



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

August 11, 2015

Gary S. Qualls
PO Box 14210
Research Triangle Park, NC 27709-4210

No Review

Record #: 1684
Facility Name: Wilkes Regional Medical Center
FID #: 943561
Business Name: WRMC Hospital Operating Corp. d/b/a Wilkes Regional Medical Center
Business #: 2072
Project Description: Change Wilkes Regional Medical Center Ambulatory Surgical Facility's operating room from a separately licensed ambulatory surgical facility operating room to an operating room on Wilkes Regional Medical Center's hospital license as a result of the exempt acquisition of the facility
County: Wilkes

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of July 1, 2015 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

However, you need to contact the Agency's Acute and Home Care Licensure and Certification Section to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented in your correspondence. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the

Healthcare Planning and Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-715-4413

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



Gary S. Qualls
August 11, 2015
Page 2

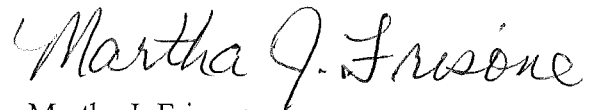
original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

Please contact this office if you have any questions. Also, in all future correspondence you should reference the Facility ID # (FID) if the facility is licensed.

Sincerely,

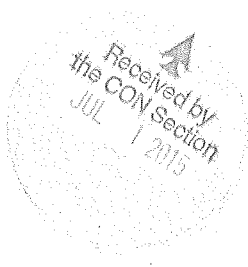


Julie Halatek
Project Analyst



Martha J. Frisone
Assistant Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, DHSR
Assistant Chief, Healthcare Planning



K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210
430 Davis Drive, Suite 400
Morrisville, NC 27560
T 919.466.1190 www.klgates.com

July 1, 2015

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

VIA HAND DELIVERY

Ms. Martha Frisone
Assistant Chief, Certificate of Need Section
Healthcare Planning and Certificate of Need
Section
Division of Health Service Regulation
Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: No Review Letter, Alternative Exemption Notice for Wilkes Regional Medical
Center Ambulatory Surgical Facility License No. AS0046

Dear Ms. Frisone:

The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "CON Section" or "Agency") that the WRMC Hospital Operating Corporation, d/b/a Wilkes Regional Medical Center ("WRMC") plans to absorb the separately licensed one (1) operating room multispecialty ambulatory surgical facility owned by the Town of North Wilkesboro d/b/a Wilkes Regional Medical Center Ambulatory Surgical Facility ("Wilkes ASC") into WRMC's hospital license. WRMC operates as Hospital License # H0153 and Wilkes ASC operates as ASC License # AS0046. See Exhibit 1 (2015 SMFP, pp. 56 and 75, respectively).

We are requesting that the Agency confirm that this change in the licensure status of Wilkes ASC is either not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law or (in the alternative) exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

I. NO REVIEW REQUEST

The proposed change in the licensure status is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). The absorption of an entire ambulatory surgical facility into a hospital's license is not included in the list of activities that constitute the development of a new institutional health service requiring a CON. Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON. See, e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating

Ms. Martha Frisone, Chief
July 1, 2015
Page 2

that “[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list”); see also Jackson v. A Woman’s Choice, Inc., 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) (“[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”).

Moreover, no operating rooms are being relocated as part of this transaction and no capital expenditures are being incurred to accomplish this change in licensure status.

II. EXEMPTION NOTICE

For the reasons described above, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is technically required. The change in licensure status does not involve an acquisition under the CON law. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

The General Assembly has chosen to exempt certain otherwise reviewable events from CON review, including the acquisition of an existing health service facility and the equipment owned by the health service facility at the time of the acquisition.¹ Under N.C. Gen. Stat. § 131E-176(9b), an ambulatory surgical facility is a “health service facility.”

Assuming that the proposed change in licensure status is deemed by the Agency to be an acquisition under the CON law, upon the change in the license to the hospital license of WRMC, WRMC will be acquiring an existing “health service facility,” including all equipment owned at the time of acquisition. After the change in licensure, WRMC will keep the operating room in its current location and operate it as part of WRMC’s acute care hospital.

Furthermore, should the Agency view the proposed change in licensure status as an acquisition, the change does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14)(o) and (16)(f1). Likewise, the proposal does not include the offering of any *per se* reviewable services.²

Accordingly, if the Agency views the change in licensure status as an acquisition under the CON law, the proposal is exempt under N.C. Gen. Stat. § 131E-184(a)(8) because it is the acquisition of an existing health service facility.

¹ See N.C. Gen. Stat. § 131E-184(a)(8).

² See N.C. Gen. Stat. § 131E-176(16)(f).

Ms. Martha Frisone, Chief

July 1, 2015

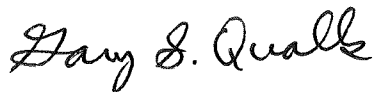
Page 3

III. CONCLUSION

In light of the foregoing, we request your written confirmation that the proposed change in the licensure status of Wilkes ASC and its one (1) operating room from a licensed ambulatory surgical facility to the hospital license of WRMC does not require or trigger CON review, or alternatively, is exempt from CON review. This proposal is only to absorb the facility and its one (1) operating room into the hospital license of WRMC.

Thank you for your assistance in regard to this matter. If you require additional information, please contact me at the above number as soon as possible.

Sincerely,

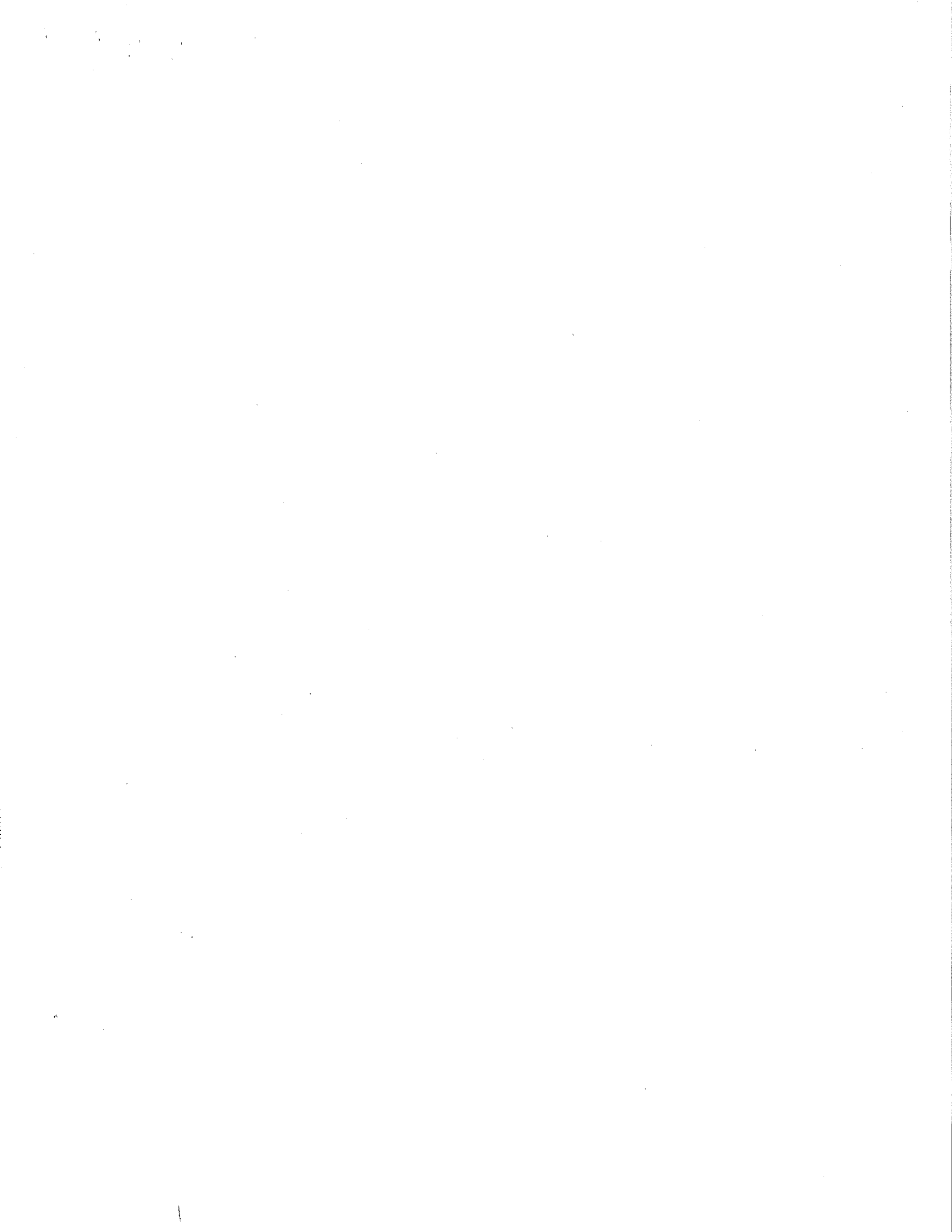


Gary S. Qualls

Ms. Martha Frisone, Chief
July 1, 2015
Page 4

Exhibits

1. 2015 SMFP Excerpts



EXHIBIT

1

STATE MEDICAL FACILITIES PLAN



DHSR

N.C. Division of Health Service Regulation

2015

Table 5A: Acute Care Bed Need Projections

2013 Utilization Data from Truven Health Analytics compiled by the Cecil B. Sheps Center for Health Services Research
 Target Occupancy Rates: ADC 1-99: 66.7%, ADC 100-200: 71.4%, ADC > 200 and <=400: 75.2%, ADC>400: 78%
 Target Occupancy Factors: ADC 1-99: 1.50, ADC 100-200: 1.40, ADC > 200 and <=400: 1.33, ADC>400: 1.28

A	B	C	D	E	F	G	H	I	J	K	L
Service Area	License Number	Facility Name	Licensed Acute Care Beds	Adjustments for CONs/ Previous Need	Truven Health Analytics 2013 Acute Care Days	County Growth Rate Multiplier	4 Years Growth Using County Growth Rate (= 2013 Days, if negative growth)	2017 Projected Average Daily Census (ADC)	2017 Beds Adjusted for Target Occupancy	Projected 2017 Deficit or Surplus (surplus shows as a "-")	2017 Need Determination
Wake	H0238	Duke Raleigh Hospital	186	0	34,236	-1.0038	34,236	94	141	-45	
Wake	H0065	Rex Hospital	433	56	106,742	-1.0038	106,742	292	389	-100	
Wake	H0199	WakeMed****	575	119	166,865	-1.0038	166,865	457	585	-109	
Wake	H0276	WakeMed Cary Hospital	156	22	42,513	-1.0038	42,513	116	163	-15	
Wake Total		WakeMed Total	731	141	209,378		209,378	574	748	-124	0
Washington	H0006	Washington County Hospital**	49	-37	1,583	-1.0025	1,583	4	7	-5	0
Washington Total			49	-37							0
Watauga	H0160	Blowing Rock Hospital (Closed)	0	-28		-1.0929	0	0	0	28	
Watauga	H0077	Watauga Medical Center	117	0	14,617	-1.0929	14,617	40	60	-57	
Watauga Total			117	-28							0
Wayne	H0257	Wayne Memorial Hospital	255	0	46,240	-1.0566	46,240	127	177	-78	
Wayne Total			255	0							0
Wilkes	H0153	Wilkes Regional Medical Center	120	0	15,583	1.0063	15,979	44	66	-54	
Wilkes Total			120	0							0
Wilson	H0210	Wilson Medical Center	271	-21	32,535	-1.0054	32,535	89	134	-116	
Wilson Total			271	-21							0
Yadkin	H0155	Yadkin Valley Community Hospital	22	0	652	-1.0377	652	2	3	-19	
Yadkin Total			22	0							0
		Grand Total All Hospitals	20,957	584	4,373,077		4,573,079				88

* Duke University Hospital is licensed for 14 acute care beds under Policy AC-3. The 14 beds are not counted when determining acute care bed need.

** The difference between Truven Health Analytics acute days of care data and the Division of Health Service Regulation Hospital License Renewal Application days of care data is beyond +/-5% discrepancy between the two data sources.

*** Pitt/Greene/Hyde/Tyrrell Service Area

**** Pursuant to Policy AC-4, a total of 37 nursing care beds were approved and converted to acute care beds.

***** The State Health Coordinating Council approved an adjusted need determination to reduce the number of beds from 84 to zero in Cumberland County.

^ Mercy Hospital was granted approval through a Declaratory Ruling on 11/2/2012 to be relicensed under Carolinas Medical Center.

o Novant Health Charlotte Orthopedic Hospital, per CON F-008765-11, is being relicensed under Novant Health Presbyterian Medical Center.

Projections based on four-year average county-specific growth rates, compounded annually over the next four years. Acute Care Days data from 2009, 2010, 2011, 2012 and 2013 were used to generate four-year growth rate.
 (ADC=Average Daily Census)

Table 6A: Operating Room Inventory (Combined Data for Hospitals and Ambulatory Surgical Facilities)

Case Data for 10/1/2012 through 9/30/2013 as reported on the 2014 Hospital and Ambulatory Surgical Facility License Renewal Applications

County	License	Facility Name	Inpatient Cases (Dedicated C-Section Excluded)	Ambulatory Cases	Inpatient ORs	Ambulatory ORs	Shared ORs	Excluded C-Section ORs	Excluded Trauma/ Burn ORs	CON Adjust- ments	CON Adjustments for Dedicated C-Section
Union	H0050	Carolinas Medical Center-Union	1,453	4,456	2	0	6	-2	0	0	0
		Union Total	1,453	6,458	2	3	6	-2	0	0	0
Vance	H0267	Maria Parham Medical Center	941	2,231	0	0	5	0	0	0	0
		Vance Total	941	2,231	0	0	5	0	0	0	0
Wake		Holly Springs Surgery Center	0	0	0	0	0	0	0	3	0
Wake	AS0029	Blue Ridge Surgery Center	0	5,949	0	6	0	0	0	0	0
Wake	AS0034	Raleigh Plastic Surgery Center	0	267	0	1	0	0	0	0	0
Wake	AS0048	Southern Eye Associates Ophthalmic Surgery Center	0	373	0	2	0	0	0	0	0
Wake	AS0129	Rex Surgery Center of Cary, LLC	0	5,108	0	4	0	0	0	0	0
Wake	AS0137	Capital City Surgery Center	0	5,276	0	6	0	0	0	2	0
Wake	AS0142	Triangle Orthopaedic Surgery Center***	0	632	0	2	0	0	0	0	0
Wake	AS0143	Raleigh Orthopaedic Surgery Center	0	411	0	4	0	0	0	0	0
Wake	H0065	Rex Hospital	7,269	15,993	3	3	24	-3	0	0	0
Wake	H0199	WakeMed	6,902	11,441	7	4	16	-3	-1	-2	1
Wake	H0238	Duke Raleigh Hospital	3,844	10,394	0	0	15	0	0	0	0
Wake	H0276	WakeMed Cary Hospital	2,042	4,463	2	0	9	-2	0	0	0
		Wake Total	20,057	60,307	12	32	64	-8	-1	3	1
Washington	H0006	Washington County Hospital	0	197	0	0	2	0	0	0	0
		Washington Total	0	197	0	0	2	0	0	0	0
Watauga	H0077	Watauga Medical Center	809	3,476	1	0	6	-1	0	0	0
Watauga	H0160	Blowing Rock Hospital (Closed)	0	0	0	0	1	0	0	0	0
		Watauga Total	809	3,476	1	0	7	-1	0	0	0
Wayne	H0257	Wayne Memorial Hospital	2,588	7,184	1	2	10	-1	0	1	0
		Wayne Total	2,588	7,184	1	2	10	-1	0	1	0
Wilkes	AS0046	Wilkes Regional Medical Center ASC	0	725	0	1	0	0	0	0	0