON applicants proposed a total of two new operating rooms in Union County. It is not possible for the Agency to approve both CON applications.

The Agency should award one new operating room to NHMOS and deny the UWSC application. NHMOS is seeking approval to expand an existing one operating room ambulatory surgical center which was not historically financially viable, to have two operating rooms and one procedure room resulting in a more financially feasible surgical facility.

In addition, the NHMOS project will offer a new provider centrally located in Union County. UWSC is proposing to expand an existing facility in northern Union County. The NHMOS proposed project will expand access to residents of Union County by providing the choice of an alternative provider of outpatient surgical services in a licensed freestanding, multi-specialty ASC in the county.

B. Access and Competition

The 2017 SMFP identified a need for an additional operating room in Union County. However, the SMFP does not specify where in the county the new operating room should be located. CHS determined that the addition of one operating room to its existing ambulatory surgical facility in northern Union County was the most reasonable alternative for development of this additional operating room. However, a review of patient origin reflected in the most current LRA filed for UWSC shows that only 47.8% of current patients, **not even 50.0% of current patients**, are from Union County. Further, a comparison of Union County residents choosing outpatient surgery at Novant Health Matthews Medical Center (NHMMC) or UWSC shows that more residents of Union County choose NHMMC, just across the Mecklenburg County border, for services as reflected in the following table.

Outpatient Surgery on Union County Residents

Surgical Facility	FFY 2014	FFY 2015	FFY 2016	Change 2014-2016
UWSC Indian Trail	1,344	1,215	1,311	-33
NHMMC	1,372	1,471	1,594	222

Source: LRAs

In fact, the percent of Union County residents choosing to leave Union County for outpatient surgical procedures at Novant Health surgical facilities in Mecklenburg County continues to increase as discussed in the NHMOS CON application.

On page 35 and 36 of the UWSC application, UWSC divides Union County zip codes into three subgroups, western, central, and eastern. Of the four western zip codes identified, NHMMC has a larger market share of outpatient surgical cases than UWSC in three of these zip codes. Residents of the zip codes identified by UWSC with the greatest population growth – implying the greatest need – do not currently choose to have outpatient surgical procedures at UWSC. Zip code market share information is based upon Truven data and is included in **Attachment 2**.

All these residents of Union County are now leaving the county for outpatient surgical services. They are choosing Novant Health as a provider. The proposed NHMOS would improve access to outpatient surgery for a significant portion of Union County residents currently leaving the county for outpatient surgical services.

In addition, many of the Union County residents seeking care in Mecklenburg County today at Novant Health surgical facilities are going to hospital-based outpatient surgical centers. The proposed NHMOS would provide improved access to more affordable outpatient surgical care. NHMOS will offer outpatient surgeries at a lower price point than a hospital-based outpatient surgery program. Traditionally, patient co-pays and charges have been lower at licensed outpatient surgery centers, than at hospital-based outpatient surgery programs. This approach will offer a more affordable option for local access to outpatient surgical care in Union County. As a result, NHMOS will also promote beneficial competition and choice with other surgery centers in Union County and neighboring counties. Competition can be a useful tool in expanding local geographic access to services, and promoting cost effectiveness by putting downward pressure on costs of care, and encouraging the consistency in the delivery of quality care.

NHMOS is the most effective alternative for geographic and financial access to outpatient surgical care and for enhanced competition and choice.

The development of a viable competitor for outpatient surgical services in Union County will result in enhanced access and provide an affordable alternative for residents of Union County. Therefore, the proposed NHMOS will improve access to meet the needs of residents of Union County for residents currently leaving the county for surgical services at Novant Health facilities.

C. Access for Medically Underserved Populations – Payor Mix Analysis

Based on the Project Year 2 payor mix information provided in response to CON Application Question VI.14 in both CON Applications the medically underserved payor mix categories of the two applicants are compared below:

Payor Category	Novant Health Monroe Outpatient Surgery	Union West Surgery Center
Self-Pay/Indigent	1.0%	0.8%
Commercial Insurance/Managed Care*	39.1%	40.0%
Medicare/Mcare Managed Care**	36.3%	45.7%*
Medicaid	17.9%	11.8%
Other (Worker’s Comp)	5.7%	1.8%
Total	100%	100%

*In preparing these comments Novant Health noticed that the payor mix category for Commercial & Managed Care in its application was accidentally duplicated, showing 39.1% for Commercial Insurance and 39.1% for Managed Care on page 73. The payor mix category of Commercial/ Managed Care combined is more correctly identified as 39.1% in the NHMOS response to Question VI.14 regarding payor mix for PY2. The combined percentage was used preparing the Proformas in Forms D and E on pages 110 to 113.

**UWSC listed only Medicare and not Medicare Managed Care; the Agency typically assumes Medicare Managed Care is included.

NHMOS is comparatively superior in service to the Medicaid medically underserved population (17.9% vs. 11.8%). And NHMOS is comparatively superior in service to the Self-Pay/Indigent population (1.0% vs. 0.8%). Medicare payor mix information for NHMOS is reported as 36.3%; Medicare payor mix info for Union West Surgery Center is 45.7%.

The UWSC payor mix shows that it will provide less access to care for the medically underserved Medicaid, and Charity Care/Self-Pay populations as explained below:

- The UWSC CON application Medicaid payor mix (11.8%) for outpatient surgery cases is lower by 6.1 basis points than the NHMOS payor mix percentage (17.9%) for outpatient surgeries;
- The UWSC CON application Charity Care/Self Pay payor mix (0.8%) for outpatient surgeries is lower by 0.92 basis points than the NHMOS payor mix (1.0%) for outpatient surgeries;
- 18.9% of NHMOS's payor mix is dedicated to serving the above medically underserved populations.
- Only 12.6% of UWSC's payor mix is dedicated to serving the above medically underserved populations.

NHMOS projects to provide superior service to the following medically underserved groups (Self-Pay/Indigent and Medicaid) in greater percentages than UWSC.

D. Charity Care Policies Including Bad Debt and Charity Care – Deductions from Revenue

As discussed above, UWSC's Medicaid and Charity Care payor mix percentages are substantially less than NHMOS. Thus, NHMOS is superior in terms of demonstration of access for the medically underserved population in the Union market area. In addition, the NHMOS Charity Care policy is more generous in terms of providing coverage for patients with annual household incomes up to 300% of the federal poverty level which will allow a patient who is part of family of four with an annual household income of \$72,900 to qualify for charity care for an outpatient surgery at NHMOS. The UWSC Charity Policy & Financial Assistance is limited to: (1) Uninsured patients are offered 50% discount off gross charges; (2) Patients financially unable to pay for healthcare services according to (1) above will have their cases reviewed by the ASC Administrator; (3) Insured patients who have financial responsibility for their care but are unable to pay in full should work with the billing office staff to establish a payment plan.

Thus, the NHMOS Charity Care policy is not only more generous on its face; it also covers a greater segment of medically underserved patients. As shown in the following table, NHMOS projects the provision of more charity care and bad debt than proposed by UWSC in Project Year 3. Project Year 3 is the most comparative year as both applicants included assumptions which ramped up the surgical volume at the two proposed facilities in Project Years 1 and 2.

Charity Care Percent Net Revenue – Project Year 3	
UWSC Form B	NHMOS Form BC
1.1%	4.4%
Bad Debt Percent Net Revenue – Project Year 3	
UWSC Form B	NHMOS Form BC
3.9%	5.4%

Source: ProForma B for both applicants

Calculation = Charity Care / Net Patient Revenue and Bad Debt / Net Patient Revenue

The Agency should award the one new operating room identified in the 2017 SMFP for Union County to NHMOS and deny the UWSC CON application.

The responses to CON application Question VI.8(c) and in ProForma Form B allow the CON Section to compare actual Charity Care dollar amounts projected by each applicant during Project Years 1 - 3. The information is provided in the table below.

Charity Care Dollar Amounts	PY1: 4/1/2019-3/31/2020*	PY2: 4/1/2020-3/31/2021	PY3: 4/1/2021-3/31/2022
NH Monroe Outpatient Surgery	\$304,901	\$317,481	\$359,579
Union Health Services	\$77,355	\$85,137	\$93,703
Difference	\$227,546	\$232,344	\$265,876

Source: ProForma B for both applicants

*UWSC start date March 1, 2019, one month earlier than NHMOS

This demonstrates that NHMOS is projecting to provide significantly more charity care at its outpatient surgery center than UWSC has projected. This reinforces the comparative superiority of the NHMOS project in terms of financial accessibility to outpatient surgical care in an additional freestanding, licensed multi-specialty ASC for in the Union market area.

E. Total Operating Cost Per Case

Based on information provided in each applicant's response to CON application ProForma Form B/C (Statement of Revenues & Expenses), below is a comparison of each applicant's total operating cost per case and direct cost per case including outpatient OR cases and procedure room cases combined.

Cost Per Case Analysis

Total Operating Cost	PY1	PY2	PY3
Union Health Services**	\$1,793.01	\$1,763.46	\$1,737.31
NHMOS*	\$2,266.75	\$2,270.80	\$2,244.44

*NHMOS CON Application page 109 ProForma Form B/C

**Union Health Services CON Application ProForma Form B/C

Calculation = Total Expenses / (Total Surgical Cases + Total Procedure Cases)

A comparison of cost per surgical case is not a useful point of comparison in this review. UWSC is an existing two operating room facility which will be adding a third operating room and a procedure room. NHMOS will be a two-operating room facility with one procedure room. UWSC is projecting 45.6% more cases than NHMOS, (4,260 combined OR and procedure room cases at UWSC / 2,925 combined OR and procedure room cases at NHMOS – 1 = 45.6%).

Therefore, indirect costs, including fixed costs are spread across a much larger volume at UWSC and are not comparable for costs per case.

Cost per case at NHMOS and UWSC is therefore not comparable and cost per case cannot be utilized in this review as a comparative factor.

F. Gross Revenue Per Outpatient Surgical Case

Based on information provided in each applicant’s response to Proforma Form D (Gross Revenue Worksheet) below is a comparison of each applicant’s Gross Revenue per outpatient surgery case.

Gross Revenue Per Outpatient Surgical Case

Facility	PY1	PY2	PY3
NHMOS*	\$8,120.46	\$8,282.87	\$8,965.65
Union Health Services**	\$5,666.53	\$5,836.12	\$6,010.88
<i>Difference</i>	<i>\$2,453.93</i>	<i>\$2,446.75</i>	<i>\$2,954.12</i>

*NHMOS CON Application CON ProFormas Form D at page 112

**Union Health Services CON Application Form D-UWSC Gross Revenue Worksheet

In comparing Gross and Net Revenue per Outpatient surgical case, the Agency should consider case mix. As reflected in the 2017 LRA, nearly 90% of all surgical cases performed at UWSC are ophthalmology and ENT cases. As discussed in the assumptions for the NHMOS ProFormas on page 114, charges are based upon charges at Novant Health Huntersville Surgery Center and Novant Health Ballantyne Surgery Center and represent a more diverse multispecialty outpatient surgery case mix for future procedures at NHMOS. Therefore, comparing charges is not reasonable.

Based on information provided in each applicant’s response to Proforma Form E (Net Revenue Worksheet) below is a comparison of each applicant’s Net Revenue per outpatient surgery case in Project Year 3.

Net Revenue Per Surgical Case

Facility	PY3
NHMOS*	\$3,550.47
Union Health Services**	\$2,062.22
<i>Difference</i>	<i>1,488.25</i>

*NHMOS CON Application CON ProFormas Form E at page 112

**Union Health Services CON Application Form E - UWSC Net Revenue Worksheet

As discussed previously, a comparison of Gross Revenue per Outpatient surgical case is not a useful point of comparison in this review. In comparing Gross and Net Revenue per Outpatient surgical case, the Agency should consider case mix. As reflected in the 2017 LRA, nearly 90% of all surgical cases performed at UWSC are ophthalmology and ENT cases. In addition, the

physician letters of support, listed on page 42-43 of the UWSC application, reflect surgical case volumes, of which nearly 75% will continue to be ophthalmology and ENT cases.

As discussed in the assumptions for the NHMOS ProFormas on page 114, projected charges are based upon actual charges at Novant Health Huntersville Surgery Center and Novant Health Ballantyne Surgery Center. The case mix at these two Novant Health surgical centers represent a much more diverse multispecialty case mix for future procedures at NHMOS. Therefore, comparing Gross and Net Revenue per case is not reasonable or useful.

G. Physician Support and Access

In contrast to UWSC's limited physician support letters, NHMOS's physician letters of support come from a wide variety of surgical specialties. The 16 surgeon support letters and the three letters from a gastroenterologist and two colon & rectal surgeons, who will practice in the ASC procedure room, reflect a wide array of surgical specialties, including physicians/surgeons utilizing the procedure room:

- General Surgery (2)
- Otolaryngologists (2)
- Obstetrics/Gynecology (8)
- Ophthalmology (1)
- Orthopedic Surgery (2)
- ENT (2)
- Gastroenterology/Colon & Rectal Surgery (3)

These surgeons practice with the following Novant Health Medical Group (NHMG) and independent physician groups: Charlotte Eye Ear Nose & Throat, Carolina Bone & Joint, Novant Health Barron, Homesley & Valentine Orthopedic Specialists, Novant Health Carmel OB/GYN, Surgical Specialists of Charlotte, Horizon Eye Care, and Metrolina Eye Associates, Charlotte Gastroenterology & Hepatology, Charlotte Colon & Rectal Surgery. In the future, additional surgeons will be able to seek medical staff privileges to practice at Novant Health Monroe Outpatient Surgery, LLC.

In contrast, the UWSC surgeon support letters included in UWSC CON Application Exhibit 16 contain 33 surgeon support letters that reference the UWSC project and 16 letters that reference the CHS-Huntersville Surgery Center CON Application (CON Project I.D.# F-11349-17), which was also filed on 5/15/17. These 16 letters do not contain any statements of support for the UWSC CON application and should not be considered as relevant surgeon support letters part of the CON Section's review of the UWSC application. In addition, there are four signed surgeon support letters that support both the UWSC and the Novant Health Monroe Outpatient Surgery, LLC proposals. These support letters are signed by one urologist (Dr. Udoff), two ophthalmologists (Dr. Mac & Dr. Patel), and one orthopedic surgeon (Dr. Hayes).

Finally, in response to CON application Question VI.9(c) NHMOS states that "the surgeons who propose to practice at NHMOS have existing and established referral relationships with numerous Novant Health Medical Group and independent physician offices throughout the

Union County market area. The NHMG practices in and near the NHMOS include but are not limited to the following.

- Novant Health Child & Adolescent Medical Group, Waxhaw and Monroe, NC
- Novant Health Carmel OB/GYN, Monroe, NC 28110
- Novant Health Express Care, Indian Trail, NC 28079
- Novant Health Heart and Vascular Institute, Monroe, NC 28112
- Novant Health Monroe Family Medical, Monroe, NC 28112
- Novant Health Pulmonary Medicine South, Monroe, NC 28112
- Novant Health Sleep, Monroe, NC 28112
- Novant Health Southern Piedmont Primary Care, Monroe, NC 28110
- Novant Health Sun Valley Family Physicians, Indian Trail, NC 28079
- Novant Health Waxhaw Family & Sports Medicine, Waxhaw, NC 28173

These Novant Health Medical Group practices with offices in Union County represent 45 physicians and 8 advanced practice clinicians. These practices represent over approximately 45 established referring physicians for NHMOS.

The UWSC CON Application (CON Project I.D. #F-111348) does not include any letters from referring physicians. Exhibit 16 of the UWSC CON Application includes 49 surgeon support letters; however, 16 of the 49 letters are surgeon support letters that express support for the CHS-Huntersville Surgery Center (CON Project I.D. # F-11349-17)² a project seeking to convert the CHS-Huntersville Surgery Center from hospital-based to a freestanding licensed ASC. Thus, one-third of the surgeon support letters in UWSC CON Application Exhibit 16 that pertain to the CHS Huntersville Surgery Center CON Application cannot be counted as expressions of support for the Union West Surgery Center CON Application.

H. Construction Cost

NHMOS Construction Cost per SF (\$254.95) is less than UWSC Cost per SF (\$410.95/SF) by \$156/SF. The NHMOS Total Capital Cost per SF (\$695.44) is significantly less than UWSC Total Capital Cost per SF (\$924.05) by \$229/SF. Data is from Section XI for both CON Applications. UWSC has failed to demonstrate that its costs per square foot are lower than the competing applicant's cost per square foot.

VI. Conclusion

The UWSC application does not demonstrate conformity with multiple CON Review Criteria and does not demonstrate conformity with multiple CON Regulatory Criteria and Standards for surgical services. The NHMOS complies with all applicable CON review criteria and rules. The NHMOS application is comparatively superior to the UWSC application in several key areas, including access for medically underserved populations. As a result, the UWSC CON application should be denied and the NHMOS CON application should be approved.

²These two CHS CON Applications were filed on the same day, May 15, 2017.

*File: NovantHealthCIO.UHS SurgeryCenter.Union West Surgery
Center.FINAL.06.30.2017.docx*

Presbyterian HEALTHCARE

Remarkable People. Remarkable Medicine.

February 12, 2013



Ms. Azzie Conley, Chief
Acute and Home Care Licensure and Certification Section
North Carolina Department of Health and Human Services
Division of Health Service Regulation
2712 Mail Service Center
Raleigh, NC 27699-2712

Re: License #AS0120—Presbyterian Same Day Surgery Center-Monroe, Monroe, NC (Union County)-Licensed Multi-Specialty Surgery Center with One Operating Room

Dear Ms. Conley:

This is to notify the Licensure and Certification Section that Novant Health and Presbyterian Healthcare have made the business decision to temporarily stop offering care at Presbyterian Same Day Surgery Center-Monroe effective at the close of business on Thursday, January 31, 2013. In addition, we wish to notify the Licensure and Certification Section that SDSC-Monroe proposes to maintain this facility as a licensed surgery center until next steps are determined as to the operation of this facility.

If you have any questions, please do not hesitate to contact Melissa Masterton, Novant Health, Vice President of Finance at 704-384-9860.

Sincerely,

Harry L. Smith, Jr.
President, Presbyterian Healthcare

cc: Melissa F. Masterton, Novant, Vice President of Finance
Barbara Freedy, Novant, Director of CON

Zip Code Market Share



	28079			28103			28104			28110			28112			28173			28174		
	2014	2015	2016	2014	2015	2016	2014	2015	2016	2014	2015	2016	2014	2015	2016	2014	2015	2016	2014	2015	2016
Carolina Center for Specialty	1.0%	1.5%	1.3%	0.8%	0.6%	0.2%	1.7%	2.2%	1.4%	1.0%	0.9%	0.9%	0.7%	0.7%	0.9%	1.3%	1.4%	1.0%	1.9%	0.5%	0.0%
Charlotte Surgery Center	6.4%	6.5%	5.9%	2.0%	1.3%	1.4%	9.4%	8.6%	7.5%	4.9%	3.3%	4.4%	2.5%	2.6%	2.6%	9.0%	8.1%	7.9%	1.6%	2.1%	1.5%
CMC	14.6%	13.5%	13.5%	10.8%	9.5%	10.0%	16.6%	17.1%	18.0%	12.2%	11.4%	14.9%	9.8%	9.6%	12.0%	16.0%	16.5%	17.2%	10.2%	12.2%	8.1%
CMC Mercy	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CMC Northeast	0.4%	0.2%	0.5%	0.8%	0.3%	0.7%	0.1%	0.1%	0.2%	0.2%	0.5%	0.6%	0.1%	0.2%	0.2%	0.1%	0.4%	0.1%	0.0%	0.7%	0.3%
CMC Pineville	3.1%	3.1%	3.7%	1.1%	0.7%	0.2%	4.0%	3.4%	4.3%	1.7%	1.9%	2.1%	1.3%	1.4%	2.0%	7.3%	6.9%	7.5%	1.9%	2.1%	2.1%
CMC Union	12.9%	13.7%	7.8%	40.0%	43.4%	38.2%	4.7%	6.3%	3.4%	34.8%	35.7%	25.2%	45.6%	44.1%	30.8%	11.8%	10.5%	7.5%	49.1%	42.5%	37.7%
CMC University	1.0%	0.8%	0.1%	0.6%	0.6%	0.2%	0.9%	1.1%	0.1%	0.6%	0.4%	0.1%	0.2%	0.1%	0.0%	0.6%	0.3%	0.0%	0.0%	0.7%	0.0%
Gateway Ambulatory Surgery	0.3%	0.1%	0.6%	0.2%	0.3%	1.1%	0.1%	0.1%	0.4%	0.3%	0.2%	0.2%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Mallard Creek Surgery Center	0.1%	0.4%	0.4%	6.2%	5.0%	5.2%	0.1%	0.8%	1.1%	0.0%	0.3%	0.7%	0.1%	0.3%	0.6%	0.0%	0.8%	1.2%	0.0%	0.0%	0.0%
Matthews Surgery Center	5.8%	6.5%	5.6%	0.0%	0.0%	0.0%	4.5%	5.4%	4.9%	5.1%	5.7%	7.1%	5.6%	4.2%	5.9%	4.3%	3.2%	3.5%	5.8%	5.1%	6.9%
NH COH	4.3%	4.3%	4.2%	2.3%	1.7%	1.8%	5.2%	3.4%	4.3%	3.1%	2.9%	2.3%	2.7%	1.8%	2.8%	5.4%	6.2%	6.6%	1.2%	1.2%	1.2%
NH HMC	0.1%	0.2%	0.3%	0.0%	0.0%	0.0%	0.2%	0.2%	0.2%	0.1%	0.2%	0.2%	0.0%	0.0%	0.0%	0.2%	0.3%	0.0%	0.0%	0.0%	0.0%
NH MMC	16.0%	15.6%	17.6%	6.9%	9.5%	11.5%	15.9%	14.2%	15.2%	10.3%	10.8%	11.2%	6.5%	8.4%	12.0%	9.3%	10.2%	9.7%	6.5%	7.9%	9.3%
NH PMC	11.2%	10.6%	14.0%	5.9%	6.4%	6.8%	13.9%	15.1%	12.7%	8.3%	7.7%	9.2%	6.7%	7.0%	9.3%	13.6%	12.7%	13.7%	5.1%	8.8%	8.7%
Presbyterian Same Day Surgery Center Huntersville	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.1%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%
Presbyterian SameDay Surgery Center - Monroe	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Presbyterian SameDay Surgery Center at Ballantyne	1.3%	0.9%	0.6%	0.3%	0.3%	0.5%	1.0%	0.9%	1.2%	0.8%	0.9%	1.2%	1.2%	0.7%	1.0%	1.8%	2.0%	2.3%	0.2%	0.9%	0.9%
SouthPark Surgery Center	9.0%	9.0%	10.1%	4.8%	3.4%	3.8%	11.6%	11.4%	13.6%	4.3%	4.5%	4.9%	2.9%	3.5%	4.9%	11.8%	13.6%	12.8%	4.4%	1.6%	3.6%
Union West Surgery Center	10.5%	11.3%	12.4%	13.9%	13.6%	14.9%	8.0%	8.6%	9.4%	10.7%	11.4%	13.8%	12.6%	13.6%	13.4%	5.0%	4.9%	6.2%	10.9%	10.9%	16.9%
All Other	2.0%	1.7%	1.5%	3.5%	3.5%	3.4%	2.1%	1.0%	2.0%	1.4%	1.1%	1.1%	1.4%	1.7%	1.7%	2.3%	1.9%	2.3%	1.4%	3.0%	2.7%
Grand Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source Truven

