Petition to the State Health Coordinating Council

Regarding the Single Specialty Ambulatory Surgery

Demonstration Project

For the 2010 State Medical Facilities Plan

July 31st, 2009

Petitioner:

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PETITION

STATEMENT OF REQUESTED CHANGE

The Southern Surgical Center, LLC requests the following policy change to the 2010 State Medical Facilities Plan (SMFP). Many of the points mentioned in our original petition have already been addressed through the petitioning process. However we still want to emphasize a few points that we think are vital and should be included. The Southern Surgical Center therefore requests that a demonstration project criteria be amended to include the following:

1. Sites must bill as a freestanding Ambulatory Surgery Center, which is not licensed as part of a hospital or other Medicare Part A provider.

2. This lower cost solution should be a permanent feature of the facility.

3. While the current criteria gives "priority" to physician owned enterprises, we still think hospitals should be excluded as applicants. Otherwise they will be better able to tie up any award in litigation. Physicians cannot compete against the legal roadblocks that hospitals can create.

4. The CON application should include letters of support from surgeons with an existing case volume, and not rely on projections. At least 2,000 cases and letters of support from surgeons who have completed these cases should be included.

5. Physicians should be required to "offer" Emergency Room coverage.

REASONS FOR THE PROPOSED CHANGES

1. Sites must bill as a freestanding Ambulatory Surgery Center, which is not licensed as part of a hospital or other Medicare Part A provider.

There is no valid argument to support billing as an outpatient hospital department (at a higher rate than an ASC). Omission of this criterion will open the door for higher costs for everyone. Multiple studies show that procedures performed in an Ambulatory Surgery Center provide a better value to the patient. When those procedures occur in a freestanding non-hospital facility, the patient gains in cost savings as well as in efficiency of healthcare delivery.

This demonstration study also needs to address the topic of Joint ventures. We have found that the state will give deference to proposals that partner with hospitals. We are convinced that any demonstration project for Ambulatory Surgery Centers should specifically state that they be run by entities that bill ASC rates to ensure cost savings.

2. This lower billing schedule should be a permanent feature of the facility.

The ASC cannot be sold to a hospital corporation, unless the ASC billing rates can be maintained, or unless laws are passed that make an owner ineligible for continued

ownership. The state should exclude scenarios where hospital billing rates are applied to a demonstration project setting.

3. While the current criteria gives "priority" to physician owned enterprises, we still think hospitals should be excluded as applicants.

Hospitals have a much deeper cash reserve than physician practices. They will be better able to tie up any award in litigation. Physicians cannot compete against the legal roadblocks that hospitals can create. It is conceivable that some of the sites will be delayed years of hospitals are considered valid applicants. Demonstration projects are only worthwhile if they are actually operational.

4. The CON application should include letters of support from surgeons with an existing case volume, and not rely on projections.

At least 2,000 cases and letters of support from surgeons who have completed these cases should be included. Forecast utilization based only on population growth and estimated surgical use rates should be considered insufficient documentation. Letters of support from actual surgeons using the center need to be included in the application.

5. Physicians should be required to "offer" Emergency Room coverage.

It is very possible that a hospital might try to deny ER coverage, stating reasons other than "competitive" reasons, while actually trying to disqualify the physician from ASC ownership. It would make sense to have the physician "offer" ER coverage according to the rules set out in the medical staff bylaws.

ADVERSE EFFECTS ON PROVIDERS AND CONSUMERS OF NOT MAKING THE REQUESTED CHANGE

Patients are hurt by the status quo because freestanding ambulatory surgery centers are more cost effective, and the more ambulatory surgery that can be performed outside of a hospital and out from under the expensive hospital bureaucracy, the better. Many of these points have already been listed in previous petitions. Only ten percent of operating rooms in North Carolina are not hospital owned. The freestanding ASC cost structure needs more support. We think that adding the lower ASC reimbursement requirement is therefore mandatory here.

If North Carolina is to have the flexibility to respond to the national call for cost management in health care, we must have policies that permit willing providers to develop innovative facilities. All of the reform agendas involve increased participation and ownership of physicians in care management, care evaluation and care direction. In the face of a documented growing national shortage of specialty physicians, we must think about efficient use of their time. This requires thinking about deployment of resources in a very different way. Measuring only the total productivity of existing multi-specialty operating rooms will force replication of the status quo.

ALTERNATIVES TO THE REQUESTED CHANGE CONSIDERED AND REJECTED

Leaving the current petition unchanged will still allow the Single Specialty Ambulatory Surgery Center Demonstration project to succeed, but adding the changes recommended in this petition will increase the likelihood of success. Not adding these criteria will make it more likely for pitfalls to adversely affect the performance of the project sites.

EVIDENCE OF NON-DUPLICATION OF SERVICES

This requested change would cause no duplication of services.

There is currently an overwhelming imbalance of hospital owned operating rooms. Adding the Single Specialty Demonstration sites will not begin to significantly change the ratios that currently exist. Two rooms added to each of the three largest metropolitan areas in North Carolina will not adversely affect any of the health systems in place. We applaud the decision to place these sites in major metropolitan areas.

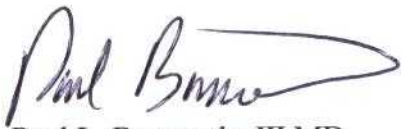
EVIDENCE THAT THE REQUESTED CHANGE PROMOTES SAFETY, QUALITY, ACCESS AND VALUE

The arguments made in the previous petitions and in the discussions leading to the current form of the 2010 SMFP support the improved safety, access, and value of the Demonstration Project. Safety concerns are of the highest priority, and the existing state, Medicare, and licensing requirements will be in effect for these demonstration ASCs as they are for existing ones, as well as hospital based operating rooms. This will ensure safety protocols and designs are met.

CONCLUSION

We believe the Single Specialty Ambulatory Surgery Center Demonstration Project is a fantastic idea whose time has come. We hope our points can be considered to improve the chances of a successful demonstration project.

Sincerely,



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