

Operating Rooms

Agency Report:

Affordable HealthCare and Carolina Ophthalmology

AGENCY REPORT

OR Petition 1: Affordable Health Care Facilities, LLC

OR Petition 2: Carolina Ophthalmology

Petitioners

OR Petition 1:

Affordable Health Care Facilities, LLC

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OR Petition 2:

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Request

OR Petition 1: The Petition requests that the SHCC change the need methodology for ambulatory surgical operating rooms to provide more price competition, increased patient access and choice, and transparency of actual service purchase costs through a managed approach allowing for increased levels of price competition, while accounting for such factors as care for indigent populations and the fragility of rural health care delivery.

OR Petition 2: The Petition requests that the state issue an exemption to the CON process for ambulatory surgery centers for the discipline of ophthalmology.

Background Information

Chapter 2 of the Plan allows petitioners early each calendar year to recommend changes that may have a statewide effect. According to the Plan, "Changes with the potential for a statewide effect are the addition, deletion, and revision of policies and revision of the projection methodologies." Clearly, the changes recommended by both petitioners, if approved, would have a statewide effect. Additionally, the recommendation to exempt operating rooms in single specialty ambulatory surgical facilities from need determination limitations, common to both petitions, is best described as a policy revision, not a methodology revision.

Much interest has been shown in the operating room need projection methodology and the consequences of its application since the methodology was adopted and first used in the 2004 State Medical Facilities Plan. The operating room petitions filed annually since 2004 and the recent vigorous discussions of the methodology during Acute Care Services Committee and State Health Coordinating Council meetings are evidence of this interest. In response to this interest, an Operating Room Methodology Work Group was convened and met four times during 2007. This work group reviewed and recommended a set of revisions to the operating room need methodology, to be phased in over the next several years. One of the Work Group's recommendations, to exclude facilities with chronically under utilized OR's from operating room need projections, was incorporated into the 2008 State Medical Facilities Plan. Given the work group's recommendations, there is clearly an understanding of the value and strength of the current operating room methodology as well as an understanding of the need for the planning process to be dynamic and responsive in a measured way to new ideas.

Analysis/Implications

The Agency recognizes that the Affordable Healthcare Facilities petition represents a serious effort to ensure that single specialty ambulatory surgical facilities meet the Basic Principles governing the development of the State Medical Facilities Plan. Additionally, the Agency believes that adoption of some of the petitioner's criteria (shown in the table on the next page) into the CON rules has the potential to enhance the CON process. Determination of which criteria to adopt would be made after thorough review of each criterion.

CRITERIA	RATIONALE
1. Capital Cost	<ul style="list-style-type: none"> • Each ASC facility must have a total capital cost of less than \$1.25 million per operating room in order to be eligible to apply for a CON. • Complete architectural and engineering plans with construction cost estimates must be developed to confirm cost-effectiveness and compliance with the \$1.25 million threshold. • The ASCs must agree through affidavit to meet all state licensure, accreditation, and Medicare certification requirements in the CON application.
2. Indigent Care and Community Safety Net	<ul style="list-style-type: none"> • Facilities must agree to have at least 5% of its total patient load being charity or indigent care (less than \$200 per service in reimbursement). • Upon annual facility licensure renewal, if the 5% charity/indigent care threshold has not been met, the facility must pay into a DHSR managed state facility fund up to 5% of the facility's average reimbursement to reach the threshold. • Under this approach, the facilities are an integral participant in the community safety net for care.
3. Rural Counties and Service Areas	<ul style="list-style-type: none"> • Facility construction is limited to North Carolina counties with the following demographics: • Counties with a population of at least 85,000 and one (1) hospital; or • Counties with a population of at least 125,000 and two (2) or more hospitals.
4. Excessive Cost Counties and Service Areas	<p>Applicant facilities must prove through the collection of explanation of benefits (EOBs) statements and other sources that facility charges in the target counties exceed 200% of prevailing Medicare reimbursement for the services that the facility will provide before receiving a CON.</p>
5. Price Ceiling Limits, Disclosure, and Transparency for New Facilities	<ul style="list-style-type: none"> • ASC facilities agree not to charge more than 200% of prevailing Medicare reimbursement by CPT code to all payers and consumers. • Medicare has developed a new ASC reimbursement methodology based on CPT codes that can be accessed over the Internet if DHSR or another organization is willing to host such a web site. • Facilities agree to publish a list of their charges by procedure or service and file a report each year with the DHSR with these charges upon licensure renewal. • Facilities agree to provide each consumer with an individual financial review of his/her expected out of pocket cost for the respective payer prior to performing the procedure or service.
6. Single Specialty Facilities	<ul style="list-style-type: none"> • It is well documented that single specialty ASC facilities can operate at much lower costs and higher levels of operations efficiency than other types of health care facilities, such as larger hospitals and health systems. • Only single specialty ASC facilities are eligible for a CON under the new proposed need methodology.
7. Demonstrated Volume	<ul style="list-style-type: none"> • ASC facilities must demonstrate that that they will perform a minimum target level of procedures per year. If forecasted volume targets are not reached by year two (2) of operation, the facility will lose its CON and state license. • The target procedure volume for an applicant ASC is 1,000 procedures per operating room.
8. Physician Commitment to "Call" Coverage	<ul style="list-style-type: none"> • Physician groups who develop and operate the new facilities must commit to continued "call" coverage at area hospitals in order to maintain licensure for the facilities that they may develop. • "Call" coverage is maintained in accordance with each individual hospital's medical staff by-laws, not by state mandate as to specific requirements.

Furthermore, the Agency supports submission of innovative ideas, such as the ideas described in the petitions under review, which reflect response to changes in surgical practices. However, the Agency does not support **perpetually** exempting all single specialty ambulatory surgical facilities (or ophthalmology only ambulatory surgical facilities) from **any** operating room need determination limits as this would undermine the CON law and defeat the basic purpose of the planning process. Moreover, the Agency does not support Carolina Ophthalmology's request "for an exemption to the CON process for ambulatory surgery centers for the discipline of ophthalmology" as this exemption would contravene the spirit of the Certificate of Need law.

Agency Recommendation

In consideration of the above, the Agency has two recommendations. The first recommendation is denial of both of the petitions, as submitted, and the second recommendation is that, as an experiment, one single specialty ambulatory surgery operating room be allocated to each of the five counties shown below:

COUNTY	POPULATION
MECKLENBURG	826,893
WAKE	790,007
GUILFORD	449,078
FORSYTH	331,859
CUMBERLAND	306,545

These counties were chosen because they are the counties with the largest population and thus in the best position economically to absorb one additional operating room.

Eligible applicants for CONs for these operating rooms would be applicants proposing to provide single specialty (including ophthalmology) surgery in an ambulatory surgery facility. Any CONs awarded as a result of this experiment would be awarded through the CON process with the stipulation that those criteria shown in the table on page 3 of this report, which are incorporated into the CON rules, must be met.