

## Comments on Competing Application for Additional Operating Rooms in Orange County

*submitted by*

### University of North Carolina Hospitals at Chapel Hill

In accordance with N.C. GEN. STAT. § 131E-185(a1)(1), University of North Carolina Hospitals at Chapel Hill (“UNC Health Care System” or “UNC HCS”) submits the following comments related to a competing application to develop additional operating rooms in Orange County. UNC HCS’s comments on this competing application 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*”<sup>1</sup>. See N.C. GEN. STAT. § 131E-185(a1)(1)(c). To facilitate the Agency’s review of these comments, UNC HCS has organized its discussion by issue, noting some of the general CON statutory review criteria and specific regulatory criteria and standards creating the non-conformity on the following application:

- **Duke University Health System, Inc. (“DUHS”), Project ID # J-11692-19**

#### General Comments

DUHS’ proposed project, like its 2018 application (Project ID # J-11632-18), involves the development of a two-OR, two-procedure room ambulatory surgical facility (“ASF”) in Orange County. The application declares the intent to develop only one of the ASF projects (the 2018 and the 2019), not both. The 2018 application was approved on April 29, 2019 after the instant application was filed (April 15, 2019). While the approval of the 2018 application is under appeal, the Agency’s approval of the DUHS 2018 application is relevant to this review, particularly since the 2019 DUHS application states its intention to develop only one ASF between the two applications. As such, the 2019 application proposes to address the “same need” as the 2018 application.

In the 2019 review, the UNC HCS application is the only one that is conforming with all the applicable review criteria and is comparatively superior to the DUHS application. The UNC HCS application proposes to meet a significant and ongoing deficit of operating room capacity in Orange County, particularly at UNC Hospitals’ Main Campus. As a quaternary academic medical center teaching hospital that serves patients from across the state as part of its public mission, UNC HCS needs sufficient surgical capacity to serve its patients. Its proposed project is the only one that will meet the current need in Orange County, a need which was generated in large part by thousands of patients across the state seeking care at the only state-owned, comprehensive, full-service hospital system.

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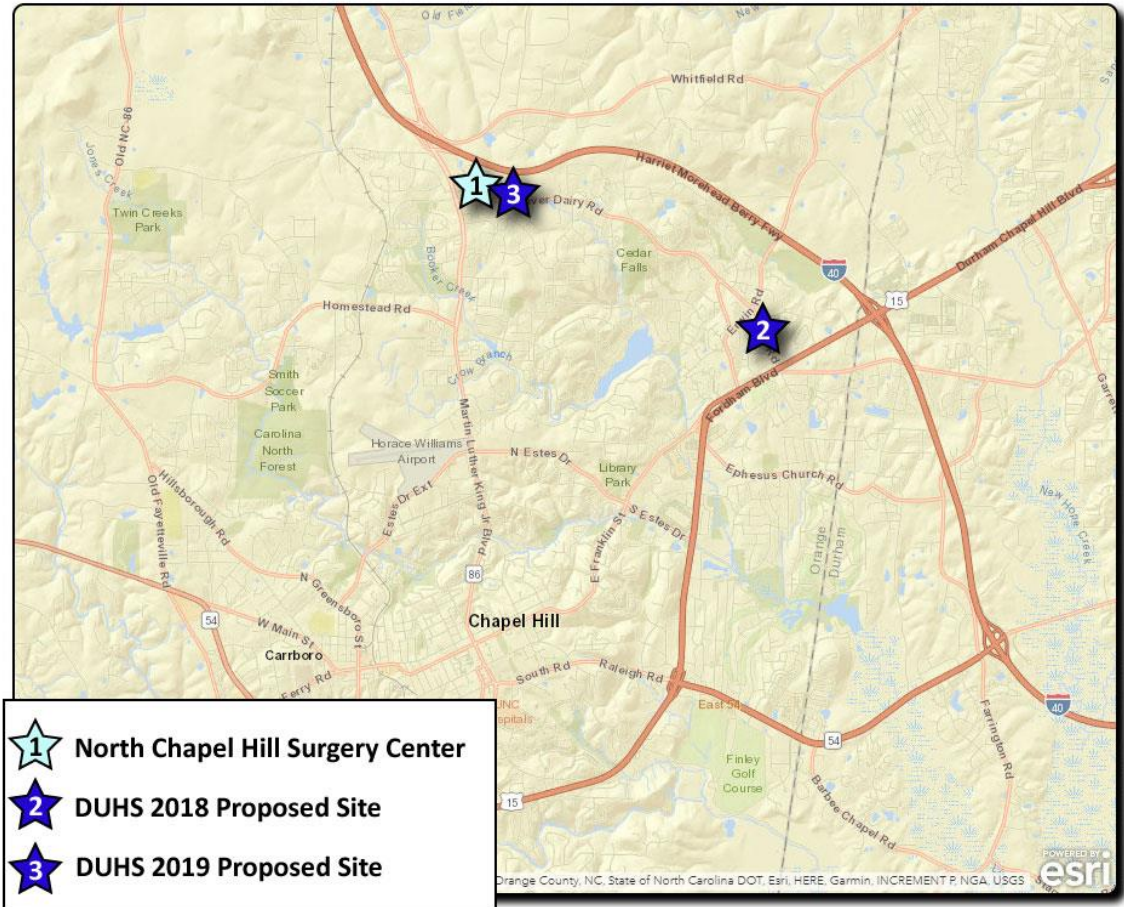
<sup>1</sup> UNC HCS is providing comments consistent this statute; as such, none of the comments should be interpreted as an amendment to its application as filed April 15, 2019.

## COMMENTS ON DUKE UNIVERSITY HEALTH SYSTEM

### Issue-Specific Comments

1. DUHS fails to consider and properly account for the proposed (and approved) North Chapel Hill Surgery Center in its analysis.

As stated above, while the DUHS proposal is essentially the same as its 2018 proposal, the facts and circumstances have changed considerably since then. Of note, North Chapel Hill Surgery Center has been approved by the CON Section to develop a two-room ASF, with a Certificate of Need likely to be issued shortly. While the outcome of the 2018 review was not known at the time the DUHS application was filed, it did have knowledge of the potential for such an outcome, and, in fact, since DUHS did not apply for all of the ORs available in that review, it would be reasonable for DUHS to have expected that the North Chapel Hill Surgery Center would be approved for some number of operating rooms. In past decisions, the Agency has found applicants non-conforming with Criteria 3 and 6, among others, for failing to demonstrate that the proposed project was needed in light of other similar projects that were under review and ultimately approved. Consistent with Agency practice, the DUHS application should be held to that same standard. This standard is not merely a requirement that the application make note of the potential approval, but that it demonstrate that its proposal is needed even if the project(s) under review are approved. In fact, Criterion 6 requires an applicant to demonstrate that its project does not duplicate existing and approved projects. Notwithstanding these new facts and circumstances that have developed since the 2018 application was filed, DUHS failed to address anywhere in the instant application that North Chapel Hill Surgery Center was under review and could be approved. The application failed to consider the impact of such a likely approval on its proposal, including but not limited to such assumptions as the number of ASFs in the county, the projected market share for its facility, the impact of an approved competitive ASF on its utilization projections and other assumptions, and the impact of the location of the North Chapel Hill Surgery Center in relation to its updated site. To the latter point, DUHS' 2019 application proposes a different site than the 2018 application, and that site is less than one-half mile from North Chapel Hill Surgery Center's approved location. In comparison, the proposed site in the 2018 application was nearly three miles from the North Chapel Hill Surgery Center. The map below shows the proximity of the site proposed in this review compared to the 2018 site and the approved North Chapel Hill Surgery Center.



As part of its review of the DUHS 2019 application, the Agency should consider its approval of the North Chapel Hill Surgery Center and the impact of that facility on the analysis and assumptions in the DUHS application, particularly its market share and utilization assumptions.

**Based on this error, the DUHS application should be found non-conforming with Criteria 1, 3, 5, 6, and 18a, as well as the performance standards at 10A NCAC 14C .2103.**

2. DUHS fails to reasonably identify its patient population.

As a key part of its need analysis, the DUHS application points to the number of patients leaving Orange County for surgery in other counties, including Durham County. While it attempts to argue that its proposed project will provide better access to surgical services for Orange County residents, this assertion does not explain why it is reasonable to assume that patients from other counties, namely Alamance and Chatham, will come to the proposed ASF for surgery. The application discusses the patients from these counties that DUHS already serves; however, none of the patients DUHS presently serves are proposed patients for the proposed ASF. The application clearly and repeatedly states that the volume projections include completely new (“incremental”) patients to the DUHS system, and that not a single surgical case from any of these counties that currently seek care at DUHS facilities will instead be performed at the proposed ASF. As such, there is no

basis to assume that DUHS' historical market share of patients from these counties will be of benefit to the proposed ASF, since none of that market share is expected to shift to the ASF. The application therefore provides no clear basis for its assumption that it will serve patients from Alamance, Chatham, and Orange counties.

To that end, the methodology in Section Q also fails to explain why the proposed ASF will serve these specific counties. Moreover, while the application cites DUHS' existing market share of Alamance County patients, its existing share is completely irrelevant for this project, as it repeatedly states that the projected market shares are incremental to DUHS. In fact, one could argue that given its comparatively larger share of Alamance than Orange or Durham, as stated on page 105, it is more reasonable to assume that it will attract fewer patients from Alamance County to the proposed ASF, since it already serves a larger share of these patients in Durham County, not a single one of which it projects to shift to the proposed ASF. Please see the discussion below regarding the unreasonableness of DUHS' market share projections.

It is also unreasonable to believe that the proposed ASF, located in Chapel Hill in Orange County, will serve more patients from Alamance County than any other county. Incredibly, as shown on page 17, DUHS projects to serve 1,759 patients from Alamance County in the third project year, while serving only 1,327 from Orange County. Given the fact that none of DUHS' existing share of Alamance County patients is projected to shift to the proposed ASF in Orange County, as stated on page 111, the application provides no credible basis for the assumption that the proposed facility will attract more patients from Alamance County than from Orange County.

Finally, it is unreasonable that the proposed ASF would serve more patients from Alamance County than from Orange County, yet attract no patients from any other counties other than Orange, Alamance and Chatham. Other ASFs in the area, including those in Wake County and the ASF operated by DUHS in Durham County, serve patients from dozens, in fact, scores of other counties. As shown on page 412 of the *2019 SMFP*, Orange County is also contiguous to Durham, Caswell and Person counties, the latter two of which also do not have freestanding ASFs. Thus, the DUHS application fails to demonstrate that its projected patient origin, including the counties it includes and those it excludes, is based on reasonable assumptions.

**Based on these issues, the application should be found non-conforming with Criteria 1, 3, 5, 6 and 18a.**

3. The application fails to provide reasonable and supported utilization projections.

The methodology used in the application to project utilization includes assumptions for use rates for the service area counties, applied to projected population growth, to calculate projected ambulatory surgical cases. While the use of a use rate methodology is sometimes appropriate, the application makes irrational assumptions which drive a flawed methodology, resulting in unreasonable and unsupported utilization projections.

*Use Rate Errors*

On page 103 of the application, Step 2 of the methodology applies the calculated statewide use rate for ambulatory surgery to the three service area counties. The application asserts this is reasonable, based on several factors. However, these factors do not support the extraordinary and unreasonable growth resulting from the application of this methodology to derive county-level surgical case projections, particularly since the application projects such significant growth to have occurred in the past (i.e. from 2017 to 2018). The table below shows actual county-level data from 2017 compared with DUHS’ projected 2018 volume by county, as projected in the application on page 110.

<b>County</b>	<b>2017 Actual Ambulatory Surgical Cases</b>	<b>2018 Projected Ambulatory Surgical Cases</b>	<b>Projected Growth in Cases 2017-2018</b>	<b>Projected Growth Percentage 2017-2018</b>
Orange	6,158	9,296	3,138	51.0%
Alamance	11,071	10,535	-536	-4.8%
Chatham	3,061	4,935	1,874	61.2%
Total	20,290	24,766	4,476	22.1%

Source: 2017 cases from DHSR Healthcare Planning and Certificate of Need Section database; 2018 cases from application, page 104

The utilization projections are clearly unbelievable when compared with the most recent and available data from the DHSR database. It should also be noted that updated 2018 actual data will be available from DHSR sometime during the course of this review, and the Agency should include this data in its analysis of the DUHS application<sup>2</sup>. The application’s failure to compare its projected utilization by county to recent actual data results in a flawed approach and unreasonable projections. It is clear that these data were available, as the table on page 24 of the application includes the actual 2017 cases from Orange County; yet, there is no explanation given as to why it is reasonable to expect such a tremendous rate of growth. Moreover, there is no basis for the assumption that the use rate and associated volume will increase so dramatically in the year in which the application is filed, ***more than three years before the project would be developed.***

<sup>2</sup> According to Healthcare Planning and Certificate of Need staff, the 2018 data for ASFs should be available in July 2019 with hospital data available shortly thereafter.

The tables below show the statewide use rate from 2014 to 2017, as presented in the application, compared with the use rates for the same time period for Orange, Alamance and Chatham counties.

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
NC Population	9,945,642	10,046,467	10,155,942	10,272,692
Statewide Ambulatory Surgery Cases	637,641	652,632	657,664	666,204
Statewide Ambulatory Surgery Use Rate	<b>64.1</b>	<b>65.0</b>	<b>64.8</b>	<b>64.9</b>

Source: Duke Health Orange ASF Application, Page 103

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Orange County Population	139,613	139,915	140,853	142,365
Orange County Ambulatory Surgery Cases	6,668	6,464	6,274	6,158
Orange County Ambulatory Surgery Use Rate	<b>47.8</b>	<b>46.2</b>	<b>44.5</b>	<b>43.3</b>

Source: DHSR Health Planning and Certificate of Need Section 2014-2017 Ambulatory Surgery Data

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Alamance County Population	155,613	157,235	159,054	161,076
Alamance County Ambulatory Surgery Cases	9,818	10,661	10,823	11,071
Alamance County Ambulatory Surgery Use Rate	<b>63.1</b>	<b>67.8</b>	<b>68.0</b>	<b>68.7</b>

Source: DHSR Health Planning and Certificate of Need Section 2014-2017 Ambulatory Surgery Data

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Chatham County Population	69,185	71,701	73,286	74,835
Chatham County Ambulatory Surgery Cases	2,850	2,887	2,755	3,061
Chatham County Ambulatory Surgery Use Rate	<b>41.2</b>	<b>40.3</b>	<b>37.6</b>	<b>40.9</b>

Source: DHSR Health Planning and Certificate of Need Section 2014-2017 Ambulatory Surgery Data

As shown, the statewide use rate is significantly higher than the use rates in both Orange and Chatham counties. Since the use rate in Alamance County is higher than the statewide rate, even though Alamance County has no freestanding ASF, it is simply unreasonable to suggest that the lack of a freestanding ASF in Orange County is driving its lower use rates, and that the use rate will increase from 43.3 to 64.6 in a single year, as the DUHS application projects (pages 103-104), several years before the proposed project would be developed.

For Orange County in particular, it is likely that the lower use rates are driven, at least in part, by its younger than average population. While the county is home to a considerable number of older residents, the younger population associated with UNC Chapel Hill drives the median age lower than the state, as shown in the following table.

	<b>2017 Median Age</b>
Orange County	35.41
North Carolina	38.61

Source: NC OSBM

Further, the rationale provided in the application simply does not support the incredible projections, as follows:

- The MedPAC report cited in the application never suggests that the impact will be as much as 51 or 61 percent in a single year, as projected by the application;
- While the population age 65 and older may be growing, it is not growing at a rate that would result in the growth in surgical cases projected in the application. In particular, the application’s assumption that the use rate in these counties would equal the statewide growth rate is unreasonable when the projected percentage of population 65 and older for each county is compared to the statewide percentage, as shown in the following table.

	<b>Orange</b>	<b>Alamance</b>	<b>Chatham</b>	<b>North Carolina</b>
2018 Population Age 65+	14.1%	19.3%	13.6%	16.1%
2024 Population Age 65+	17.4%	22.0%	16.6%	18.3%

Source: North Carolina data from NC OSBM; County data from application pages 32 and 33.

While all areas are projected to have an aging population, both Orange and Chatham counties will remain below the statewide average; as such, it is unreasonable to assume that they will have the same use rate as the statewide rate, given their younger populations.

- Information provided in Section C of the application, while generally supportive of the increase in ambulatory surgical cases, does not support the projected increases in use rates. There is simply no statistical foundation for the extraordinary growth in surgical utilization projected in the application.
- While the development of an ASF will have a positive qualitative impact on local residents, particularly when coordinated with the existing healthcare system as UNC HCS proposes, this impact does not support the projected increase in utilization projected by the application. This is true for Alamance and Chatham counties, which already have access to ASFs in contiguous counties, as well as for Orange County, which will soon have access through the approved North Chapel Hill Surgery Center. As such, the proposed project does not support the growth rates projected in the application.

In Step 3, the application presents the projected utilization as reasonable, since the statewide use rate is held constant and the growth is only based on population growth. However, similar to the issues discussed above, a comparison of 2017 actual utilization

for each county with the 2024 projected utilization demonstrates the unreasonableness of the application’s approach:

<b>County</b>	<b>2017 Actual Ambulatory Surgical Cases</b>	<b>2024 Projected Ambulatory Surgical Cases</b>	<b>Projected Growth in Cases 2017-2018</b>	<b>CAGR 2017-2024</b>
Orange	6,158	9,879	3,721	7.0%
Alamance	11,071	11,421	350	0.4%
Chatham	3,061	5,536	2,475	8.8%

Source: 2017 cases from DHSR Healthcare Planning and Certificate of Need Section database; 2018 cases from application, page 104

When the projected population growth is applied to the actual number of ambulatory surgical cases performed in 2017, the following number of cases are projected:

<b>County</b>	<b>2017 Actual Ambulatory Surgical Cases</b>	<b>2024 Projected Ambulatory Surgical Cases</b>	<b>CAGR 2017-2024</b>
Orange	6,158	6,614	1.0%
Alamance	11,071	12,149	1.4%
Chatham	3,061	3,504	1.3%

Clearly the application’s projected growth in surgical cases, particularly for Orange and Chatham counties, are not supported by historical trends or reasonable assumptions regarding future changes.

*Unreasonable Market Share and Specialty Assumptions*

The application projects its market share by county in Step 4. These market share projections are problematic for several reasons. First, DUHS assumes that it can achieve these market share projections, in part because the proposed project will “establish Orange County’s first freestanding ASF.” See page 106. As discussed previously, that assumption is incorrect and demonstrates DUHS’ failure to reasonably consider the proposed North Chapel Hill Surgery Center, which is now approved. Next, DUHS assumes that it will have a higher market share for Alamance County than the other service area counties. While it states that this is based on the number of “lives touched” in Alamance County, it is reasonable to assume that this would already be driving a higher market share of Alamance County patients coming to existing DUHS facilities, including those in Durham County. In addition, the application makes it clear that these are incremental market share projections; thus, the historical number of “lives touched” by DUHS in Alamance County is irrelevant, since the patients already receiving surgery at a DUHS facility will not be served at the proposed ASF. The application simply, and unreasonably, assumes that a new Orange County ASF would increase DUHS’ market share in Alamance County more than in Orange County, which is without basis. What is more likely is that because Alamance County has a larger population, and therefore has a higher projected surgical case volume, DUHS chose to project a larger share of that population to make it



easier to achieve the necessary utilization for the project. That does not mean the assumption is reasonable, however.

The market share assumptions are also not supported by the “number and type of surgeons who will have privileges” at the proposed ASF. While many of the support letters from surgeons indicate an intent to perform cases at the ASF, ***neither the application nor the letters provide the source of these patients***. Specifically, it is important to note that all of the cases projected in the DUHS application are stated to be incremental to the system. In other words, the application ***projects no shift of historical patients or market share from its existing surgeons or facilities to the proposed ASF***. As a result, the number of patients or representative market share served by these surgeons is irrelevant for the projected ASF volume. Rather than expecting patients from Alamance, Orange or Chatham counties who have historically sought care at DUHS from these physicians to instead go to the proposed ASF for care, DUHS’ assumptions indicate that these patients will instead bypass the proposed facility and continue going to Durham or Wake counties for care. This assumption is not only unreasonable, it also indicates that in order for DUHS to achieve its projected utilization, these surgeons must increase their surgical case volumes with a sufficient number of patients from these three counties. It is incredible to believe that all of the supporting surgeons have sufficient capacity to add the significant volume of cases projected in the application at the new ASF, while also continuing to perform cases at facilities in Durham and Wake counties, as noted in many of the letters. It is more likely that DUHS will need to recruit additional surgeons to perform these cases. While the application speaks to the expectation that DUHS will continue to recruit, it does not tie that expectation to the projected utilization assumptions. This is particularly important since the application is specific as to the types of cases by specialty it projects to perform. The application fails to demonstrate that existing surgeons can reasonably be expected to increase their market share to meet these projections or that a sufficient number of surgeons from the specialties projected for the ASF will be recruited for that location.

While the application states that it will focus on ophthalmic surgery cases, it fails to establish a reasonable basis for this assumption, or that it can attain the projected utilization based on this assumption. The application contains information regarding the number of these cases currently performed at DUHS facilities, including those that reside in Orange County. However, the application specifically states that the projected market share and **case volume at the ASF will be incremental to the DUHS system**. In other words, as stated elsewhere, DUHS projects that none of the patients currently leaving Orange County to come to DUHS for surgery will instead go to the proposed ASF. In other words, DUHS does not propose to treat its existing Orange County patients closer to home. It projects to have those patients continue to travel outside the county, while treating an entirely different patient population in Orange County. Therefore, in order to achieve its projected market share and utilization, patients must come to the proposed ASF from another, non-DUHS facility. According to patient origin data for ambulatory surgery, patients from Orange County received surgery in the following counties:

<i>Service Location</i>	<i>2017 Patients</i>	<i>Percent of Total</i>
Durham	3,100	50.3%
Orange	2,450	39.8%
Wake	357	5.8%
Alamance	144	2.3%
Other	107	1.7%
<b>Total</b>	<b>6,158</b>	<b>100.0%</b>

Source: DHSR Health Planning and Certificate of Need Section Ambulatory Surgery Data

As shown, the majority of patients traveled to Durham County for care, followed by those that remained in Orange County. The same database shows where within Durham County patients received their care:

<i>Service Location</i>	<i>2017 Patients</i>	<i>Percent of Total</i>
Duke University Hospital	1,426	46.0%
Duke Regional Hospital	249	8.0%
Davis Ambulatory Surgery Center	1,010	32.6%
NC Specialty Hospital	415	13.4%
<b>Total</b>	<b>3,100</b>	<b>100.0%</b>

Source: DHSR Health Planning and Certificate of Need Section Ambulatory Surgery Data

Note that the first three service locations are DUHS facilities; thus, only 415 went to non-DUHS facilities in Durham County. Since the application states that the proposed patients represent incremental cases to DUHS, the patients that historically had their care at a DUHS facility are not the source of the projected patient volume for the proposed ASF. Although data are not available for cases by specialty and by county of origin, the 2018 Hospital License Renewal Application (HLRA) for NC Specialty Hospital, Table 9.d on page 12, shows that 344 of its 3,724 ambulatory surgical cases, or nine percent, were eye cases. It is reasonable to assume that approximately nine percent of the Orange County patients, or 37 patients, would also be eye surgery patients.

As shown in the previous table, 2,450 Orange County patients had ambulatory surgery in Orange County. As the only existing surgical provider in the county, those patients received care at UNC Hospitals. As shown in table 9.d on page 12 of its HLRA, the combined total number of eye ambulatory cases provided in Orange County was only 83 cases. Thus, the two largest sources of non-DUHS providers for eye surgery performed approximately 120 ambulatory cases on Orange County patients in 2017. Simply put, there is an insufficient base of non-DUHS patients from which to draw that would support the application's assumption that all of the projected volume for the ASF is new, incremental volume to DUHS.

In summary, the information presented in the application regarding need for the proposed project does not support the utilization projections nor does it demonstrate

that it will increase access. Rather than projecting that it would improve access by serving its existing patients closer to home, DUHS projects to instead shift market share from other existing providers, certainly including UNC HCS, which is particularly unreasonable in light of the approval of North Chapel Hill Surgery Center. It is also apparent from the lack of discussion in Section E of shifting existing patient volume to the proposed facility in order to improve access that DUHS did not even consider this alternative to the proposed project.

**Based on these issues, the application should be found non-conforming with Criteria 1, 3, 4, 5, 6, and 18a, as well as the performance standards at 10A NCAC 14C .2103.**

4. The application fails to account for previously reported erroneous surgery data.

On page 22 of the application, DUHS presents its historical utilization for its existing Durham County facilities. While the total four-year compound annual growth rate represented by these facilities is 2.1 percent, the application omits several relevant facts from its analysis. First, it should be noted that the data for FY 2018 are significantly lower than what was presented in the 2018 Orange County application for the same time period, by approximately 2,000 cases (54,605 versus 56,624). While the application fails to explain these missing cases, clearly the growth in surgical cases at DUHS' Durham County facilities is lower than it had previously calculated. Most notably missing from the analysis in the instant application are surgical data for Duke Raleigh Hospital, which had previously been used in the 2018 application to support the growth in volume across DUHS. As the Agency is aware, Duke Raleigh Hospital erroneously reported its historical surgical utilization data, and when the correct data are included in the analysis, surgical utilization across the DUHS system has been minimal, particularly for outpatient surgery, the subject of this application. The following table shows the results of this analysis.

		2014	2015	2016	2017	2018	4-YR CAGR
DASF	OP Cases	4,406	4,869	5,164	5,277	5,877	7.5%
	IP Cases	16,920	17,344	17,151	17,989	18,300	2.0%
	OP Cases	22,292	23,728	22,642	22,575	22,215	-0.1%
DUH	Total Cases	39,212	41,072	39,793	40,564	40,515	0.8%
	IP Cases	3,697	3,865	3,765	4,539	4,632	5.8%
	OP Cases	2,899	2,995	2,981	3,352	3,581	5.4%
DRH	Total Cases	6,596	6,860	6,746	7,891	8,213	5.6%
DUHS Durham Facilities Total	IP Cases	20,617	21,209	20,916	22,528	22,932	2.7%
	OP Cases	29,597	31,592	30,787	31,204	31,673	1.7%
	Total Cases	50,214	52,801	51,703	53,732	54,605	2.1%
	IP Cases	3,586	3,616	4,389	4,094	3,328	-1.8%
	OP Cases	9,132	9,875	10,855	11,084	7,474	-4.9%
DRAH	Total Cases	12,718	13,491	15,244	15,178	10,802	-4.0%
	IP Cases	24,203	24,825	25,305	26,622	26,260	2.1%
DUHS Total	OP Cases	38,729	41,467	41,642	42,288	39,147	0.3%
	Total Cases	62,932	66,292	66,947	68,910	65,407	1.0%

Source: DUHS application, DUHS 2018 LRAs.

The figures in red indicate changes in data from the 2018 application. As shown, total growth across the DUHS system has been only 1.0 percent, with outpatient surgery growing a mere 0.3 percent. This analysis is important to consider given the number of recent surgery projects initiated by DUHS, including a new ASF under development near the Durham/Wake County line, a new ASF in western Wake County, and additional operating rooms in Durham County. These additional developments, which may include volume shifting among various DUHS facilities, combined with the significant decline in surgical case volume at Duke Raleigh Hospital, indicate that the application is grossly inaccurate when it states on page 21, *“Duke facilities have experienced significant growth in surgery, especially outpatient surgery, across the DUHS system.”* As shown in the table above, surgery volume, especially outpatient surgery, across the DUHS system has not experienced significant growth, and, in fact, has grown less than the statewide growth rate of 0.76 percent shown on page 22 of the application. As a result, growth across the DUHS system is not supportive of the proposed project. Even if existing DUHS facilities are highly utilized, there is no projected shift in patients from these facilities, so existing DUHS utilization does not support the new ASF proposal. Moreover, given the application’s failure to explain or to document the reason for these significant changes in data, particularly when the data presented in the 2018 review were still under review by the Agency when these corrected data were presented, the Agency has no basis to determine whether the data presented in the 2019 application are accurate.

5. The application fails to demonstrate how the cost, design and means of construction represents the most reasonable alternative for the proposal.

In Section K.4(a), the application provides the basis for the projected construction cost for the proposed project. However, it fails to demonstrate how that cost is the most reasonable alternative for the proposed project. The application fails to provide any correlation between the estimated construction cost and the most reasonable alternative to develop the project. A similar error in the 2018 Buncombe County OR review<sup>3</sup> resulted in a finding of non-conformity for the application under Criterion 12. In that review, even though the applicant did provide its proposed energy saving features and otherwise identified the information about the proposed site, it was not conforming with Criterion 12.

**For similar reasons, the application should be found non-conforming with Criterion 12.**

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<sup>3</sup> See Agency Findings, page 12 at [https://www2.ncdhhs.gov/dhsr/coneed/decisions/2018/oct/1113\\_buncombe\\_or\\_find.pdf](https://www2.ncdhhs.gov/dhsr/coneed/decisions/2018/oct/1113_buncombe_or_find.pdf)

## **COMPARATIVE ANALYSIS**

In order to determine the most effective alternative to meet the identified need for three additional operating rooms in Orange County, UNC HCS reviewed and compared the following relevant factors in UNC HCS' and DUHS' applications:

- Conformity with Review Criteria
- Physician Support
- Patient Access to Multiple Surgical Services

UNC HCS believes that the factors presented above and discussed in turn below should be used by the Project Analyst in reviewing the competing applications. The factors are appropriate and/or have been used in previous competitive operating room review findings.

Please note that in the comparative factors below, dedicated C-Section operating rooms are excluded from the analysis as the financial results provided by the applicants do not relate to those rooms.

### **Conformity with Applicable Statutory and Regulatory Review Criteria**

As discussed in the application-specific comments above, DUHS is non-conforming with multiple statutory and regulatory review criteria. In contrast, the UNC HCS application is conforming with all applicable statutory and regulatory review criteria. Therefore, with regard to statutory and regulatory review criteria, the UNC HCS application is the most effective application.

### **Documentation of Physician Support**

The UNC HCS application and the DUHS application contain support letters from area physicians, including surgeons. However, as noted previously, the DUHS application fails to demonstrate that the surgeons will continue to perform surgeries on Orange County patients in facilities in Durham County, while dramatically increasing their market share of Orange and other counties. Further, the UNC HCS applications are the only ones that are conforming with all applicable statutory and regulatory review criteria. Therefore, the UNC HCS application is the most effective with regard to physician support.

### **Patient Access to Surgical Specialties**

Between the two applications, the UNC HCS application clearly proposes access to the greatest number of surgical specialties. The DUHS application states that it will provide surgery in five specialties, as shown in the table below.

**Proposed Services to be Offered**

	<i>UNC Hospitals</i>	<i>DUHS</i>
Cardiothoracic, excl. open heart	x	
Open Heart	x	
General Surgery	x	x
Neurosurgery (incl. spine)	x	
OB GYN (excl. C-Section)	x	
Ophthalmology	x	x
Oral Surgery/Dental	x	
Orthopedic (incl. spine)	x	x
ENT	x	x
Plastic Surgery	x	x
Podiatry	x	
Urology	x	
Vascular	x	
Other:	Anesthesia, Dermatology, GI, Nephrology, Pulmonary, Neurology	

Source: 2019 License Renewal Application for UNC Hospitals and Duke Health Orange ASF application.

It should be noted that the DUHS application makes it clear that the spine cases proposed in the application will be performed by orthopedists, not neurosurgeons. On that basis, they have been included with orthopedics in the table above. Thus, DUHS' application proposes only five surgical specialties and is the least effective application. Moreover, as explained above, the UNC HCS application is the only one that is conforming with all applicable statutory and regulatory review criteria. Therefore, the UNC HCS application is the most effective alternative with regard to providing patients with access to multiple surgical specialties.

**Access by Underserved Groups, Revenue and Operating Expenses**

In recent reviews, the Agency has determined that differences among the competing applications made comparisons of access to the underserved, revenue per case and expenses per case of little value. UNC HCS agrees that the competing applications are different in the scope and setting of surgical services they propose; however, the DUHS application is not approvable, standing alone, for the reasons discussed previously, and therefore it cannot be the more effective alternative under these factors.

## **SUMMARY**

In summary, UNC Hospitals proposes the only project that is conforming with all applicable review criteria and is the most effective alternative for expanding access to surgical services in Orange County. North Chapel Hill Surgery Center, a new freestanding ASF, has been approved for development in the county, and DUHS' proposed second ASF located within one-half mile of that facility would unnecessarily duplicate North Chapel Hill Surgery Center while limiting the development of much-needed surgical capacity on the UNC Hospitals Main Campus. For these reasons, the UNC HCS proposal should be approved and the DUHS proposal should be denied.