

January 3, 2017

Celia Inman, Project Analyst
Health Planning and Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health and Human Services
809 Ruggles Drive
Raleigh, North Carolina 27603

RE: Comments on Brunswick County OR CON Applications

Dear Ms. Inman:

Enclosed please find comments prepared by Brunswick Surgery Center, LLC regarding the competing Novant CON application to develop one additional operating room in Brunswick County to meet the need identified in the *2016 State Medical Facilities Plan*. We trust that you will take these comments into consideration during your review of both applications.

If you have any questions about the information presented here, please feel free to contact me at 910.332.3800. I look forward to seeing you at the public hearing.

Sincerely,

Steve DeBiasi

Stephen L. DeBiasi, FACHE, CMPE
Brunswick Surgery Center

**COMMENTS ABOUT COMPETING CERTIFICATE OF NEED APPLICATIONS
BRUNSWICK COUNTY OPERATING ROOM**

**Submitted by Brunswick Surgery Center, LLC
January 3, 2017**

Two applicants submitted Certificate of Need (CON) applications in response to the need identified in the *2016 State Medical Facilities Plan (SMFP)* for one additional operating room (OR) in Brunswick County; Brunswick Surgery Center, LLC (BSC) and Novant Health Brunswick Outpatient Surgery Center, LLC (NHBOS). In accordance with N.C.G.S. §131E-185(a.1)(1), this document includes comments relating to the representations made by NHBOS, and a discussion about whether the material in their application complies with the relevant review criteria, plans, and standards. These comments also address the determination of which of the two competing proposals represents the most effective alternative for development of an additional OR in Brunswick County.

Specifically, the Healthcare Planning and Certificate of Need Section, in making the decision, should consider several key issues, including the extent to which each proposed project:

- (1) Demonstrates conformity with applicable review criteria and standards;
- (2) Reasonably demonstrates the need the population has for the proposed services;
- (3) Does not represent unnecessary duplication of existing services;
- (4) Enhances market competition for surgical services in Brunswick County; and
- (5) Maximizes healthcare value in the delivery of health care services, and represents the most cost-effective (developmental and operational) alternative for development of the need determined OR, with competitive charges and costs.

The Agency typically performs a comparative analysis when evaluating all applications in a competitive batch review. The purpose is to identify the proposal that would bring the greatest overall benefit to the community. The table below summarizes 11 objective metrics that the Agency should use for comparing the two applications in this Brunswick County OR batch review.

Brunswick County OR Batch Review
Applicant Comparative Analysis

Metrics		
Comparative	BSC	NHBOS
Conforming to all Review Criteria	Yes	No
New Entrant/ Enhance Market Competition	Yes	No
Improve Geographic Accessibility	Yes	Yes
Operational Date	1/1/2019	1/1/2019
Project Capital Cost	\$4,247,515	\$14,123,358
PY3 Gross Revenue/Surgical Case	\$4,987	\$7,848
PY3 Net Revenue/Surgical Case	\$2,340	\$2,529
PY3 Operating Cost/Surgical Case	\$1,701	\$2,280
PY2 Access by Underserved Groups (Self-Pay/Indigent, Medicare, Medicaid %)	27.64%	68.70%
PY2 Brunswick County Resident Patient Origin %	94.90%	89.50%
PY2 Combined RN & Surgical Technician Salaries	\$111,404	\$111,370

Rankings		
Comparative	BSC	NHBOS
Enhance Market Competition	1	2
Conforming to Review Criteria	1	2
Geographic Accessibility	1	1
Operational Date	1	1
Project Capital Cost	1	2
PY3 Gross Revenue/Case	1	2
PY3 Net Revenue/Case	1	2
PY3 Operating Cost/Case	1	2
PY2 Access by Underserved Groups	2	1
PY2 Brunswick Co. Patient Origin %	1	2
PY2 RN & Surg Tech Salaries	1	1
Total	12	18
Average	1.09	1.64

Based on this comparative analysis which shows BSC ranks more favorably on the head-to-head comparison, and considering that the BSC application conforms to the Review Criteria and best achieves the Basic Principles of the 2016 SMFP (Policy Gen-3), BSC represents the most effective alternative for development of the need determined operating room.

Comparative Analysis

Note: Novant did not utilize the current form for all of its CON application. Sections VII through XII of Novant's application show that it used the 1/1/14 version of the New Operating Rooms form, rather than the current 4/1/15 version. Therefore, Novant may not have provided all the information that the Agency requested in the most current version of the application form.

Ownership of Operating Rooms in Brunswick County

Existing Brunswick County operating rooms are located at J. Arthur Dosher Memorial Hospital in Southport and at Novant Health Brunswick Medical Center (NHBMC) in Bolivia. NHBMC owns four of the six ORs (excluding one dedicated C-section OR at NHBMC) in Brunswick County, or two-thirds of the general OR inventory. NHBOS is 100 percent owned by Novant Health. Therefore, the proposal by NHBOS will not introduce a new entrant into the surgical marketplace in Brunswick County, and would further concentrate Novant's ownership of operating rooms in Brunswick County to a total of five of seven (71%) ORs.

BSC is owned by 15 physician members of EmergeOrtho. Neither EmergeOrtho, nor any of the 15 physician members of BSC currently own or operate any existing ORs in Brunswick County. BSC's proposal would introduce a new provider in the surgical marketplace in Brunswick County. Therefore, with regard to improving accessibility to an increased number of providers of surgical services located in Brunswick County, the BSC proposal is the most effective alternative.

Patient Origin

BSC projects the highest patient origin for residents from Brunswick County of the two competing proposals, as shown on the table below.

Projected Patient Origin, Year Two

County	BSC	NHBOS
Brunswick	94.9%	89.5%
Columbus	5.1%	--
Other Counties	0%	10.5%
Total	100.0%	100.0%

Source: CON Applications

The BSC proposal is the most effective alternative for expanding access to surgical services for local residents in the SMFP-defined service area of Brunswick County.

Maximize Healthcare Value

Average Charges, Reimbursement and Cost per Case

An essential issue to consider when evaluating the competing applications is the extent to which each proposed project represents a cost-effective alternative for provision of outpatient surgical services. In the current healthcare marketplace, where cost of care is a major concern with payors and consumers, the projected average charges, average reimbursement and average cost per surgical case are all important measures of healthcare value. In this Brunswick County batch review, BSC projects the lowest charges and costs, with lower gross charges, lower average reimbursement per surgical case, and lower average costs than NHBOS. Please see the tables on the following page.

Projected Average Charge per Surgical Case*

Project Year	BSC	NHBOS
1	\$4,841	\$7,544
2	\$4,913	\$7,695
3	\$4,987	\$7,848

Source: CON Applications

*Reflects only technical charges. For surgical cases only, not non-surgical procedures.

Projected Average Reimbursement per Surgical Case*

Project Year	BSC	NHBOS
1	\$2,271	\$2,431
2	\$2,305	\$2,479
3	\$2,340	\$2,529

Source: CON Applications

*Reflects only technical charges. For surgical cases only, not non-surgical procedures.

Projected Average Cost per Case*

Project Year	BSC	NHBOS
1	\$1,894	\$3,399
2	\$1,785	\$2,579
3	\$1,701	\$2,280

Source: CON Applications

*Reflects total project expenses for all surgical cases and non-surgical procedures.

NHBOS proposes a multi-specialty ASC and may contend that comparing the costs and charges of a multi-specialty ASC to a single-specialty ASC is like comparing apples and oranges. However, considering that orthopaedic surgical cases are typically more complex, and thus costlier than many of the NHBOS specialties (such as ophthalmic or ENT), BSC projects comparatively lower costs and charges per surgical case than NHBOS. Therefore, the comparison of charges and costs between the two applicants is clearly relevant in this batch review.

This comparative analysis demonstrates BSC's commitment to competitive pricing and greater cost-effectiveness. In Project Year 3, NHBOS projects average reimbursement 8

percent higher than BSC, and a 34 percent higher average cost per case. Clearly, BSC most effectively satisfies the value requirement of Policy GEN-3, and is a comparatively superior application.

Capital & Start-up Costs

In its application, BSC demonstrates that the cost, design, and means of construction, and facility development of its proposal represent the most effective alternative of the two applications. The BSC project will not unduly increase the costs of providing health services, or the costs to the public of providing health services. The table below summarizes the project capital and working capital costs.

Project Development Costs

	BSC	NHBOS
Capital Cost	\$4,247,515	\$14,123,358
Working Capital	\$330,000	\$414,571
Total	\$4,577,515	\$14,537,929
% Higher		218%

Source: CON Applications

BSC projects, by far, the lowest project initiation costs between the two competing applicants. In the current economic climate, effective initiatives to contain unnecessary costs and expenditures are especially important to promote value in healthcare. Declining reimbursement rates and augmented government regulations are increasingly placing downward pressure on healthcare providers to effectively do more with less. Ultimately, all healthcare providers must obtain a return on their investment. Thus, efficient management of project capital and start-up costs is crucial to providing healthcare value to consumers.

Quality in Delivery of Services

Clinical Staff Salaries

In recruitment and retention of high quality clinical personnel, salaries are a significant factor. Both applicants provided salary information in Section VII. As a new market entrant, BSC demonstrates that it's proposed salaries for RNs and Surgical Technicians are competitive in the local marketplace.

RN & Surgical Tech Salaries, YR 2

	BSC	NHBOS
Registered Nurse	\$66,116	\$65,913
Surgical Tech	\$45,288	\$45,457

Source: CON Applications

Specific comments regarding the NHBOS application

Comments specific to Criterion 3

NHBOS did not adequately demonstrate the need the population projected to be served has for the proposed project, and is not conforming to Review Criterion 3. There are several deficiencies in the specific methodology and assumptions used to project utilization for both the proposed new ASC and the remaining ORs at NHBMC.

Inpatient Surgical Utilization at NHBMC

NHBOS does not demonstrate that projected inpatient surgical utilization at NHBMC is based on reasonable and supported assumptions. One of the first steps of NHBOS's methodology involves projecting inpatient surgical cases at NHBMC. The applicant projects inpatient surgical volume to remain flat during the next six years. NHBOS claims this assumption is conservative; however, it is unreasonable to assume that inpatient surgical volume at NHBMC will remain flat for six years when inpatient surgical volume has actually been steadily declining in recent years. The following table summarizes inpatient surgical volume at NHBMC, as reported in NHBOS's CON application.

NHBMC Inpatient Surgical Cases

	2014	2015	2016
Inpatient Cases	1,011	981	883
Annual % Change	-3.0%	-10.0%	

Source: CON Project I.D. #O-11283-16, page 23

As stated in NHBOS' CON application, and shown above, inpatient surgical volume at NHBMC has decreased significantly during the past two years, including a decrease of 10 percent during the most recent fiscal year. The applicant states on page 32 of its application, "...inpatient surgical [sic] at NHBMC decreased as NHBMC experienced surgical capacity constraints and inpatient utilization shifted to the outpatient setting"; however, Novant fails to explain how the proposed project could possibly alleviate capacity constraints for inpatient cases. In Exhibit 3, several of the applicant's letters of support state "*I [sic] often have experienced delays in scheduling surgical cases for our surgeons due to the high utilization of the NHBMC operating rooms. It often takes longer to schedule a surgical case here at NHBMC than at another surgical facility in Brunswick or New Hanover*

counties." However, the proposed project will actually reduce access to inpatient surgical services, by relocating 25% of NHBMC's shared ORs from the hospital facility to NHBOS' proposed ASC in Leland, thereby exacerbating capacity constraints for inpatient surgical services at NHBMC. There is also no discussion in NHBOS's methodology to describe how the proposed project will halt or reverse NHBMC's inpatient surgical utilization patterns from shifting to the outpatient setting during the next six years. Given 1) the decreasing trend of inpatient surgical utilization at NHBMC, 2) the existing surgical capacity constraints at NHBMC, and 3) the further diminished OR access resulting from the proposed project, the applicant failed to adequately demonstrate why it is reasonable to project that inpatient surgical utilization will remain constant at NHBMC for the next six years.

Outpatient Surgical Utilization at NHBMC

NHBOS does not demonstrate that projected outpatient surgical utilization at NHBMC and NHBOS is based on reasonable and supported assumptions. As shown in the following table, outpatient surgical cases performed at NHBMC have remained flat during the last four years.

NHBMC Outpatient Surgical Cases

	2012	2013	2014	2015	2016	4-YR CAGR
Outpatient Cases	3,324	3,337	3,279	3,180	3,334	
% Change	0.4%	-1.7%	-3.0%	4.8%	0.1%	

Source: CON Project I.D. #O-11283-16, page 23

Novant states on page 24 of its CON application, "*The current limited surgical capacity at NHBMC has caused NHBMC's outpatient surgical market share to decrease slightly during the last several years as total outpatient surgical volume for Brunswick County residents has increased.*" However, this rationale for the market share decrease is not supported. The ongoing decrease of NHBMC's inpatient surgical cases has enabled more OR capacity for NHBMC's outpatient volume (and market share) to grow. Yet despite this additional available OR capacity for outpatient surgical volume, outpatient surgery market share continued to decrease at NHBMC (see table on following page).

NHBMC Outpatient Surgery Market Share

	FFY2012	FFY2013	FFY2014	FFY2015
Brunswick Community Hospital	30.9%	29.0%	28.6%	27.7%

Source: CON Project I.D. #O-11283-16, page 24

Despite minimal growth (0.1% CAGR) for outpatient surgical cases, NHBOS projects outpatient surgical cases at NHBMC will increase by 2.3% annually during the next six years. Novant attempts to support this growth rate by citing the addition of one orthopaedic surgeon who will perform surgical cases at NHBMC and NHBOS in the future; however, this attempted justification is inadequate. The applicant cites on page 25 of its CON application that NHBMC had 17 surgeons on the Active Medical Staff in 2012, which increased to a total surgical staff of 26 surgeons in 2016. Despite the increase of nine surgeons to its Medical Staff during the most recent four-year period, NHBMC's outpatient surgical utilization increased by only 10 total cases during the same time period (see table below).

NHBMC Outpatient Surgical Cases

	2012	2013	2014	2015	2016	4-YR CAGR
Outpatient Cases	3,324	3,337	3,279	3,180	3,334	0.1%

Source: CON Project I.D. #O-11283-16, page 33 and Exhibit 3, Table 6

Therefore, the MGMA physician productivity report is not representative of realistic surgical productivity expectations at NHBMC, nor is it an accurate tool for projecting utilization for the proposed project.

Furthermore, Exhibit 4 of the NHBOS application contains letters from surgeons expressing support for the proposed project and their intention to seek privileges at the proposed ASC. However, the application does not contain a letter of support from the new orthopaedic surgeon regarding his or her intention to perform surgical cases at either NHBOS or NHBMC. Therefore, because the applicant's utilization projections are based to a great extent on the projected increases in surgical case volume attributable to the addition of this specific surgeon, the lack of documentation from this surgeon regarding his or her support of the proposed project and his or her intention to perform outpatient

surgical cases at both NHBOS and NHBMC, is significant. Therefore, the applicant's utilization projections are not supported or reliable.

The reasonableness of projected outpatient surgical utilization at NHBMC is particularly relevant to the applicant's conformity to Review Criterion 3.

NHBMC's projected outpatient surgical utilization is the basis by which NHBOS projects the vast majority of its projected surgical cases. As stated on page 33 of its application, NHBOS projects that 45% of the future projected NHBMC outpatient surgical volume will shift to the new ASC. Therefore, if NHBMC's outpatient surgical utilization is unreasonable and not supported, then by extension, so is NHBOS's projected surgical utilization. Consequently, NHBOS did not adequately demonstrate the need for the proposed new ASC and is not conforming to Criterion 3.

Conflicting Utilization Projections

Based on the information provided in NHBOS' application, there are conflicting statements regarding the full impact of the proposed new ASC on NHBMC's surgical utilization. On page 34 of its application, NHBOS states, "*NHBMC estimates that as much as 45% of outpatient surgical volume will shift to the new NHBOS by the third year of operation.*" The accompanying table on page 34 of the application indicates a projection that 1,697 cases will shift from NHBMC in the third project year. However, on page 52 of its application, NHBOS states, *[T]he volume estimated to shift is 2,300 outpatient surgical cases from NHBMC in the third year of operation of the new freestanding outpatient surgical location. In addition, approximately 5% of patients leaving the county for outpatient surgical services in New Hanover County surgical facilities is estimates to remain in county by Project Year 3...*". Therefore, it is not clear what the full impact of the proposed project will be on NHBMC's surgical utilization. If 2,300 outpatient surgical cases will shift from NHBMC in the third year of the project, as stated on page 52 of the NHBOS application, then the remaining NHBMC ORs may be underutilized as a result of the proposed project.

Comments specific to Criterion 4

NHBOS failed to demonstrate that its proposal represents the least costly or most effective alternative, and is not conforming to Review Criterion 4. As stated previously, in Exhibit 3, several of the applicant's letters state "*I [sic] often have experienced delays in scheduling surgical cases for our surgeons due to the high utilization of the NHBMC operating rooms. It often takes longer to schedule a surgical*

case here at NHBMC than at another surgical facility in Brunswick or New Hanover counties." However, the proposed project will actually reduce access to inpatient surgical services at the hospital, by relocating one of NHBMC's four shared ORs from the hospital facility to NHBOS' proposed ASC in Leland, thereby exacerbating capacity constraints for surgical services at NHBMC.

The applicant states it considered developing a new ASC with one OR, but determined it was not a reasonable alternative based on utilization of other 1-OR ASCs in North Carolina, and Novant's experience operating a 1-OR ASC in Monroe. It seems this is the rationale driving Novant's decision to develop a 2-OR ASC, not the need the population has for the services NHBOC proposes. As a result, it appears that NHBOS utilized unreasonable growth rates for their utilization projections in order to reach the minimum performance standards for the existing and proposed ORs. As described previously, NHBOS does not demonstrate that projected inpatient and outpatient surgical utilization at NHBMC and NHBOS are based on reasonable and supported assumptions. Therefore, the application is not conforming to Criterion 4.

Comments specific to Criterion 5

Novant did not adequately demonstrated the financial feasibility of the proposal, and the NHBOS application is therefore non-conforming to Review Criterion 5. Specifically, in Forms D & E of the financial proformas, Novant projects that the payor mix for surgical cases and non-surgical procedures will be exactly the same. This seems unlikely, and thus raises a concern about the reliability of the financial proforma model.

Further, on page 71 of its application, Novant portrays that the bad debt for the initial two project years will be the same amount and percentage as the charity care projection. However, this does not match the information Novant shows on Form B/C, which portrays a much lower bad debt total for each year. Therefore, the application provides conflicting information which damages the credibility of the financial projections.

For information purposes, the Novant representation that charity care will be 12.1% of net revenue, and that bad debt will also be 12.1% of net revenue over-represents both elements in a comparative analysis. Based on the figures shown in Form B/C, Novant's projected charity care calculates to 3.87% of gross revenues, and bad debt to 2.00% of gross revenues. These figures are more comparable to the gross revenue percentages that BSC projects, which are 2.72%

charity care (totaling BSC charity care and self-pay allowances) and 1.04% for bad debt.

As a new provider, BSC projects to offer wide access to services for all local residents, including the medically underserved. BSC's projected combined Medicaid/Charity Care mix of 13.5% is higher than the 12.8% historical mix of ambulatory surgery cases at the two Brunswick County hospitals. NHBOS's slightly higher projected underserved access of 16.5% for Medicaid/Charity Care would be expected for an institution that will be tax-exempt and, thus, financially supported by the government and obligated to provide such access.

Comments specific to Criterion 6

NHBOS did not adequately demonstrate that its proposal would not result in the unnecessary duplication of surgical services in Brunswick County. Specifically, NHBOS did not adequately demonstrate in its application that the new OR it proposes to develop in Leland is needed, and that it will not unnecessarily duplicate the ORs that Novant already owns and operates in Brunswick County. See discussion regarding projected utilization in Criterion 3. Therefore, the NHBOS application is non-conforming to Review Criterion 6.

Comments specific to Criterion 18a

Because the NHBOS application is non-conforming with Criteria (3), (4), (5), and (6), it should also be found non-conforming with Criterion (18a). NHBOS did not adequately demonstrate the need the population projected to be served has for the proposed project, and did not adequately demonstrate that its proposal would not result in the unnecessary duplication of surgical services in Brunswick County. Novant did not adequately demonstrated the financial feasibility of the proposal. Thus, the proposed Novant project will not have a positive impact on competition.

And with regard to cost effectiveness, Novant did not reasonably demonstrate how any enhanced competition will have a positive impact upon the cost effectiveness to the services proposed. In fact, the Novant application is the least cost-effective option of the two applicants. Specifically, as shown in the tables on the following page, Novant projects the highest charges, reimbursement and cost between the two applicants.

Comparison of Projected Charges, Reimbursement and Costs

Third Operating Year	NHBOS	BSC
Per Case:		
Gross Revenue	\$7,848	\$4,987
Net Revenue	\$2,529	\$2,340
Cost	\$2,280	\$1,701

Source: CON applications

With regard to access, Novant Health by nature, as a not-for-profit hospital provider, provides extensive care to the medically underserved. BSC is also committed to providing the medically underserved with quality healthcare services. Because of the distinctly different tax statuses of Novant Health and BSC, the two entities are not directly comparable in terms of expanding access to the local medically underserved population.

10A NCAC 14C .2103(b)(1) Performance Standard

The Novant application does not conform to 10A NCAC 14C .2103(b)(1) because the NHBOS surgical case projections are not based on reasonable and supported assumptions. Please see discussion regarding Criterion 3.

10A NCAC 14C .2103(c)(1) Performance Standard

The Novant application does not conform to 10A NCAC 14C .2103(c)(1) because the NHBOS surgical case projections are not based on reasonable and supported assumptions. Please see discussion regarding Criterion 3.

10A NCAC 14C .2103(f) Performance Standard

The Novant application does not conform to 10A NCAC 14C .2103(f) because the NHBMC and NHBOS volume projections are not based on reasonable and supported assumptions. Please see discussion regarding Criterion 6.

CONCLUSION

For all of the foregoing reasons, the NHBOS application should be disapproved. It fails to satisfy multiple CON criteria, and it is also comparatively inferior to the Brunswick Surgery Center application. The BSC application should be approved because it satisfies all the applicable CON criteria and is comparatively superior to the Novant application.