

**Acute Care Services Committee  
Agency Report  
Petition to Create an ESRD Policy to Allow for the  
Development or Expansion of a Kidney Disease Treatment Center  
at a Skilled Nursing Facility  
Proposed 2024 State Medical Facilities Plan**

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***Petitioner:***

Liberty Healthcare & Rehabilitation Services

***Contact:***

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***Request:***

Liberty Healthcare & Rehabilitation Services ("Liberty") requests the creation of Policy ESRD-4 to allow for the development or expansion of a kidney disease treatment center ("outpatient dialysis facility") at a skilled nursing facility.

***Background Information:***

Chapter Two of the *North Carolina 2023 State Medical Facilities Plan (SMFP)* provides that "[a]nyone who finds that the North Carolina State Medical Facilities Plan policies or methodologies, or the results of their application, are inappropriate may petition for changes or revisions. Such petitions are of two general types: those requesting changes in basic policies and methodologies, and those requesting adjustments to the need projections." The annual planning process and timeline allow for submission of petitions for changes to policies and methodologies to the State Health Coordinating Council (SHCC) in the spring.

There are two methodologies in the *SMFP* for End-Stage Renal Disease (ESRD) services. The facility needs methodology projects need for a specific facility, and the county need methodology projects need for the county. When a facility need determination exists, only the facility that generated the need may apply to add stations. When a county need determination exists, any current provider may apply to add stations in an existing facility, and anyone may apply to develop a new facility.

Policy ESRD-3 appears in Chapter Four of the *SMFP*. This policy allows licensed acute care hospitals to apply for a certificate of need to develop or expand an existing Medicare-certified kidney disease treatment center (outpatient dialysis facility) without regard to a county or facility need determination if all the policy's criteria are met.

The Petitioner requests the creation of the following policy as an alternative to a county need determination for entities seeking to develop a kidney disease treatment center in a nursing home:

**Policy ESRD-4: Development or Expansion of a Kidney Disease Treatment Center in a Nursing Home**

Licensed nursing homes (see stipulations in 131E-102) may apply for a certificate of need to develop or expand an existing Medicare-certified kidney disease treatment center (outpatient dialysis facility) without regard to a county or facility need determination if all the following are true:

1. A licensed nursing home facility shall propose to develop at least the minimum number of stations required for Medicare-certification by the Centers for Medicare and Medicaid (CMS) as a dialysis facility; and,
2. The new stations must be sited within nursing home facility or “proximate to the nursing home building,” i.e., on the same property as the nursing home facility; and
3. The dialysis facility must comply with the federal life safety and building code requirements applicable to a nursing home if located within it and the life safety and building code requirements applicable to dialysis facilities if located within the nursing home or “proximate to the nursing home building.”

Certificate of Need will impose a condition requiring the nursing home to document that it has applied for Medicare certification no later than three (3) years from the effective date on the certificate of need.

The performance standards in 10A NCAC 14C .2203 do not apply to a proposal submitted by a nursing home pursuant to this policy.

Dialysis stations developed pursuant to this policy are excluded from the inventory in the State Medical Facilities Plan and excluded from the facility and county need methodologies.

Outpatient dialysis facilities developed or expanded pursuant to this policy shall report utilization to the Agency in the same manner as other facilities with outpatient dialysis stations.

This petition is very similar to the 2022 spring petition submitted by the Petitioner. The Agency denied the Petitioner’s request because it could submit a summer petition for a county need for a specific number of dialysis stations and specify the stations be located at a nursing home.

Liberty subsequently submitted a summer petition in 2022 requesting a “pilot demonstration project” of six outpatient dialysis stations in Mecklenburg County based on the facility need methodology. The SHCC denied the Petition but approved a county need determination for six outpatient dialysis stations at a nursing home facility in Mecklenburg County with the following conditions:

- 1) a licensed nursing home facility shall propose to develop at least the minimum number of stations required for Medicare-certification by the Centers for Medicare and Medicaid (CMS) as a dialysis facility; and
- 2) the new stations must be sited within a nursing home facility or “proximate to the nursing home building,” i.e., on the same property as the nursing home facility; and
- 3) the dialysis facility must comply with the federal life safety and building code requirements applicable to a nursing home if located within it and the life safety and building code requirements applicable to dialysis facilities if located within the nursing home or “proximate to the nursing home building;” and
- 4) the CON will include a condition requiring the dialysis facility to document that it has applied for Medicare-certification no later than three years from the effective date of the CON; and
- 5) dialysis stations developed pursuant to this need determination are excluded from the planning inventory in the SMFP and excluded from the county and facility need methodologies; and
- 6) outpatient dialysis facilities developed pursuant to this need determination shall report utilization to the Agency in the same manner as other outpatient dialysis facilities.

The need determination for six dialysis stations in Mecklenburg County appears in the *2023 SMFP*, and the CON application deadline is September 15.

***Analysis/Implications:***

The Petitioner asserts that by establishing Policy ESRD-3, the Agency and the SHCC set a precedent for the development of Policy ESRD-4. A key distinction exists between the rationales for these policies. Hospitals sought the development of Policy ESRD-3 to receive reimbursement for outpatient dialysis treatment services that they were already providing to patients that were not designated as having “inpatient” status. As noted previously, there is a need determination for six dialysis stations at a nursing home in Mecklenburg County in the *2023 SMFP*. A reimbursement mechanism currently exists for the provider that receives CON approval and CMS certification to develop those stations. Thus, there is no precedent for Policy ESRD-4.

The Petitioner states, without supportive data, that there is a statewide need for nursing home facilities to provide dialysis treatment on-site to residents. Although outpatient dialysis services have yet to be provided at a nursing home in North Carolina, a county need determination is an existing mechanism by which a new dialysis provider, including a nursing home, may develop stations in a service area. In addition, an adjusted (county) need determination would exempt a CON applicant from the requirement to show a need for at least 10 stations (10A NCAC 14C .2203(a)), which would be advantageous to a nursing home provider as it is unlikely that a nursing home would require more than 10 stations. The applicant would still be required to show compliance with Policy GEN-3, which requires the CON applicant to demonstrate how the proposed project will promote the basic principles of the SMFP. Based on the foregoing, a new statewide policy is not required to establish outpatient dialysis services in nursing homes.

***Agency Recommendation:***

The Agency supports the standard methodologies for ESRD facilities. Given available information and comments submitted by the March 15, 2023, deadline, and in consideration of factors discussed above, the Agency recommends denial of the Petition.