



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

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Ambassador (Ret.)  
Secretary DHHS

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Division Director

August 11, 2015

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

**Exempt from Review – Acquisition of Facility**

**Record #:** 1685  
**Facility Name:** Wilkes Regional Medical Center Ambulatory Surgical Facility  
**Type of Facility:** Ambulatory Surgical Facility  
**FID #:** 943560  
**Acquisition by:** WRMC Hospital Operating Corp. d/b/a Wilkes Regional Medical Center  
**Business #:** 2072  
**County:** Wilkes

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your letter of July 1, 2015, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, WRMC Hospital Operating Corp. d/b/a Wilkes Regional Medical Center may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Agency's Acute and Home Care Licensure and Certification Section to obtain instructions for changing ownership of the existing facility. Note that pursuant to G.S. 131E-181(b): *"A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need."*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

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

**Healthcare Planning and Certificate of Need Section**

www.ncdhhs.gov

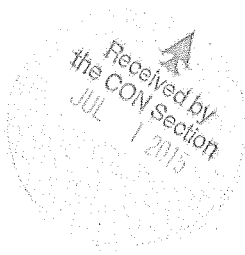
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July 1, 2015

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**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

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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.<sup>1</sup> 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.<sup>2</sup>

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.

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

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

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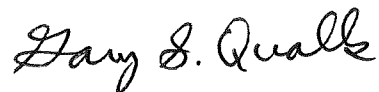
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**III. CONCLUSION**

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,

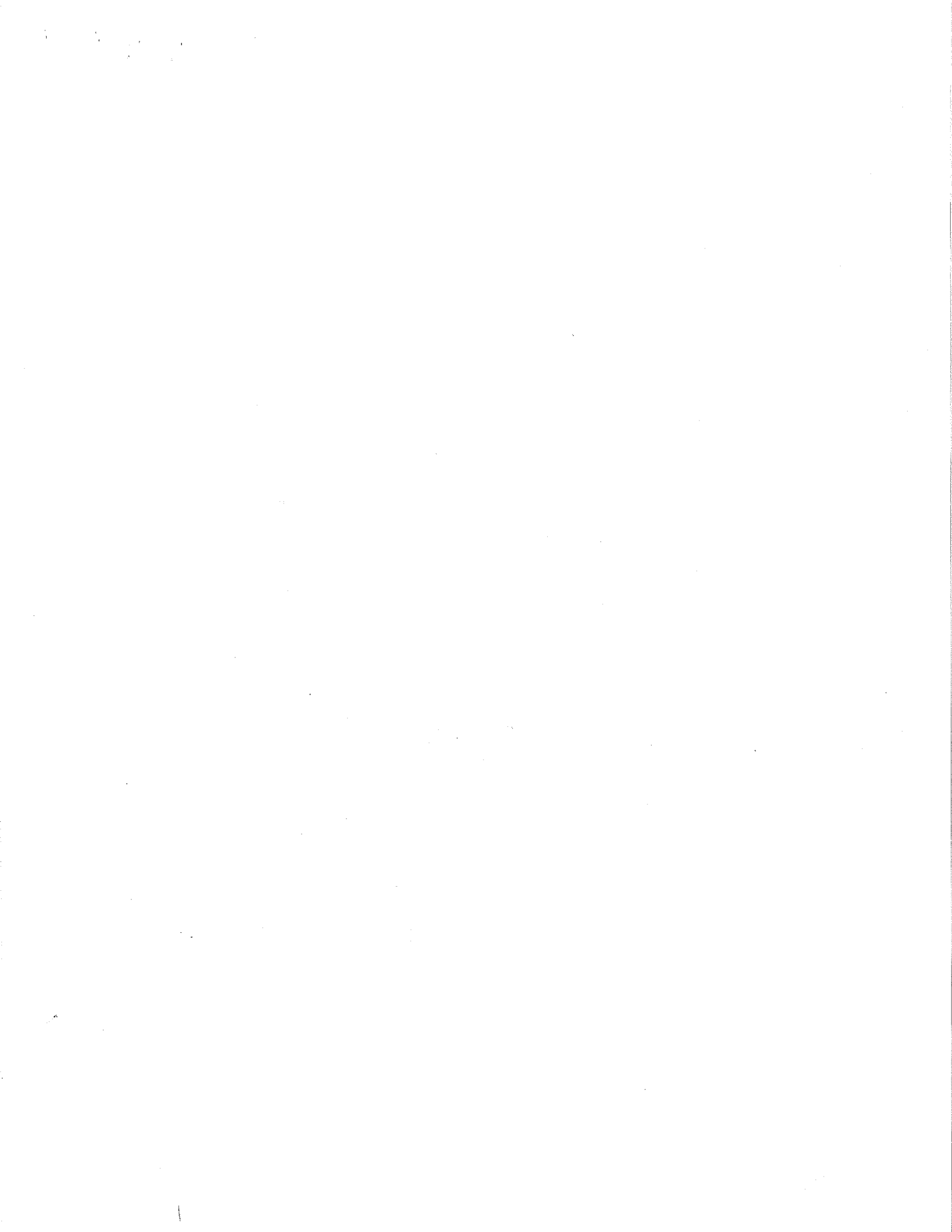


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**Exhibits**

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	
<b>Wake Total</b>		<b>WakeMed Total</b>	<b>731</b>	<b>141</b>	<b>209,378</b>		<b>209,378</b>	<b>574</b>	<b>748</b>	<b>-124</b>	<b>0</b>
Washington	H0006	Washington County Hospital**	49	-37	1,583	-1.0025	1,583	4	7	-5	<b>0</b>
<b>Washington Total</b>			<b>49</b>	<b>-37</b>							<b>0</b>
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	
<b>Watauga Total</b>			<b>117</b>	<b>-28</b>							<b>0</b>
Wayne	H0257	Wayne Memorial Hospital	255	0	46,240	-1.0566	46,240	127	177	-78	
<b>Wayne Total</b>			<b>255</b>	<b>0</b>							<b>0</b>
Wilkes	H0153	Wilkes Regional Medical Center	120	0	15,583	1.0063	15,979	44	66	-54	
<b>Wilkes Total</b>			<b>120</b>	<b>0</b>							<b>0</b>
Wilson	H0210	Wilson Medical Center	271	-21	32,535	-1.0054	32,535	89	134	-116	
<b>Wilson Total</b>			<b>271</b>	<b>-21</b>							<b>0</b>
Yadkin	H0155	Yadkin Valley Community Hospital	22	0	652	-1.0377	652	2	3	-19	
<b>Yadkin Total</b>			<b>22</b>	<b>0</b>							<b>0</b>
<b>Grand Total All Hospitals</b>			<b>20,957</b>	<b>584</b>	<b>4,373,077</b>		<b>4,573,079</b>				<b>88</b>

\* 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 Adjustments	CON Adjustments for Dedicated C-Section
Union	H0050	Carolinas Medical Center-Union	1,453	4,456	2	0	6	-2	0	0	0
		<b>Union Total</b>	<b>1,453</b>	<b>6,458</b>	<b>2</b>	<b>3</b>	<b>6</b>	<b>-2</b>	<b>0</b>	<b>0</b>	<b>0</b>
Vance	H0267	Maria Parham Medical Center	941	2,231	0	0	5	0	0	0	0
		<b>Vance Total</b>	<b>941</b>	<b>2,231</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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
		<b>Wake Total</b>	<b>20,057</b>	<b>60,307</b>	<b>12</b>	<b>32</b>	<b>64</b>	<b>-8</b>	<b>-1</b>	<b>3</b>	<b>1</b>
Washington	H0006	Washington County Hospital	0	197	0	0	2	0	0	0	0
		<b>Washington Total</b>	<b>0</b>	<b>197</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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
		<b>Watauga Total</b>	<b>809</b>	<b>3,476</b>	<b>1</b>	<b>0</b>	<b>7</b>	<b>-1</b>	<b>0</b>	<b>0</b>	<b>0</b>
Wayne	H0257	Wayne Memorial Hospital	2,588	7,184	1	2	10	-1	0	1	0
		<b>Wayne Total</b>	<b>2,588</b>	<b>7,184</b>	<b>1</b>	<b>2</b>	<b>10</b>	<b>-1</b>	<b>0</b>	<b>1</b>	<b>0</b>
Wilkes	AS0046	Wilkes Regional Medical Center ASC	0	725	0	1	0	0	0	0	0