Comments Opposing the Mission Hospital CON Application for 26 Acute Care Beds by Novant Health and Novant Health Asheville Medical Center, LLC

Filed July 31, 2024

The 2024 State Medical Facilities Plan (SMFP) found a need for 26 acute care beds in the service area including Buncombe, Graham, Madison and Yancey Counties. Certificate of Need (CON) applications, each for 26 beds, were filed by Novant Health, Mission Hospital, and AdventHealth. The applications are very different.

- Novant Health and Novant Health Asheville Medical Center, LLC (Novant Health or "NH") proposes to build a new 26 bed hospital focused on oncology care with large emergency and outpatient services departments.
- MH Mission Hospital, LLLP (Mission Hospital or Mission) proposes to reclassify 26 existing observation beds at its main campus to acute care beds without changing the physical capacity of the hospital.
- AdventHealth Asheville (AdventHealth or "AH") proposes to add 26 acute care beds to the 67 acute care bed hospital preliminarily approved by the Agency and under appeal by Mission Hospital, and to move the hospital from Candler to Weaverville.

The Healthcare Planning and Certificate of Need Section of the NC Division of Health Service Regulation (DHSR or the Agency) can approve none or one of the applications. Novant Health's position is that its application should be approved, and the other two applications should be denied as neither competing application conforms to all applicable CON criteria, and in a comparative review, Novant Health has the superior application. This document presents Novant Health's comments opposing the Mission Hospital application. Novant Health filed comments in opposition to the AdventHealth application in a separate document.

Mission Does Not Need a CON to Use the 26 Observation Beds for Acute Care Patients

Mission Can Use at Least 50 Observation Beds for Acute Care Patients Now

1. Mission Hospital is licensed for 853 beds, designated as 519 adult medical/surgical ("med/surg" or M/S") beds, 91 adult ICU beds, 51 Level IV neonatal ICU

("NICU") beds, 28 pediatric beds (ICU and med/surg), and 120 psychiatric beds, including child and adolescent psychiatry, for a total of 853 beds (733 acute care and 120 behavioral health).

2. The Mission application does not propose to increase the physical bed capacity of the hospital. It is solely to license 26 existing observation beds as acute care beds. It does not propose to replace the observation beds. Mission represented to the Agency on April 22, 2024, it has at least 50 observation beds that can be used as licensed acute care beds immediately when it applied for a temporary increase in its number of licensed beds.[1] Its 2024 License Renewal Application (LRA) shows 58 unlicensed observation beds.[2] Mission does not explain in its application why its number of observation patient days would decline in the future or how it would accommodate its observation patients if it reduced the number of observation beds by 26. Mission did not disclose in its application how many physical beds its main campus can accommodate. That is, does Mission have more licensure compliant bed spaces not now reported as licensed or observation beds that can be put in service to replace the 26 converted observation beds?

3. Based on Mission's representation to DHSR, it has today at least 783 "licensure compliant spaces" (733 licensed beds + 50 licensure compliant observation beds) for acute care patients if its CON is denied. DHSR clarified in a March 16, 2017, declaratory ruling a hospital can operate its licensed beds in any available "licensure compliant spaces."[3] The ruling says any licensure compliant bed can be an observation bed one day and a licensed acute care bed the next without the hospital having to file a new bed plan or obtain other Agency permission.

4. The declaratory ruling was requested by the Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Rehabilitation (CR). CR's facility had 70 licensed rehabilitation beds in 2017 in a facility that had previously been licensed for more. CR represented to DHSR it had 117 bed spaces that met licensure requirements for rehabilitation beds. DHSR held that CR could use any of the 117 bed spaces for admitted inpatient rehabilitation patients so long as the census

[1] Request for temporary increase in bed capacity for Mission Hospital, April 22, 2024, and DHSR approval of a temporary increase of 73 beds, May 8, 2024 (Exhibit 1)
[2] 2024 License Renewal Application for Mission Hospital (Exhibit 2)
[3] Memorandum from Martha J. Frisone to Mark Payne, March 16, 2017 (Exhibit 3)

on any day did not exceed 70. CR did not need to designate which of the 117 bed spaces were used as licensed beds on a given day. To quote the ruling:

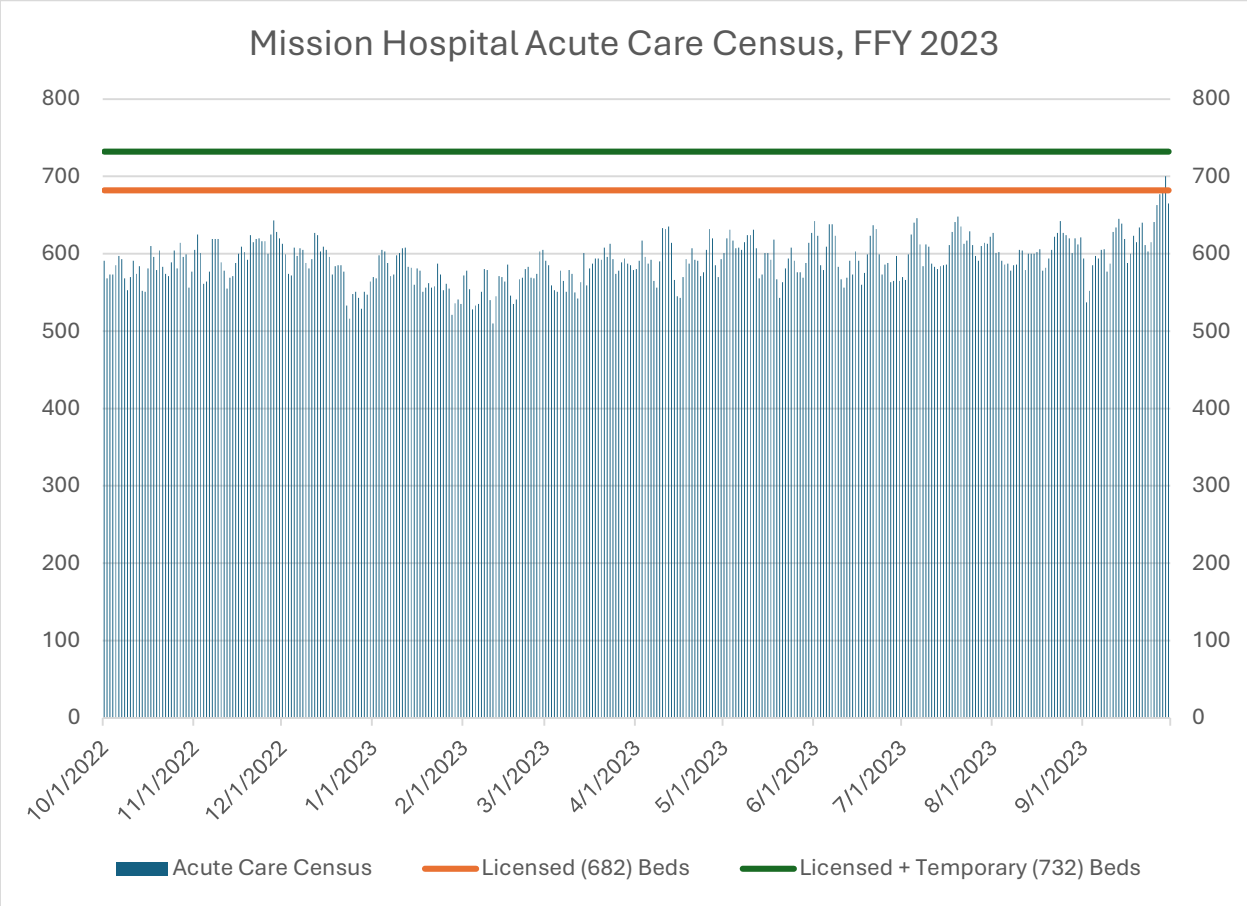
> *Nevertheless, pursuant to N.C. Gen. Stat. § 131 E-l 78(a), a certificate of need would only be required if the proposal results in the development or offering of a "new institutional health service." "New institutional health service" is defined in N.C. Gen. Stat. § 131E-176(16). The proposal would not result in the development of a new health service facility. Assuming that no more than 70 beds are in use at any one time, the proposal would not result in an increase in the number of rehabilitation beds. Although, ensuring compliance with the limit on the total number of beds that can be in use at any one time could be problematic. The request appears to imply that there is no capital cost associated with the proposal. And even if there is a capital cost for renovations, the cost of renovations could be exempt from review. It appears that the proposal to operate the 70 licensed rehabilitation beds in any of the 117 available and "licensure-compliant spaces" does not meet any of the definitions of "new institutional health service." Consequently, a certificate of need is not required.*[4]

5. This means that Mission can use any of its 783 licensure compliant bed spaces for acute care inpatients so long as the census does not exceed 733 acute care inpatients on any day. Further, spending for renovation or addition of observation bed spaces to make them licensure compliant are exempt from CON review. Mission only needs a CON to increase its permanent bed license if its daily census will exceed 733 acute care patients and it does not have a temporary increase in licensed capacity. In its application, Mission projects an average daily census of 694.8 in CY 2028, including NICU, and 651.6 excluding NICU.

6. Hospital occupancy varies and it is important for a hospital to be able to manage peak demand. Figure 1 below shows the daily census at Mission based on HIDI data for Federal fiscal year 2023 (October 1, 2022, to September 30, 2023). The data excludes patient days for psychiatric, substance abuse, rehabilitation, and NICU patients and for normal newborns. The orange bar is the 682 licensed acute care beds excluding NICU. The green bar shows the 732 beds with the 50 observation beds Mission says can immediately be used as acute care beds

[4] Ibid, page 2.

whether they are temporarily licensed or classified as observation beds. This period includes the COVID rebound. Even so, the census exceeded 682 on two days of the year.



7. On June 17, 2024, the day Mission filed the 2024 application, its licensed bed capacity was 806 acute care beds. The Agency granted Mission's request for a temporary increase in licensed bed capacity with a temporary increase of 73 beds effective May 1, 2024, through June 29, 2024. If Mission's patient day projections in the 2024 application are correct, it can renew this temporary change in bed capacity every 60 days and have up to 806 licensed acute care beds without the CON for 26 beds.[5]

<u>With Either Result of the 2022 Applications, Mission Does Not Need to Convert 26 Beds</u>

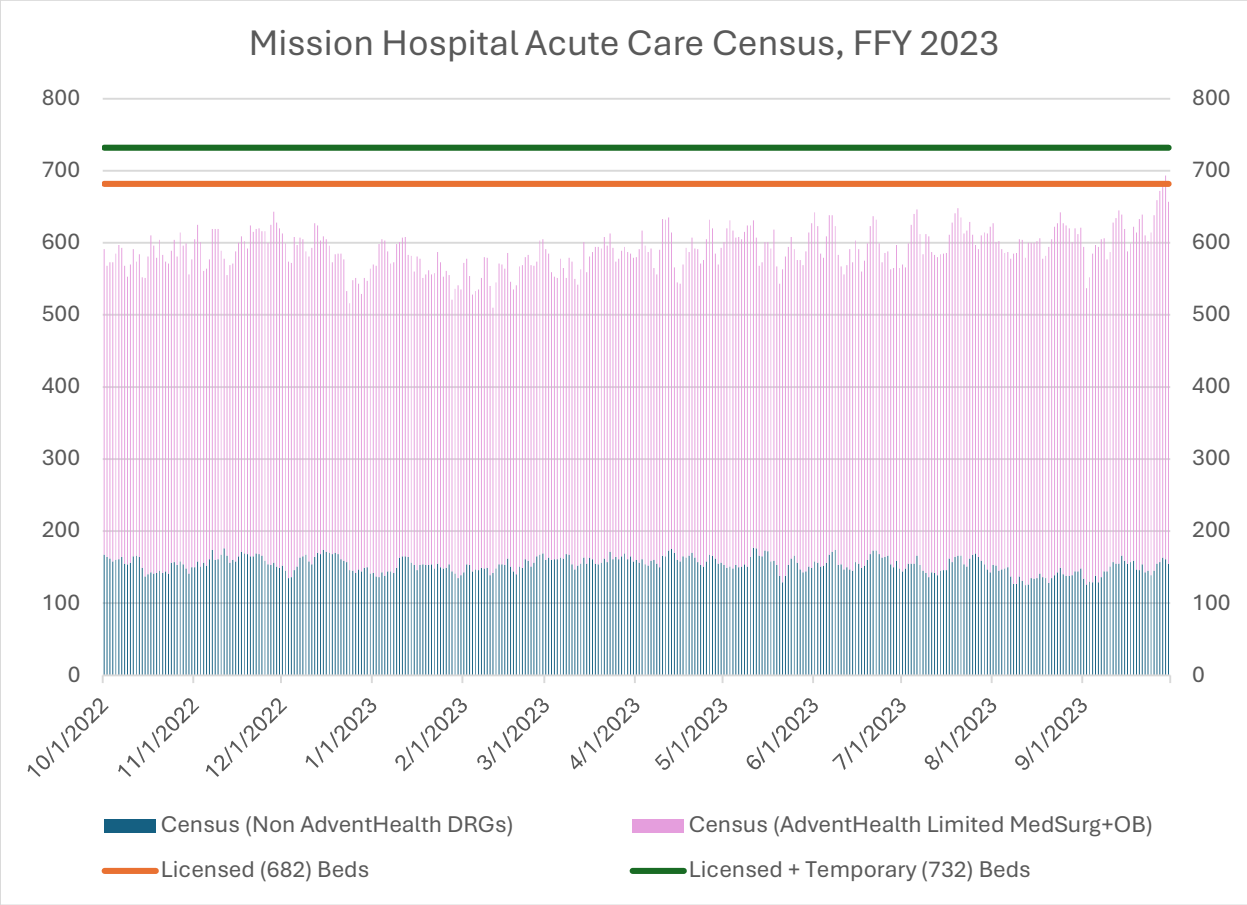
[5] Exhibit 1.

8. The Mission 2024 application totally ignores the two possible outcomes of the 2022 applications by Mission and AH Asheville. One of them will be awarded 67 acute care beds. If Mission is awarded the beds, it has no need for the additional 26 acute care beds. If AdventHealth is awarded the beds, it will take away part of Mission's volume and keep the daily acute care census below 733.

9. Figure 2 below shows the same daily census as the previous chart. However, it separates the daily census by our approximation of the AdventHealth limited medical/surgical DRGs + Obstetrics and the DRGs AH Asheville would not normally admit.[6] On average 74 percent of Mission's acute care census, excluding NICU, could be served by AdventHealth Asheville.[7]

[6] AdventHealth describes which services were excluded to identify the AH-Asheville Limited Med/Surg discharges on page 128 of the 2024 AH-Asheville Application. For the purposes of this analysis OB includes discharges in MDC 14: "Pregnancy, Childbirth & the Puerperium".

[7] On average, more than two-thirds (67.5%) of Mission's acute care (less NICU) daily census includes patients in AH Asheville's Limited Med/Surg subset of services alone.



10. As shown in the tables from the 2022 application, AH Asheville projected it would deliver 18,287 days of acute care (16,699 medical/surgical +1,588 obstetric) by Year 3. This is an average daily census of 50.1 patients. The Agency accepted the projections as reasonable. Virtually all these patients would otherwise have been admitted to Mission, and approval of AH Asheville will reduce Mission's projected volume for future years. With this reduction in census, and the ability to use all licensed and observation beds flexibly, Mission has no need for 26 additional licensed acute care beds.

Table Q.9: AdventHealth Asheville Med/Surg Discharges and Days of Care (Excluding Obstetrics)

	2025	2026	2027
Discharges	1,557	2,738	4,282
ALOS	3.9	3.9	3.9
Days of Care	**6,073**	**10,678**	**16,699**

Table Q.20: AdventHealth Asheville OB Discharges and Days of Care			
	2025	**2026**	**2027**
Discharges	**297**	**457**	**618**
ALOS	2.57	2.57	2.57
Days of Care	763	1,176	1,588

11. To summarize, Mission has 733 licensed acute care beds and at least 50 observation beds it says can immediately be used as licensed acute care beds for a total of 783. It therefore has at least 783 beds that can be used as licensed acute care beds. It can use all 783 beds flexibly so long as the census does not exceed 733 on any day. It might renovate the other eight reported observation beds to licensure standards and the renovation cost would be exempt from CON review. If Mission's census approaches its licensed bed capacity it can apply for temporary increases in licensed bed capacity when needed.

12. The Agency should not award Mission (or AH Asheville) additional acute care beds until the judicial review of the 2022 applications is final. If Mission is awarded the 67 beds from the 2022 application, the 2024 application does not show a need at Mission for 26 more licensed beds. If AH Asheville is awarded the 67 beds, it will reduce Mission's census and it will have no need for 26 more licensed beds.

Mission is Not Conforming with All Applicable CON Criteria

13. The Mission application cannot be approved because it is not conforming with these applicable CON criteria: 1, Policy GEN-3, 3, 4, and 18a.

Criterion 1, Policy GEN-3

"A certificate of need applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing healthcare value for resources expended. A certificate of need applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the availability of capacity to provide these services. A certificate of need applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the State

Medical Facilities Plan as well as addressing the needs of all residents in the proposed service area."

14. NH Asheville's previous comments are incorporated by reference into its comments on this criterion. The Mission application is non-conforming with this policy. As shown above, Mission does not need a CON to use the 26 observation beds for general acute care patients today or in the future. The Mission application adds no real capacity to acute care services in the service area. The Mission application does nothing to address problems of understaffing oncology services and or of reducing delays in emergency services documented by the North Carolina Attorney General with sworn affidavits.[8]

15. Because Mission challenged the award of 67 beds to AH Asheville, the final disposition of these beds is unknown.[9] The projections in the 2024 Mission application (pages 82 – 90) ignore these beds and their effect on Mission's capacity or Mission's census, depending on the outcome. Because Mission did not consider the possible effect of placing the 67 beds in service at AH Asheville its utilization projections are not reasonable or adequately supported.

16. Approving the Mission application would require the Agency to deny the Novant Health application which increases safety and quality for oncology patients and improves access to emergency services. How NH Asheville would increase safety and quality for oncology patients and increase access to prompt emergency services for service area residents is discussed at length in the NH Asheville application (pages 68-77, 180 and Executive Summary pages 1-4) and is incorporated by reference in these comments.

Criterion 3

"The applicant shall identify the population to be served by the proposed project and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, ... persons [with disabilities]*, the*

[8] *Joshua H. Stein v. HCA Management Services et al.* In the General Court of Justice Superior Court Division Buncombe County. Complaint, Exhibits 2-17

[9] Novant Health understands the Agency and Office of Administrative Hearings decisions were appealed to the North Carolina Court of Appeals (*see* Mission CON Application, page 41). The appeal has not been docketed by the Court as of the date of this comment. The Court of Appeals may not decide the case until sometime in 2025 or possibly 2026. No CON can be issued until the case is resolved.

elderly, and other underserved groups are likely to have access to the services proposed."

17. NH Asheville's previous comments are incorporated by reference into its comments on this criterion. On pages 67 and 68 of the 2024 application, Mission discusses capacity constraints.

> ***Capacity Constraints at Mission Hospital*** *For some time, Mission has been experiencing capacity constraints for acute care services, particularly in its ICU beds. Mission Hospital's acute care beds are highly utilized, not only because Mission is the regional tertiary provider for a multi-county region but also because the population is growing and aging. Mission believes in making health care readily accessible so that patients are not required to face delays and capacity constraints when they need the most critical and specialized services. The current acute care bed capacity issues are projected to be exacerbated by increased demand due to the growth and aging of the service area population as well as longer lengths of stays due to the complexity of cases treated at Mission.*
>
> *As a result of capacity constraints, Mission is often unable to accept transfer requests for high acuity patients from community hospitals. In addition, Mission experiences long ED hold times for patients who need to be admitted and for which a bed is unavailable. As detailed below, if the need for additional bed capacity is not addressed, Mission will be unable to keep up with demand, potentially limiting access to care.*

18. The 2024 Mission application does not address these problems or meet these needs. It would not increase the physical capacity of the hospital to address the capacity problems Mission claims exist. However, it would prevent NH Asheville from adding physical capacity to reduce demand at Mission.

19. Mission has not shown the population of the service area has any need for Mission to license 26 observation beds as acute care beds. The application does not increase access to acute care services at Mission over what it is today. Mission does not need a CON to spend funds on renovation of these rooms. Mission can place acute care inpatients in these rooms today because (1) it has flexibility to use all beds that are licensure-compliant for observation or acute care patients so long as its inpatient census on any day does not exceed its licensed

capacity and (2) it had a temporary increase of 73 beds in its licensed capacity when it filed the application and can renew this increase indefinitely if its occupancy is at current levels.

20. Mission argues on page 50 of the 2024 application that, "Bed awards to smaller community hospitals will not meet the identified need the population has for additional med/surg beds for higher acuity services...." This statement is untrue as applied to NH Asheville because it will provide specialized oncology services and expanded emergency services supported by oncology specialists and the medical resources of Novant Health. NH Asheville expects to reduce Mission's oncology census and to reduce outmigration of oncology patients from the service area by providing the proper staffing and ancillary services. To be clear, NH Asheville will divert patients now going to Mission and reduce its census.

21. This statement is untrue if it was meant to apply to the 67 beds awarded to AH Asheville. As shown on Figure 2 above, 74% of Mission's acute care inpatient census was in DRGs that AH Asheville can serve. If and when it opens, it will reduce Mission's census of patients either hospital can treat and make capacity available for tertiary patients only Mission can treat in the service area.

22. Mission notes on page 74 of the 2024 application, "...[H]alf of the time, Mission is operating at over 87% occupancy. These occupancy rates are almost 10% higher than the 78% occupancy target in the SMFP for hospitals of Mission's size and show that Mission's utilization far exceeds planning capacity." The occupancy percentages in the SMFP and the performance standard are not the maximum percentages at which a hospital, particularly a large hospital like Mission, can operate efficiently. They are the minimum percentages at which the Agency can approve additional acute care beds. From an operational perspective these target percentages do not consider the effect of unlicensed beds that can be used for acute care patients. Hospitals can increase their physical capacity by adding licensed acute care beds or observation beds. If Mission wanted to increase its physical capacity, a Mission project to construct only 26 or 67 new observation beds would probably be exempt from CON review.

23. On page 80, Mission discusses the transfers it declined in CY2021, 2022, and 2023. CY 2021 and 2022 are COVID years and CY2023 is the COVID rebound year. These are

not "normal" years for health planning. While it says transfers were declined due to capacity constraints, Mission does not say whether the constraint was lack of beds or inability to staff the beds. It does not say how many beds were occupied by COVID patients not expected in 2025 and after. It does not say what temporary increase in licensed beds Mission had during these years. Because the 2024 application does not increase the physical capacity of the hospital, Mission probably could not have accepted any more transfers than it did even with 26 observation beds converted to licensed beds.

Criterion 4

"Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed."

24. NH Asheville's previous comments are incorporated by reference into its comments on this criterion. The 2024 Mission application is non-conforming with this criterion. Mission told the Agency it had 50 observation beds it could immediately use as acute care beds without renovation and these beds were temporarily licensed as acute care beds. That temporary license can be renewed, as long as Mission's occupancy rate remains high, without approving the Mission application.

25. The need on which Mission bases its application is really the need it sees for more physical capacity. If so, the application does nothing to increase physical capacity. Mission can use the physical capacity of the 26 observation beds now for acute care patients without a CON. It can perform any necessary renovations on observation beds without a CON.

26. One alternative Mission did not consider is new construction of 26 or 67 observation beds at Mission that would increase its physical capacity and probably be exempt from CON review. Mission then has complete discretion which beds it designates as licensed beds and which as observation beds each day.

27. Another alternative not considered is not obstructing other applicants, such as NH Asheville, which propose to add physical bed capacity to the service area and reduce census pressure at Mission.

Criterion 18a

"The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact."

28. NH Asheville's previous comments are incorporated by reference into its comments on this criterion. The 2024 Mission application is non-conforming with this criterion. The approval of the Mission application will reduce competition in the service area by preventing approval of the NH Asheville application. NH Asheville will be a new provider in the service area and increase competition for inpatient, outpatient, and emergency services. It will give consumers the option of proper inpatient oncology services. It will improve access for consumers to emergency department services. It will benefit consumers by offering better negotiated rates than Mission or AH AdventHealth.

29. Competition will have a favorable effect on oncology services because NH Asheville will have proper staffing and cause Mission to improve the staffing and quality of its oncology services to reduce the loss of physicians and patients to NH Asheville. Competition will have a favorable effect on emergency services by reducing access times for patients and wait times for EMS units. Competition will have a favorable effect on negotiated rates by making Novant's lower rates available at NH Asheville.

Comparative Review Factors

30. NH Asheville's previous comments are incorporated by reference into its comments on comparative review of the Mission and NH Asheville applications. Comparing these two applications is an unusual exercise for the Agency.

31. NH Asheville's application increases competition for acute care services in the area and offers residents an additional choice of provider. It will offer more, properly staffed, inpatient and outpatient oncology services. It will offer more access to emergency services with

reduced delays for patients and first responders. It will add more acute care inpatient and outpatient services capacity to the service area.

32. Mission's application will give service area residents nothing they would not have if the Mission application is denied. It offers no new provider, no new services, no improved oncology or other services, no improved access to emergency services, and no increased physical capacity for acute care inpatients. Mission can use the 26 physical beds flexibly for inpatients or observation patients now. Any funds spent to renovate observation beds are exempt from CON review. If its projections are accurate, Mission can continue to have a "temporary" increase in licensed capacity of 73 beds for the foreseeable future.

33. In summary, the NH Asheville application improves quality and access to healthcare services and delivers the benefits of competition for residents of the service area. The Mission application does nothing to improve quality and access to healthcare services that could not be done without a CON. For these reasons, the Agency should consider the NH Asheville application to be superior to the Mission application.