January 3, 2017
Comments in Opposition from Novant Health, Inc.
Regarding a Certificate of Need Application
Submitted on 11/15/2016 for 12/1/2016 Review Cycle
by Brunswick Surgery Center, LLC
in Response to a Need Determination for
One Operating Room in the Brunswick County Service Area

I. Introduction

In accordance with N.C.G.S. § 131E-185(a1)(1), Novant Health, Inc. submits the following comments regarding a Certificate of Need application submitted by Brunswick Surgery Center, LLC (BSC) in response to a need determination for one operating room in the Brunswick County Service Area for the December 1, 2016 review cycle.

Overview of applications

The following two CON applications were submitted in response to a need determination for one operating room in the Brunswick County Service Area in the *2016 State Medical Facilities Plan* (*2016 SMFP*).

- O-011283-16: Novant Health Brunswick Outpatient Surgery, LLC (NHBOS) - Develop a new, multi-specialty, licensed ASC with two operating rooms by relocating one OR from NHBMC and adding one new OR.
- O-011282-16: Brunswick Surgery Center, LLC – Develop a new single specialty orthopedic ASC with one operating room; this project lists two co-applicants in CON application Section I which are Brunswick Surgery Center, LLC and OWP3, LLC.

The two CON applicants proposed a total of two new operating rooms in Brunswick County. It is not possible for the Agency to approve both CON applications.

Based upon the operating room need methodology in the annual *SMFP*, Novant Health Brunswick Medical Center (NHBMC) generated the need for the one additional operating room identified as needed in the *2016 SMFP*. The following table projects operating room need in Brunswick County by surgical facility using the SMFP Operating Room Need Methodology.

Brunswick County Operating Room Need by Surgical Facility
SMFP Operating Room Need Methodology

Surgical Provider	Inpatient Volume	Weighted Inpatient Hours	Outpatient Volume	Weighted Outpatient Hours	Combined	Growth Rate	Projected Operating Room Hours	Projected Total OR Need	Existing Inventory	Additional Need
NHBMC	1,137	3,411	3,279	4,919	8,330	11.03%	9,248	4.94	4	0.9403
Dosher	329	987	950	1425	2,412	11.03%	2,678	1.43	2	-0.569
Total	1,466	4,398	4,229	6,344	10,742	11.03%	11,926	6.37	6	0.370

Source: NHBOS CON Application Exhibit 3, Table 13

Further, the four operating rooms at NHBMC have operated well over the planning target of 80% since FFY 2013 as discussed in the NHBOS CON application. NHBOS and NHBMC are owned by Novant Health and NHBOS will be operated by a local Novant Health surgical management team.

II. Brunswick Surgery Center CON Application

The application submitted by BSC, Project I.D. #O-011282-16, includes co-applicants: Brunswick Surgery Center, LLC, the operating entity; and OWP3, LLC, the construction entity. The project includes only one operating room and will provide surgical services for only one specialty, orthopedics. Therefore, the project does not provide access to residents of Brunswick County in need of outpatient surgical services in other surgical specialties. In addition, the project does not provide access to other surgical specialists who are seeking access to a local solution for a freestanding ambulatory surgical facility for their patients. In comparison, the NHBOS application proposes to provide outpatient surgical care for eight distinct surgical specialties: ENT, General Surgery, Obstetrics/Gynecology, Ophthalmology, Orthopedics, Podiatry, Plastic Surgery, and Urology.

III. CON Review Criteria

The following comments are submitted based upon the CON Review Criteria found at G.S. § 131E-183. While some issues impact multiple Criteria, they are discussed under the most relevant review Criteria and referenced in others to which they apply.

G.S. § 131E-183 (1)

The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

There are two *State Medical Facilities Plan* (*SMFP*) Policies, SMFP Policies GEN-3 and GEN-4, applicable to the review of the two competing CON applications for a new operating room in Brunswick County, Policy GEN-3 and Policy GEN-4.

A. Policy GEN-3: Basic Principles

"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 the residents in the proposed service area.

As will be discussed in the context of CON Review Criteria (3), (4), (5), (13) and (18a), BSC:

- Does not demonstrate a need for the proposed project;
- Does not demonstrate that the proposed project will promote equitable access; and
- Does not demonstrate that the proposed project will maximize health care value for resources expended.

B. Policy GEN-4: Basic Principles: Energy Efficiency and Sustainability for Health Service Facilities

> *"Any person proposing a capital expenditure greater than $2 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178* ***shall include in its certificate of need application a written statement describing the project's plan*** *to assure improved energy efficiency and water conservation.*

In Section III of the BSC CON application, Question III.4 asks the co-applicants to address the policies in the annual SMFP, including Policy GEN-4 which asks how the proposed facility will be developed and operated to assure energy efficiency and sustainability. The co-applicants fail to address this policy in response to Question III.4.

Section XI, Question 8 of the CON application also asks the co-applicants to discuss efficient energy operations and containing the cost of utilities. Efforts to be made by OWP3, LLC associated with the construction of the facility are discussed in the BSC CON application in response to this question. However, the CON application does not include any response by the other co-applicant, BSC, regarding any processes or policies associated with operation of the proposed facility "*to assure improved energy efficiency and water conservation"*.

SMFP Policy GEN-4 requires that the "*person*" *proposing a capital expenditure greater than $2 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178* ***shall include in its certificate of need application a written statement describing the project's plan*** *to assure improved energy efficiency and water conservation.* The "person" in this case is the co-applicants. Therefore, a statement regarding this policy from both co-applicants and their respective roles in the assurance of improved energy efficiency and water conservation is required. Based upon the responses in the application, OWP3 will construct a facility which will have the potential to improve energy efficiency and water conservation. However, there is no response from BSC, the operating entity, to assure that it will have policies or procedures in place to guarantee that utilization of the facility will in fact result in improved energy efficiency and water conservation. As the operating entity, BSC will have an important role in the facility's efforts to achieve energy efficiency and conserve water. BSC's response to Policy GEN-4 is required by the language "shall" in SMFP Policy GEN-4, and its failure to provide a response is a fatal flaw.

Therefore, the BSC CON application does not conform to Policy GEN-3, Policy GEN-4, and CON Review Criterion (1).

G.S. § 131E-183 (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, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

BSC seeks to justify developing an ambulatory surgical facility with one operating room based upon the following reasons reflected on page 34 in the BSC CON application.

1. The need for dedicated ambulatory surgery center for Brunswick County residents
2. To meet the growing demand for ambulatory surgery in Brunswick County
3. Increase patient access to cost-effective alternative
4. Improve geographic access
5. Improve patient satisfaction

The first three of these issues are discussed below. In addition, the methodology utilized by BSC is based upon unreasonable assumptions as discussed below.

A. No Need for Orthopedics Only Outpatient Surgery Center with One OR in Brunswick County

The 2016 SMFP declared a need for an additional OR in Brunswick County. Rather than propose a project that would meet the needs of the greatest number of patients in Brunswick County, BSC chose an extremely narrow focus: orthopedics only. Thus, the only "need" that could be met by the BSC proposal is a need for outpatient orthopedic surgery. This is significant because if it is approved and built, BSC would be the first – and only – ambulatory surgical facility in Brunswick County. A scarce resource – a new OR in Brunswick County – could only be used by certain patients for a narrow purpose. The first freestanding surgery center to be approved in Brunswick County should be a multi-specialty surgery center which will maximize the number of patients who can choose to have their outpatient surgical care delivered in a freestanding, licensed surgery center.

BSC's application shows that there is no need for an orthopedics-only outpatient OR in Brunswick County. Only 25% of outpatient surgery in Brunswick County is orthopedic as reflected in the BSC application on page 16. This means that 75% of outpatient surgery in Brunswick County would remain in a more expensive hospital-based surgical facility or the patient would need to travel outside Brunswick County to utilize a freestanding licensed surgery center. Therefore, the proposed BSC project does not meet the need for an additional OR in Brunswick County and does not meet the demand for freestanding ambulatory surgical services in Brunswick County.

In contrast to BSC, NHBOS will be a freestanding multi-specialty ambulatory surgery center with two operating rooms and will meet the needs of *all* residents and surgeons for a local, low-cost outpatient surgical alternative.

B. Demand for Ambulatory Surgery in Brunswick County

BSC presents data in the application that illustrates that both the population and overall outpatient surgical volumes in Brunswick County are increasing. However, BSC does not propose to meet this need. A one OR orthopedic surgery center will not meet the needs of the residents and surgeons in Brunswick County for a freestanding ambulatory surgical solution.

On page 44 of its application, BSC presents data which shows a self-reported prevalence for select medical conditions. Musculoskeletal disorders are the highest ranked self-reported issue. Further the table shows that the highest age-adjusted rates are for the 65+ and 75+ population. However, when reviewing the proposed payor mix for utilization by the Medicare population on page 97 of the application, only 14.18% of projected surgical cases at BSC are Medicare cases. In addition, the BSC payor mix for commercial health insurance is 68.99% (28.04% Commercial & Managed Care + 40.95% BCBS) as noted on CON Application page 97. This suggests an emphasis at the BSC on patients under age 65.

Again, on pages 47-50, BSC discusses the impact aging will have on the demand for outpatient surgery, stating on page 49, *"According to the NSAS survey, the ambulatory surgery use rate for females age 65-74 is more than twice the rate of females overall. The ambulatory surgery use rate for males age 65-74 is more than two and a half times the rate of males overall."* Despite this, BSC only proposes to serve a relatively small percentage of Medicare enrollees, and further, the only Medicare enrollees it will service are solely orthopedic patients. Thus, BSC's proposed service to Medicare patients is really *de minimus*. Only 14.18% of projected surgical cases at Brunswick Surgery Center are Medicare cases as reflected on page 97 of the BSC application.

Brunswick County has a population of nearly 125,000 persons in 2016. From 2010 to 2016, Brunswick County was the fastest growing county in North Carolina based upon percentage growth. However, much of the population growth of Brunswick County is residents ages 65+, the age group most likely to utilize outpatient surgery services as discussed by BSC.

Brunswick County Population Projected Growth
Aged 65 and Greater

Ages 65+	2012	2015	2016	2017	2018	2019	2020	2021	CAGR 2016-2021
Brunswick County	27,369	33,855	35,546	37,416	39,213	40,976	42,633	44,217	4.5%
Percent of Total County Population	24.3%	27.4%	28.3%	29.0%	29.7%	30.3%	30.8%	31.2%	

Source: NC Office State Budget and Management

There is growing demand for outpatient surgical alternatives in Brunswick County. However, the proposed BSC project fails to meet the need for the Medicare population or the under 65 population in Brunswick County based upon the payor mix information presented in the BSC application. Of interest, the BSC payor mix for commercial health insurance is 68.99% (28.04% Commercial & Managed Care + 40.95% BCBS) as noted on CON Application page 97. This suggests an emphasis at BSC on patients under age 65. Therefore, the proposed BSC project

does not meet the needs of the population for a dedicated ambulatory surgery center in Brunswick County.

C. Increase Patient Access to Cost-Effective Alternative

BSC proposes to provide access to cost-effective alternatives for only orthopedic outpatient surgery patients. As discussed above, this is not the most reasonable alternative for meeting the growing demand for a freestanding cost-effective surgery center alternative in Brunswick County. Therefore, the proposed BSC does not meet the need for an additional OR in Brunswick County or the demand for a dedicated ambulatory surgery center in Brunswick County.

D. Methodology to Project Utilization is Flawed

BSC fails to project future utilization based upon reasonable assumptions as required by the CON statute and the CON Surgical Services Criteria and Standards. Therefore, the application is non-conforming to Criterion (3).

- **Brunswick Surgery Center Orthopedic Only Need Methodology Step 2 - Projected CAGR of 4.9% is Unreasonable**

Step 2 projects future orthopedic only utilization for BSC based upon the "user surgeons" (which includes only EmergeOrtho surgeons) current patient populations from Brunswick and Columbus Counties and historical growth of ambulatory surgical volume for Brunswick and Columbus County residents, as shown on pages 56 and 57 of BSC's CON application.

BSC did not justify the use of a 4.9% growth rate for Brunswick County residents and a 2.3% growth rate for Columbus County residents seeking orthopedic surgery.

A closer review of the historical data, presented on page 57, shows a decreasing growth trend in ambulatory surgical volume for both counties as illustrated in the following table. While growth in the county is still very vibrant for all outpatient surgical volume, BSC does not provide justification for using this CAGR for an orthopedic only ASC.

Decreasing Growth Trend in Ambulatory Surgery in Brunswick and Columbus Counties

County of Residence	2012	2013	2014	2015	3-Yr CAGR	2-Yr CAGR	Average Annual Growth Rate
Brunswick	8,455	9,493	9,961	10,467	7.4%	5.0%	5.1%
Annual Growth		12.3%	4.9%	5.1%			
Columbus	3,845	4,640	5,764	4,254	3.40%	-4.2%	-26.2%
Annual Growth		20.7%	24.2%	-26.2%			

Source: Brunswick Surgery Center CON Application page 57

As shown in the previous table, the ambulatory surgical growth trend is decreasing in both counties. Therefore, utilizing the 3-Yr CAGR to project future orthopedic outpatient surgical volume results in overstating the need for the proposed orthopedic only surgery center.

In Step 2 on page 57, BSC assumes that future orthopedic surgical growth will be two-thirds of the 3-Yr CAGR. Brunswick Surgery Center provides no explanation for this assumption. Again, assumptions provided by BSC do not support the orthopedic only ASC. NHBOS projected future need for a freestanding multi-specialty ASC with two operating rooms using more conservative assumptions.

Therefore, BSC'S projected orthopedic only outpatient surgical volumes are based upon unreasonable and unsupported assumptions. The application is non-conforming to Criterion (3) and as a result, the application also in non-conforming to Criterion (5).

- **Brunswick Surgery Center Need Methodology for Non-Surgical Procedures**

BSC's projected volumes for non-surgical procedures do not justify the need for two non-surgical procedure rooms. Project Year 3 projections on page 61 reflect an average of only 1.2 non-surgical procedures per day based upon 260 operating days per year reflected in the proposed hours of operation on page 16 or 0.6 procedures per non-surgical procedure room per day. If a non-surgical procedure takes 1 hour to complete, the capacity of one non-surgical procedure room operated 8 hours per day is 2,080 procedures per year; capacity of two non-procedure operating rooms is 4,160 procedures per year. The projected utilization of the two proposed non-surgical procedure rooms is only 7.5% per room in Project Year 3. If only one non-surgical procedure room is developed, utilization of the one non-surgical procedure room would be only 15% per year. BSC has clearly failed to demonstrate the need for the two procedure rooms.

Therefore, the proposed BSC project does not meet the need for an additional OR in Brunswick County or the demand for a dedicated ambulatory surgery center in Brunswick County. The application should be found non-conforming with Criterion (3).

E. Physician Support Is Extremely Limited

The BSC CON application is seeking approval to develop a dedicated orthopedic surgery center with one operating room. CON Application Exhibit11 includes letters of support from 12 orthopedic surgeons and one anesthesiologist. All the orthopedic surgeons who signed letters of support are part of the EmergeOrtho[1] physician group. It is unlikely that surgeons who are not part of the EmergeOrtho group will be able to obtain medical staff privileges at the proposed BSC. While the utilization assumptions are unreasonable (see discussion above), it is worth noting that they show the one operating room utilized at well over 100% of capacity. BSC will

[1] Four independent orthopaedic physician groups across North Carolina recently joined together to form a new practice called EmergeOrtho. EmergeOrtho is one of the largest physician-owned orthopaedic practices in the country. The practices that combined to create EmergeOrtho include the following: Blue Ridge Bone and Joint of Asheville, Hendersonville and Arden; Carolina Orthopaedic Specialists with offices in Alexander, Burke, Caldwell and Catawba counties; OrthoWilmington with offices in New Hanover, Brunswick and Onslow counties; and Triangle Orthopaedic Associates of the greater Raleigh-Durham area. The four practices began operating under the EmergeOrtho name on August 1, 2016.

not have sufficient operating room capacity to accommodate more surgeons than the initial twelve orthopedic surgeons who signed letters of support. Thus, the proposed project – the only freestanding ASC in Brunswick County – is not a community resource that will meet the needs of residents of Brunswick County. Rather, it is a very narrowly-focused project that is designed to benefit its physician owners. Other orthopedic surgeons in the market would not have access to the facility for their patients.

Therefore, the proposed BSC project does not meet the need for an additional OR in Brunswick County or the demand for a dedicated ambulatory surgery center in Brunswick County. The application should be found non-conforming to Criterion (3).

F. Brunswick Surgery Center is Non-Conforming to the CON Surgical Services Criteria and Standards

As discussed in Section D of these comments and in detail in Section IV of these comments below, BSC does not justify the need for the proposed project and therefor is non-conforming to the CON Criteria and Standards for Operating Rooms, Ambulatory Surgery Facilities, and GI Endoscopy Rooms at 10A NCAC 14C .2100.

For the reasons set forth above, BSC fails to document a need for a one room orthopedic only surgical center, and has not demonstrated conformity with CON Review Criterion (3).

G.S. § 131E-183 (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.

BSC discusses alternatives on pages 69 through 75. Several issues arise in the evaluation of the alternatives identified by BSC.

In discussing the alternative to "Develop an ASC Without Procedure Rooms," BSC states that "[d]eveloping the proposed ASC with two procedure rooms enables pain management specialists to rotate procedures between each room while the other is being cleaned." However, projected utilization of the procedure rooms on page 61 reflects an average of only 1.2 procedures per day based upon 260 operating days per year reflected in the proposed hours of operation on page 16. Therefore, having two procedure rooms is not necessary and is not the least costly or most effective alternative.

In discussing the alternative to "Develop a Multi-Specialty ASC With Procedure Rooms," BSC states that "a multi-specialty ASC would have resulted in increased capital costs associated with the relevant equipment needed for the various surgical specialties involved." However, as discussed above, the need in Brunswick County is for an OR that will meet the needs of all the population, not just a subset of the need for orthopedic services. Therefore, a single specialty outpatient surgery center is not the most effective alternative.

One alternative not discussed by BSC was the possibility of joint venturing the project with an existing provider in Brunswick County. NHBOS, a multi-specialty freestanding ambulatory

surgery center is being developed as an independent LLC which includes a future potential for joint venturing.

Finally, as discussed in the context of CON Statutory Review Criterion (3), BSC failed to demonstrate a need of the identified population for the proposed project.

Consequently, BSC fails to demonstrate that it is the least costly or most effective alternative proposed, which demonstrates non-conformity with CON Review Criteria (4).

G.S. § 131E-183 (5)

Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

As discussed in the Criterion (3) section of these comments above, future utilization for BSC is overstated, unsupported, and unreasonable. Thus, any CON Proforma Financial Projections based on these unsupported and unreasonable surgical projections are likewise unreasonable. Therefore, the BSC Application is non-conforming with Criterion (5).

In addition to unreliable projections, the BSC Application does not provide reasonable documentation for the projected capital expenditure for the project. Question XI.7 on page 129 of the BSC Application requires an applicant to "Provide a certified estimated of the construction cost for the proposed project from an architect licensed to do business in North Carolina." BSC refers the Agency to Exhibit 13 of the application. There is no cost estimate certified by an architect licensed to do business in North Carolina in Exhibit 13. Exhibit 13 does include a Project Cost Summary from Adams Southeastern Construction, a General Contractor, reflecting a total project cost of $6,485,836. This exceeds the projected construction costs associated with the project reflected on the OWP3 Project Capital Cost on page 111 of the BSC Application by $3,609,213. In addition, BSC did not provide the necessary assumptions and methodology utilized to project the capital costs as requested in the application in Question VIII.1. Based upon the lack of a certified construction cost estimate for the proposed project, the lack of necessary assumptions and the varying project costs reflected in Section VIII and Exhibit 13, the Agency cannot determine if all necessary capital costs associated with the proposed ASC are included in the Projected Capital Cost on page 111 of the application.

Further, projected Architect and Engineering Fees (A&E) reflected on page 111 represent only 2.1% of total constructions costs. This is extremely low for A&E fees. In comparison, the NHBOS project reflects a 9% A&E fee. In the footnote on page 111, BSC states that A&E fees are allocated based 28.34% of total A&E fees; however, it is not clear what total the A&E fees are calculated from: total construction costs associated with the shell, total project cost reflected in Exhibit 13, or total project cost on page 111. In addition, BSC does not include any contingency in the Projected Total Costs on page 111 to cover these missing fees.

Review of the BSC Projected Capital Cost on page 112 does not include any A&E fees. In Section XI and in Exhibit B of the Lease included in Exhibit 1, the application states that BSC

provided input into the design of the project. Therefore, the Total Project Cost for BSC should include some expenses for design. There are none. Therefore, the Total Project Cost is understated and the Agency cannot determine if the project capital cost is reasonable.

In addition, BSC is inconsistent in identifying the equipment included in the proposed project. The equipment list included in Exhibit 17 is not consistent with the equipment quotes included in Exhibit 18. Further the list of equipment exceeding $10,000 included on page 110 of the application is not consistent with the equipment quotes included in Exhibit 18. For example, the quotes include multiples of equipment not included in the table on page 110. Finally, there are several items in the table on page 110 for which no quotes are provided. Therefore, it is unclear what equipment will be acquired, again bringing doubt to the reasonableness of the Total Project Cost for BSC on page 112.

Therefore, assumptions associated with the financial feasibility of the project are in not provided for either of the co-applicants. Based upon the lack of a certified architect estimate, the varying project costs in the application and other understated costs, the Agency cannot determine the total capital expenditure associated with the BSC ASC which negatively impacts the financial feasibility of the proposed project. Therefore, the proposed project is non-conforming with Criterion (5).

G.S. § 131E-183 § (7)

(7) The applicant shall show evidence of availability of resources, including health manpower and management personnel, for the provision of services proposed to be provided.

BSC's staffing table in CON Application VII includes 1.0 FTE of a Radiological Technologist/Technician. However, BSC does not document any radiologist oversight or supervision for this position.

G.S. § 131E-183 § (8)

(8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

The proposed BSC ASC includes not one, but two pieces of radiology equipment. In addition, staffing for the project reflected on page 101 includes one FTE radiology technologists. However, BSC does not provide any documentation of a radiologist that would be responsible for coverage. Therefore, the applicant did not demonstrate that BSC would make available, or otherwise make arrangements for, the provision of all necessary ancillary and support services proposed in the application.

G.S. § 131E-183 § (12)

(12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the

construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

Question XI.7 on page 129 of the BSC Application requires an applicant to "Provide a certified estimate of the construction cost for the proposed project from an architect licensed to do business in North Carolina." BSC refers the Agency to Exhibit 13 of the application. There is no construction cost estimate certified by an architect licensed to do business in North Carolina in Exhibit 13. Exhibit 13 does include a Project Cost Summary from Adams Southeastern Construction, a General Contractor, reflecting a total project cost of $6,485,836. This exceeds the total construction costs associated with the project reflected on the OWP3 Project Capital Cost on page 111 of the BSC Application by $3,609,213. In addition, BSC did not provide the necessary assumptions and methodology utilized to project the capital costs as requested in the application in Question VIII.1. Based upon the lack of a certified construction cost estimate for the proposed project, the lack of necessary assumptions and the varying project costs reflected in Section VIII and Exhibit 13, the Agency cannot determine if all necessary costs associated with the Lessor's and the Tenant's Projected Capital Costs on pages 111 and 112 of the application. The total capital cost when the OPM3, LLC (Lessor) CON Application Section VIII Capital Cost Worksheet is added to the BSC, LLC (Tenant) CON Application Section VIII Capital Cost Worksheet is: ($4,247,515=$2,876,623 + $1,370,892). One of the things for which each applicant filing a CON Application is seeking CON-approval is for the amount of capital that can be spent to develop the project. It is very difficult for the Agency to determine which are the real or correct capital costs for the single specialty orthopedic surgery center, based on the varying information included in BSC CON Application Exhibit 17 regarding equipment costs, the co-applicant CON Application Section VIII capital cost sheets at pages 111-112, and Exhibit 13 containing only a general contractor's project capital cost estimate which states: "*the budget estimate is based on assumptions and historical data and should be considered as a recommended Construction budget only. Due to the volatility of construction costs, this budget estimate ($6,485,836) should be reviewed in 90 days."*

Review of the construction cost associated with the project, reflected in the OWP3 Project Capital Cost on page 111, shows that labor costs associated with the project are grossly understated. Based upon discussions with Novant Health experts in Construction and Design, labor cost routinely run 40% to 60% of total construction costs. The labor costs associated with the proposed project included on page 111 are projected to be only 6.2% of total construction costs. This is unreasonable. Again, BSC has understated its project costs and the financial feasibility of the proposed project cannot be determined. Therefore, the project is non-conforming to Criterion (5).

Further, projected Architect and Engineering (A&E) Fees reflected on page 111 represent only 2.1% of total constructions costs. This is extremely low for A&E fees. In comparison, the NHBOS project reflects a 9% A&E fee. In the footnote on page 111, BSC states that A&E fees are allocated based 28.34% of total A&E fees; however, it is not clear what total A&E fees are based upon. In addition, BSC does not include any contingency in the Projected Total Costs on page 111 to cover these missing fees.

Based upon the lack of a certified construction cost estimate from an architect, the varying project costs in the application and other understated costs, the Agency cannot determine that the proposed project is conforming with Criterion (12).

The line drawings for BSC, included in Exhibit 13 do not identify space for an IT closet to accommodate the support of the Electronic Health record mentioned in the application BSC at pages 11-12. Throughout the application BSC discusses the proposed electronic medical record and the equipment list on page 110 includes a significant expenditure for IT, however, no space is identified for IT equipment which can be sizable and often requires special HVAC.

In addition, the line drawings for BSC include space for sterile storage and a small 130 SF room for sterilization. However, the identified space is not adequate to house both the sterilization equipment and the decontamination equipment included on page 110. The sterile processing function must include the necessary space to provide both the "clean" and "dirty" functions of the process. Based upon a review of the drawings by Novant Health experts in Construction and Design, the square footage included in Exhibit 13 for this function are insufficient. Therefore, the total square footage for the project and the total capital expenditure for the project are understated and unreasonable.

Based upon the lack of a certified construction cost estimate from an architect, the varying project costs in the application, other understated costs, and lack of necessary space include in the design of the project, the Agency cannot determine that the proposed project is conforming with Criterion (12).

G.S. § 131E-183 (13)c. and d.

The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:

c. That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and

BSC presents data in the application that illustrates that both the population and outpatient surgical volumes in Brunswick County are increasing. However, BSC does not propose to meet the needs of the growing 65+ population or the under 65 population in need of outpatient surgery other than orthopedic surgery. On page 44 of the application, BSC presents data which shows a self-reported prevalence for select medical conditions. Musculoskeletal disorders are the highest ranked self-reported issue. Further the table shows that the highest age-adjusted rates are for the 65+ and 75+ population.

Reviewing the proposed payor mix for BSC on page 97 of the application, only 14.18% of projected surgical cases at Brunswick Surgery Center are Medicare cases. In addition, page 97 of the BSC application shows that the payor mix for commercial health insurance is 68.99% (28.04% Commercial & Managed Care + 40.95% BCBS). This suggests BSC will emphasize orthopedic surgery on patients under age 65.

- **This is significantly lower than the Medicare payor mix** for outpatient surgical cases at existing surgical providers in Brunswick County, which was 54.35% in FFY 2015 as reflected on page 99 of the BSC application.
- **This is significantly lower than the Medicare payor mix** for outpatient surgical cases at existing surgical providers in Columbus County, which was 35.5% in FFY 2015 as reflected on page 7 of Columbus Regional Healthcare System's 2016 LRA.
- **This is significantly lower than the Medicare payor mix** for outpatient surgical cases at existing surgical providers in New Hanover County as shown in the following table.

Payor Mix – Outpatient Surgical Cases FFY 2015

Surgical Facility	Charity	Medicare	Medicaid	Total
New Hanover Regional Medical Center	718	9,716	2,422	23,203
Percent of Total	3.1%	41.9%	10.4%	
Wilmington Surg	123	4575	710	8,915
Percent of Total	1.4%	51.3%	8.0%	

Source: 2016 LRAs

Again, on pages 47 -50, BSC discusses the impact aging will have on the demand for outpatient surgery, stating on page 49, *"According to the NSAS survey, the ambulatory surgery use rate for females age 65-74 is more than twice the rate of females overall. The ambulatory surgery use rate for males age 65-74 is more than two and a half times the rate of males overall."* However, when reviewing the proposed payor mix for BSC, application only 14.18% of projected surgical cases at BSC are Medicare cases. Thus, there is a significant disconnect between the data utilized to justify the "need" for the project and the payor mix that BSC proposes. Moreover, given the fact that BSC will be an orthopedic-only ASC, its service to Medicare enrollees, when compared to the Medicare-eligible population in Brunswick County (see table below), is truly *de minimus*. As far as service to Medicare enrollees is concerned, only Medicare enrollees who need orthopedic surgery would be eligible for treatment at BSC; all other Medicare enrollees in need of outpatient surgery would be excluded. By its very nature, the BSC project discourages use of its service by Medicare enrollees. This is entirely inconsistent with Criterion (13)c.

Brunswick County has a population of nearly 125,000 persons in 2016. From 2010 to 2016, Brunswick County was the fastest growing county in North Carolina based upon percentage growth. However, much of the population growth of Brunswick County is residents ages 65+, the age group most likely to utilize outpatient surgery services as discussed by BSC.

Brunswick County Population Projected Growth
Aged 65 and Greater

Ages 65+	2012	2015	2016	2017	2018	2019	2020	2021	CAGR 2016-2021
Brunswick County	27,369	33,855	35,546	37,416	39,213	40,976	42,633	44,217	4.5%
Percent of Total County Population	24.3%	27.4%	28.3%	29.0%	29.7%	30.3%	30.8%	31.2%	

Source: NC Office State Budget and Management

The proposed BSC application fails to meet the need for the Medicare population based upon the payor mix information presented in the application. Therefore, the proposed BSC application does not conform to Criterion (13) c.

d. That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

On its face, the BSC CON application does not meet this criterion. The proposal is for orthopedic surgery only. Thus, the only means by which a person will have access to the proposed facility is if the person needs orthopedic surgery. This is not a "range of means." Further, it is apparent that the only physicians who are likely to use the facility are EmergeOrtho doctors. See comments above under Criterion (3). Thus, the project is limited only to orthopedic patients who are patients of EmergeOrtho physicians. The proposed project, with its narrow scope and physician support, fails to meet Criterion (13)d. Other orthopedic surgeons and other surgical specialist in the market would not have access to the facility for their patients. Therefore, the proposed BSC project does not offer a range of means by which a person will have access to its services and is non-conforming to Criterion (13d).

G.S. § 131E-183 (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.

As discussed above, BSC fails to demonstrate conformity with CON Review Criteria (1), (3), (4), (5), (12) and (13)c. and d. Consequently, BSC fails to demonstrate that its CON application is conforming to CON Review Criterion (18a).

IV. North Carolina Criteria and Standards for Surgical Services

10A NCAC 14C .2103(a)(c)(f) PERFORMANCE STANDARDS

(a) A proposal to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating rooms in an existing facility (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall:

(1) demonstrate the need for the number of proposed operating rooms in the facility which is proposed to be developed or expanded in the third operating year of the project based on the following formula: {[(Number of facility's projected inpatient cases, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours) plus (Number of facility's projected outpatient cases times 1.5 hours)] divided by 1872 hours} minus the facility's total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-section operating rooms or demonstrate conformance of the proposed project to Policy AC-3 in the State Medical Facilities Plan titled "Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects;" and

(2) The number of rooms needed is determined as follows:

(A) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;

(B) in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative number or a positive number less than 0.3, then the need is zero; and

(C) in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero.

As previously discussed, BSC did not justify the need for the proposed project.

(c) A proposal to increase the number of operating rooms (excluding dedicated C-section operating rooms) in a service area shall:

(1) demonstrate the need for the number of proposed operating rooms in addition to the rooms in all of the licensed facilities identified in response to 10A NCAC 14C .2102(b)(2) in the third operating year of the proposed project based on the

following formula: {[(Number of projected inpatient cases for all the applicant's or related entities' facilities, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours) plus (Number of projected outpatient cases for all the applicant's or related entities' facilities times 1.5 hours)] divided by 1872 hours} minus the total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-Section operating rooms in all of the applicant's or related entities' licensed facilities in the service area; and

(2) The number of rooms needed is determined as follows:

(A) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;

(B) in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative number or a positive number less than 0.3, then the need is zero; and

(C) in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero.

As previously discussed, BSC did not justify the need for the proposed project.

(f) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

As previously discussed, BSC did not provide data supporting the assumptions used to project future surgical utilization.

For the reasons set forth above, BSC does not demonstrate conformity with North Carolina Criteria and Standards for Surgical Services.

V. Comparative Analysis

A. Demonstration of Need

The two CON applicants proposed a total of two new operating rooms in Brunswick County. It is not possible for the Agency to approve both CON applications.

The Agency should award one new operating room to NHBOS and deny the BSC application. NHBOS is seeking approval to develop a multi-specialty, licensed surgery center with eight types of outpatient surgeries offered. EmergeOrtho's BSC is proposing to offer only outpatient orthopedic surgeries. NHBOS's proposed project will offer more access to multiple types of outpatient surgical care than the proposed BSC.

NHBOS will meet the need for more patients in the service area than the BSC proposal. As reflected in the BSC application, on page 16, it would not meet the demand for freestanding ambulatory surgery in Brunswick County as only 25% of outpatient surgery in Brunswick County is orthopedic according to the BSC Application. This means that 75% of outpatient surgery in Brunswick County would remain in more expensive hospital-based surgical settings if BSC is approved. NHBOS will be a multi-specialty ambulatory surgery center and will meet the need for many more surgical specialties than BSC. Therefore, the proposed BSC project does not meet the need for an additional OR in Brunswick County.

B. Number of Operating Rooms

NHBOS proposes a new multi-specialty two operating room freestanding ambulatory surgery center. As discussed in the NHBOS CON Application on pages 50-51, Novant Health considered developing a one operating room surgical center. However, one operating room surgical facilities are inefficient and rarely successful in North Carolina. North Carolina currently has nine surgical facilities with only one operating room. Of these, all but one was chronically underutilized in FFY 2015.[2] Novant has first-hand experience with one OR ASCs and in fact closed its one OR facility in Monroe. The following table includes the list of one-OR surgical facilities and total surgical cases performed in FFY 2015 reflected in the Proposed 2017 SMFP.

North Carolina Surgical Facilities with One Licensed Operating Room

Surgical Provider	Operating Rooms	Surgical Cases FFY 2015	Utilization 2015
Carolinas Healthcare System – Anson (Sole surgical provider in county	1	33	2.1%
Asheville Eye Surgery Center	1	4,074	261.2%
Carolina Birth Center	1	5	0.3%
FirstHealth – Hoke (Only two LRAs reported as of 2016 LRA; second OR CON approved but not licensed)	1	226	14.5%
Iredell Head Neck and Ear Ambulatory Surgery Center	1	496	31.8%
Swain Community Hospital (Sole surgical provider in county)	1	0	0.0%
Presbyterian Same Day Surgery Center – Monroe (Closed)* d/b/a Novant Health Monroe Outpatient Surgery (NHMOS)	1	0	0.0%
Raleigh Plastic Surgery Center	1	323	20.7%
Wilson OB-GYN	1	105	6.7%

Source: 2017 SMFP

[2]SMFP definition of chronically underutilized = Licensed facilities operating at less than 40% of utilization for the past two fiscal years, which have been licensed long enough to submit at least three LRAs to DHSR. Utilization = Weighted Surgical Hours / Capacity. Capacity = #ORs x 2,340 available surgical hours (9 hours per day x 260 days per year)

As reflected in the previous table, the only surgical facility utilized at more than 40% of capacity in FFY 2015 was an ophthalmology specialty surgical center located in Buncombe County. The remaining eight surgical facilities that are in use are "chronically underutilized" based upon the definition in the SMFP.

Novant Health successfully operates nine[3] ambulatory surgical facilities in North Carolina, four of which are freestanding separately licensed facilities and five of which are hospital-based outpatient surgical facilities. All of these facilities have more than one operating room.

As illustrated in the above table, NHMOS has only one operating room. After several years of operation Novant Health determined that a freestanding ambulatory surgical facility with only one-operating room could not be financially viable. Novant Health continues to review and consider options regarding the most effective alternative to operate the one operating room surgery center as a successful multi-specialty ambulatory surgical facility.

In addition, in two-different single specialty ambulatory surgical demonstration projects included by the SHCC in the 2010 and 2016 SMFPs, both included a criterion that a minimum of two operating rooms be developed in a new facility. It should be noted that for the dental demonstration project the groups involved in submitting petitions to the SHCC requested only one operating room. The SHCC determined, based upon the experience and knowledge of its members, that a minimum of two operating rooms should be required.

NHBOS determined that developing a freestanding separately licensed ambulatory surgical facility with only one operating room was not a reasonable alternative.

Further, developing a single specialty freestanding separately licensed ambulatory surgical facility with only one operating room is not the most effective alternative as it would not provide cost savings on outpatient surgeries for all patients in Brunswick County since BSC proposes to offer only orthopedic outpatient surgeries at its single specialty surgery center.

Projected utilization for NHBOS in Project Year 3 is conservatively projected to be 2,300 surgical cases or 74% of the available capacity for two operating rooms. This allows for additional growth in the market. Projected utilization for BSC was only 1,642 surgical cases; however, this reflects 105% utilization of the available capacity of the one operating room, allowing no room for additional volume in the future.

Therefore, the development of the NHBOS freestanding ambulatory surgical center with two operating rooms is superior to developing a freestanding ambulatory surgical center with one operating room proposed by BSC.

[3]Novant Health's surgery centers in North Carolina include: Novant Health Ballantyne Outpatient Surgery; Novant Health Huntersville Outpatient Surgery, Novant Health Charlotte Outpatient Surgery; Novant Health Midtown Outpatient Surgery; Novant Health Julian Rd. Outpatient Surgery; Novant Health Hawthorne Outpatient Surgery; Novant Health Orthopedic Surgery; South Park Surgery Center; and Matthews Surgery Center. Novant Health was CON-approved in Sept. 2016 to develop Kernersville Outpatient Surgery, LLC. Novant Health's Holly Springs Surgery Center was CON-approved in 2012 and is projected to open in January 2017.

C. Surgical Specialties Provided

NHBOS, as the only multi-specialty surgery center applicant in this review, creates the best option to increase access to **ALL** outpatient surgeries across several surgical specialties including not only orthopedics, but also general surgery, ENT, ophthalmology, podiatry, plastic surgery, urology, obstetrics and gynecology. The first freestanding surgery center to be approved in Brunswick County should be a multi-specialty surgery center which will maximize the number of patients who can choose to have their outpatient surgical care delivered in a freestanding, licensed surgery center setting that offers eight surgical specialties. If approved, BSC, as a single specialty orthopedic surgery center, would be able to offer only one surgical specialty on an outpatient basis in the Brunswick market area.

Therefore, the multi-specialty ambulatory surgical facility proposed by NHBOS is substantially superior on this comparative factor.

D. Access for Medically Underserved Populations

Based on the applicants' responses to CON Application Question VI.14, regarding payor mix in Project Year 2, a comparison of service to medically underserved populations (Medicare, Medicaid, and Charity Care) is set forth below.

	Medicare	Medicaid	Charity Care/ Self Pay
NHBOS*	52.20%	13.40%	3.10%
Brunswick Surgery Center**	14.18%	10.58%	2.88%

*NHBOS Component Payor Mix from CON Application, Question VI.14 at page 75
**Brunswick Surgery Center Payor Mix from CON Application page 97

The BSC payor mix shows that it will provide less access to care for the medically underserved populations of Medicare, Medicaid, and Charity Care/Self-Pay as explained below:

- The BSC CON application Medicaid payor mix for outpatient surgery cases is lower by 2.82 basis points than the NHBOS payor mix percentage for outpatient surgeries;
- The BSC CON application Charity Care/Self Pay payor mix for outpatient surgeries is lower by 0.22 basis points than the NHBOS payor mix for outpatient surgeries;
- The BSC CON application Medicare payor mix for outpatient surgeries is lower by 38.02 basis points than the NHBOS Medicare payor mix for outpatient surgeries.
- 68.7% of NHBOS's payor mix is dedicated to serving the three above medically underserved populations.
- Only 27.64% of BSC's payor mix is dedicated to serving the three above medically underserved populations.

As discussed earlier, the BSC project discourages use of its services by Medicare enrollees. It is an orthopedic surgery only ASC that proposes limited service to Medicare enrollees. As is the case with every other population group, Medicare enrollees need access to a range of surgical services, not just orthopedic surgical services. Because of BSC's extremely limited scope, a large percentage of the Medicare eligible population in Brunswick County will not be able to use

BSC's services. Clearly, NHBOS is projected to provide superior access for medically underserved populations when compared with BSC.

E. Historical Experience in Treating the Medically Underserved Populations of Brunswick County

The commercial and Blue Cross percentage of care at BSC is 68.99% compared to only 28.6% at NHBOS. As stated on page 98 of the BSC application, its payor mix is based upon the actual experience of the surgeons who will be utilizing the proposed orthopedic only surgery center.

Payor mix for NHBOS is based upon historical outpatient surgical payor mix for Novant Health Brunswick Medical Center. NHBOS reviewed outpatient surgical payor mix at NHBMC for calendar years 2014, 2015 and year to date in 2016. Slight changes in payor mix occurred during this timeframe. Therefore, NHBOS averaged payor mix for the three-year timeframe and used the average for the proposed NHBOS. In addition, NHBOS compared the proposed payor mix to other outpatient surgical providers in Brunswick and New Hanover Counties. The proposed NHBOS payor mix is consistent with outpatient surgical services currently provided in Brunswick and New Hanover Counties, including the one freestanding ambulatory surgical facility in New Hanover County.

It is evident from this information that Novant Health has a history of meeting the needs of the underserved. The surgeons who will be utilizing BSC have a history of treating primarily patients from Brunswick County with commercial insurance or Blue Cross Blue Shield.

F. Charity Care Policies

As discussed above, BSC's Medicaid, Medicare and Charity Care payor mix percentages are substantially less than NHBOS. Thus, NHBOS is superior in terms of demonstration of access for the medically underserved population in the Brunswick market area. In addition, the NHBOS Charity Care policy is more generous in terms of providing coverage for patients with annual household incomes up to 300% of the federal poverty level which will allow a patient who is part of family of four with an annual household income of $72,750 to qualify for charity care for an outpatient surgery at NHBOS. BSC only offers charity for a narrow class of patients (orthopedic surgery only) with household incomes up to 200% of the federal poverty level. See NHBOC's responses to CON Application Questions VI.1.2., 4(a)-(b) and 6 and Exhibit 8. in the NHBOC Application. Thus, the NHBOS Charity Care policy is not only more generous on its face; it also covers a wider range of patients. As shown in the following table, NHBOS projects the provision of significantly more charity care and bad debt than proposed by BSC in Project Year 3. Project Year 3 is the most comparative year as both applicants included assumptions which ramped up the surgical volume at the two proposed facilities in Project Years 1 and 2.

Charity Care Percent Net Revenue – Project Year 3	
BSC Form B	NHBOS Form BC
1.5%	12.10%
Bad Debt Percent Net Revenue – Project Year 3	
BSC Form B	NHBOS Form BC
4.4%	6.24%

Source: Proforma B for both applicants
Calculation = Charity Care / Net Patient Revenue and
BSC Bad Debt (Write Down for Self Pay) / Net Patient Revenue

The Agency should award the one new operating room identified in the 2016 SMFP for Brunswick County to NHBOS and deny the BSC CON application.

The responses to CON application Question VI.8(c) allow the CON Section to compare actual Charity Care dollar amounts projected by each applicant during Project Years 1 and 2. The information is provided in the table below.

Charity Care Dollar Amounts	PY1: CY2019	PY2: CY 2020
NH Brunswick Outpatient Surgery	$378,430	$590,000
Brunswick Surgery Center	$45,709	$52,201
Difference	*$332,721*	*$537,799*

This demonstrates that NHBOS is projecting to provide significantly more charity care at its outpatient surgery center than BSC has projected. This reinforces the comparative superiority of the NHBOS project in terms of financial access to outpatient surgical care for in the Brunswick market area.

G. Total Operating Cost Per Case

Based on information provided in each applicant's response to CON application Proforma Form B/C (Statement of Revenues & Expenses), below is a comparison of each applicant's total operating cost per case including outpatient OR cases and procedure room cases combined.

Total Operating Cost Per Case

Facility	PY1	PY2	PY3
Brunswick Surgery Center***	$1,541.13	$1,478.94	$1,430.56
NHBOS*	$2,639.75	$2002.09	$1,769.64

*NHBOS CON Application page 110 Proforma Form B/C
***Brunswick Surgery Center CON Application Proforma Form B
Calculation =Total Expenses / (Total Surgical Cases + Total Procedure Cases)

A comparison of cost per surgical case is not a useful point of comparison in this review. Comparing the cost of providing services in a one operating room single specialty orthopedic

surgery center, BSC, and a two-operating room multi-specialty ambulatory surgery center, NHBOS, which will provide outpatient surgical care for orthopedics, as well as general surgery, urology, ENT, plastic surgery, podiatry, ophthalmology, and obstetrics & gynecology, is not comparing apples to apples. One applicant, NHBOS, is offering outpatient surgical care in eight surgical specialties, which involves higher expenses associated with staffing, inventory, supplies, equipment, etc. and the other applicant is offering outpatient surgical care only for orthopedics.

Further, as projected volume at NHBOS increases, the difference in cost per case between the two applicants decreases dramatically. This is due to the assumptions associated with projected case growth at NHBOS. The NHBOS trend for projected volume growth is less aggressive than the growth trend utilized by BSC. By year three, fixed costs are more equitably distributed across a larger volume of cases at NHBOS and the two projects are more comparable. However, as discussed previously, NHBOS expenses include the cost of providing surgical cases to a wide variety of surgical specialties. Cost per case at NHBOS and BSC is therefore not comparable and cost per case cannot be utilized in this review as a comparative factor.

H. Gross Revenue Per Outpatient Surgical Case

Based on information provided in each applicant's response to Proforma Form D (Gross Revenue Worksheet) below is a comparison of each applicant's Gross Revenue per outpatient surgery case.

Gross Revenue Per Outpatient Surgical Case

Facility	PY1	PY2	PY3
NHBOS*	$7,543.68	$7,694.55	$7,848.44
Brunswick Surgery Center**	$4,841.00	$4,913.00	$4,987.00
Difference	*$2,702.68*	*$2,781.55*	*$2,861.44*

*NHBOS CON Application CON Proformas Form D at page 111
**Brunswick Surgery Center CON Application Form D-BSC Gross Revenue Worksheet

However, a comparison of Gross Revenue per Outpatient surgical case is not a useful point of comparison in this review. Comparing gross revenue per case between the one operating room single specialty orthopedic surgery center proposed by BSC and the two-operating room multi-specialty ambulatory surgery center, in which NHBOS will provide outpatient surgical care for orthopedics, as well as general surgery, urology, ENT, plastic surgery, podiatry, ophthalmology, and obstetrics and gynecology, is not comparing apples to apples. Only one applicant, NHBOS, is offering outpatient surgical care in eight surgical specialties, which involves a wider variety of charges associated with different types of surgical cases and the other applicant is offering outpatient surgical care in only orthopedics.

Based on information provided in each applicant's response to Proforma Form E (Net Revenue Worksheet) below is a comparison of each applicant's Net Revenue per outpatient surgery case in Project Year 3.

Net Revenue Per Surgical Case

Facility	PY3
NHBOS*	$2,529.02
Brunswick Surgery Center**	$2,340.00
Difference	*$189.40*

*NHBOS CON Application CON Proformas Form E at page 112
**Brunswick Surgery Center CON Application Form E - BSC Gross Revenue Worksheet

As discussed previously, a comparison of Gross Revenue per Outpatient surgical case is not a useful point of comparison in this review. The above table illustrates that once the payor mix at NHBOS is taken into consideration, the net revenue per surgical case is similar.

Further a review of the methodology used by both applicants to project total gross revenue shows that NHBOS reviewed actual charge per case data by payor, such that some adjustment is included in the charges reflected in Form D for the type of case, time per case and the acuity of the case for each payor category. BSC utilized an average charge for all payors, which assumes all cases are identical and there is no difference between type of case, time per case, or demographic variation, such as age, for all payors. Therefore, gross revenue per case cannot be utilized as a comparative factor.

I. Physician Support and Access

- ***Novant Health Brunswick Outpatient Surgery, LLC Physician Support Letters***

In contrast to BSC's limited physician support letters, NHBOS's physician letters of support come from a wide variety of surgical specialties with offices located throughout Brunswick County, as reflected in NHBOS CON Application **Exhibit 4,** at pages 159-184. The 18 surgeon support letters for NHBOS includes multiple surgical specialties:

- General Surgery (4)
- Otolaryngologists (2)
- Obstetrics/Gynecology (6)
- Ophthalmology (1)
- Orthopedic Surgery (1)
- ENT (2)
- Podiatry (1)
- Plastic Surgery (1)

These surgeons practice with the following Novant Health Medical Group (NHMG) and independent physician groups: Novant Health Surgical Associates, Novant Health OB/GYN, Specialty Eye Care of the Carolinas, Leighton Orthopaedics & Sports Medicine, P.C., Coastal Carolina E.N.T. D.O., P.A. and InStride Brunswick Foot and Ankle. In the future, additional surgeons will be able to seek medical staff privileges to practice at Novant Health Brunswick Medical Center.

Further, the proposed NHBOS facility will allow access to outpatient surgical services for ANY qualified surgeon interested in seeking credentials to provide care for their patients, regardless of specialty. Projected utilization at NHBOS reflects available capacity for additional surgical cases for new surgeons interested in providing care to Brunswick County residents, in Brunswick County.

In contrast, the BSC CON application is seeking approval to develop a dedicated orthopedic surgery center. BSC CON Application Exhibit 11 includes letters of support from 12 orthopedic surgeons and one anesthesiologist. All the orthopedic surgeons who signed letters of support are part of the EmergeOrtho physician group. Surgeons who are not part of the EmergeOrtho group will not be able to provide surgical services at BSC as BSC, with only one operating room, will not have sufficient operating room capacity to accommodate more surgeons than the initial twelve orthopedic surgeons who signed letters of support.

Finally, in response to CON application Question VI.9(c) NHBOS states that "the surgeons who propose to practice at NHBOS have existing and established referral relationships with numerous Novant Health Medical Group and independent physician offices throughout the Brunswick market area. The NHMG practices in and near the NHBOS include but are not limited to the following.

- Novant Health Inpatient Care Specialists, Bolivia, NC 28422
- Novant Health Family and Internal Medicine, Carolina Shores, NC 28467
- Novant Health Oceanside Family Medicine with offices in Southport, Leland, and Bolivia
- Novant Health Oceanside Family Medicine and Convenient Care, Shallotte, NC
- Novant Health Seaside Family Medicine, Sunset Beach, NC

These practices represent over 50 referring physicians.

In contrast, the BSC CON Application includes support letters in Exhibit 11 from only two referring physicians.

VI. Conclusion

The BSC application does not demonstrate conformity with multiple CON Review Criteria and does not demonstrate conformity with multiple CON Regulatory Criteria and Standards for surgical services. The NHBOS complies with all applicable CON review criteria and rules. The NHBOS application is comparatively superior to the BSC application in several key areas, including access for medically underserved populations. As a result, the BSC CON application should be denied and the NHBOS CON application should be approved.