

## **Analysis of Operation Room CON Applications and CONs Issued: 2018-2021 Acute Care Services Committee, May 10, 2022**

The Acute Care Services Committee asked the Healthcare Planning staff to examine whether patterns exist in the approval of certificates of need (CON) for new operating rooms (ORs). An issue of concern is the scenario in which the SMFP has a need determination that is triggered by a hospital's deficit; the hospital that triggered the need submits a CON application for some or all of the ORs in the need determination; and an unrelated provider proposing an AMSU receives CON approval for the new ORs. As staff investigated the patterns that may be present in CON applications and decisions, we discovered several items that must be considered.

First, need determinations are not based on the deficits at individual facilities within a health system. Rather, the sum of the individual facility deficits and surpluses result in the total surplus or deficit for the health system. Deficits are then added for health systems and for individual facilities (hospitals or AMSUs) that are not part of a larger health system. The total number of deficits are then offset by a placeholder for previous need determinations for which CONs have not yet been issued, if any. The final result is the need determination.

Second is the situation in which a hospital shows a deficit of ORs because CONs have been issued to relocate ORs from the hospital to a new facility (another hospital or AMSU) in the same health system. Upon issuance of the CON, the ORs at the hospital are subtracted from the hospital's planning inventory and added to the inventory of the new facility(ies). The ORs are very likely to still be in use at the hospital until the relocation occurs, which may take several years. For example, Table 6B may show that a hospital with 10 ORs has a deficit of 3 ORs, but Table 6A may show that 4 ORs have been approved for relocation. Thus, the hospital effectively has a surplus of 1 OR. In this example, the deficit is simply an artifact of how the methodology records ORs to be relocated. This situation is not common, but demonstrates that a calculated deficit may not be an actual deficit.

Another scenario occurs when a hospital's utilization may be driving the need determination, but the hospital may choose not to apply for a CON to develop new ORs. Similarly, the health system may apply for ORs to be located at a new AMSU owned by that health system, even if a hospital in that same health system has a deficit. It is a business decision on the part of a multifacility health system whether to propose to develop hospital-based ORs or AMSU-based ORs.

Finally, our review of CON OR approvals does not capture the substantive analysis within each CON application. Moreover, competitive applications are evaluated, in part, using comparative factors. One of those factors includes whether an applicant is a new entrant into the market. Inclusion of this factor supports the SMFP basic principle of increasing access to services.

## Analysis

With these items in mind, we undertook an analysis of CON applications and their outcomes between 2018 and 2021. We selected these years because 2018 is the first year of the new OR methodology. Also, 2021 is the latest year for which CON reviews have been completed.

Table 1 shows statewide CON applications and approvals from 2018-2021. The first group of columns shows the CON applications approved. These figures do not reflect the number of ORs approved because CONs are typically approved for more than one OR. Rather, these numbers show the overall “success rate” of applications from AMSUs compared to hospitals. Even though AMSUs have a higher CON application approval rate, hospitals are approved for more ORs than AMSUs. Overall, hospitals received CONs for 52.8% of the new ORs, with some variation from year to year.

We concentrated further analysis of patterns on counties that had need determinations in more than one year. The following counties had need determinations in only one year, and were thus eliminated from the more detailed analysis:

- Brunswick County had a need determination for 2 ORs in 2021. One hospital had a deficit and the CON for the new ORs were issued to an AMSU owned by that hospital system.
- Buncombe County had a need determination for 2 ORs in 2018. The deficit was driven by utilization of AMSUs and the CON for the new ORs was issued to an AMSU. The hospital did not apply.
- Catawba County had a need determination for 1 OR in 2018. The need was based on a petition submitted by an AMSU. The petitioner received the CON for the new OR.
- Cumberland County had a need determination for 1 OR in 2018. The need was based on a petition requesting an OR to train surgical residents in inpatient and outpatient surgery. The hospital that petitioned received the CON.

Table 2 shows the summary statistics by county for those with need determinations in more than one year. The following are worthy of note:

- Substantial variation exists across these counties in whether ORs are issued to hospitals versus AMSUs.
- Hospitals in Wake County receive a substantially smaller percentage of new ORs than other counties. Durham and Forsyth counties receive a somewhat higher percentage, but still less than 50%.
- The number of CON applications shows that the process appears to be far more competitive in Wake County than elsewhere.

**Table 1. Statewide CONs Issued for ORs, 2018-2021 SMFPs**

SMFP YEAR	CON APPLICATIONS APPROVED		% or CON APPLICATIONS APPROVED		TOTAL NEEDS	TOTAL ORs APPLIED FOR	TOTAL ORs APPROVED	TOTAL ORs TO HOSPITALS	% OF ORs TO HOSPITALS
	HOSPITAL	AMSU	HOSPITAL	AMSU					
2018	8	11	42.1%	57.9%	30	30	30	14	46.7%
2019	5	4	55.6%	44.4%	17	17	17	9	52.9%
2020	1	4	20.0%	80.0%	17	15	15	10	66.7%
2021	3	3	50.0%	50.0%	12	10	10	5	50.0%
<b>TOTAL</b>	<b>17</b>	<b>22</b>	<b>43.6%</b>	<b>56.4%</b>	<b>76</b>	<b>72</b>	<b>72</b>	<b>38</b>	<b>52.8%</b>

**Table 2. CONs Issued for ORs, by County, 2018-2021 SMFPs**

County (Number of Applications)	Need Determinations	Number of ORs Approved-Hospitals	Number of ORs Approved - AMSUs	Total ORs Approved	% of Total ORs approved for Hospitals
Durham (5) *	8	2	4	6	33.3%
Forsyth (6) *	6	2	4	6	33.3%
Mecklenburg (9) **	24	17	3	20	85.0%
Orange (7) **	12	8	4	12	66.7%
Wake (23) ***	14	4	10	14	28.6%

\* Had need determinations in 2 years

\*\* Had need determinations in 3 years

\*\*\* Had need determinations in 4 years

The Attachment contains tables that provide somewhat more detailed information on the CON applications for new ORs in each of these counties. They show data for the counties that had need determinations in at least two SMFP years between 2018 and 2021. We present this information to illustrate some of the nuances in the CON application process and the difficulty of making generalizations. A few patterns emerged, some of which are also evident in Table 2.

In general, almost all OR need determinations result in at least one CON application. Competitive CON applications for ORs is common.

In most counties and in most years, hospital utilization was responsible for most of the need determinations. (In Orange County, the only existing ORs are in hospitals, so their utilization, of course, drove the need). Only in Mecklenburg and Orange counties did most of the new ORs go to hospitals. However, in the case of Forsyth, the hospital generating the need did not apply for new ORs.

In Durham and Forsyth counties, CONs were generally issued to existing health systems. Even though a hospital within a health system may have generated a deficit, the system often opted to propose that new ORs be developed at AMSUs.

Wake County is an exception to the above patterns. In three of the four years examined, hospital utilization drove most or all of the need, but only 29% of the new ORs were issued to hospitals. However, 36% of the new CONs were issued to existing health systems for the development of AMSUs. An additional 36% of CONs were issued to unrelated entities for the development of AMSUs.

Based on these observations, the concern expressed in the first paragraph of this report is not a statewide phenomenon. It has occurred- to some extent- in Wake County, for several possible reasons. First, the CON competitive review process takes into consideration whether an applicant is a new provider. In all other counties except Wake, almost all CON applicants were existing providers. Second, CON applications were much more competitive in Wake County than elsewhere. Finally, all new providers proposed AMSUs simply because new providers, by definition, do not have an existing hospital in the county. (All new hospitals in Wake County were part of existing health systems.)

**Attachment**  
**CON Application and Decision Patterns: Need Determinations, 2018-2021 SMFPs**

**Durham**

	<b>2018</b>	<b>2021</b>
Need determination	4	4
Number of ORs applied for	4	4
Number of ORs approved	4	2
Number of applications received/approved	2/2	3/1
Hospital utilization drove all or most of need	✓	✓
Hospital(s) driving need applied	✓	✓
Health system driving need had surplus or small deficit		
Placeholders or cap offset need		
Pending OR relocation offset deficit		
Number of CON-approved ORs awarded to AMSU owned by hospital/health system in county	2	2
Number of CON-approved ORs awarded to hospital driving need	2	0
Number of CON-approved ORs awarded to independent AMSU (not part of health system in county)		
Number of CON-approved ORs awarded to other hospital		

All facilities in Durham County are owned by an individual hospital (NC Specialty Hospital) or a health system with a hospital (Duke).

There were no CON applicants outside these two entities.

Even though two-thirds of the CONs were issued to AMSUs, these AMSUs are part of the health system that generated the needs.

**Forsyth**

	<b>2018</b>	<b>2020</b>
Need determination	4	2
Number of ORs applied for	4	2
Number of ORs approved	4	2
Number of applications received/approved	5/2	3/1
Hospital utilization drove all or most of need	✓	✓
Hospital(s) driving need applied		✓
Health system had either surplus or small deficit, but hospital (in that health system) had larger deficit		✓
Placeholders or cap offset need		
Pending OR relocation offset deficit		
Number of CON-approved ORs awarded to AMSU owned by hospital/health system in county	0	0
Number of CON-approved ORs awarded to hospital driving need	0	0
Number of CON-approved ORs awarded to independent AMSU (not part of health system in county)	2	2
Number of CON-approved ORs awarded to other hospital	2	0

As of 2018, all facilities in Forsyth County were owned by either NC Baptist or Novant, except an AMSU that is a single specialty demonstration site.

Of the 6 ORs approved:

- CON's for 2 ORs were issued to a hospital (Novant), but not to the hospital driving the need (NC Baptist).
- CONs were issued for 4 ORs in independent AMSUs.

**Mecklenburg**

	<b>2018</b>	<b>2019</b>	<b>2020</b>
Need determination	6	6	12
Number of ORs applied for	6	4	11
Number of ORs approved	6	4	10
Number of applications received/approved	4/4	3/3	2/1
Hospital utilization drove all or most of need	✓	✓	✓
Hospital(s) driving need applied	✓		✓
Health system had either surplus or small deficit, but hospital (in that health system) had larger deficit	✓		
Placeholders or cap offset need	✓	✓	✓
Pending OR relocation offset deficit			
Number of CON-approved ORs awarded to AMSU owned by hospital/health system in county	2		
Number of CON-approved ORs awarded to hospital driving need	3	3	10
Number of CON-approved ORs awarded to independent AMSU (not part of health system in county)	1		
Number of CON-approved ORs awarded to other hospital	0	1	

Of the 20 ORs approved:

- 16 were approved for the hospital driving the need (Carolinas Medical Center)
- 2 were approved for AMSUs owned by the hospital driving the need
- 1 OR was approved for an AMSU owned by another hospital in the county
- 1 OR was approved for an independent AMSU

There was only 1 application from an entity not affiliated with a health system in the county.

**Orange**

	<b>2018</b>	<b>2019</b>	<b>2021</b>
Need determination	6	3	3
Number of ORs applied for	6	3	3
Number of ORs approved	6	3	3
Number of applications received/approved	4/3	2/2	1/1
Hospital utilization drove all or most of need	✓	✓	✓
Hospital(s) driving need applied	✓	✓	✓
Health system had either surplus or small deficit, but hospital (in that health system) had larger deficit			
Placeholders or cap offset need			
Pending OR relocation offset deficit			
Number of CON-approved ORs awarded to AMSU owned by hospital/health system in county	2	1	0
Number of CON-approved ORs awarded to hospital driving need	4	1	3
Number of CON-approved ORs awarded to independent AMSU (not part of health system in county)	0	2	0
Number of CON-approved ORs awarded to other hospital	0	0	0

As of 2018, all ORs were owned by the UNC health system.

Of the 12 ORs approved:

- 8 were approved for the hospital.
- 2 were approved for an AMSU owned by health system
- 2 were approved at an independent AMSU not related to UNC.

## Wake

	2018	2019	2020	2021
Need determination	6	2	3	3
Number of ORs applied for	6	2	3	3
Number of ORs approved	6	2	3	3
Number of applications received/approved	8/5	5/2	6/3	4/3
Hospital utilization drove all or most of need	✓	✓		✓
Hospital(s) driving need applied	✓	✓		✓
Health system had either surplus or small deficit, but hospital (in that health system) had larger deficit	✓	✓		✓
Placeholders or cap offset need	✓	✓	✓	✓
Pending OR relocation offset deficit	✓	✓	✓	
Number of CON-approved ORs awarded to AMSU owned by hospital/health system in county	2	0	2	1
Number of CON-approved ORs awarded to hospital driving need	2	0	0	1
Number of CON-approved ORs awarded to independent AMSU (not part of health system in county)	2	2	1	0
Number of CON-approved ORs awarded to other hospital	0	0	0	1

Of the 14 ORs approved:

- 5 were approved for AMSUs in a health system with a deficit (UNC and Duke)
- 3 were approved at the hospital driving the need (UNC Rex)
- 5 were approved for independent AMSUs
- 1 was approved for another hospital (WakeMed)