



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

Pat McCrory  
Governor

Richard O. Brajer  
Secretary DHHS

Mark Payne  
Assistant Secretary for Audit and  
Health Service Regulation

July 12, 2016

Denise Gunter  
380 Knollwood Street, Suite 530  
Winston-Salem, NC 27103

**No Review**

**Record #:** 1982  
**Facility Name:** Atlantic Surgicenter, LLC  
**FID #:** 040149  
**Business Name:** Atlantic Surgicenter, LLC  
**Business #:** 117  
**Project Description:** Transfer 100% ownership interest to New Hanover Regional Medical Center  
**County:** New Hanover

Dear Ms. Gunter:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of July 7, 2016 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](http://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


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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,



Tanya S. Rupp  
Project Analyst



Martha J. Frisone,  
Assistant Chief, Certificate of Need

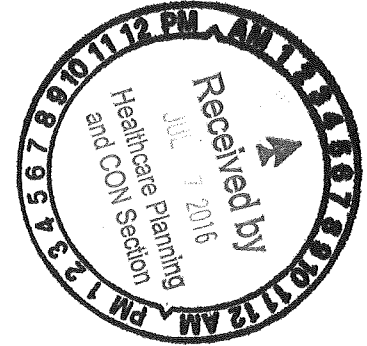
cc: Construction Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR  
Paige Bennett, Assistant Chief, Healthcare Planning, DHSR

# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
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Denise M. Gunter  
Tel: 336.774.3322  
Fax: 336.774.3372  
denise.gunter@nelsonmullins.com

July 7, 2016



## Hand Delivered

Martha J. Frisone  
Assistant Chief  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Certificate of Need Section  
809 Ruggles Drive  
Raleigh, North Carolina 27603

Re: *Busid 117/NR 1982*  
Atlantic Surgicenter, LLC  
Project I.D.: O-6984-04 (original CON) and O-7760-06 (cost overrun)  
County: New Hanover  
HSA: V  
FID: 040149

Dear Ms. Frisone:

Atlantic Surgicenter, LLC ("Atlantic") is an ambulatory surgery center ("ASC") with four operating rooms located at 9104 Market Street in Wilmington, North Carolina. The ASC has been in operation since November 2007. Atlantic is a joint venture limited liability company with two members: New Hanover Regional Medical Center ("NHRMC") and Wilmington Physicians, LLC ("Physicians"). When Atlantic was formed, NHRMC owned 40% of the membership interests and the Physicians owned 60% of the membership interests. Over time, through additional capital contributions, NHRMC's ownership interest in Atlantic has increased to approximately 46% with the Physicians now owning approximately 54% of the membership interests in Atlantic.

The ASC was originally operated as a freestanding ASC. Due to changes in reimbursement, NHRMC and the Physicians decided to convert the ASC to a hospital outpatient department ("HOPD") of NHRMC. In September 2012, Atlantic requested and received a material compliance determination that the conversion to HOPD status was in

Martha J. Frisone  
July 7, 2016  
Page 2

material compliance with the representations in the CONs issued for Atlantic. The material compliance request and the material compliance determination are attached as Exhibits A and B, respectively. Exhibit A contains the CONs issued for the ASC.

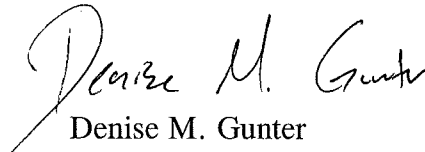
The Physicians have now decided to sell their membership interests in Atlantic to NHRMC, so NHRMC will own 100% of Atlantic. The holders of the CONs (Atlantic and SENCA Properties, LLC) will not change. The location of the ASC will not change. The number of ORs in the ASC will not change. The scope of services provided in the ASC will not change. The only change proposed is to reconfigure the membership interests of Atlantic.

The Department has previously determined that acquisition of membership interests in a limited liability company does not require a CON. *See, e.g.,* Exhibit C and examples cited therein.

Since NHRMC's proposed acquisition of the Physicians' membership interests will not impact the holders of the CON, the location of the ASC, the number of ORs in the ASC or the scope of services provided in the ASC, we respectfully request the CON Section's written confirmation that NHRMC's acquisition of the Physicians' membership interests in Atlantic is in material compliance with the CONs issued for Project I.D. No. O-6984-04 and Project I.D. No. O-7760-06.

Thank you for your time and consideration.

Sincerely,

  
Denise M. Gunter

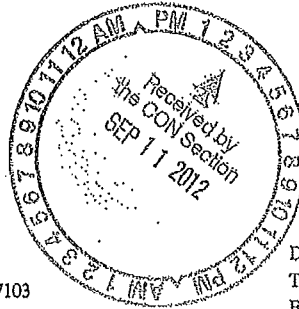
*w/powson*  


Enclosures

Exhibit A

# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
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[denise.gunter@nelsonmullins.com](mailto:denise.gunter@nelsonmullins.com)

September 11, 2012

## Hand Delivered

Craig R. Smith, Chief  
Certificate of Need Section  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, North Carolina 27603

Re: Material Compliance Determination for Project I.D. No. O-6984-04 and Project I.D. No. O-7760-06/Atlantic Surgicenter, LLC/New Hanover County/Health Service Area V

Dear Craig:

Atlantic Surgicenter, LLC ("Atlantic") owns and operates a four-operating room ambulatory surgery center ("ASC") located at 9104 Market Street in Wilmington, New Hanover County, North Carolina (the "Center"). The CONs for this facility are attached as Exhibit A.

Atlantic is a joint venture between New Hanover Regional Medical Center ("NHRMC") and Wilmington Physicians, LLC (the "Physicians"). When Atlantic was formed, NHRMC owned 40% of the joint venture and the Physicians owned 60% of the joint venture. Over time, through additional capital contributions, NHRMC's ownership interest in Atlantic has increased to approximately 46% with the Physicians now owning approximately 54%. The Center opened in November 2007.

The Center is one of two ASCs in New Hanover County, and it is the only ASC in northern New Hanover County. According to its 2012 Ambulatory Surgical Facility License Renewal Application, a copy of which is attached as Exhibit B, the Center served patients from a broad geographic area, including New Hanover County, Pender County, Brunswick County, Bladen County, Columbus County, Onslow County and Jones County. Most of these counties have no ASCs.

~#4839-2143-0033 v.2~

*With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia*

Craig R. Smith  
September 11, 2012  
Page 2

In the CON application for Project I.D. No. O-6984-04, the applicants represented on page 13:

It should be noted that SENCA Properties and Atlantic Surgicenter are new North Carolina health care entities; this CON application does not propose that New Hanover Regional operate the ambulatory surgery center. The ambulatory surgery center will be licensed and certified separate from New Hanover Regional.

The applicants further represented on page 34:

Atlantic Surgicenter will be organized and licensed as a four-operating room, freestanding ambulatory surgery center and will be operated independently of New Hanover Regional.

These pages are attached as Exhibit C.

Since the time the Center opened in late 2007, Atlantic has operated consistently with these representations. Changes in reimbursement rates after the CON was issued in 2004 have dramatically altered the landscape with respect to free-standing ASCs. The Centers for Medicare and Medicaid Services ("CMS") has lowered the reimbursement rates for most of the procedures performed in the ASC setting.

Despite this change in circumstances, the Physicians and NHRMC remain strongly committed to providing outpatient surgery in New Hanover County and believe that the Center offers a valuable service to the community and to the broader region of southeastern North Carolina. Yet economic realities have caused the Physicians and NHRMC to evaluate various options. To ensure the long-term economic viability of the Center, the Physicians and NHRMC have determined that the only feasible option is to make the Center a hospital outpatient department ("HOPD") of NHRMC. Thus, the Center will no longer be independent of NHRMC.<sup>1</sup> It will be licensed as part of NHRMC. As part of becoming an HOPD, Medicare requires that the clinical staff at the Center be employees of NHRMC; all other personnel will be employed by Atlantic.

Despite this change, there will be no change to the location of the Center, the scope of services offered at the Center or the number of operating rooms at the Center. Ownership of the Center will remain unchanged. The holders of the CON will not change. Atlantic will still lease the building from SENCA Properties, LLC, which was the co-applicant for the CON. Atlantic will continue to be the owner of most of the equipment in the Center and the

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<sup>1</sup> It should also be noted that Surgery Consultants of America, Inc., the original manager of the ASC, is no longer managing the ASC. SCA's contract was for three years and the contract has since expired. There is no longer a management contract for the ASC.

Craig R. Smith  
September 11, 2012  
Page 3

employer of the administrative staff in the Center. Through a Facility and Services Agreement, Atlantic will allow NHRMC to utilize the building which houses the Center, the equipment in the Center and Atlantic's administrative personnel. This transaction does not involve any activities that would constitute a "new institutional health service" as that term is defined in N.C. Gen. Stat. § 131E-176(16).

While patient co-pays are likely to increase once the Center becomes an HOPD, the Center will also be subject to NHRMC's charity care and medication assistance policies. Copies of these policies are attached as Exhibits D and E. These policies do not currently apply to the Center. NHRMC believes that these policies offer significant patient benefits. For example, as reflected in the charity care policy (Exhibit D):

As a non-profit, charitable, community-based healthcare provider, NHRMC will provide medically necessary services for a reduced charge or no charge to patients who meet the specific criteria defined herein. These criteria are objectively determined and shall be consistently applied. New Hanover Regional Medical Center uses 200% of the Federal Poverty Guidelines and other screening criteria to qualify patients for Financial Assistance.

See Exhibit D, page 1. As illustrated on page 6 of Exhibit D, a family of 4 with an income of \$46,100 is eligible for a 100% write off of charges. If family income is between 201% and 250% of the federal poverty guideline, the patient is eligible for a 50% reduction in charges. According to NHRMC's audited financial statements, in FY 2011, NHRMC provided approximately \$47,035,000 in charity care, up from \$42,332,000 in FY 2010.

The Medication Assistance Policy (Exhibit E) provides up to 30 days of medication to those outpatients who are unable to pay for their medications. Combined, NHRMC believes these policies will enhance access to outpatient surgery in New Hanover County and the broader region of southeastern North Carolina.

The Department has approved similar types of changes in the recent past. For example, in November 2011, the Department issued a declaratory ruling to Wayne Memorial Hospital and Wayne ASC allowing them to develop an additional operating room inside the hospital. A copy of this ruling is attached as Exhibit F. Originally, the operating room was planned to be located in an ASC on the campus of the hospital along with two operating rooms relocated from the hospital. As in this case, changes in reimbursement rates no longer made a freestanding ASC financially viable. The Department approved this change.

In August 2012, the Department issued a declaratory ruling to The Charlotte Mecklenburg Hospital Authority d/b/a Carolinas Medical Center-NorthEast ("CMC-NE"). A copy of this ruling is attached as Exhibit G. In that case, CMC-NE had planned to develop two new endoscopy rooms on an outpatient campus in Harrisburg. Due to difficulties encountered at the proposed site and for other reasons, CMC-NE subsequently determined that

Craig R. Smith  
September 11, 2012  
Page 4

it would be preferable to develop the endoscopy rooms inside CMC-NE, in Concord. The Department also approved this request. ;

We believe that the Center's change to HOPD status should also be found in material compliance with the CONs issued for this project. The location, ownership, number of operating rooms and scope of services will not change as a result of Atlantic becoming an HOPD of NHRMC. The application of NHRMC's charity care and medications policies are a significant patient benefit and will ameliorate an increase in charges as a result of the Center's conversion to HOPD status.

The Center's change to HOPD status is scheduled to be effective on October 1, 2012. In advance of that date, and as soon as reasonably possible, we respectfully request the CON Section's written confirmation that the conversion of the Center to an HOPD of NHRMC is in material compliance with the CONs issued for Project I.D. No. O-6984-04 and Project I.D. No. O-7760-06.

Please let me know if the CON Section has any questions or needs any additional information.

With best personal regards.

Sincerely,

*Denise M. Gunter*  
Denise M. Gunter 

Enclosures



Exhibit A

**STATE OF NORTH CAROLINA**  
Department of Health and Human Services  
Division of Facility Services

**CERTIFICATE OF NEED**

for

**Project Identification Number O-6984-04  
FID#040149**

**ISSUED TO: SENCA Properties, LLC (Lessor)  
d/b/a Atlantic Surgicenter (Lessee)  
1721 New Hanover Medical Park  
Wilmington, NC 28403**

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16). The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

**SCOPE: SENCA Properties, LLC (Lessor) and Atlantic Surgicenter (Lessee) shall establish an ambulatory surgical facility with four operating rooms/New Hanover County**

**CONDITIONS: See Reverse Side**

**PHYSICAL LOCATION: Atlantic Surgicenter, LLC  
7241 Market Street, Wilmington, NC 28411**

**MAXIMUM CAPITAL EXPENDITURE: \$6,844,980**

**TIMETABLE: See Reverse Side**

**FIRST PROGRESS REPORT DUE: April 15, 2005**

This certificate is effective as of the 14th day of December, 2004.

*Joe B. Hoffman*  
Chief, Certificate of Need Section  
Division of Facility Services

**CONDITIONS:**

1. SENCA Properties, LLC and Atlantic Surgicenter, LLC shall materially comply with all representations made in the certificate of need application.
2. SENCA Properties, LLC and Atlantic Surgicenter, LLC shall develop a new licensed ambulatory surgical facility with no more than four ambulatory surgical operating rooms.
3. SENCA Properties, LLC and Atlantic Surgicenter, LLC shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or that would otherwise require a certificate of need.
4. SENCA Properties, LLC and Atlantic Surgicenter, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance and compliance with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on August 31, 2004.

**TIMETABLE:**

Obtaining funds necessary to undertake project	September 15, 2004
Completion of final drawings and specifications	January 1, 2005
Contract Award	March 1, 2005
25% completion of construction	May 15, 2005
50% completion of construction	August 1, 2005
75% completion of construction	October 15, 2005
Completion of construction	December 1, 2005
Order Equipment	July 1, 2006
Operation of Equipment	January 1, 2006
Licensure of facility	January 1, 2006

STATE OF NORTH CAROLINA  
Department of Health and Human Services

Division of Facility Services

CERTIFICATE OF NEED

for

Project Identification Number O-7760-06

FID#040149

ISSUED TO: SENCA Properties, LLC (Lessor)  
701 Market Street  
Wilmington, NC 28401

Atlantic Surgicenter, LLC (Lessee)  
1721 New Hanover Medical Park  
Wilmington, NC 28403

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

**SCOPE:** Cost overrun on Project ID#O-6984-04/ SENCA Properties, LLC (Lessor) d/b/a Atlantic Surgicenter, LLC (Lessee) shall establish an ambulatory surgical facility with four operating rooms. The total capital cost for both projects is \$10,622,754 New Hanover County

**CONDITIONS:** See Reverse Side

**PHYSICAL LOCATION:** Atlantic Surgicenter  
9104 Market Street  
Wilmington, NC 28411

**MAXIMUM CAPITAL EXPENDITURE:** \$3,777,774

**TIMETABLE:** See Reverse Side

**FIRST PROGRESS REPORT DUE:** April 30, 2007

This certificate is effective as of the 27th day of February, 2007.

*Lee B. Hoffman by CR SAC*  
Chief, Certificate of Need Section  
Division of Facility Services

**CONDITIONS**

1. SENCA Properties, LLC and Atlantic Surgicenter, LLC shall materially comply with all representations made in Project I.D. #O-6984-04 and Project I.D. #O-7760-06. In those instances in which representations conflict, SENCA Properties, LLC and Atlantic Surgicenter, LLC shall materially comply with the last-made representation.
2. SENCA Properties, LLC and Atlantic Surgicenter, LLC shall materially comply with all conditions of approval on the certificate of need for Project I.D. # O-6984-04, except as specifically modified by the conditions of approval for Project I.D. # O-7760-06.
3. SENCA Properties, LLC and Atlantic Surgicenter, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on February 13, 2007.

**TIMETABLE**

50% completion of construction	January 30, 2007
75% completion of construction	April 30, 2007
Completion of construction	August 30, 2007
Order Equipment	January 30, 2007
Operation of Equipment	October 1, 2007
Licensure of facility	October 1, 2007
Certification of facility	October 1, 2007

Exhibit B



COPY

North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Acute and Home Care Licensure and Certification Section  
2712 Mail Service Center • Raleigh, North Carolina 27699-2712  
<http://www.ncdhs.gov/dhsr/>

Beverly Hayes Perdue, Governor  
Lanier M. Cansler, Secretary

Drexdal Pratt, Director

Azzie Y. Conley, Chief  
Phone: 919-855-4620  
Fax: 919-715-8476

**MEMORANDUM**

TO: Ambulatory Surgical Facilities  
Atlantic Surgicenter, LLC -- Wilmington

FROM: Azzie Y. Conley, RN, Section Chief

SUBJECT: 2012 Ambulatory Surgical Facility License Renewal Application

**PLEASE READ CAREFULLY**

Enclosed is your 2012 License Renewal Application. Please complete this application and return the original plus ONE COPY no later than December 1, 2011 to the address below.

Acute and Home Care  
Licensure and Certification Section *or Overnight mail address*  
2712 Mail Service Center  
Raleigh, N C 27699-2712

Acute and Home Care  
Licensure and Certification Section  
1205 Umstead Drive  
Raleigh, N C 27603.

Data on file with the Division indicates that your facility/entity is an Ambulatory Surgical Facility (ASF) with 4 Surgical/Endoscopy room(s). Your annual licensure fee, as authorized by Sections 41.2(a) - 41.2(i) of Session Law 2005-622, is \$1,150.00. This amount is comprised of a base fee of \$850.00 plus an additional per Surgical/Endoscopy room fee of \$75.00.

Payment should be in the form of check, money order or certified check and must be payable to "NC - DHSR." Payment should include the facility's license number and be submitted with your license renewal application. A separate check is required for each licensed entity.

Your completed renewal application and the license renewal fee must be received by December 1, 2011 to ensure your license is renewed with an effective date of January 1, 2012. Failure to possess a valid license may compromise your facility's ability to operate and/or adversely impact its funding sources.

A portion of this application (pp. 1-2) contains preprinted information from our data systems, based on your last ASF license renewal application or the most recent information that has been reported to this office. If any of this preprinted information has changed, mark through the incorrect information with a RED pen and write in the correct information. Prior to amending the D/B/A or legal entity, please contact this office for further instructions. Please review the "ownership disclosure" section carefully to verify

--- continued

North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Acute and Home Care Licensure and Certification Section  
1205 Umstead Drive, 2712 Mail Service Center  
Raleigh, N.C. 27699-2712  
Telephone: (919) 855-4620 Fax: (919) 715-3073

For Official Use Only  
License # AS0103  
Medicare Provider #:  
Computer: 070498  
PC \_\_\_\_\_ Date \_\_\_\_\_  
Total License Fee..... \$1,150.00

2012  
**AMBULATORY SURGICAL FACILITY  
LICENSE RENEWAL APPLICATION**

Legal Identity of Applicant: Atlantic Surgicenter, LLC  
(Full legal name of corporation, partnership, individual, or other legal entity owning the enterprise or service.)

Doing Business As  
(d/b/a) name(s) under which the facility or services are advertised or presented to the public:

PRIMARY: Atlantic Surgicenter, LLC

Other: \_\_\_\_\_

Other: \_\_\_\_\_

Facility Mailing Address: 9104 market Street  
Wilmington, NC 28411

Facility Site Address: 9104 Market Street  
Wilmington, NC 28411

County: New Hanover  
Telephone: (910)686-2840  
Fax: (910)452-8133

Administrator/Director: Jose Yong  
Title: Administrator

Chief Executive Officer (PRINT OR TYPE): Jose A. Yong  
Title: Administrator  
(Designated agent (individual) responsible to the governing body (owner) for the management of the licensed facility)

Name of the person to contact for any questions regarding this form:

Name: Jose A. Yong

Telephone: 910 686-2846

E-Mail: ~~pachurchwell@belleouth.net~~ tyong@atlanticsurgicenter.com

DHSR-4137 (08/2011)

"The N.C. Department of Health and Human Services does not discriminate on the basis of race, color, national origin, religion, age, or disability in employment or the provision of services."

All responses should pertain to October 1, 2010 thru September 30, 2011.

**Ownership Disclosure** (Please fill in any blanks and make changes where necessary.)

1. What is the name of the legal entity with ownership responsibility and liability?

Owner: Wilmington Physicians LLC, New Hanover Regional CTR  
National Provider Identifier (NPI):  
Federal Employer ID#: 1942334065  
20-0714432  
Street/Box: 9104 market Street  
City: Wilmington State: NC Zip: 28411  
Telephone: (910)686-2840 Fax: (910)763-9971  
CEO: Mr. Jack Barto

Is your facility part of a Health System? [i.e., are there other ambulatory surgical facilities, hospitals, nursing homes, home health agencies, etc. owned by your facility, a parent company or a related entity?]

Yes  No

a. Legal entity is:  For Profit  Not For Profit

b. Legal entity is:  Corporation  Limited Liability Corporation  Partnership  
 Proprietorship  Limited Liability Partnership  Government Unit

c. Does the above entity (individual, partnership, corporation, etc.) LEASE the building from which services are offered?  Yes  No

If "YES", name and address of building owner:

Seneca Properties, LLC

2. Is the business operated under a management contract? ~~Yes~~ No

If 'Yes', name and address of the management company

Name: Surgery Consultants of America, Inc.  
Street/Box: 12670 Creel Side Lane Suite 401  
City: Fort Myers State: FL Zip: 33919  
Telephone: (239)482-1771

3. Accreditation: (Please fill in any blanks and change where necessary. If you are deemed, please attach a copy of the deeming letter from the accrediting agency. If surveyed within the last twelve (12) months, attach or mail a copy of your accreditation report and grid to this office. If applicable, attach copy of plan of correction.)

- a. Is this facility TJC accredited?  Yes  No Expiration Date: \_\_\_\_\_
- b. Is this facility AAAHC accredited?  Yes  No Expiration Date: 6-30-14
- c. Is this facility AAAASF accredited?  Yes  No Expiration Date: \_\_\_\_\_
- d. Is this facility DNV accredited?  Yes  No Expiration Date: \_\_\_\_\_
- e. Are you a Medicare deemed provider?  Yes  No

All responses should pertain to October 1, 2010 thru September 30, 2011.

**Reporting Period:** All responses should pertain to **October 1, 2010 to September 30, 2011.**

**Meals:**

a. Are meals provided for patients?  Yes  No

b. If 'Yes', describe arrangements for this service: \_\_\_\_\_

c. If 'Yes', what is the date of the last sanitation inspection: \_\_\_\_\_

d. Date of last Fire Marshal inspection: 7-19-2010

e. Date inspected by the Health Department: \_\_\_\_\_

**Hours:**

Indicate the number of hours (e.g., 8 hrs) that the facility is routinely open for surgery and recovery each day:  
(Use a zero "0" if not open)

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
0						0

**Anesthesia:**

a. Qualifications of persons administering anesthesia (check one or more)  
 Anesthesiologist  Other M.D.  CRNA  RN  DDS

b. Name of Anesthesia Group: American Anesthesiology

c. Provide information regarding the use and storage of flammable anesthesia: 0

**Other Information Needed:**

a. Name of laboratory and pathology services utilized: Solotas Lab Partners

b. Name of hospital with which transfer agreement has been made: New Hanover Regional Medical Center

c. Describe arrangements for emergency transportation of patients from the facility:  
The local EMS company, Vitalink, is contacted & given the information and when they come to the facility to transport the patient to the hospital.

d. Do you provide recovery care services overnight?  Yes  No

e. Are abortions performed in this facility?  Yes  No

If 'Yes', please give the number of abortions performed during the reporting period: \_\_\_\_\_



All responses should pertain to October 1, 2010 thru September 30, 2011.

**Composition of Surgical Staff:**

Please indicate below the number of physicians credentialed to perform surgery in your ambulatory surgical program during the reporting period.

Surgical Specialist	Number
Anesthesiologist	24
Gastroenterologist	10
General Dentist	—
General Surgeon	10
Gynecologist	6
Neurologist	—
Obstetrician	—
Ophthalmologist	7
Oral Surgeon	—
Orthopedic Surgeon	13
Otolaryngologist	6
Plastic Surgeon	7
Podiatrist	5
Thoracic Surgeon	—
Urologist	7
Urologist/Cystoscopy	—
Vascular Surgeon	—
Other	—
<b>Total:</b>	<b>95</b>

Name of Chief of Staff: Robert Cortina MD / J. Holt Evans, MD

Name of Director of Nursing: Kathy Wines, RN, BSN, MHA, CNOR

All responses should pertain to October 1, 2010 thru September 30, 2011.

**Surgical Operating Rooms; Procedure Rooms; and Gastrointestinal Endoscopy Rooms, Cases and Procedures:**

A. Total Existing Licensed Surgical Operating Rooms: # 4  
Surgical Operating Rooms are defined as being built to meet specifications and standards for operating rooms specified by the Construction Section of the Division of Health Service Regulation and which are fully equipped to perform surgical procedures. Do not include those rooms listed in Part B. or C., which follow.

Additional CON approved surgical operating rooms pending development: # 0

CON Project ID Number(s) \_\_\_\_\_

• Total recovery room beds: # 12

B. Procedure Rooms (Excluding Operating Rooms and Gastrointestinal Endoscopy Rooms)  
 Report rooms, which are not equipped for or do not meet all the specifications for an operating room, that are used for performance of procedures other than Gastrointestinal Endoscopy procedures.

Total Procedure Rooms: # \_\_\_\_\_

C. Gastrointestinal Endoscopy Rooms, Cases and Procedures:

Is facility licensed for only endoscopy rooms with no surgical ORs? Yes  **No**  [circle one]

Report the number of *Gastrointestinal Endoscopy* rooms, and the Endoscopy cases and procedures performed in these rooms during the reporting period.

Total Existing Gastrointestinal Endoscopy Rooms: # \_\_\_\_\_

Additional CON approved GI Endoscopy Rooms pending development: # \_\_\_\_\_

CON Project ID Number(s) \_\_\_\_\_

Additional GI Endoscopy Rooms pending development pursuant to SB 714: # \_\_\_\_\_

	Number of Cases		Number of Procedures*	
	Inpatient	Outpatient	Inpatient	Outpatient
GI Endoscopy				
Non-GI Endoscopy				
Totals				

Count each patient as one case regardless of the number of procedures performed while the patient was in the GI endoscopy room.

\*As defined in 10A NCAC 14C .3901 "Gastrointestinal (GI) endoscopy procedure" means a single procedure, identified by CPT code or ICD-9-CM procedure code, performed on a patient during a single visit to the facility for diagnostic or therapeutic purposes.

All responses should pertain to October 1, 2010 thru September 30, 2011.

**Surgical and Non-Surgical Cases**

**NOTE:** Read the following instructions carefully.

**Surgical Cases by Specialty Area Table** - Enter the number of surgical cases by surgical specialty area in the chart below. Count each patient undergoing surgery as one case regardless of the number of surgical procedures performed while the patient was having surgery. Categorize each case into one specialty area -- the total number of surgical cases is an unduplicated count of surgical cases. Count all surgical cases, including surgical cases operated on in procedure rooms or in any other location.

Surgical Specialty Area	Cases
Cardiothoracic	—
General Surgery	810
Neurosurgery	—
Obstetrics and GYN	175
Ophthalmology	425
Oral Surgery	26
Orthopedics	1215
Otolaryngology	773
Plastic Surgery	575
Urology	47
Vascular	—
Other Surgeries (specify) (Podiatry)	20
Other Surgeries (specify)	—
<b>Total Surgical Cases</b>	<b>4066</b>

**Non-Surgical Cases by Category Table** - Enter the number of non-surgical cases by category in the table below. Count each patient undergoing a procedure or procedures as one case regardless of the number of non-surgical procedures performed. Categorize each case into one non-surgical category -- the total number of non-surgical cases is an unduplicated count of non-surgical cases. Count all non-surgical cases, including cases receiving services in operating rooms or in any other location, *except* do not count cases having endoscopies in GI Endoscopy rooms. Report cases having endoscopies in GI Endoscopy Rooms on page 5.

Non-Surgical Category	Cases
Pain Management	0
Cystoscopy	0
Non-GI Endoscopies (not reported on page 5)	0
GI Endoscopies (not reported on page 5)	1127
YAG Laser	0
Other (specify)	0

All responses should pertain to October 1, 2010 thru September 30, 2011.

Other (specify)	0
Other (specify)	0
<b>Total Non-Surgical Cases</b>	<b>1127</b>

**Average Operating Room Availability and Average Case Times:**

The Operating Room Methodology assumes that the average operating room is staffed 9 hours a day, for 260 days per year, and utilized at least 80% of the available time. This results in 1872 hours per OR per year. The Operating Room Methodology also assumes 1.5 hours for each Outpatient Surgery.

Based on your facility's experience, please complete the table below by showing the assumptions for the average operating room in your facility.

Average Hours per Day Routinely Scheduled for Use *	Average Number of Days per Year Routinely Scheduled for Use	Average "Case Time" ** in Minutes for Ambulatory Cases
9	261	48.95

\* (Use only Hours per Day routinely scheduled when determining. Example: 2 rooms @ 8 hours per day plus 2 rooms @ 10 hours per day equals 36 hours per day; divided by 4 rooms equals an average of 9 hours / per room / per day.)

\*\* "Case Time" = Time from Room Set-up Start to Room Clean-up Finish. Definition 2.4 from the "Procedural Times Glossary" of the AACD, as approved by ASA, ACS, and AORN. NOTE: This definition includes all of the time for which a given procedure requires an OR/PR. It allows for the different duration of Room Set-up and Room Clean-up Times that occur because of the varying supply and equipment needs for a particular procedure

**Reimbursement Source**

Primary Payer Source	Number of Cases
Self Pay/Indigent/Charity	136
Medicare & Medicare Managed Care	1595
Medicaid	339
Commercial Insurance	52
Managed Care	2091
Other (Specify) <u>WIC / Medicare</u>	59 / 918
<b>TOTAL</b>	<b>5193</b>

All responses should pertain to October 1, 2010 thru September 30, 2011.

**Patient Origin - Ambulatory Surgical Services**

Facility County: New Hanover

In an effort to document patterns of utilization of ambulatory surgical services in North Carolina's licensed freestanding ambulatory surgical facilities, you are asked to provide the county of residence for each patient (as reported on page 6) who had Ambulatory Surgery in your facility during the reporting period.

Total No. of Patients should match Total Surgical Cases from "Surgical Cases by Specialty Area" Table on page 6.

County	No. of Patients	County	No. of Patients	County	No. of Patients
1. Alamance		37. Gates		73. Person	
2. Alexander		38. Graham		74. Pitt	3
3. Alleghany		39. Granville	1	75. Polk	2
4. Anson		40. Greens		76. Randolph	
5. Ashe		41. Guilford	2	77. Richmond	
6. Avery		42. Halifax		78. Robeson	13
7. Beaufort		43. Harnett		79. Rockingham	1
8. Bertie		44. Haywood		80. Rowan	
9. Bladen	38	45. Henderson		81. Rutherford	1
10. Brunswick	402	46. Hertford		82. Sampson	31
11. Buncombe		47. Hoke	1	83. Scotland	1
12. Burke	1	48. Hyde		84. Stanly	
13. Cabarrus		49. Iredell		85. Stokes	1
14. Caldwell		50. Jackson	1	86. Surry	
15. Camden	1	51. Johnston		87. Swain	
16. Carteret	21	52. Jones	20	88. Transylvania	
17. Caswell		53. Lee		89. Tyrrell	
18. Catawba		54. Lenoir	5	90. Union	1
19. Chatham	1	55. Lincoln		91. Vance	3
20. Cherokee		56. Macon		92. Wake	5
21. Chowan		57. Madison		93. Warren	1
22. Clay	1	58. Martin		94. Washington	
23. Cleveland		59. McDowell		95. Watauga	3
24. Columbus	910	60. Mecklenburg	1	96. Wayne	5
25. Craven	210	61. Mitchell		97. Wilkes	
26. Cumberland	9	62. Montgomery		98. Wilson	
27. Currituck		63. Moore	2	99. Yadkin	
28. Dare		64. Nash		100. Yancey	
29. Davidson		65. New Hanover	1488		
30. Davie		66. Northampton		101. Georgia	7
31. Duplin	139	67. Onslow	1094	102. South Carolina	21
32. Durham		68. Orange		103. Tennessee	5
33. Edgecombe		69. Pamlico		104. Virginia	7
34. Forsyth		70. Pasquotank		105. Other States	44
35. Franklin		71. Pender	557	106. Other	3
36. Gaston		72. Perquimans		Total No. of Patients	4000

All responses should pertain to October 1, 2010 thru September 30, 2011.

Patient Origin –Gastrointestinal (GI) Endoscopy Services

Facility County: New Hanover

In an effort to document patterns of utilization of gastrointestinal endoscopy services in North Carolina's licensed freestanding ambulatory surgical facilities, you are asked to provide the county of residence for each patient who had a Gastrointestinal Endoscopy in your facility during the reporting period.

Total No. of Patients should match Total GI Endoscopy cases from the "Gastrointestinal Endoscopy Rooms, Cases and Procedures" Table on page 5 plus the Total GI Endoscopy cases from the "Non-Surgical Cases by Category" Table on page 6.

County	No. of Patients	County	No. of Patients	County	No. of Patients
1. Alamance		37. Gates		73. Person	
2. Alexander		38. Graham		74. Pitt	
3. Alleghany		39. Granville		75. Polk	
4. Anson		40. Greene		76. Randolph	
5. Ashe		41. Guilford		77. Richmond	
6. Avery		42. Halifax		78. Robeson	7
7. Beaufort		43. Harnett		79. Rockingham	
8. Bertie		44. Haywood		80. Rowan	
9. Bladen	10	45. Henderson		81. Rutherford	
10. Brunswick	120	46. Hertford		82. Sampson	8
11. Buncombe		47. Hoke		83. Scotland	
12. Burke		48. Hyde		84. Stanly	
13. Cabarrus		49. Iredell		85. Stokes	
14. Caldwell		50. Jackson		86. Surry	
15. Camden		51. Johnston		87. Swain	
16. Carteret	4	52. Jones		88. Transylvania	
17. Caswell		53. Lee		89. Tyrrell	
18. Catawba		54. Lenoir		90. Union	
19. Chatham		55. Lincoln		91. Vance	
20. Cherokee		56. Macon		92. Wake	2
21. Chowan		57. Madison		93. Warren	
22. Clay		58. Martin		94. Washington	
23. Cleveland		59. McDowell		95. Watauga	
24. Columbus	33	60. Mecklenburg		96. Wayne	1
25. Craven		61. Mitchell		97. Wilkes	
26. Cumberland		62. Montgomery		98. Wilson	
27. Currituck		63. Moore		99. Yadkin	
28. Dare		64. Nash		100. Yancey	
29. Davidson	1	65. New Hanover	490		
30. Davie		66. Northampton		101. Georgia	
31. Duplin	96	67. Onslow	75	102. South Carolina	
32. Durham		68. Orange	1	103. Tennessee	
33. Edgecombe		69. Pamlico		104. Virginia	
34. Forsyth		70. Pasquotank		105. Other States	
35. Franklin		71. Pender	277	106. Other	
36. Gaston		72. Perquimans		Total No. of Patients	1127

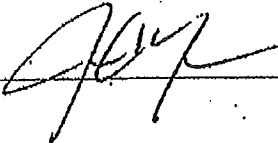
2012 License Renewal Application for Ambulatory Surgical Facility:  
Atlantic Surgicenter, LLC

License No: AS0103  
Facility ID: 070498

All responses should pertain to October 1, 2010 thru September 30, 2011.

This application must be completed and submitted with ONE COPY to the Acute and Home Care Licensure and Certification Section, Division of Health Service Regulation prior to the issuance of a 2012 Ambulatory Surgical Facility license.

**AUTHENTICATING SIGNATURE:** The undersigned submits application for licensure subject to the provisions of G.S. 131E-147 and Licensure Rules 10A NCAC 13C adopted by the Medical Care Commission, and certifies the accuracy of this information.

Signature:  Date: 10/26/2011

PRINT NAME & TITLE OF APPROVING OFFICIAL: Jose A. Yule ADMINISTRATOR

**Please be advised**, the licensure fee must accompany the completed application and be submitted to the Acute and Home Care Licensure and Certification Section, Division of Health Service Regulation, prior to the issuance of an ambulatory surgical facility license.

Exhibit C

Copy  
①-698404

**SENCA Properties, LLC**

and

**Atlantic Surgicenter, LLC**

**CERTIFICATE OF NEED APPLICATION**

**Ambulatory Surgery Center**

**Wilmington, NC**

**February 16, 2003**



11. Type of Ownership: Please check one of the following line items to describe the "ownership" of the applicant identified in Section I.1 of this application. Attach any documentation that will clearly identify the owner or lessee of the facility even if specific documents are not indicated below.

<b>Proprietary</b>	
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Partnership - Attach a copy of the Partnership Agreement and receipt showing agreement has been recorded with the Secretary of State.
<input type="checkbox"/>	In-State Corporation - Attach a copy of the Articles of Incorporation and Certificate of Incorporation.
<input type="checkbox"/>	Out-of-State Corporation - Attach evidence of registration with the Secretary of State.
<input checked="" type="checkbox"/>	Other - In-State Limited Liability Companies
<b>Non-Profit</b>	
<input type="checkbox"/>	Corporation - Attach a copy of Articles of Incorporation and Certificate of Incorporation.
<input type="checkbox"/>	Church
<input type="checkbox"/>	Other (Specify)
<b>Governmental</b>	
<input type="checkbox"/>	State
<input type="checkbox"/>	County - Attach documentation that the county commissioners have endorsed this project if prior approval is required.
<input type="checkbox"/>	City
<input type="checkbox"/>	City/Council
<input type="checkbox"/>	District
<input type="checkbox"/>	Hospital Authority or Commission
<input type="checkbox"/>	Other (Specify)

Please refer to Exhibit 4 for copies of the Articles of Organization for SENCA Properties and Atlantic Surgicenter. SENCA Properties will own the ambulatory surgery center building and Atlantic Surgicenter will operate the ambulatory surgery center. Additionally, as Atlantic Surgicenter member companies, Wilmington Physicians, LLC's Articles of Organization and New Hanover Regional's Articles of Amendment to the Articles of Incorporation are also included in Exhibit 4.

It should be noted that SENCA Properties and Atlantic Surgicenter are new North Carolina health care entities; this CON application does not propose that New Hanover Regional operate the ambulatory surgery center. The ambulatory surgery center will be licensed and certified separate from New Hanover Regional.

3. Explain how the facility will be organized to accommodate the provision of the services proposed in this application. Include the number and type of operating rooms to be located in the facility. If the proposal is for an ambulatory surgical program located within a physician's or dentist's office or within a general acute care hospital, describe the mechanism by which the ambulatory surgical program will be made physically, administratively, and financially separate from the other operations of the facility.

Atlantic Surgcenter will be organized and licensed as a four-operating room, freestanding ambulatory surgery center and will be operated independently of New Hanover Regional. Two new North Carolina limited liability companies; SENCA Properties, LLC and Atlantic Surgcenter, LLC will develop and operate the ambulatory surgery center. Accordingly, the ambulatory surgery center will not be located within a physician's office, dentist's office or within a general acute care hospital.

SENCA Properties will be the owner of the ambulatory surgery center's property and building. Individual community physicians are the sole investors in SENCA Properties. Atlantic Surgcenter will be the operator of the ambulatory surgery center. Atlantic Surgcenter's member companies with their percentage ownership in parentheses are Wilmington Physicians (60.0%) and New Hanover Regional (40.0%).

Atlantic Surgcenter will lease the ambulatory surgery center's property and building from SENCA Properties; Atlantic Surgcenter will contract with Surgery Consultants of America to provide management consulting services for the ambulatory surgery center. Please refer to the organization chart in Exhibit 1 for the relationships among SENCA Properties, Atlantic Surgcenter, New Hanover Regional, Wilmington Physicians, and Surgery Consultants of America and the functional organization chart for Atlantic Surgcenter.

The Medical Director of the proposed ambulatory surgery center will be Dr. Cobern Peterson, Jr., a board-certified anesthesiologist with 19 years of experience. Dr. Peterson will be responsible for the day-to-day clinical operation of the ambulatory surgery center and will report to the Atlantic Surgcenter Board of Managers. Please refer to Exhibit 13 for the Atlantic Surgcenter Board of Manager election of Dr. Peterson as Medical Director. Please refer to Exhibit 14 for Dr. Peterson's Medical Director Acceptance Letter and curriculum vitae.

As described in Section II.9, 10A NCAC 14C .2105(b) and (c), any physician or surgeon practicing in the service area and in good standing with a licensed acute care hospital, may apply for medical staff privileges at the ambulatory surgery center and gain access to the ambulatory surgery center and its resources to perform surgery.

Please refer to Exhibit 1 for the Atlantic Surgcenter functional organization chart showing how the ambulatory surgery center will be organized. The Medical Director, Administrator, and Clinical Director will perform administrative activities. The business office coordinator and business office staff will provide business support activities. Clinical services will be functionally split by pre-operative, operative, and PACU / second stage recovery functions. Each clinical service will be properly staffed by registered nurses and certified scrub technicians. Please refer to Exhibit 15 for copies of the associated job descriptions.

Exhibit D



### Policy and Procedure

<b>Title:</b>	Financial Assistance						
<b>Origination Date:</b>	5/16/83	<b>Section:</b>	N/A				
<b>Review Date(s):</b>	3/25/99, 4/19/99, 5/20/99, 2/07/03, 1/21/04, 11/05, 10/08	<b>Policy No.:</b>	325				
<b>Revision Date(s):</b>	3/25/99, 4/19/99, 5/20/99, 2/07/03, 1/21/04, 03/08/04, 9/1/04, 10/1/05, 02/02/06, 5/11/06, 2/02/07, 3/17/07, 4/10/07, 8/20/07, 09/04/07, 9/12/07, 1/9/08, 2/6/08, 2/15/08, 4/9/08, 10/24/08, 03/02/09, 03/09/09, 3/30/09, 10/20/09, 02/10/10, 4/15/10, 07/30/10, 08/16/10, 10/01/10, 10/13/10, 2/28/11, 5/9/11, 10/04/11, 1/26/12, 2/29/12, 3/19/12, 4/23/12	<b>Contact Dept.:</b>	Patient Financial Services				
<b>Effective Date:</b>	5/16/83						
<b>Approval(s):</b>	<table border="0" style="width:100%"> <tr> <td style="width:50%">_____ Jack Barfo, President and CEO</td> <td style="width:50%">_____ Edwin J. Ollie, Executive Vice President and CFO</td> </tr> <tr> <td>_____ Debra O'Neill, Director, Patient Financial Services</td> <td>_____ Tim Pollard, Vice President Revenue Cycle</td> </tr> </table>			_____ Jack Barfo, President and CEO	_____ Edwin J. Ollie, Executive Vice President and CFO	_____ Debra O'Neill, Director, Patient Financial Services	_____ Tim Pollard, Vice President Revenue Cycle
_____ Jack Barfo, President and CEO	_____ Edwin J. Ollie, Executive Vice President and CFO						
_____ Debra O'Neill, Director, Patient Financial Services	_____ Tim Pollard, Vice President Revenue Cycle						

#### I. POLICY:

As part of its charitable mission, New Hanover Regional Medical Center ("NHRMC") and its entities are committed to providing benefits to the Community. This policy addresses financial assistance for the uninsured and the underinsured. NHRMC provides a comprehensive service to assist patients in addressing the financial burden of their medical expenses in the form of sponsoring financial assistance and providing patients and their family members trained advocates who work to identify and carefully guide each patient through the complex application process to obtain benefits from Medicaid, Supplemental Security Income, Social Security Disability, as well as other federal, state and community benefit programs.

As a non-profit, charitable, community-based healthcare provider, NHRMC will provide medically necessary services for a reduced charge or no charge to patients who meet the specific criteria defined herein. These criteria are objectively determined and shall be consistently applied. New Hanover Regional Medical Center uses 200% of the Federal Poverty Guidelines and other screening criteria to qualify patients for Financial Assistance.

Other payment sources (i.e., Medicaid, Crime Victims Assistance, Vocational Rehabilitation, etc) must be reviewed and evaluated before an account can be considered for financial assistance to ensure that the assets of NHRMC are judiciously and prudently managed. A financial assistance application will be provided to all patients who demonstrate the potential of non-payment due to financial need/economic hardship and upon request. All reasonable efforts will be made to determine eligibility for financial assistance before any accounts are placed in collections.

An applicant who is approved for financial assistance will be eligible for services rendered for a period of six months after the approval date, unless other resources are located to satisfy the account or their financial situation improves. A new application is required each subsequent six-month period thereafter. Active accounts with a self pay patient balance may be considered for financial aid in the application approval process. Accounts deemed bad debt may not be covered by financial assistance application/approval.

Partial balances that cannot be settled due to financial hardship may be approved for financial assistance if an application is completed and approved.

It is important to distinguish between individuals who can afford to pay and choose not to pay (Bad Debt), and those who cannot afford to pay (Financial Assistance).

NHRMC periodically reviews its financial assistance policy to ensure that its mission is fulfilled to provide medically necessary health care to eligible uninsured or underinsured patients in need of such services. NHRMC reserves the right to revise, modify or change this policy as necessary or appropriate. Further information/assistance and applications may be obtained by contacting Patient Financial Services at 910.343.7050 or via email at [PFS.CustomerService@nhrmc.org](mailto:PFS.CustomerService@nhrmc.org)

## II. PROCEDURE:

1. If it becomes apparent that a patient account cannot be settled through other means, the patient will be given a Financial Assistance application or upon request. Accompanying this application will be full, explicit instructions for its completion, along with a request for the documents necessary to support potential patient assets, liabilities, and/or payor source. These documents may include:
  - Copy of a pay stub
  - Copy of most recent tax return
  - Copy of disability award
  - Unemployment payments
  - Statement of wages from employer
  - Current bank statements
  - Homeless individuals may provide a statement from a shelter or other resource
  - Documented proof of payor source
  - Screening by eligibility specialist/DSS caseworker/ and/or proof of ineligibility for Medicaid/ and/or other State funded programs
2. When a request for a financial aid application has been received, an application and cover letter with instructions and a return postage paid envelope will be provided. The account will be placed on hold for 30 days pending the return of the completed application. During this time, collections efforts will cease/be on hold pending a determination for financial aid eligibility. If a patient fails to return a complete application within 30 days, collection activity/efforts will resume.
3. After the application has been received, it will be documented as such on the patient account. The application is then reviewed for completeness. Completeness is defined as all pertinent information provided on the face of the application and signed by the patient, guardian and/or spouse. Incomplete applications are documented in the patient account and are temporarily denied until completed. Normal billing procedures will continue. If a complete, conforming application is approved, this will be noted on the patient account and the balance will be adjusted using the appropriate adjustment code. Accounts that are deemed bad debt which are not within the fiscal year of financial assistance approval are not covered by financial assistance application/approval and will not be considered or reclassified as financial assistance. Accounts deemed bad debt within the fiscal year of charity care approval may be considered for reclassification to financial assistance.
4. When reviewing the application, the facility representative will use the income guidelines along with all other available information. A credit report will be acquired and used to validate the application for the applicant. In addition, if the applicant has a legal spouse, a credit report will be acquired for the legal spouse and used to validate the application for the applicant. The applicant's debt/income ratio will be calculated and personal assets, resources, and property tax values will be evaluated. If the applicant has a legal spouse, all spousal assets/resources/income will be evaluated in calculating the debt/income ratio and asset testing for the applicant.
5. All available/potential payor sources must be reviewed and exhausted prior to approval for financial assistance including documented proof of no payor source and ineligibility for Medicaid and/or State funded programs. The decision to grant or reject an application is made on an objective basis with documentation to support each decision.

6. Applicants over the age of 18 who are not claimed as a dependent either as a qualifying child or qualifying relative on another person's tax return will be screened/reviewed for financial assistance based on their own individual ability to pay.
7. Family members who claim an applicant on their tax return as a dependent either as a qualifying child or as a qualifying relative will be screened along with the applicant and all of their income/assets/resources assessed for ability to pay.
8. In accordance with the IRS code, to be claimed as a qualifying child, the person must meet four criteria:
  - Relationship** — the person must be the child, step child, adopted child, foster child, brother or sister, or a descendant of one of these (for example, a grandchild or nephew).
  - Residence** — for more than half the year, the person must have the same residence as the person claiming the dependent.
  - Age** — the person must be
    - under age 19 at the end of the year, or
    - under age 24 and a be a full-time student for at least five months out of the year, or
    - any age and totally and permanently disabled.
  - Support** — the person did not provide more than half of his or her own support during the year.
9. In accordance with the IRS code, to be claimed as a qualifying relative, the person must meet all six of the following criteria:
  - Not a qualifying child** — The dependent cannot be a qualifying child of another taxpayer.
  - Gross Income** — The dependent earns less than the personal exemption amount during the year. For 2011, this means the dependent earns less than \$3,700.
  - Total Support** — The person must provide more than half of the dependent's total support during the year.
  - Relationship** — The person must be related to the dependent in certain ways.
  - Joint Return** — If the dependent is married, the dependent cannot file a joint return with his or her spouse.
  - Citizenship** — The dependent must be a citizen or resident alien of the United States, Canada, or Mexico.
10. Undocumented citizens will not be required to apply for Medicaid or other State funded programs unless the patient is pregnant. Any other patient who clearly does not appear to meet the published Medicaid eligibility guidelines will not be required to provide a documented proof/denial and will proceed with the financial assistance screening process. There is no bias in this decision based on any demographic information, such as race, gender, immigration status, religion, age, etc.
11. Patient failure to cooperate with facility representatives for application/consideration for third party payor source eligibility will be denied and rejected. Patient failure to provide any and all requested supporting documentation or information will also result in application denial and rejection.
12. NHRMC uses the Federal poverty guidelines to determine eligibility for financial assistance. The Federal poverty guidelines are published and updated annually in February by the U.S. Department of Health and Human Services. The Department of Health and Human Services updates on its web site-- <http://aspe.hhs.gov/poverty/12poverty.shtml>. A patient's income and family size must be at or below 200% of the Federal poverty guidelines to receive financial assistance.
13. Effective 10-01-2010, Approved applicants may have a \$20.00 cost share/co-pay for out patient clinics and emergency services provided at the New Hanover Emergency Department or Cape Fear Emergency Room.
14. Approved applicants may receive Outpatient Rehabilitation services/therapies; physical therapy, speech therapy, and occupational therapy. Effective 5-9-2011, the number of Rehab visits will not be limited. All outpatient therapies are required to occur within the defined six month FA eligibility period for each Rehab discipline per diagnosis and include a \$5.00 cost share/co-pay per visit.
15. Approval for financial assistance does not automatically provide/authorize access to the Zimmer Medical, Surgical, and/or Ob-Gyn Clinics or the Coastal Family Medicine Clinic. Recipients are to contact the clinic (s) directly for appointment availability and scheduling. Outpatient clinic services include a \$20.00 cost share/co-pay per visit.

16. Individuals treated for Motor Vehicle Accidents may qualify for financial assistance after all other payment sources have been exhausted. If the patient provides legal documentation, i.e. police report with proof they were at fault and do not have insurance, or only auto insurance with limited medical payment generally not exceeding \$2000.00, the account may be considered for financial assistance. If the patient was assisted by ACI (hospital liability vendor) and ACI determines the patient was at fault and benefits were exhausted or no benefits, these patients can also be considered for financial assistance. ACI collection notes will be displayed in the patient account providing results of the MVA review. All patients will need to complete the Financial Aid application for consideration and be cooperative with ACI. Patients treated for MVA services and assisted by ACI or CEA with out any benefits that are discharged without social security numbers, forwarding addresses or phone number contacts, maybe be considered for a one time Economic Hardship after all collection attempts have failed with management approval.
17. Individuals that are patients with and referred by the Cape Fear Clinic, Cape Fear HealthNet and Coastal Horizons will qualify for financial assistance/charity care program provided there is no other payor source available and the criteria for eligibility for NHRMC Financial Assistance has been met. Series eligibility tools will be run on each Cape Fear Clinic, Cape Fear HealthNet and Coastal Horizons referral to verify that there is not a state or federal payor resource. Outpatient clinic services include a \$20.00 cost share/co-pay per visit.
18. Ryan White Program: Financial Aid Applications for individuals with diagnosis code 042-HIV will be processed and approved to receive Ryan White benefits. The percentage of coverage is determined by the attached Ryan White scale for outpatient services only. Inpatient services are not covered under the Ryan White program. The application will be processed as Financial Aid for any patient balances remaining or non-covered services under the Ryan White program if approved for financial aid. The eligibility period for approved Ryan White patients for charity care financial assistance is 12 months from the date of application approval determination.
19. Ryan White eligibility will be determined by using a sliding fee scale based on patients' income and the Federal poverty Guidelines. The Federal poverty guidelines are published and updated annually in February by the U.S. Department of Health and Human Services (DHHS). DHHS updates are located at: <http://aspe.hhs.gov/poverty/12poverty.shtml>
20. Ryan White-Patient Cap on Charges: The law limits annual cumulative charges to an individual for HIV related services to:

Family Income	Maximum Charge
At or below 100% of Poverty	\$0.00
101% to 200% of Poverty	No more than 5% of gross annual income
201% to 300% of Poverty	No more than 7% of gross annual income
Over 300% of Poverty	No more than 10% of gross annual income

Part C EIS program must have a system in place to ensure that these annual caps on charges to patients are not exceeded.

21. \*\*\*Family planning exams and selected services covered by Medicaid Family Planning Program (Family planning exams, Screening and treatment for sexually transmitted infections (STI), screening for HIV, and sterilizations) will be covered/included for approved financial assistance program recipients. Devices and all associated fees and injections intended for the purpose of birth control such as Implanon and the IUD will be excluded. Injections intended for the purpose of birth control, such as the Depo-Provera injection will be excluded. Prior to these services being rendered, documented proof of Medicaid Family Planning application and/or denial must be provided.
22. The financial assistance program does not cover elective or cosmetic services/procedures.
23. There may be individuals that apply for Financial Assistance prior to receiving any medical services at NHRMC. In these cases, the facility will hold the application for a period of 90 days. If service is not provided within 90 days from the received date, a new application will be required for financial assistance consideration.

24. Patients may be eligible for financial assistance when additional criteria such as catastrophic medical costs are considered. This qualification may provide for financial assistance in the form of a one time economic hardship adjustment or approval for an extended payment arrangement. Completion of a financial assistance application is required for consideration.
25. If a patient is underinsured, he or she may also qualify for financial assistance. These applications will be reviewed for eligibility under the guidelines stated in this policy.
26. The PFS Management or designee will make a determination on each application within 16 business days from receipt of a completed application. Approval is made upon review of the following:
  - a. A completed financial assistance application
  - b. A copy of the patient's credit report to verify expenses/debt load
  - c. Review of all income\* sources and expenses
  - d. Debt/income ratio calculation
  - e. Review of Assets with verification
  - f. Available credit/means to pay
27. The following Financial Aid adjustment approval guidelines will be followed for posting account adjustment codes 997-9102 or 997-1036:
  - Designated Patient Financial Services employees may approve adjustments to account balances up to \$24,999.99.
  - Patient Financial Services Coordinators may approve adjustments to account balances \$25,000.00 to \$49,999.99.
  - Patient Financial Services Manager may approve adjustments to account balances \$50,000.00- \$99,999.00.
  - Patient Financial Services Director may approve adjustments to account balances \$100,000.00 and greater.
28. The eligibility period for approved patients for charity care financial assistance is six months from the date of application approval determination.
  - At the time of evaluating the patient for charity, the reviewer will determine if such patient has a prior approved application.
  - If the adjustment posted on the approved prior charity is under six months from the patient's subsequent date of admission, the reviewer will submit the corresponding adjustment and it will be entered.
  - If the adjustment was posted over six months from the subsequent admission date, the reviewer will request the updated information from the patient, and re-evaluate the application considering the current information submitted.
  - The new application will be approved or denied based on the documentation submitted.
29. Designated Patient Financial Services employees may approve Economic Hardship Applications if the patient's debt ratio is greater than 95% and the account balance is less than \$25,000.00. All other Economic Hardship cases may only be approved or denied by PFS Management.
30. Patients will be notified of the decision regarding the disposition of the application in writing. A financial assistance card will be issued with the dates of coverage and applicable cost shares indicated.
31. Prior to mailing each patient written notification, the assigned Patient Account Technician will verify all contents within the outgoing envelope that pertain to that patient's application. The envelope will then be passed to a co-worker to complete the same verification process as stated above. This is to include verifying the patient address on the envelope matches the patient data on the enclosed documents. Using the patient reference account number, the co-worker will add action code "TO (Time Out Quality Ck)" into the collection notes and forward the outgoing envelope to the Business Center mailroom.
32. In the event a card is lost/stolen, a new card will not be issued and an alert will be placed on the X drive next to the patient's name. New cards will only be issued at time of Financial Aid approval and at times of

Financial Aid renewal every six month period. For each service scheduled/received thereafter, the patient will be required to present for treatment with a photo Id in order to receive the adjustment to their account charges for financial aid status.

33. Performance Expectations: The thorough exploration of possible sources of payment and proper and timely processing of applications are expected of all facility representatives who process financial assistance applications. Failure to meet these expectations will result in the progressive disciplinary process up to and including termination for job performance and/or will impact the employee's annual performance review.
34. Conflict of Interest: A facility representative will not make financial assistance determinations on patient accounts of relatives, friends, or acquaintances. Any such account must be transferred to a team member who is unrelated/unknown to the applicant or to a member of management.

\* **INCOME:** Refers to total cash receipts before taxes from all sources. This includes but is not limited to: wages and salaries before any deductions, receipts from self-employment or from farm or business; regular payments from public assistance, social security, unemployment and workmen's compensation, strike benefits from union funds, veteran's allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments, and; income from dividends, interest, rents, royalties, or income from estates and trusts, food stamps, savings, bank account, any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury.

Income will be considered from any person(s) deemed legally responsible for the debt per NC General Statute (spouse/power of attorney/guarantor) to determine eligibility

\*\*Household / family members are defined as any persons living in the same house (unit) for the purpose of shelter, whether or not they are legally responsible for incurred debt, who may or may not be related by marriage, blood, or adoption who share in household expenses.

<http://aspe.hhs.gov/poverty/12poverty.shtml>

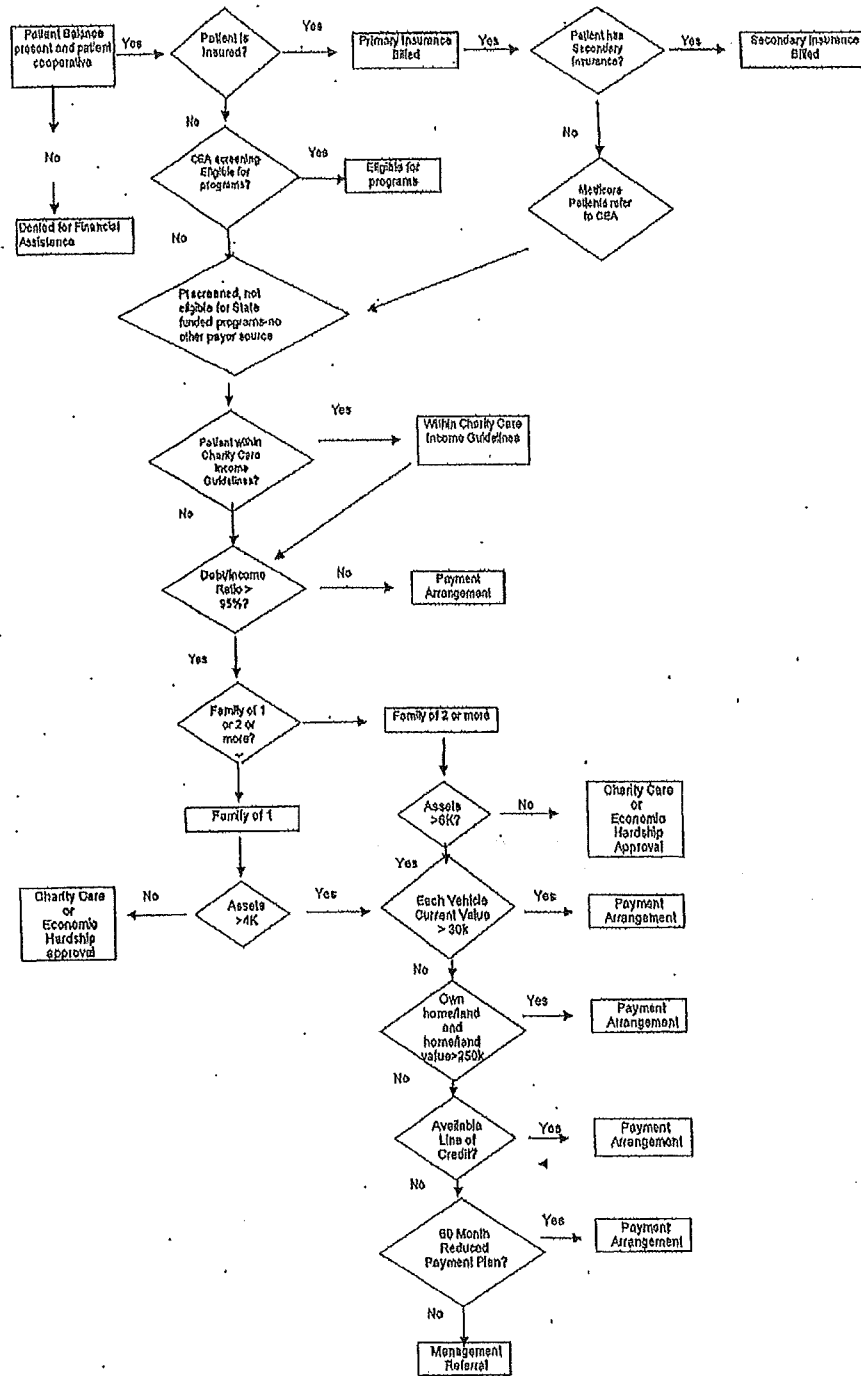
Updated FPG 01/26/2012  
Revised 01/26/2012

Effective 01/26/2012

Family Size	2012 Federal Poverty Guideline	NHRMC Financial Assistance Guideline (200% of FPG) 100% adjustment	NHRMC Financial Assistance Guideline 201%-250% FPG= 50% adjustment
1	\$11,170	\$22,340	\$22,341-\$27,925
2	\$15,130	\$30,260	\$30,261-\$37,825
3	\$19,090	\$38,180	\$38,181-\$47,725
4	\$23,050	\$46,100	\$46,101-\$57,625
5	\$27,010	\$54,020	\$54,021-\$67,525
6	\$30,970	\$61,940	\$61,941-\$77,425
7	\$34,930	\$69,860	\$69,861-\$87,325
8	\$38,890	\$77,780	\$77,781-\$97,225
For each additional person, add	\$3,960		



### Financial Assistance Algorithm



Ryan White Sliding Scale

Family Size	2012 Federal Poverty Level	125% of Poverty Level	155% of Poverty Level	185% of Poverty Level	215% of Poverty Level	245% of Poverty Level	Above 245% of Poverty Level
1	11,170	13,963	17,314	20,665	24,016	27,367	27,368
Maximum Reimbursement (% Allowable)		100%	85%	70%	55%	40%	25%

Based on 2012 US Department of Health and Human Services Poverty Guidelines

Exhibit E



## POLICY & PROCEDURE MANUAL

<b>Title:</b>	<b>Financial Assistance with Medications and/or Medical Supplies</b>		
<b>Origination Date:</b>	03/96	<b>Manual:</b>	Administrative
<b>Review Date(s):</b>	11/99, 11/00, 11/01, 11/02, 01/06	<b>Section:</b>	01 - Provision of Care, Treatment and Services/Continuum of Care (PC)
<b>Revision Date(s):</b>	11/99, 02/01, 4/01, 11/02, 06/07, 06/10, 5/12	<b>Policy No.:</b>	1.13
<b>Effective Date:</b>	11/02, 01/06, 06/07, 06/10, 05/12	<b>Contact Dept.:</b>	Clinical Resource Services, Outpatient Pharmacy, Patient Financial Services
<b>Approval(s):</b>			
<i>Signature on File</i>		<i>Signature on File</i>	
Edwin J. Ollie Executive Vice President/Chief Financial Officer		Pam Hagley Director of Clinical Resource Services	
<i>Signature on File</i>			
Mark E. Allen, R.Ph., MBA Director of Pharmacy Services			

### I. PURPOSE/SUPPORTING INFORMATION

New Hanover Regional Medical Center (NHRMC) will provide assistance in acquiring prescribed medications along with access to pharmaceutical counseling, disease management counseling, and pharmaceutical assistance programs for indigent, at risk, uninsured, and low income patients.

The organization will provide this assistance when the patient has:

- 1) expressed an inability to pay for prescribed medication;
- 2) when there are no other resources available to cover the medication expense; and
- 3) when the patient has provided the organization with information required to substantiate the request.

NHRMC's Patient Financial Services' Financial Assistance Policy will be used to determine eligibility for assistance. To be eligible for continued assistance, patients must comply with all requirements of the program, including those of community agencies and/or pharmaceutical companies to which the patient may be referred.

The organization's assistance with acquiring prescriptions is intended to meet the immediate/urgent needs of the patient. Urgent medications include those that have been prescribed to *alleviate immediate morbidity and mortality*. In establishing the plan of care for patients requiring assistance, physicians and other health care providers will prescribe medications in accordance with the established formulary. All medication requests must be accompanied by a prescription.

Patients may request assistance upon discharge from New Hanover Regional Medical Center's hospitals, emergency departments, or outpatient clinics.

- Prescription assistance will be limited to:
  - 2 weeks for patients either discharged from the hospital or seen in the Emergency Department
  - 30 days for patients treated in the Outpatient Clinics
- Pain medication assistance:
  - Will be evaluated on a case-by-case basis.

- o Is not available for prescriptions written in the Emergency Department.
- Assistance is not available for items that are available over-the-counter and items for which there is a suitable over-the-counter equivalent.
- A financial reassessment is required each time a medication is dispensed.
- Assistance may not be available for refills of chronic medications with no manufacturer's assistance program, particularly those costing less than \$10.

The Outpatient Pharmacy hours of operation are 7:00 AM to 9:00 PM, Monday through Friday, except on holidays. Weekend hours of operation are 9:00 AM to 6:00 PM Saturday & Sunday, except on holidays. These hours of operation are subject to change in order to meet the needs of our patients.

## II. QUALIFICATIONS/SCOPE

- Healthcare Provider
- Clinical Resources Staff
  - The ED Charge Nurse/Coordinator, Nursing Supervisor, or designated outpatient staff member is authorized to complete the Financial Assessment when Case Management staff members are not available.
- Outpatient Pharmacy Staff
- Patient Financial Services Representative

## III. EQUIPMENT

Outpatient Pharmacy Voucher (PH-099)

## IV. PROCEDURE DURING OUTPATIENT PHARMACY HOURS OF OPERATION

(7:00 AM to 9:00 PM, Monday through Friday, 9:00 AM to 6:00 PM Saturday & Sunday)

Patients needing assistance will be referred by the health care provider to the Case Management (CM) staff member. The CM staff will:

1. Upon receiving referral for prescription assistance: Complete the Financial Assessment included on the Outpatient Pharmacy Voucher. The ED Charge Nurse/Coordinator or Nursing Supervisor or designated outpatient staff member are authorized to complete the Financial Assessment when Case Management staff members are not available.
2. For inpatients whose financial status is self-pay, a Patient Financial Services (PFS) Representative is to be called to determine whether the patient has been screened for indigent status. If the patient has been reviewed by a PFS representative and deemed indigent, he/she qualifies for assistance. When the patient has not been screened by a PFS representative, the most current Poverty Sliding Scale will be used to determine whether the patient qualifies for assistance.
3. If the patient meets eligibility criteria, the CM staff or authorized designee requesting prescription assistance will complete the Outpatient Pharmacy Voucher. The voucher, the patient's demographic sheet, and the prescriptions will be faxed to the Outpatient Pharmacy at 910-815-5189.
4. During the Outpatient Pharmacy's operational hours, the patient will be instructed to take the voucher and prescriptions to the Outpatient Pharmacy, located in the front corridor of NHRMC next to the gift shop, to pick up their medications. If medication is needed before the next Outpatient Pharmacy business day, the patient will be instructed to take the voucher and prescriptions to one of the approved retail pharmacies (listed on CapsulesLive/Outpatient/Employee Pharmacy).
5. The prescriptions will be reviewed by the pharmacist, and, if necessary, physicians will be contacted regarding those written for non-formulary medications to determine if formulary substitution is appropriate. Outpatient Clinic patients will be referred to a pharmaceutical assistance specialist who

will initiate the application process to manufacturer's assistance programs for any medications that qualify.

- 6. If the pharmacist knows or suspects that no or low income is only part of the patient's failure to comply with a drug treatment plan or failure to manage disease, the patient will be referred to a nurse educator who will provide support in medication and disease management through individual counseling and follow up.
- The pharmacist, physician, or other caregiver may refer the patient to a nurse educator who will provide support in medication and disease management through individual counseling and follow-up. The pharmacist may require this counseling to take place before medications are dispensed to the patient.
- The pharmacist on-duty may refuse to fill:
  - o Any prescription that does not meet the recommendations set forth in this policy
  - o Any prescription about which he/she has therapeutic concerns
  - o Prescriptions for any patient that does not abide by the NHHN Outpatient Pharmacy Patient Agreement (Located on the Outpatient Pharmacy Website on Capslive)

#### V. PROCEDURE FOR AFTER HOURS, WEEKENDS, AND HOLIDAYS

1. After determining financial eligibility, the CM representative or authorized designee will complete the Outpatient Pharmacy Voucher. Designee will be defined as ED Charge Nurse/Coordinator, Nursing Supervisor, or designated outpatient staff member.
2. If the medication will not be needed prior to the next Outpatient Pharmacy business day, the voucher, demographic sheet, and prescriptions will be faxed to the Outpatient Pharmacy. The patient will be instructed to take the original voucher and prescriptions to the Outpatient Pharmacy to be filled on the next business day.
3. If the medication will be needed prior to the next Outpatient Pharmacy business day, the patient will be instructed to take the voucher and prescriptions to one of the approved retail pharmacies (listed on CapsulesLive/Outpatient/Employee Pharmacy).

#### VI. REFERENCES

U.S. Department of Health and Human Services Federal Poverty Guidelines  
Patient Financial Services Financial Assistance Policy # 101.14

END

Exhibit F

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION  
RALEIGH, NORTH CAROLINA

IN RE: REQUEST FOR DECLARATORY )  
RULING BY WAYNE MEMORIAL )  
HOSPITAL, INC. and WAYNE ) DECLARATORY RULING  
AMBULATORY SURGERY CENTER, LLC )  
Project I.D. No. P-7554-06 )

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services ("Department" or "Agency"), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Wayne Memorial Hospital, Inc. (Wayne Hospital) and Wayne Ambulatory Surgery Center, LLC (Wayne ASC) have requested a declaratory ruling that would allow Wayne Memorial to retain two existing operating rooms (ORs) and develop one additional approved OR at the hospital, thereby dissolving Wayne ASC which was originally proposed to house the three ORs pursuant to the certificate of need issued for Project I.D. No. P-7723-06. Petitioners seek a ruling that this proposal is in material compliance with the certificate of need (CON) laws and related rules of the Department and would not constitute a material change of scope from the original project for purposes of N.C.G.S. § 131E-181 and N.C.G.S. § 131E-189(b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Terrill Johnson Harris of Smith Moore Leatherwood LLP has requested this ruling on

behalf of Wayne Memorial and Wayne ASC and has provided the material facts upon which this ruling is based.

#### STATEMENT OF THE FACTS

On March 30, 2007, Wayne Memorial and Wayne ASC were approved in a certificate of need review to establish a new multi-specialty ambulatory surgical facility with three ORs. Two operating rooms were to be relocated from Wayne Memorial and one operating room was to be developed in a new building on the campus of Wayne Memorial, located at 2700 Wayne Memorial Drive, Goldsboro, North Carolina.

When the project was originally proposed, Wayne Memorial anticipated that the formation of Wayne ASC would provide the opportunity for physician ownership in the company. Changes in reimbursement rates after the CON was issued have changed the landscape with respect to operating a free-standing ambulatory surgical facility and the physicians' desire for ownership. Following the issuance of the CON, the Centers for Medicare and Medicaid Services (CMS) lowered Medicare reimbursement rates for most of the procedures performed in an ASC setting. According to Petitioners, the change in reimbursement resulted in eliminating the feasibility of physician ownership in Wayne ASC.

As represented by Petitioners, the proposal would not materially change the holder, location, or scope of the original project. Wayne Memorial would remain the holder of the CON while Wayne ASC would cease to exist. The operating rooms would remain at the originally proposed location and address, though within the hospital rather than a separate new building at the same location. In addition, the total capital expenditure for the revised project is expected to be less than the capital expenditure originally approved by the Department when the CON was issued.

### ANALYSIS

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioners’ proposal were to represent a material change in the scope of the project, the CON law would require a full review of OSC’s site relocation. N.C.G.S. § 131E-181(a). For the reasons discussed below, the proposal does not constitute a material change in scope of the project.

When Wayne Memorial and Wayne ASC applied for the CON in 2006, ASC reimbursement rates were more favorable. Changes in Medicare regulations required Wayne Memorial to consider alternatives to the original project in order for the project to be financially feasible. The proposed revision to the project does not affect the type, availability or utilization of the surgical services of Wayne Memorial in the county or in its service area, nor does the proposed revision increase the cost of those services. Additionally, as described above, the proposal would not materially change the holder, location, or scope of the original project.

### CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Wayne Memorial’s retention of two existing ORs and the development of one additional OR within the hospital will not constitute a material change in the scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).



This the \_\_\_\_\_ day of November, 2011.

---

Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Terrill Johnson Harris  
Smith Moore Leatherwood LLP  
Post Office Box 21927  
Greensboro, NC 27420

This the \_\_\_\_\_ day of December, 2011.

\_\_\_\_\_  
Jeff Horton  
Chief Operating Officer

Exhibit G

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION  
RALEIGH, NORTH CAROLINA

IN RE: REQUEST FOR DECLARATORY )  
RULING BY THE CHARLOTTE- )  
MECKLENBURG HOSPITAL AUTHORITY )  
d/b/a CAROLINAS MEDICAL )       DECLARATORY RULING  
CENTER-NORTHEAST )  
Project I.D. No. F-7729-06 )

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services ("Department"), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A N.C.A.C. 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center-Northeast ("Petitioner") has requested a declaratory ruling permitting it to change the location of two additional gastrointestinal (GI) endoscopy procedure rooms approved pursuant to the Certificate of Need ("CON") issued for Project I.D. No. F-7729-06. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Terrill Johnson Harris of Smith Moore Leatherwood LLP has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

**STATEMENT OF THE FACTS**

On October 31, 2006, the Department issued a CON to Cabarrus Memorial Hospital, Inc. d/b/a Northeast Medical Center to develop two new gastrointestinal (GI) endoscopy procedure rooms in a new outpatient campus to be built in Harrisburg, Cabarrus County. A separate CON

was issued to develop the new outpatient campus. Petitioner experienced significant, unanticipated delays in the project due to issues regarding water and sewer line construction. The outpatient campus is not expected to be operational until March 2014; consequently, the two GI endoscopy rooms are also not expected to be operational until that time.

Petitioner has continued to analyze how to effectively serve the patients in need of such services by making the two proposed GI endoscopy rooms readily available. In September 2011, Petitioner hired a pediatric gastrointestinal specialist who plans to provide services only at the main campus in Concord due to the need for proximity to anesthesia services for pediatric patients. To address the need that exists for these services and to avoid further delay, Petitioner requests approval to locate the two GI endoscopy rooms in the hospital in Concord, rather than in the newly proposed Harrisburg facility, with which allow the development of the GI endoscopy rooms within four months.

#### ANALYSIS

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioner’s proposal were to represent a material change in the scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioner states that no new construction will be required to develop the two rooms in the hospital because the space is already in existence and only minor renovations will be needed. The only major expenses to develop the rooms in the hospital will be for the equipment, which will be the same as proposed in the application. Petitioner contends that development and

operation of the rooms in the hospital will promote patient accessibility, efficiency, and quality. Petitioner also states that there will be no change in the ownership, licensure, certification, or accreditation of the project. Petitioner will remain the holder of the CON and the scope of the original project approved by the Department will remain the same.

Petitioner has licensed endoscopy rooms that performed 7,090 procedures in FY 2010, which is an average of 1,772 procedures per room. Petitioner further states that there will be no changes to payor mix, operating costs or patient charges, and no changes to the service area or the ability to serve all patients. In addition, Petitioner expects to be better able to coordinate endoscopy room utilization. Further, if approved, the two new GI endoscopy procedure rooms would be operational in four months and the cost of the project would be less than one-third of the original proposal, from \$2,842,653 to \$775,000.

#### CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner's proposal will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).

This the \_\_\_\_\_ day of August, 2012.

\_\_\_\_\_  
Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Terrill Johnson Harris  
Smith Moore Leatherwood LLP  
300 North Greene Street, Suite 1400  
Greensboro, North Carolina 27401

This the \_\_\_\_\_ day of August, 2012.

\_\_\_\_\_  
Dr. Patsy Christian, Assistant Director  
Healthcare, Quality and Safety



Exhibit B

North Carolina Department of Health and Human Services  
 Division of Health Service Regulation  
 Certificate of Need Section  
 2704 Mail Service Center • Raleigh, North Carolina 27699-2704  
<http://www.ncdhhs.gov/dhsr/>

Drexel Pratt, Director

Beverly Eaves Perdue, Governor  
 Albert A. Della, Acting Secretary

Craig R. Smith, Section Chief  
 Phone: (919) 855-3873  
 Fax: (919) 733-8139

September 28, 2012

Denise M. Gunter, Esq.  
 Nelson Mullins Riley & Scarborough, LLP  
 380 Knollwood Street  
 Suite 530  
 Winston-Salem, NC 27013

RE: Material Compliance / Project I.D. # O-6984-04 and Project I.D. #-7760-06 / Atlantic Surgicenter, LLC / Converting the Ambulatory Surgery Center from a separately licensed facility to being licensed as part of New Hanover Regional Medical Center as a hospital outpatient department / New Hanover County  
 FID #: 040149

Dear Ms. Gunter:

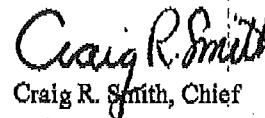
In response to your letter of September 11, 2012, regarding the above referenced project, the Certificate of Need Section has determined that the proposed change is in material compliance with representations made in the application. These changes include Converting the Ambulatory Surgery Center from a separately licensed facility to being licensed as part of New Hanover Regional Medical Center as a hospital outpatient department. There will be no change in location of the Center, the scope of services offered at the Center or the number of operating rooms at the Center. Ownership will remain unchanged. The holders of the CON will not change. Atlantic will still lease the building from SENCA Properties, LLC, which was the co-applicant for the CON. However, you should contact the Acute and Home Care, Licensure and Certification Section of the Division of Health Service Regulation to determine if they have any requirements pertinent to the proposed change.

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. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,

  
 Gregory F. Yakoboski, Project Analyst

  
 Craig R. Smith, Chief

cc: Medical Facilities Planning Section, DHSR  
 Acute and Home Care, Licensure and Certification Section, DHSR



**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION  
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY NOVANT HEALTH, INC., )  
SAME DAY SURGERY CENTER NEW ) DECLARATORY RULING  
HANOVER, LLC AND NEW HANOVER )  
REGIONAL MEDICAL CENTER. )**

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Petitioners Novant Health, Inc. (“Novant”), Same Day Surgery Center New Hanover, LLC (“SDSC New Hanover”) and New Hanover Regional Medical Center (“NHRMC”) (collectively, “Petitioners”) request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation (the “Department”) issue a declaratory ruling as to whether NHRMC may acquire from Novant all of Novant’s membership interests in SDSC New Hanover. This ruling will be binding upon the Department and the entities requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Denise M. Gunter has requested this ruling on behalf of the Petitioners and has provided the material facts upon which this ruling is based.



## STATEMENT OF THE FACTS

On October 11, 2007, the CON Section awarded SDSC New Hanover a CON to develop a two-room ambulatory surgery center as set forth in Project I.D. No. O-7671-06 (the "Project"). Novant is the parent company of SDSC New Hanover, and has not yet developed the Project.

On June 1, 2007, the CON Section issued Novant and Brunswick Community Hospital, LLC a CON to develop a replacement hospital for Brunswick Community Hospital ("BCH"). The replacement BCH, known as Brunswick Novant Medical Center ("BNMC"), opened in Summer 2011.

Novant has decided to divest all of its existing and approved projects in New Hanover County so that it can concentrate on making BNMC a success.

NHRMC, which operates two hospital campuses in Wilmington, has offered to buy Novant's membership interests in SDSC New Hanover, a limited liability company. The divestiture of Novant's membership interests in SDSC New Hanover is part of a larger transaction in which Novant will sell its interests in all of its existing and proposed New Hanover operations.

## ANALYSIS

N.C. Gen. Stat. § 131E-181 provides:

- (a) A certificate of need shall be valid only for the defined scope, Physical location, and person named in the application. A Certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).
- (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 the certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.

N.C. Gen. Stat. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of Need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project, or the certificate of need. Any transfer after that time will be subject to the requirement that the service be provided consistent with the presentations made in the application and any applicable conditions the Department placed on the certificate of need. Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. Transfers resulting from death shall not result in withdrawal.

The Department has previously determined that the acquisition of membership interests in a limited liability company does not require a CON. *See, e.g.*, Declaratory Ruling issued to Wake PET Services, LLC, et al.; Declaratory Ruling issued to Wake Radiology Oncology Services, PLLC; Declaratory Ruling issued to Alliance Oncology; Declaratory Rulings issued to the Charlotte Mecklenburg Hospital Authority; Declaratory Ruling issued to JRH Ventures, LLC. In this case, NHRMC will be acquiring membership interests in SDSC New Hanover; SDSC will remain intact as the same LLC, but with a different membership composition. The entity to whom the CON was issued (SDSC New Hanover) does not change as a result of this transaction. SDSC New Hanover will be the entity that develops the operating rooms.

The scope of the project does not change as a result of this transaction. The transaction will not result in a change in the scope of services, costs to patients or the number of operating rooms that were determined to be needed in the 2006 SMFP.

The Department has also previously found a basis for a good cause transfer under N.C. Gen. Stat. § 131E-189(c) in two similar situations. In November 2009, the Department issued a declaratory ruling to WC-Albemarle, LLC, et al. which found good cause for the transfer of Albemarle House (and an undeveloped CON for 12 additional beds) to a third party. Similarly, in January 2008, the Department issued a declaratory ruling to Yancey Health Investors, LLC, et

al. in which a third party proposed to acquire an LLC's membership interests in a facility that had been approved for, but had not yet developed, 10 additional adult care home beds.

In this case, NHRMC's acquisition of the membership interests in SDSC New Hanover is part of a larger transaction involving Novant's decision to sell its existing and proposed operations in New Hanover County. Second, the transaction will not result in a change in the scope of services, costs to patients or the number of operating rooms that were determined to be needed in the 2006 SMFP.

#### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that NHRMC may acquire from Novant all of Novant's membership interests in SDSC New Hanover. This proposed change does not constitute a change in the scope of the project, would not violate N.C. Gen. Stat. § 131E-181, or N.C. Gen. Stat. § 131E-189, or any of the rules of the Department.

This the \_\_\_\_\_ day of July, 2012.

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Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Denise M. Gunter  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
380 Knollwood Street  
Suite 530  
Winston-Salem, North Carolina 27103

This the \_\_\_\_\_ day of July, 2012.

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Dr. Patsy Christian, Assistant Director  
Healthcare, Quality and Safety