

**Acute Care Services Committee  
Agency Report  
Adjusted Need Petition for an End-Stage Renal Disease Facility  
at a Skilled Nursing Facility in Multiple Counties  
in the 2024 State Medical Facilities Plan**

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***Petitioner:***

Liberty Healthcare & Rehabilitation Services

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***Request:***

Liberty Healthcare & Rehabilitation Services (“Liberty”) requests multiple adjusted need determinations for outpatient dialysis stations to be sited within nursing home facilities or “proximate to the nursing home building” in 24 counties.

***Background Information:***

Chapter Two of the *SMFP* notes that during the summer, the Agency accepts petitions that “involve requests for adjustments to need determinations in the *Proposed SMFP*. Petitioners may submit a written petition requesting an adjustment to the need determination in the *Proposed SMFP* if they believe that special attributes of a service area or institution give rise to resource requirements that differ from those provided by the standard methodologies and policies.” It should be noted that any person may submit a certificate of need (CON) application for a need determination in the *Plan*. The CON review could be competitive and there is no guarantee that the Petitioner would be the approved applicant.

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

The Petitioner states the *SMFP*'s county need determination methodology for dialysis stations does not meet its need to develop dialysis stations at nursing home facilities. To date, outpatient (in-center) dialysis services have not been provided in North Carolina nursing homes. However, the *2023 SMFP* includes an adjusted need determination for six dialysis stations to be sited within a nursing home facility or "proximate to the nursing home building" in Mecklenburg County.

Liberty has petitioned the State Health Coordinating Council (SHCC) three times regarding the provision of outpatient dialysis services at a nursing home. In March 2022, Liberty proposed the addition of Policy ESRD-4 to the *2023 SMFP*. The proposed policy would have allowed for the development or expansion of a kidney disease treatment center at a skilled nursing facility. The Agency recommended denial of the petition because the summer petition process is available to propose an adjusted county need determination for this purpose. The Agency also noted that a county need determination could stipulate that any new stations would have to be sited at a nursing home facility or "proximate to the nursing home building." The SHCC voted to accept the Agency's recommendation and deny the Petition.

In July 2022, Liberty's second petition sought SHCC approval of a nursing home pilot demonstration project of six outpatient dialysis stations in Mecklenburg County to be located at Royal Park of Matthews Rehabilitation and Health Center based on the dialysis facility need determination methodology. The Agency acknowledged that dialysis patients in nursing homes are typically fragile, that it is reasonable for dialysis to be provided in a manner that is most appropriate to a patient's healthcare needs and that providing dialysis in the nursing home facility could accomplish this goal. However, the Agency determined a "pilot demonstration" project was not needed because dialysis is successfully provided in nursing homes in other states. As an alternative, the Agency recommended a county need determination for six outpatient dialysis stations at a nursing home facility in Mecklenburg County with six stipulations, which are listed in the *2023 SMFP*. The SHCC voted to accept the Agency's recommendation.

In March 2023, Liberty submitted a third petition in which it again proposed the creation of Policy ESRD-4 to develop or expand a kidney disease treatment center at a skilled nursing home facility. In its petition, Liberty asserted that by developing Policy ESRD-3, the Agency and the SHCC set a precedent for the establishment of Proposed Policy ESRD-4. The Agency recommended denial of the petition. In its report, the Agency clarified the distinction between the purpose of Policy ESRD-3 and Proposed Policy ESRD-4; specifically, Policy ESRD-3 created a reimbursement mechanism for hospitals that were providing outpatient dialysis services for which they were not being compensated. Conversely, a reimbursement mechanism existed and currently exists for providers that have received CON approval and CMS certification to develop outpatient dialysis stations. The Agency further noted that there was no data to support a statewide need for on-site dialysis treatment in nursing home facilities and that Proposed Policy ESRD-4 was unnecessary because the county need determination permitted a new dialysis provider to develop dialysis stations within a service area. The SHCC approved the Agency's recommendation.

***Analysis/Implications:***

In 24 separate petitions, the Petitioner requests 24 county need determinations for outpatient dialysis stations at nursing home facilities. The Petitioner states that it seeks "a change only to the 2024 draft need methodolog[ies] for [each county]." Liberty utilized datasets obtained from the

Centers for Medicare & Medicaid Services (CMS)<sup>1</sup> to create a methodology that attempts to demonstrate the current nursing home facility need for outpatient dialysis stations. Table 1 lists the Petitioner’s requests for adjustments to dialysis county need determinations in the 2024 SMFP.

**Table 1: Liberty Adjusted Need Determination Requests by County**

County Service Area	Alamance	Bertie	Brunswick	Buncombe	Chatham	Columbus	Cumberland	Davie	Durham	Forsyth	Franklin	Halifax	Johnston	Lee	Mecklenburg	Moore	New Hanover	Orange	Person	Robeson	Rowan	Sampson	Wake	Watauga	Total Stations
Number Dialysis Stations Requested	13	4	6	16	4	4	28	4	34	38	8	11	14	8	59	7	17	7	6	7	7	6	57	4	369

Source: Liberty Healthcare & Rehabilitation Services’ 2023 Summer Petitions

After the submission of the petitions, the Petitioner responded to Agency staff’s request for data indicating the number of residents in their nursing homes that receive dialysis services. Seven petitions request a need determination adjustment for dialysis stations in Bertie, Buncombe, Davie, Moore, and New Hanover counties. Based on these data, Liberty’s nursing home facilities in these counties do not have any residents diagnosed with ESRD nor are any residents receiving in-center hemodialysis (HD) treatments. In an additional eight counties (i.e., Alamance, Columbus, Halifax, Lee, Orange, Person, Rowan, and Watauga), there are 3 or fewer dialysis patients residing at Liberty nursing facilities.

Three petitions request an adjustment to the county need determination for dialysis stations in Chatham, Durham, and Robeson counties. Liberty does not have facilities in these counties. Also, there is no data to support that the existing nursing homes in these counties are serving residents receiving dialysis services.

In each petition, Liberty states, “[t]o be abundantly clear, this Summer Petition seeks a change only to the 2024 draft need methodology for [X] County.” As mentioned previously, Chapter 2 of the SMFP outlines the criteria for Spring and Summer petitions. “Spring petitions involve requests for changes to the SMFP that have the potential for a statewide effect, such as the addition, deletion or revision of...need determination methodologies.” During the Summer petition process, the SHCC considers requests based on unique aspects of service areas that the relevant standard need determination calculations do not consider. Liberty does not explicate why the targeted counties have special characteristics that merit a different approach to assessing their need as compared to any other county in the State. The approval of a methodology created for outpatient dialysis stations to determine need at nursing home facilities for dozens of counties also would have a bearing on how need should be assessed for these facilities statewide. Therefore, Liberty’s petitions for a change to the county need methodology meet the Spring petition criteria and should be submitted during that timeframe.

<sup>1</sup> <http://data.cms.gov/quality-of-care/medicar-dialysis-facilities>

***Agency Recommendation:***

The Agency supports the standard methodologies for ESRD facilities. Given available information and comments submitted by the August 9, 2023 deadline, and in consideration of factors discussed above, the Agency recommends denial of the Petition.

**List of Liberty Healthcare's  
Licensed Nursing Home Facilities**

Nursing Home Facility Name	County**	Number of NH Residents/Patients Diagnosed with ESRD	Number of NH Residents/Patients Diagnosed Receiving Hemodialysis (HD) Services
Liberty Commons Nursing & Rehabilitation Center of Alamance County	Alamance	2	2
Three Rivers Health and Rehabilitation Center	Bertie	0	0
Elizabethtown healthcare & Rehabilitation Center*	Bladen	4	4
Liberty Commons Nursing & Rehab Center of Southport	Brunswick	6	6
Pisgah Manor Health Care Center	Buncombe	0	0
Liberty Commons Nursing & Rehabilitation Center of Columbus County	Columbus	5	4
Shoreland Health Care & Retirement Center	Columbus	1	1
Liberty Healthcare Services of Golden Years Nursing Center	Cumberland	1	1
Highland House Rehabilitation & Healthcare	Cumberland	3	3
Woodlands Nursing and Rehabilitation Center	Cumberland	5	5
Bermuda Commons Nursing and Rehabilitation Center	Davie	0	0
Summerstone Health and Rehab Center	Forsyth	8	7
The Oaks	Forsyth	10	10
Oak Forest Health and Rehabilitation	Forsyth	4	3
Louisburg Healthcare & Rehabilitation Center	Franklin	7	7
Liberty Commons Nsg and Rehab Ctr of Halifax County	Halifax	1	1
Liberty Commons Nsg and Rehab Ctr of Johnston Cty	Johnston	4	4
Westfield Rehabilitation and Health Center	Lee	2	1
Liberty Commons Nsg and Rehab Ctr of Lee County	Lee	1	1
Royal Park Rehabilitation & Health Center	Mecklenburg	10	10
The Pavilion Health Center at Brightmore	Mecklenburg	0	0
Briar Creek Health Center at The Barclay	Mecklenburg	0	0
Pinehurst Healthcare & Rehabilitation Center	Moore	4	4
The Inn at Quail Haven Village	Moore	0	0
Liberty Commons Rehabilitation Center	New Hanover	0	0
Bradley Creek Health Center at Carolina Bay	New Hanover	0	0
Parkview Health and Rehabilitation Center	Orange	1	1
Roxboro Healthcare & Rehabilitation Center	Person	1	1
Liberty Commons Nsg and Rehab Ctr of Rowan County	Rowan	2	2
Mary Gran Nursing Center	Sampson	5	5
Southwood Nursing and Retirement Center	Sampson	1	1
Capital Nursing and Rehabilitation Center	Wake	4	3
Swift Creek health Center at The Templeton	Wake	0	0
Warren Hills Nursing Center*	Warren	5	4
The Foley Center at Chestnut Ridge	Watauga	1	1
Yadkin Nursing Care Center & Magnolias Over Yadkin*	Yadkin	1	1

Source: Data provided by Liberty Healthcare on 7/31/23 in response to an Agency request for additional data.

\* Liberty Healthcare did not petition for an adjusted need determination for dialysis stations for this county.