

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: April 28, 2017

Findings Date: May 4, 2017

Project Analyst: Celia C. Inman

Team Leader: Lisa Pittman

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### COMPETITIVE REVIEW

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Project ID #: O-11282-16

Facility: Brunswick Surgery Center

FID #: 160564

County: Brunswick

Applicant(s): OWP3, LLC and Brunswick Surgery Center, LLC

Project: Develop a new ASC with one OR and two procedure rooms

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Project ID #: O-11283-16

Facility: Novant Health Brunswick Outpatient Surgery

FID #: 160567

County: Brunswick

Applicant: Novant Health Brunswick Outpatient Surgery, LLC

Project: Develop a new ASC by relocating one OR from NHBMC and adding one new OR and a procedure room

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### REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

N.C. Gen. Stat. § 131E-183(a) The Agency shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (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.

C – OWP3/BSC  
C – NHBOS

Chapter 6 of the Proposed 2016 State Medical Facilities Plan (SMFP) includes a methodology for determining the need for additional operating rooms (ORs) by service area. Application of the standard need methodology in the Proposed 2016 SMFP identified a need for one additional OR in the Brunswick County OR Service Area. There were no comments or petitions filed regarding the Brunswick County OR need determination in the Proposed 2016 SMFP during the Agency established petition and written comment periods. The Governor signed the 2016 SMFP on December 15, 2015. Therefore, the 2016 SMFP includes a need determination for one additional OR in Brunswick County based on the standard need methodology.

Two applications were submitted to the Healthcare Planning and Certificate of Need Section (Agency), each proposing to develop one new OR and establish a new Ambulatory Surgical Center (ASC) in Brunswick County. Pursuant to the need determination, only one new OR may be approved in this review for Brunswick County.

A number of comments about the two proposed projects submitted to the Agency during the written comment period appear to have a misunderstanding of the proposed projects and the need for an additional OR in Brunswick County, pursuant to the standard methodology for determining need for additional ORs in the 2016 SMFP. Following are some of the misconceptions from the comments followed by the Agency response:

- Ambulatory services are being moved from Southport to Leland – Currently, there are no ambulatory surgery centers in Brunswick County. Novant Health is proposing to relocate an existing OR from Novant Health Brunswick Medical Center (NHBMC) to Novant Health Brunswick Outpatient Surgery (NHBOS) and develop one new OR (pursuant to the need determination). The relocation of one OR from NHBMC leaves NHBMC with a total of three shared ORs and one dedicated C-Section OR in their current location.
- The applications are both proposing three ORs – Both applications are proposing to develop an ASC in Leland with one new OR for Brunswick County (pursuant to the need determination). The Brunswick Surgery Center (BSC) application proposes to develop two procedure rooms in addition to the OR and NHBOS' application proposes to develop one procedure room and relocate an existing Brunswick County OR from NHBMC to the proposed ASC, in addition to the OR in the need determination. The Agency does not regulate the development of procedure rooms.
- Patients would be forced to travel significant distances to receive surgical care – Surgical services will still be available at both J. Arthur Doshier Memorial Hospital (Doshier) and NHBMC in the southern part of the county. No patients will be forced to travel to the proposed ASC; however, with the addition of an ASC in Leland, patients will also have access to outpatient surgical care in the northern part of the county.

- Approval of either application will result in duplication of services – The 2016 SMFP identified the need for one additional OR in Brunswick County, using the standard need methodology for determining the need for additional ORs; therefore, it is possible that either (or both) applications could demonstrate that approval of that application would not result in unnecessary duplication of existing or approved services.
- Surgeons at BSC “*will likely have little interest in continuing inpatient procedures at Doshier...*” – the BSC application clearly states that the BSC participating surgeons (page 76 of the application) will continue to utilize existing licensed hospital surgical facilities.
- The NHBOS application “*proposes to develop more than one operating room in Brunswick County in a location that is not easily accessible to most of the county. It would unnecessarily duplicate existing capabilities.*” – NHBOS proposes to develop only one new operating room in Leland, which is a large and fast growing area in northern Brunswick County, an area that currently has no surgical services. NHBOS also proposes to relocate one of four existing ORs from NHBMC and develop a procedure room at the ASC.

### **Need Determination**

**OWP3, LLC (OWP3) and Brunswick Surgery Center, LLC (BSC)**, collectively referred to as “**OWP3/BSC**”, or “the applicant”, proposes to develop a new ASC with one OR and two procedure rooms in Brunswick County. OWP3/BSC does not propose to develop more new ORs than are determined to be needed in the 2016 SMFP for Brunswick County. Therefore, the application is consistent with the need determination.

**Novant Health Brunswick Outpatient Surgery, LLC (NHBOS)**, “the applicant”, proposes to establish a new ASC in Brunswick County by developing one new OR and one procedure room, and relocating one existing Brunswick County OR from Novant Health Brunswick Medical Center (NHBMC). The applicant does not propose to develop more new ORs than are determined to be needed in the 2016 SMFP for Brunswick County. Therefore, the application is consistent with the need determination.

### **Policies**

There are two policies in the 2016 SMFP which are applicable to this review: Policy GEN-3: Basic Principles and Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities.

Policy GEN-3, on page 39 of the 2016 SMFP, states:

*“A certificate of need applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access*

*and maximizing healthcare value for resources expended. A certificate of need applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the availability of capacity to provide these services. A certificate of need applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the State Medical Facilities Plan as well as addressing the needs of all residents in the proposed service area.”*

Policy GEN-4, on pages 39-40 of the 2016 SMFP, states:

*“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 approving a certificate of need proposing an expenditure greater than \$5 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178, Certificate of Need shall impose a condition requiring the applicant to develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN-4.*

*Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E-184 are required to submit a plan of energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant’s representation in the written statement as described in paragraph one of Policy GEN-4. The plan shall not adversely affect patient or resident health, safety or infection control.”*

**OWP3/BSC** proposes to develop a new ASC with one OR and two procedure rooms in Brunswick County. Applicant OWP3 will build the building and Applicant BSC will lease space in a portion of the newly constructed medical office building to be located on South Dickinson Road in Leland (Brunswick County) and operate the ASC.

The applicant, OWP3/BSC, addresses Policy GEN-3 as follows:

Promote Safety and Quality – The applicant describes how it believes the proposed project would promote safety and quality in Section III.1, pages 34-62, Section III.4, pages 64-66, Section II.8, page 26, and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant’s proposal would promote safety and quality.

Promote Equitable Access – The applicant describes how it believes the proposed project would promote equitable access in Section III.1, pages 34-62, Section III.4, page 64, Section VI, pages 88-100, and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant's proposal would promote equitable access.

Maximize Healthcare Value – The applicant describes how it believes the proposed project would maximize healthcare value in Section III.1, pages 34-62, Section III.4, pages 63-64, and Section X, beginning on page 119. The information provided by the applicant is reasonable and adequately supports the determination that the applicant's proposal would maximize healthcare value.

The applicant adequately demonstrates how the projected volumes incorporate the concepts of quality, equitable access and maximum value for resources expended in meeting the identified need. The application is consistent with Policy GEN-3.

The proposed capital expenditure for this project is greater than \$2 million but less than \$5 million; therefore, Policy GEN-4 is applicable. The applicant does not address Policy GEN-4 in Section III.4, where the application requests the applicant(s) to describe how the project is consistent with each applicable policy in the SMFP. However, in Section XI.8, page 130, the applicant describes its plan to maintain energy efficiency and water conservation, including, using energy guidelines of the U.S. Department of Housing and Urban Development, U.S. Department of Energy, and the American Society of Heating, Refrigeration, and Air Conditioning Engineers for the facility design; and incorporating a plumbing design which includes sensor-operated faucets and low flow toilets to minimize water usage. The applicant adequately demonstrates that the application includes a written statement describing the project's plan to assure improved energy efficiency and water conservation. Therefore, the application is consistent with Policy GEN-4.

In summary, the application is consistent with the need determination in the 2016 SMFP, Policy GEN-3 and Policy GEN-4. Consequently, the application is conforming to this criterion.

**NHBOS** proposes to establish a new ASC in Brunswick County by developing one new OR and one procedure room, and relocating one existing OR from NHBMC.

NHBOS addresses Policy GEN-3 as follows:

Promote Safety and Quality – The applicant describes how it believes the proposed project would promote safety and quality in Section III.1, pages 22-38, Section III.4, pages 43-44, Section II.8, pages 13-15, and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant's proposal would promote safety and quality.

Promote Equitable Access – The applicant describes how it believes the proposed project would promote equitable access in Section III.1, pages 22-38, Section III.4, pages 44-45, Section VI, pages 66-76, and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant's proposal would promote equitable access.

Maximize Healthcare Value – The applicant describes how it believes the proposed project would maximize healthcare value in Section III.1, pages 22-38, Section III.4, pages 45-47, and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant's proposal would maximize healthcare value.

The applicant adequately demonstrates how its projected volumes incorporate the concepts of quality, equitable access and maximum value for resources expended in meeting the facility need as identified by the applicant. The application is consistent with Policy GEN-3.

NHBOS addresses Policy GEN-4 as follows:

The proposed capital expenditure for this project is greater than \$5 million. In Section III.4, page 47, Section XI.8, page 106, and Exhibit 15, the applicant describes its plan to assure improved energy efficiency and water conservation. The applicant adequately demonstrates that the application includes a written statement describing the project's plan to assure improved energy efficiency and water conservation. Therefore, the application is consistent with Policy GEN-4, subject to the condition that the applicant shall develop an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant's representation in the written statement as described in paragraph one of Policy GEN-4.

In summary, the application is consistent with the need determination in the 2016 SMFP, Policy GEN-3, and Policy GEN-4. Consequently, the application is conforming to this criterion.

### **Conclusion**

In summary, both applicants adequately demonstrate that their proposals are consistent with the need determination in the 2016 SMFP for the development of one new OR to be located in Brunswick County. However, the limit on the number of ORs to be located in Brunswick County is one. Collectively, the two applicants propose a total of two new ORs. Therefore, even if both applications are conforming to all statutory and regulatory review criteria, both applications cannot be approved.

OWP3/BSC's application is conforming to the need determination, Policy GEN-3 and Policy GEN-4. NHBOS's application is conforming to the need determination, Policy GEN-3, and Policy GEN-4. Therefore, both applications are conforming to this criterion. See the Summary following the Comparative Analysis for the decision.

- (2) Repealed effective July 1, 1987.
- (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.

#### C – Both Applications

**OWP3/BSC** proposes to develop a new ASC with one operating room and two procedure rooms. Applicant OWP3 will build the building on South Dickinson Road in Leland (Brunswick County) and Applicant BSC will lease space in the new medical office building and operate the ASC. In Section I.8, page 3, and Section I.10, page 4, respectively, the applicant describes the proposed project as follows:

*“The proposed ASC will provide orthopaedic ambulatory surgical services and pain management procedures.*

...

*OWP3, LLC will incur the development and construction costs for the building where the proposed new ASC will be located. OWP3, LLC will lease a portion of the building to BSC for purposes of the proposed ASC project.”*

In Section I.13(c), page 10, the applicant states that OWP3 and BSC are new entities that do not currently own, manage or operate any healthcare facilities. In Section I.12, pages 6-7, the applicant lists the physician owners of each entity and provide the addresses of medical office buildings owned and operated by the physicians. In Section I.12, Page 8, the applicant lists the officers for the two LLCs as Michael M. Marushack, MD, Eric J. Lescault, DO and Thomas B. Kelso II, MD, PhD. On page 10, the applicant states that OWP3/BSC physician members are also physician partners of OrthoWilmington, which the applicant refers to as a regional referral center for comprehensive orthopedic care, with satellite offices in New Hanover, Brunswick and Onslow counties. On page 12, the applicant states that on August 1, 2016, OrthoWilmington and three other independent orthopedic physician groups across North Carolina joined together to form a new practice called EmergeOrtho, with 49 offices in 21 counties statewide. Fifteen of the OrthoWilmington/EmergeOrtho orthopedic surgeons who own BSC will be responsible for provision of surgical services and the operation of the proposed ASC. The applicant further states on page 13 that although no surgical facilities in Brunswick County are

owned or operated by the applicant or any related parties, EmergeOrtho has experience owning and operating an orthopedic ASC: Triangle Orthopaedics Surgery Center. Triangle Orthopaedics Surgery Center is an orthopedic ambulatory surgical facility with two operating rooms developed pursuant to the demonstration project need determination in the 2010 SMFP: Project ID #J-8616-10 in Wake County. In Section II, the applicant discusses the scope of the proposed project, including listing the service components of the project (page 14) and identifying the necessary ancillary and support services (page 15) proposed for the ASC. In Section II.1, page 14, the applicant states:

*“BSC proposes to develop an orthopaedic ambulatory surgery center with one operating room and two procedure rooms in Leland.”*

### **Patient Origin**

On page 62, the 2016 SMFP states, *“An operating room’s service area is the operating room planning area in which the operating room is located. The operating room planning areas are the single and multicounty groupings shown in Figure 6.1.”* In Figure 6.1, page 67 of the 2016 SMFP, Brunswick County is shown as a single-county operating room service area. Thus, in this application, the service area is Brunswick County. Providers may serve residents of counties not included in their service area.

In Sections III.6, page 68, the applicant provides the projected patient origin, by percentage, for the proposed facility for the first two operating years (CY2019-2020), as summarized in the table below.

<b>County</b>	<b>PY 1 CY2019</b>	<b>PY2 CY2020</b>
Brunswick	95.8%	94.9%
Columbus	4.2%	5.1%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>

In Section III.6, page 68, with regard to the assumptions for projected patient origin, the applicant states:

*“The projected patient origin is based on the methodology previously described in Section III.1, and is based on the historical ambulatory surgery patient origin for BSC’s anticipated user physicians.”*

The applicant adequately identifies the population proposed to be served.

### **Analysis of Need**

In Section III.1, page 34, the applicant describes the proposed project, stating:



*“Pursuant to the need determination identified in the 2016 SMFP for one OR in Brunswick County, BSC proposes to develop a new ASC with one OR and two procedure rooms in Leland. The proposed project will:*

- offer the first dedicated ambulatory surgery center to local residents,*
- help meet the growing demand for ambulatory surgical services in Brunswick County,*
- increase patient access to cost-effective ambulatory surgical services in Brunswick County, including access for the medically underserved,*
- improve geographic access to ambulatory surgical services in Brunswick County, and*
- improve patient satisfaction through offering an ambulatory surgical service with lower cost and charge structures compared to existing hospital-based surgical services.”*

In Section III.1, page 34, the applicant states it reviewed ambulatory surgery growth trends, ambulatory surgery utilization rates, service area demographics and growth trends, geography, and physician surgical utilization to determine need. On pages 34-62, the applicant describes its need analysis under the following headings:

Ambulatory Surgery Growth (pages 34-35),  
Ambulatory Surgery Centers (pages 35-40),  
Ambulatory Surgery for Brunswick County Residents (pages 40-43),  
Orthopaedic Surgery (pages 43-46),  
Service Area Demographics (pages 46-50),  
Geography (pages 50-54), and  
Physician Support (pages 54-55).

#### *Ambulatory Surgery Growth*

The applicant states that ambulatory surgery has grown from fewer than one in five procedures in 1980 being done without an overnight stay to four out of five surgical procedures now being performed on an outpatient basis. Ambulatory surgery accounts for approximately 72.3 percent of all surgical utilization in North Carolina, based on FY2015 data provided by the applicant on page 35 of the application. The applicant further states that as medical innovation continues to advance, more procedures will be able to be performed safely in the outpatient setting.

#### *Ambulatory Surgery Centers*

On page 35, the applicant states that ASCs are health care facilities that offer patients the convenience of having surgeries and procedures performed safely outside the hospital setting. On page 36, the applicant states that the number of ASCs has grown in response to demand from patients, physicians and insurers. The applicant further states:

*“This demand has been made possible by technology, but has been driven by high levels of patient satisfaction, efficient physician practice, high levels of quality and the cost savings that have benefited all.”*

The applicant discusses the benefits of the ASC setting to physicians and patients, including scheduling, physician ownership, the quality and safety of the care provided, and the cost-effectiveness of ASC services.

#### *Ambulatory Surgery for Brunswick County Residents*

On page 41, the applicant provides data illustrating that, *“the majority of Brunswick County residents who receive ambulatory surgery actually leave the county to receive care.”* In fact, more than half of all residents from Brunswick County seeking ambulatory surgery traveled to New Hanover County for care, which the applicant states, *“is indicative of the need for improved local access for Brunswick County residents.”*

Based on Brunswick County population and the number of Brunswick County patient outpatient surgery cases, the applicant calculated a 2015 Brunswick County ambulatory surgery use rate of 86.1 per 1,000 residents, significantly higher than the applicant’s calculated North Carolina ambulatory surgery use rate of 64.9 per 1,000 residents. The applicant concludes that as the Brunswick County service area population increases and third-party payors continue to direct patients to cost-effective settings, the service area will continue to experience increased ambulatory surgical utilization.

#### *Orthopaedic Surgery*

The applicant provides a table on page 43 representing calculations made from 2016 License Renewal Applications (LRAs) for Brunswick County Surgical Operating Rooms showing surgical cases by specialty with orthopedics (24.9%) representing the largest percentage of all outpatient surgical utilization, just ahead of general surgery (23.2%); and states:

*“Given that orthopaedic surgery is the most common outpatient surgical specialty in the service area, an orthopaedic ASC would be the most effective alternative to increase access to ambulatory surgical services in Brunswick County.”*

The applicant further states that musculoskeletal conditions are among the most disabling and costly conditions suffered by Americans and that bone and joint disorders account for more than one-half of all chronic conditions in people older than 50 years of age in developed countries. On page 46, the applicant states that the high demand for outpatient orthopaedic surgery offers a tremendous opportunity to improve quality, value and access through an orthopaedic ambulatory surgery center.

### *Service Area Demographics*

The applicant provides a table on page 47 representing the North Carolina Office of State Budget and Management (NCOSBM) Brunswick County projected population, which shows the county will grow by a compound annual growth rate (CAGR) of 2.4% from 2016 to 2021, while the statewide growth rate is only 1.0% during the same time period. The applicant also discusses the aging of the population and its impact upon the demand for orthopaedic surgical services. The applicant concludes that as the service area population ages, the resulting high demand for outpatient orthopaedic surgery offers a tremendous opportunity to improve quality, value and access through an orthopaedic ambulatory surgery center.

### *Geography*

The applicant provides evidence on pages 50-54 that developing the need-determined OR in Leland is an effective alternative for improving geographic access to ambulatory surgical services for Brunswick County residents and BSC physician's Columbus County patients.

### *Physician Support*

The applicant states that local physicians who currently refer patients to OrthoWilmington/EmergeOrtho are enthusiastic about the proposed project and that at least 12 orthopaedic surgeons are expected to utilize the proposed facility initially. Exhibit 11 contains support letters from 13 EmergeOrtho surgeons and three physicians who refer to OrthoWilmington/EmergeOrtho.

The following is a list of the 13 OrthoWilmington/EmergeOrtho surgeons identified in Exhibit 11, their current hospital affiliations as listed on the OrthoWilmington website (<http://www.orthowilmington.com/specialists-staff/physician-bios>), and their projected surgeries at BSC in the first operating year.

<b>OrthoWilmington/ EmergeOrtho Surgeon</b>	<b>Hospital Affiliations*</b>	<b>BSC Cases Year 1</b>
Michael M. Marushack, MD	DMH, NHBMC	370
Erick J. Lescault, DO	DMH, NHBMC, NHRMCOH	325
Jon K. Miller, MD	NHRMC, NHRMCOH, WS	20
Craig A. Rineer, MD	NHRMC, NHRMCOH, WS	125
Mark D. Foster, MD	NHRMC, NHRMCOH, DMH, NHBMC	190
Scott Q. Hannum, MD	NHRMC, NHRMCOH, WS	17
Richard S. Bahner, MD	NHRMC, NHRMCOH, WS	63
D. Todd Rose, MD	NHRMC, NHRMCOH, WS	40
Walter W. Frueh, MD	NHRMC, NHRMCOH, WS	12
Albert W. Marr, MD	NHRMC, NHRMCOH, WS	85
Thomas B. Kelso, MD	DMH, NHBMC	220
R. Mark Rodger, MD	NHRMC, NHRMCOH, WS	12
David W. Zub, MD	NHBMC	300
<b>Total Projected</b>		<b>1,779</b>

\*DMH – Doshier Memorial Hospital  
 NHBMC - Novant Health Brunswick Medical Center  
 NHRMC – New Hanover Regional Medical Center  
 NHRMCOH - New Hanover Regional Medical Center Orthopaedic Hospital  
 WS – Wilmington Surgcare

In addition, Exhibit 11 contains support letters from three area referral physicians who pledge to continue to refer surgical cases to EmergeOrtho surgeons at the proposed ASC. The information provided by the applicant on the pages and Exhibit referenced above is reasonable and adequately supported.

Projected Utilization

In Section IV.1, page 77, the applicant provides the projected utilization for the operating room at its proposed facility for the first three years of operation following completion of the project, as summarized below.

**Brunswick Surgery Center  
 Projected Utilization (CY2019-CY2021)**

	<b>Year 1 CY2019</b>	<b>Year 2 CY2020</b>	<b>Year 3 CY2021</b>
Number of Operating Rooms	1	1	1
Number of Orthopedic Surgical Cases	1,294	1,462	1,642

As shown in the above table, the applicant projects the proposed facility will perform 1,642 surgical cases in the one operating room in the third operating year (CY2021), which exceeds the annual utilization standard of 1,872 hours per operating room as required in 10A NCAC 14C.2130(b)(1) [1,642 surgical cases x 1.5 hours = 2,463 / 1,872 = 1.3].

The applicant describes its methodology and assumptions for projecting utilization at the proposed ASC in Section III.1 (b), beginning on page 55 of the application, and as summarized below.

*Step 1. Determine Historical Utilization*

On pages 55-56, the applicant provides the historical ambulatory surgical cases for the orthopaedic surgeons who have indicated their intent to utilize the proposed OR, as shown below.

**Brunswick Surgery Center  
 Historical Utilization**

County	CY2014	CY2015	CY2016*
Brunswick	991	1,153	1,431
Columbus	41	88	170
<b>Total</b>	<b>1,032</b>	<b>1,241</b>	<b>1,601</b>
<b>Annual Growth</b>		<b>20.3%</b>	<b>29.0%</b>

Source: BSC member surgeons: Totals may not sum due to rounding  
 \*7 months of data annualized

*Step 2. Project Orthopaedic Ambulatory Surgery Cases*

On page 57, the applicant states that they reviewed historical ambulatory surgical growth rates (2012-2015) for Brunswick and Columbus counties in addition to the review of the BSC physicians' growth rates in Step 1. The 3-Yr CAGR was 7.4% and 3.4% for Brunswick and Columbus county residents, respectively. The applicant determined that applying two-thirds of the respective county's 3-Yr CAGR was reasonable and conservative, compared to the BSC physicians' historical annual surgical growth for the last two years and produces the following projected utilization for Brunswick and Columbus county orthopaedic ambulatory surgery cases.

**Projected Orthopaedic Ambulatory Surgery Cases  
 BSC User Surgeons**

County	Growth Rate	CY2017	CY2018	CY2019	CY2020	CY2021
Brunswick	4.9%	1,502	1,576	1,653	1,735	1,820
Columbus	2.3%	174	178	182	186	190
<b>Total Cases</b>		<b>1,675</b>	<b>1,753</b>	<b>1,835</b>	<b>1,920</b>	<b>2,010</b>

Totals may not sum due to rounding

*Step 3. Project Orthopaedic Ambulatory Surgery Cases to be Performed at BSC*

On page 58-60, the applicant projects the number of ambulatory surgical cases expected to be performed at the proposed ASC. The applicant assumes that 75%, 80% and 85% of the BSC physicians' Brunswick County patients' ambulatory surgeries will be performed at the proposed ASC in the first three years of operation, respectively. The applicant

assumes a more conservative rate for its Columbus County patients' surgeries in the proposed ASC in the first three years of 30%, 40% and 50%, respectively, resulting in the following projection.

**Brunswick Surgery Center  
 Projected Surgical Cases**

County	CY2019	CY2020	CY2021
Projected Total Brunswick Patient Surgeries	1,653	1,735	1,820
Projected % of Brunswick Patients' Surgeries	75%	80%	85%
Brunswick Surgeries	1,240	1,388	1,547
Projected Total Columbus Patient Surgeries	182	186	190
Projected % of Columbus Patients' Surgeries	30%	40%	50%
Columbus Surgeries	54	74	95
<b>Total BSC Surgeries</b>	<b>1,294</b>	<b>1,462</b>	<b>1,642</b>

Totals may not sum due to rounding

On page 59, the applicant states that the projections are reasonable and based on supported assumptions, including conservative growth rates, a reasonable portion of cases performed at the ASC, demographic growth and aging data, and the physician case estimates provided in their support letters in Exhibit 11. In addition, the applicant states that the proposed ASC will be available to any orthopaedic surgeon or pain management physician who meets the credentialing criteria for the proposed facility.

*Non-Surgical Procedures Performed in Procedure Rooms*

In addition to the projected surgical procedures, on page 61, the applicant projects 296, 303, and 310 procedure room cases, based on a percentage of its pain management physicians' historical utilization projected forward, during CY2019, CY2020, and CY2021, respectively. Exhibit 11 includes a letter from an EmergeOrtho surgeon who plans to practice in the proposed procedure rooms and projects performing 300 procedures in the first year. In addition, on page 62, the applicant discusses the use of portable C-Arm imaging in conjunction with surgical and pain management procedures.

Projected utilization at the proposed ASC is based on reasonable and adequately supported assumptions.

Therefore, based on the review and analysis of: 1) the information provided by the applicant in Section III, pages 34-76, including referenced exhibits; 2) the written comments received during the first 30 days of the review cycle; and 3) the applicant's response to the written comments submitted at the public hearing, the applicant adequately demonstrates the need to develop the proposed operating room and two procedure rooms, which will be licensed as a freestanding ambulatory surgery center.

### **Access**

In Section VI.2, pages 88-89, the applicant states that BSC will not discriminate against anyone and will provide medical services without regard to race, ethnicity, creed, color, age, religion, national origin, gender, or handicap. Exhibit 10 contains the EmergeOrtho non-discrimination policy, which the applicant states is the model for the proposed ASC. In Section VI.14, page 97, the applicant projects that 24.76 percent of patients to be served will be Medicare or Medicaid recipients. The applicant adequately demonstrates the extent to which all residents, including underserved groups, will have access to the proposed services.

### **Conclusion**

In summary, the applicant adequately identifies the population to be served, demonstrates the need the population has for the proposed project, and demonstrates the extent to which all residents, including underserved groups, will have access to the proposed services. Therefore, the application is conforming to this criterion.

**NHBOS** proposes to develop a new multi-specialty, separately licensed ASC in Brunswick County by relocating one existing OR from NHBMC and developing one new OR and one procedure room. In Section I.12, page 3, the applicant states that Novant Health, Inc. owns one hundred percent of the applicant LLC. In Section I.13, pages 4-8, the applicant discusses Novant Health's experience in the development of surgical and other healthcare facilities, and the provision of surgical services and other healthcare services. In Section II, the applicant discusses the scope of the proposed project, including listing the service components of the project (page 9) and identifying the necessary ancillary and support services (pages 10-11) proposed for the ASC. In Section III.1, page 22, the applicant describes the proposed project as follows:

*“Novant Health Brunswick Outpatient Surgery (NHBOS) is planning to develop a freestanding separately licensed outpatient surgery facility with two operating rooms located in Leland in Brunswick County. One of the operating rooms will be a new operating room identified as needed in the 2016 State Medical Facilities Plan (SMFP). The second operating room at NHBOS will be an existing operating room which will be relocated from NHBMC. Both NHBMC and NHBOS will be owned by Novant Health and operated by the administrative and surgical team at NHBMC. At completion of the project there will be two outpatient surgery rooms at NHBOS in Leland, and four hospital-based operating rooms at NHBMC, three shared operating rooms and one C-Section operating room.”*

In Section III.8, page 51, the applicant states:

*“The proposed project creates a more appropriate setting for clinically appropriate outpatient surgical cases in a variety of surgical specialties.”*

Exhibit 4 contains support letters from 18 Novant Health surgeons who intend to seek OR privileges at the proposed ASC in the following specialties: General Surgery (4), OB/GYN (6), Ophthalmology (1), Orthopedics (1), Otolaryngology (2), Podiatry (1), Plastic Surgery (1), and Urology (2).

In addition, the applicant is proposing a minor procedure room at the proposed ASC. Exhibit 4 contains letters from two surgeons who state they will utilize the procedure room.

**Patient Origin**

In Section III.6, page 48, the applicant provides the projected patient origin for the proposed facility for the first two operating years (CY2019-2020), as shown in the table below.

**NHBOS Projected Patient Origin**

County	CY2019		CY2020	
	Number of Patients	Percent of Total Patients	Number of Patients	Percent of Total Patients
Brunswick	2,843	88.4%	1,070	89.5%
Other	373	11.6%	125	10.5%
<b>TOTAL</b>	<b>3,216</b>	<b>100.0%</b>	<b>1,196</b>	<b>100.0%</b>

Other is not identified by the applicant.

However, from the tables provided in Exhibit 3, it is apparent that the applicant erroneously transferred columns of data from other tables to the above table in the application. The number of patients identified above for NHBOS in CY2019 is actually the number of patients recorded for NHBMC in FFY2015 in Exhibit 3, Table 14 and on its 2016 LRA. The number of patients shown above for CY2020 is actually the number of patients projected for NHBOS in CY2019. Per Tables 2 and 14 in Exhibit 3, the projected patient origin should be as shown below.

**NHBOS Projected Patient Origin, per Tables 2 and 14, Exhibit 3**

County	CY2019		CY2020	
	Number of Patients	Percent of Total Patients	Number of Patients	Percent of Total Patients
Brunswick	1,070	89.5%	1,657	90.6%
Other	125	10.5%	171	9.4%
<b>TOTAL</b>	<b>1,196</b>	<b>100.0%</b>	<b>1,828</b>	<b>100.0%</b>

Other is not identified by the applicant.



The patient origin, as provided by the applicant does not identify “Other”, which represents approximately 10% of the total patient population. In Section III.6, page 48, the applicant states:

*“Projected patient origin for NHBOS is based upon current outpatient surgical patient origin at NHBMC adjusted to reflect the projected decrease in outmigration, 1% in Project Year 1 and 3% in Project Year 2, expected because of the development of the proposed freestanding ambulatory surgical facility in Leland.”*

Per the 2016 LRA submitted by NHBMC, 11.6% of its ambulatory surgical cases were performed on patients from outside Brunswick County. In addition to the 88.4% of patients from Brunswick County, the LRA lists outpatient surgical patients originating from Bladen, Burke, Cabarrus, Caldwell, Catawba, Chatham, Columbus, Cumberland, Davidson, Davie, Duplin, Durham, Forsyth, Gaston, Guilford, Hoke, Lincoln, Mecklenburg, New Hanover, Onslow, Pender, Randolph, Richmond, Robeson, Rowan, Scotland, Stokes, Union, Wake counties, and other states. Only New Hanover County (1.5%), Columbus County (2.2%), and South Carolina (5%) contributed as much as 2% to the total of outpatient surgical patients at NHBMC.

The applicant adequately identifies the population proposed to be served.

### **Analysis of Need**

In Section III.1(a) and (b) of the application, the applicant describes the factors which it states support the need for the proposed project, including:

- NHBMC surgical utilization (pages 22-24),
- Brunswick County outpatient surgery market share, outmigration and outpatient surgery use rates (pages 24-25),
- Increasing number of surgeons on NHBMC medical staff (pages 25-26),
- Changes in outpatient services reimbursement (pages 26-28), and
- Growth in population for Brunswick County residents (pages 28-30).

#### *NHBMC Surgical Utilization*

On page 23, the applicant provides a table showing NHBMC operating above 80% of total surgical capacity since 2013. The applicant states that it is NHBMC’s utilization which resulted in the 2016 SMFP need determination for one new operating room in Brunswick County. The applicant further states that NHBMC surgeons have difficulty scheduling cases at NHBMC due to the constricted surgical capacity at NHBMC.

*Brunswick County Outpatient Surgery Market Share, Outmigration and Outpatient Surgery Use Rates*

On page 24, the applicant states that the limited surgical capacity at NHBMC has caused NHBMC's outpatient surgical market share to decrease as the Brunswick County population and the total outpatient surgical volume for Brunswick County residents has increased. The applicant provides a table showing surgical market share for Brunswick County residents and illustrating the large outmigration to two New Hanover surgical facilities: New Hanover Regional Medical Center and Wilmington SurgCare.

The applicant calculates an increasing Brunswick County outpatient surgery use rate and three year trend on page 25, utilizing population data from the NCOSBM and hospital and ambulatory surgery center data reported on annual LRAs. The applicant further states that it expects the aging population to impact the outpatient surgical utilization in Brunswick County.

*Increasing Number of Surgeons on NHBMC Medical Staff*

On page 25, the applicant states that NHBMC has increased its surgical staff from 17 in 2012 to 26 surgeons in 2016, including the specialties of general surgery, orthopedics, urology, OB/GYN, ENT, ophthalmology, oral and maxillary surgery, plastic surgery and podiatry. The applicant states that NHBMC is actively recruiting an additional orthopedic surgeon to meet the growing demand for surgical services in Brunswick County. The applicant further states (page 26) that the impact of one new orthopedic surgeon at NHBMC and NHBOS could exceed 500 additional surgical cases annually by the fourth year.

Therefore, the applicant says that the growth in surgical staff at NHBMC supports the need for the proposed NHBOS. Support letters from 18 NHBMC surgeons in multiple specialties are included in Exhibit 4.

*Changes in Outpatient Services Reimbursement*

The applicant discusses what it expects to be the impact of the Affordable Care Act and the implementation of value-based purchasing (VBP) for payments under the Medicare program for hospitals and ASCs on pages 26-28. The applicant states the proposed project reflects the efforts currently underway within Novant Health to address the changes that the Affordable Care Act and VBP will bring to the consumption of healthcare services.

*Growth in Population for Brunswick County Residents*

On page 28 of the application, the applicant states that the population growth of Brunswick County has outpaced state and national population growth by a large margin and provides data from the NCOSBM that shows that Brunswick County is growing

faster than Wake or Mecklenburg counties and further states that Brunswick County is growing faster than any county in North Carolina, based upon percentage growth from 2010 to 2016. In addition, the applicant provides data indicating a steady growth of the age 55+ population in Brunswick County. The applicant further states that the Leland zip code, where it proposes to locate NHBOS, in northeastern Brunswick County, has the largest population base in the county.

On page 30, the applicant states:

*“NHBOS has documented the need for expanded outpatient surgery services located in Brunswick County: the growing population in Brunswick County, especially in the Leland and surrounding zip codes; the increasing utilization of outpatient surgery services by the Brunswick County population; and the need for a lower cost freestanding alternative for outpatient surgery. All these factors support the development of a freestanding outpatient surgery ambulatory surgical facility in Brunswick County.”*

In Section III.2, pages 37-38, the applicant discusses the need for a general use minor procedure room, stating:

*“NHBOS is proposing to add this space for the convenience of the surgeons on staff at NHBOS. The availability of a minor procedure room will allow surgeons to schedule patients for surgical cases and minor procedures at one location on those days the surgeon will be operating at NHBOS.”*

Exhibit 4 contains letters from two Novant Health surgeons stating they will utilize the procedure room. The information provided by the applicant on the pages and exhibits referenced above is reasonable and adequately supported.

Projected Utilization

In Section IV.1, page 53, the applicant provides the projected utilization for the operating rooms at its proposed facility for the first three years of operation following completion of the project, which is summarized below.

**New Hanover Brunswick Outpatient Surgery  
Projected Utilization (CY2019-CY2021)**

<b>Surgical Suite</b>	<b>PY1 CY2019</b>	<b>PY2 CY2020</b>	<b>PY3 CY2021</b>
Number of Operating Rooms	2	2	2
Number of Surgical Cases	1,196	1,828	2,300

As shown in the above table, the applicant projects the proposed facility will perform 2,300 surgical cases in the two operating rooms in the third operating year (CY2021), which

exceeds the annual utilization standard of 1,872 hours per operating room as required in 10A NCAC 14C.2130(b)(1) [2,300 surgical cases x 1.5 hours = 3,450 / 1,872 = 1.8].

The applicant describes its methodology and assumptions for projecting utilization at the proposed ASC in Section III.1(a) and (b) and Exhibit 3 of the application.

*Step 1: Determine NHBMC Baseline Volume*

Using available Trendstar and internal data, the applicant states that it determined September 2015-August 2016 utilization in Exhibit 3, Table 6 to be the most reasonable and conservative baseline data for use in projecting future surgical volume for Novant Health surgical facilities in Brunswick County: 883 for inpatient surgeries and 3,334 for outpatient surgeries.

*Step 2: Project Inpatient Surgical Cases at NHBMC*

The applicant states that it reviewed historical inpatient surgical utilization at NHBMC as shown in Exhibit 3, Table 6, and determined for the purposes of projecting inpatient surgical cases, to hold the inpatient surgical utilization constant at 883 cases through August 2022.

*Step 3: Project Outpatient Surgical Utilization at NHBMC*

The applicant states that it reviewed historical outpatient surgical utilization at NHBMC from Step 1 above and uses a baseline of 3,334 cases. For the purposes of projecting outpatient surgical cases, the applicant determined to use the Brunswick County projected population 2016-2022 CAGR of 2.3%, as calculated in Exhibit 3, Table 9, as shown on page 33 and below.

**NHBMC Projected Outpatient Surgical Volume**

	Sept 15- Aug16	Sept 16- Aug17	Sept 17- Aug18	Sept 18- Aug19	Sept 19- Aug20	Sept 20- Aug21	Sept 21- Aug22
Outpatient Cases	3,334	3,412	3,492	3,573	3,657	3,743	3,830

Totals may not foot due to rounding

Source per applicant: Exhibit 3, Table 1. Note that the applicant erroneously labeled the row of projections as “Inpatient” in the table on page 33.

*Step 4: Determine Percentage of Outpatient Surgical Cases for NHBOS*

Based on the level of surgeon support (Exhibit 4), the acuity level of outpatient surgical cases at NHBMC, and input from the NHBMC and Novant Health leadership teams, the applicant determined the percentage of the projected NHBMC outpatient surgical volume that will shift to the proposed ASC, as shown below.

**Shift of Outpatient Surgeries  
 from NHBMC to NHBOS**

	PY1	PY2	PY3
Percentage Shift	30%	40%	45%

*Step 5: Project OR Need for NHBOS*

Based on the applicant’s assumptions regarding projected outpatient surgical cases at NHBMC for September 2018 through August 2022 (Exhibit 3, Table 1) and the shift of cases to NHBOS in Step 4, the applicant converts the projected shift of cases from fiscal year to calendar year for CY2019 through CY2020 in a table on page 34, which is summarized below.

**Projected Shift of Outpatient Surgical Cases from NHBMC to NHBOS**

	Sept 2018- Aug 2019	Sept 2019- Aug 2020	Sept 2020- Aug 2021	Sept 2021- Aug 2022
Projected Outpatient Surgical Cases	3,573	3,657	3,743	3,830
		<b>PY1</b>	<b>PY2</b>	<b>PY3</b>
		<b>CY2019</b>	<b>CY2020</b>	<b>CY2021</b>
NHBMC Outpatient Cases Converted to CY		3,601	3,686	3,772
Percentage Shift to NHBOS		30%	40%	45%
<b>Cases Shifted to NHBOS</b>		<b>1,080</b>	<b>1,474</b>	<b>1,697</b>

Totals may not sum due to rounding

In addition to the shift in cases from NHBMC, on page 34, the applicant states:

*“With additional capacity, and a surgical facility located in the northeastern section of Brunswick County, NHBOS projected a 5% decrease in outpatient surgical outmigration by the end of the third year of operation of NHBOS”*

On page 35, the applicant provides the calculation for the reduction in outmigration, utilizing projected volume based on projected population and the 2015 outpatient surgical use rate for Brunswick County residents (Exhibit 3, Table 4).

	PY1	PY2	PY3
	CY2019	CY2020	CY2021
Brunswick County Projected Population	133,941	137,032	140,123
2015 Outpatient Surgical Use Rate/1,000	86.09	86.09	86.09
Projected Total Brunswick County Outpatient Surgical Volume	11,531	11,797	12,063
Projected Percent Decrease in Outmigration for NHBOS	1%	3%	5%
<b>NHBOS Volume Due to Decrease in Outmigration</b>	<b>115</b>	<b>354</b>	<b>603</b>

The applicant's projected impact on NHBOS of the 5% decrease in outmigration by the third operating year results in an increase of 600+ outpatient surgical cases in CY2021 as shown in the tables on page 35 and below.

**Projected Total NHBOS Surgical Cases and OR Need**

	PY1	PY2	PY3
	CY2019	CY2020	CY2021
NHBMC Outpatient Cases Shifted to NHBOS	1,080	1,474	1,697
New Volume Recapture Due to Decrease in Outmigration	115	354	603
Projected Cases	1,196	1,828	2,300
Weighted Outpatient Surgical Hours (1.5)	1,794	2,742	3,451
Total ORs Needed (1,872)	0.96	1.46	1.84
<b>Total ORs Needed Rounded per SMFP</b>	<b>1</b>	<b>2</b>	<b>2</b>

Totals may not sum due to rounding

The table above shows the applicant's projection of 2,300 surgical cases for CY2021 at NHBOS, and demonstrates the volume is sufficient to support two ambulatory ORs by the third year of operation, using the SMFP methodology which assumes 1.5 surgical hours per ambulatory surgery and 1,872 surgical hours per OR.

*Step 6: Project OR Need for NHBMC*

The applicant utilizes the inpatient and outpatient surgical volumes projected in Steps 1, 2 and 3 to project the future operating rooms needed at NHBMC as presented on page 36 of the application and resulting in the following OR need at NHBMC, as summarized below.

**NHBMC Total Projected Surgical OR Need**

	PY1	PY2	PY3
	CY2019	CY2020	CY2021
Inpatient Cases	883	883	883
Weighted Inpatient Surgical Hours (3)	2,649	2,649	2,649
Outpatient Cases after Shift to NHBOS	2,521	2,211	2,074
Weighted Outpatient Surgical Hours (1.5)	3,781	3,317	3,112
Total Weighted Surgical Hours	6,430	5,968	5,761
Total ORs Needed (1,872)	3.4	3.2	3.1
<b>Total ORs Needed Rounded per SMFP*</b>	<b>4</b>	<b>3</b>	<b>3</b>

Totals may not sum due to rounding

\*SMFP OR methodology (page 65 of 2016 SMFP) states that OR need fractions of 0.30 or greater are rounded to the next highest whole number in service areas with six to ten ORs. Brunswick County has six ORs.

*Step 7: Project OR need for NHBOS and NHBOS*

The applicant provides a table on page 37 of the application combining the operating room need for NHBMC and NHBOS (Steps 5 and 6 and Exhibit 3) and reflecting a need for 5 operating rooms (excluding one dedicated C-Section OR) in the third project year, utilized at 78.7%.

**NHBOS and NHBMC Operating Room Need**

	<b>PY1</b>	<b>PY2</b>	<b>PY3</b>
	<b>CY2019</b>	<b>CY2020</b>	<b>CY2021</b>
NHBOS OR Need	0.96	1.46	1.84
NHBMC OR Need	3.44	3.19	3.08
Total Combined Need	4.40	4.65	4.92
<b>Total ORs Needed Rounded*</b>	<b>5</b>	<b>5</b>	<b>5</b>
Total Combined Projected Weighted Surgical Hours	8,224	8,708	9,211
Combined Capacity (Surgical Hours Available for 5 ORs)	11,700	11,700	11,700
<b>Projected Utilization of the 5 Novant Health ORs in Brunswick County</b>	<b>70.3%</b>	<b>74.4%</b>	<b>78.7%</b>

Totals may not sum due to rounding

\*Rounded per SMFP and CON Criteria and Standards

The applicant erroneously identified the project years in the table on page 37 as April through March. The Project Analyst corrected the table above to show the project years as calendar years, as specified throughout the application.

*Non-Surgical Minor Procedures at NHBOS*

In addition, Exhibit 3, Table 16 projects 344, 527, and 663 procedure room cases for NHBOS during CY2019, CY2020 and CY2021, respectively. Exhibit 4 includes letters from surgeons who plan to practice in the proposed procedure room. On page 37, the applicant states that minor procedure volume is estimated based upon discussion with NHBMC surgical management staff, a review of procedure volume data for the surgeons who signed procedure room support letters and a review of other multispecialty ambulatory surgical facilities with procedure rooms in North Carolina.

Projected utilization at the proposed ASC is based on reasonable and adequately supported assumptions.

Therefore, based on the review and analysis of: 1) the information provided by the applicant in Section III, pages 22-52, including referenced exhibits; 2) the written comments received during the first 30 days of the review cycle; and 3) the applicant's response to the written comments submitted at the public hearing, the applicant adequately demonstrates the need to establish the proposed freestanding ASC by developing one new OR and one procedure room, and relocating one existing NHBMC OR.

### Access

In Section VI.2, page 66, the applicant states it will provide services to all persons regardless of race, sex, age, religion, creed, disability, national origin, or ability to pay. Exhibit 8 contains copies of Novant Health's non-discrimination policy. In Section VI.14, page 75, the applicant projects that 65.6 percent of surgical cases will be provided to Medicare or Medicaid recipients at the proposed facility. The applicant adequately demonstrates the extent to which all residents, including underserved groups, will have access to the proposed services.

### Conclusion

In summary, the applicant adequately identifies the population to be served, demonstrates the need the population has for the project, and demonstrates the extent to which all residents, including underserved groups, will have access to the proposed services. Therefore, the application is conforming to this criterion.

- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

NA– OWP3/BSC  
C – NHBOS

**NHBOS.** In Section III.8, page 51, the applicant states:

*“Relocating one operating room from NHBMC and adding one new SMFP operating room allows NHBMC and NHBOS to put Novant Health OR resources in Brunswick County to their best and most productive uses.”*

The applicant discusses projected utilization for NHBMC and the impact NHBOS will have on utilization at NHBMC in detail in Section III.1.b., projecting a shift in clinically appropriate volume from NHBMC to NHBOS, with the result indicating a need for three shared operating rooms at NHBMC to meet the needs of the surgery patients remaining at NHBMC.

In Section III.3(d), page 41, the applicant states that the proposed project will not have a negative impact on the patients served in terms of any changes in services, costs to the patient, or level of access by medically underserved populations. In Section VI.13, the applicant states that the proposed payor mix at NHBOS is based on the current payor mix at NHBMC. The discussions regarding need and access found in Criteria (3) and 13(c)



are incorporated herein by reference. The applicant adequately demonstrates that the relocation of the one surgical operating room from NHBMC will not have a negative effect on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

In summary, the applicant adequately demonstrates that the needs of the population presently served by NHBMC will be adequately met following the proposed relocation of the operating room from NHBMC to NHBOS. Therefore, the application is conforming to this criterion.

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

#### C – Both Applications

**OWP3/BSC.** In Section III.8, pages 69-75, the applicant describes the alternatives considered prior to submitting this application for the proposed project, which include:

- Maintain the Status Quo –The applicant states that maintaining the status quo is not the most effective alternative at this time because it would not meet the need for additional surgical services, decrease the financial cost of surgical services or expand access to high quality outpatient surgical services for Brunswick County patients.
- Develop the Proposed ASC in Another Location – The applicant states that they determined that the proposed location was the best location for *“improving geographic access to ambulatory surgical services for Brunswick County residents.”*
- Develop An ASC Without Procedure Rooms – The applicant states that developing the ASC without two procedure rooms is not the most effective alternative because the procedure rooms enable pain management specialists to rotate procedures between each room while the other is being cleaned between patients. Additionally, the applicant states that the combination of one OR and two procedure rooms leverages facility staff and resources to maximize economies of scale, making the ASC more efficient and productive.
- Develop a Multi-Specialty ASC with Procedure Rooms - The applicant states that developing a multi-specialty ASC would have resulted in increased capital costs associated with the relevant equipment needed for the various surgical specialties involved. The applicant also states OR room turnover time could increase between different surgical specialties, decreasing the facility’s efficiency. Moreover, the applicant states that only orthopaedic surgeons and pain management specialists have documented intent to utilize the proposed facility at this point. For these reasons, the applicant states that this alternative is not the most effective alternative.

After considering the above alternatives, the applicant determined the proposed project as represented in the application is the most effective alternative to meet the identified need. Furthermore, the application is conforming to all other statutory and regulatory review criteria, and thus, is approvable. A project that cannot be approved cannot be an effective alternative.

In summary, the applicant adequately demonstrates that the proposal is the least costly or most effective alternative to meet the identified need. Therefore, the application is conforming to this criterion.

**NHBOS.** In Section III.8, pages 49-51, the applicant describes the alternatives considered prior to submitting this application for the proposed project, which include:

- Maintain the status quo –The applicant states that maintaining the status quo is not considered a viable alternative because the four ORs at NHBMC have been operating at functional capacity for the last four years. The applicant states that with the continued population growth, the existing capacity at NHBMC is no longer sufficient to meet the future need for surgical capacity as discussed in Section III.1.
- Develop a hospital-based outpatient surgery center – The applicant states that developing a hospital-based outpatient surgery center is not an effective alternative because outpatient surgical care can be offered at a lower cost than hospital based surgery.
- Develop a freestanding, separately licensed surgery center in another location - The applicant states that it rejected this alternative because Leland, the proposed location, is the largest and fastest growing population base in Brunswick County.
- Develop a freestanding, separately licensed surgery center with one operating room – The applicant states that “*One operating room surgical centers are inefficient and rarely successful in North Carolina.*” The applicant further states that five of the nine NC surgical facilities with only one OR are “*chronically underutilized*” (pages 49-50 of the application). Therefore, the applicant determined this was not a reasonable alternative.
- Develop a freestanding, multi-specialty separately licensed surgery center with two operating rooms - The applicant states that this alternative will permit clinically appropriate NHBMC outpatient surgical cases to shift to a freestanding multi-specialty surgery center setting in Brunswick County and will provide additional capacity for the growing demand for outpatient surgical services at NHBMC and in Brunswick County.

After considering the above alternatives, the applicant states that developing a freestanding, multi-specialty separately licensed surgery center with two ORs in Leland, as proposed in the application, is the most effective alternative to meet the identified need.

Furthermore, the application is conforming to all other statutory and regulatory review criteria, and thus, is approvable. A project that cannot be approved cannot be an effective alternative.

In summary, the applicant adequately demonstrates that the proposal is the least costly or most effective alternative to meet the identified need. Therefore, the application is conforming to this criterion.

- (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.

C – Both Applications

**OWP3/BSC** proposes to develop a new ASC with one operating room and two procedure rooms in leased space in a new office building located in Leland, Brunswick County.

**Capital and Working Capital Costs**

In Section VIII.1, pages 109-113, the applicant states the total capital cost is projected as follows:

**Proposed Project Capital Cost**

	<b>OWP3*</b>	<b>BSC</b>	<b>Total Project Costs</b>
Site Costs	\$ 528,846	\$ 0	\$ 528,846
Construction Contract	\$ 2,149,934	\$ 0	\$ 2,149,934
Landscaping	\$ 21,442	\$ 0	\$ 21,442
Fixed Equipment	\$ 0	\$ 424,401	\$ 424,401
Movable Equipment	\$ 0	\$ 291,862	\$ 291,862
Equipment and Furniture	\$ 0	\$ 596,629	\$ 596,629
Consultant Fees	\$ 46,401	\$ 0	\$ 46,401
Financing Costs/Interest during Construction	\$ 130,000	\$ 8,000	\$ 138,000
Contingency	\$ 0	\$ 50,000	\$ 50,000
<b>Total Capital Cost</b>	<b>\$ 2,876,623</b>	<b>\$ 1,370,892</b>	<b>\$ 4,247,515</b>

\*Per page 111 of the application, site costs, construction costs, landscaping and consultant fees totals “reflect a prorated share of the estimated cost of developing the entire 33,280 SF building, based on the ASC comprising 28.34% (9,433/33,280) of the facility.”

Exhibit 13 contains the estimated construction costs as prepared by William B. Adams III, a North Carolina licensed General Contractor. In Section IX.1, page 117, the applicant states that OWP3 will have no start-up costs associated with the proposed project; however, BSC is projecting \$120,000 in start-up expenses and \$210,000 in initial

operating expenses, for total working capital required in the amount of \$330,000. In Section XI.1, page 122, the applicant states:

*“BSC will incur the tenant improvement costs via the lease agreement. Thus, the facility lease costs are operational, and are reflected in the proforma financial statements shown in Section XIII.”*

### **Availability of Funds**

In Section VIII.3, page 113, the applicant states that the project capital costs will be funded by conventional loans for both OWP3 and BSC. In Section IX.2, page 117, the applicant states that the working capital incurred by BSC will also be funded by a conventional loan. In Exhibit 15, the applicant provides letters dated November 14, 2016, from BB&T Commercial Banking documenting its intention to fund the capital costs for OWP3, in an amount up to \$8,500,000 and the capital and working capital costs for BSC, in an amount up to \$2,000,000, for the proposed project. The financing for BSC of up to \$2,000,000 provides an additional \$299,000 contingent financing, to cover underestimated expenses, if any. The applicant adequately demonstrates that sufficient funds will be available for the capital and working capital of the project.

### **Financial Feasibility**

In the pro forma financial statements for OWP3/BSC, the applicant projects that revenues will exceed operating expenses in each of the first three operating years of the project, as shown in the following table.

**Brunswick Surgery Center**

	CY2019	CY2020	CY2021
Projected Surgical Cases	1,294	1,462	1,642
Projected Average Charge per Case	\$ 4,841	\$ 4,913	\$ 4,987
Gross Surgical Revenue	\$ 6,265,251	\$ 7,182,181	\$ 8,187,055
Deductions from Surgical Revenue	\$ 3,325,405	\$ 3,812,084	\$ 4,345,440
Net Surgical Revenue	\$ 2,939,846	\$ 3,370,097	\$ 3,841,615
Projected Procedure Room Cases	296	303	310
Projected Average Charge per Case	\$ 894	\$ 908	\$ 922
Gross Procedure Room Revenue	\$ 264,618	\$ 275,061	\$ 285,916
Deductions from Proc. Room Rev	\$ 164,307	\$ 170,791	\$ 177,531
Net Procedure Room Revenue	\$ 100,311	\$ 104,270	\$ 108,385
Total Gross Income	\$ 6,529,869	\$ 7,457,242	\$ 8,472,971
Deductions from Gross Patient Revenue, including CC and BD*	\$ 3,603,332	\$ 4,112,631	\$ 4,670,401
Net Patient Revenue	\$ 2,926,537	\$ 3,344,611	\$ 3,802,570
Total Expenses less Bad Debt*	\$ 2,382,493	\$ 2,532,778	\$ 2,704,325
Net Income	\$ 544,044	\$ 811,833	\$ 1,098,245

Totals may not sum due to rounding

\*For comparison purposes in the Comparative Analysis, bad debt (BD) was removed from operating expenses and included in deductions from gross revenue with charity care (CC)

The assumptions used by the applicant in preparation of the pro forma financial statements are reasonable, including projected utilization, costs and charges. See the financial section of the application for the assumptions used regarding costs and charges. The discussion regarding utilization projections found in Criterion (3) is incorporated herein by reference. The applicant adequately demonstrates that the financial feasibility of the proposal is based upon reasonable projections of costs and charges.

**Conclusion**

In summary, the applicant adequately demonstrates that sufficient funds will be available for the capital, working capital, and operating needs of the project. Furthermore, the applicant adequately demonstrates that the financial feasibility of the proposal is based upon reasonable projections of costs and charges. Therefore, the application is conforming to this criterion.

**NHBOS** proposes to develop a new ASC in Brunswick County by relocating one existing OR from NHBMC and adding one new OR and one procedure room.

**Capital and Working Capital Costs**

In Section VIII.1, page 89, the applicant states the total capital cost is projected to be as follows:

**NHBOS Project Capital Cost**

Site Costs	\$ 2,705,303
Construction Contract	\$ 5,796,101
Equipment	\$ 2,602,433
IT, Nurse Call, Other	\$ 940,000
Furniture	\$ 232,764
Consultant Fees	\$ 652,070
Financing Costs	\$ 406,918
Contingency	\$ 787,769
<b>TOTAL CAPITAL COST</b>	<b>\$ 14,123,358</b>

Exhibit 14 contains a construction cost estimate prepared by Wayne Lee Gregory, a North Carolina licensed architect. In Section IX.1, page 98, the applicant states there will be \$273,280 in start-up expenses and \$141,291 in initial operating expenses, for total working capital required of \$414,571.

**Availability of Funds**

In Section VIII.3, page 90, and Section IX.2, page 98, the applicant states that the project capital costs and working capital, respectively, will be funded with Novant Health accumulated reserves. However, the applicant states, if market conditions dictate, it may be more financially advantageous to finance all or part of the project through tax-exempt bonds; therefore, the applicant included the cost of financing in the projected capital costs. In Exhibit 7, the applicant provides letters documenting Novant Health's intention to fund the capital costs and working capital costs for the proposed project. Exhibit 7 also contains the consolidated financials for Novant Health, Inc. and Affiliates, documenting \$354 million in cash and cash equivalents, \$991 million in current assets (excluding receivables and limited use assets), and \$2.8 billion in total unrestricted net assets, as of December 31, 2015. The applicant adequately demonstrates that sufficient funds will be available for the capital and working capital needs of the project.

**Financial Feasibility**

In the pro forma financial statements for NHBOS (Form B), the applicant projects that revenues will exceed operating expenses in the second and third full fiscal years of operation of the project, as shown in the table below.

***NHBOS***

	<b>CY2019</b>	<b>CY2020</b>	<b>CY2021</b>
Projected Surgical Cases	1,196	1,828	2,300
Projected Average Charge per Case	\$ 7,544	\$ 7,695	\$ 7,848
Gross Surgical Revenue	\$ 9,022,237	\$ 14,065,637	\$ 18,051,414
Deductions from Surgical Revenue	\$ 6,114,978	\$ 9,533,230	\$ 12,234,659
Net Surgical Revenue	\$ 2,907,259	\$ 4,532,407	\$ 5,816,755
Projected Procedure Room Cases	344	527	663
Projected Average Charge per Case	\$ 2,186	\$ 2,230	\$ 2,275
Gross Procedure Room Revenue	\$ 752,070	\$ 1,175,197	\$ 1,508,043
Deductions from Proc. Room Rev	\$ 531,028	\$ 829,793	\$ 1,064,811
Net Procedure Room Revenue	\$ 221,042	\$ 345,404	\$ 443,232
Total Gross Income	\$ 9,774,307	\$ 15,240,834	\$ 19,559,457
Deductions from Gross Patient Revenue, including CC and BD	\$ 6,646,005	\$ 10,363,022	\$ 13,299,471
Net Patient Revenue	\$ 3,128,302	\$ 4,877,812	\$ 6,259,987
Total Expenses	\$ 4,065,221	\$ 4,714,914	\$ 5,243,436
Net Income	\$ (936,919)	\$ 162,898	\$ 1,016,551

Totals may not sum due to rounding

The assumptions used by the applicant in preparation of the pro forma financial statements are reasonable, including projected utilization, costs and charges. See the financial section of the application for the assumptions used regarding costs and charges. The discussion regarding utilization projections found in Criterion (3) is incorporated herein by reference. The applicant adequately demonstrates that the financial feasibility of the proposal is based upon reasonable projections of costs and charges.

**Conclusion**

In summary, the applicant adequately demonstrates that sufficient funds will be available for the capital, working capital, and operating needs of the project. Furthermore, the applicant adequately demonstrates that the financial feasibility of the proposal is based upon reasonable projections of costs and charges. Therefore, the application is conforming to this criterion.

- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

C – Both Applications

On page 62, the 2016 SMFP states, “An operating room’s service area is the operating room planning area in which the operating room is located. The operating room planning areas are the single and multicounty groupings shown in Figure 6.1.” In Figure 6.1, page 67 of the 2016 SMFP, Brunswick County is shown as a single-county

operating room service area. Thus, in this application, the service area is Brunswick County. Providers may serve residents of counties not included in their service area.

The following table identifies the existing and approved outpatient (OP), inpatient (IP) and shared operating rooms located in the service area of Brunswick County, and the outpatient and inpatient case volumes for each provider, per page 68 of the 2016 SMFP.

**Brunswick County 2014 Operating Room Inventory**

	IP ORs	OP ORs	Shared ORs	Excluded C-Section ORs	OP Surgery Cases	IP Surgery Cases
J. Arthur Doshier Memorial Hospital	0	0	2	0	950	329
Novant Health Brunswick Medical Center	1	0	4	-1	3,279	1,137
Total Brunswick County ORs	1	0	6	-1		

As the table above indicates, there are two hospitals in Brunswick County and a total of 6 operating rooms, excluding the C-Section OR. Brunswick County has no ambulatory surgery centers.

Table 6B: Projected Operating Room Need for 2018, on pages 81-82 of the 2016 SMFP, shows that the number of projected ORs needed in 2018 in Brunswick County is 6.37 (Column L) and the projected OR deficit is 0.37 (Column U). Table 6C: Operating Room Need Determination, on page 89 of the SMFP, identifies a need for 1 operating room in Brunswick County, based on the need methodology as outlined in Step 5 on page 65 of the SMFP, which states:

*“For each operating room service area with six to 10 operating rooms and a projected deficit of 0.30 or greater, the “Operating Room Need Determination” is equal to the “Projected Operating Room Deficit” rounded to the next whole number. (In this step, fractions of 0.30 or greater are rounded to the next highest whole number.) For each operating room service area with six to 10 operating rooms and a projected deficit that is less than 0.30 or in which there is a projected surplus, the Operating Room Need Determination is zero. (Column U)”*

**OWP3/BSC** proposes to develop a new ASC with one operating room and two procedure rooms to be located in Leland in Brunswick County. The 2016 SMFP identifies the need for one additional OR in Brunswick County. The applicant adequately demonstrates the need to develop a new ASC with one operating room and two procedure rooms and that the projected utilization is based on reasonable and adequately supported assumptions. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

The applicant adequately demonstrates that the proposal would not result in an unnecessary duplication of existing or approved operating rooms in Brunswick County. Therefore, the application is conforming to this criterion.



**NHBOS** proposes to develop a new ASC by relocating one existing OR from NHBMC and developing one new OR and one procedure room, to be located in Leland in Brunswick County. The 2016 SMFP identifies the need for one additional OR in Brunswick County. The applicant adequately demonstrates the need to relocate the existing Brunswick County operating room from NHBMC to NHBOS, and adequately demonstrates the need for an additional OR and procedure room and that the projected utilization is based on reasonable and adequately supported assumptions. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

The applicant adequately demonstrates that the proposal would not result in an unnecessary duplication of existing or approved operating rooms in Brunswick County. Therefore, the application is conforming to this criterion.

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

C – Both Applications

**OWP3/BSC.** In Section VII.2, page 101, the applicant provides the proposed staffing for the facility in Operating Year 2 (CY2020), as shown in the table below.

<b>Position</b>	<b>Number of Full-Time Equivalent (FTE) Positions</b>
Administrator	1.0
Registered Nurse	5.0
Surgical Technician	2.0
Radiological Tech	1.0
Medical Record Tech	0.5
Non-Health Professionals and Technical Personnel	2.5
<b>TOTAL</b>	<b>12.0</b>

In Section VII.3, page 102, and Section VII.7, page 105, the applicant describes the EmergeOrtho experience and process for recruiting and retaining staff and state its expectation of being effective in recruiting staff via internal recruiting for the proposed facility. In Section II.1, page 14, and Section VII.9(b), page 108, the applicant states that anesthesiology services will be provided via contract with American Anesthesiology of the Carolinas. Exhibit 19 contains a letter from the American Anesthesiology of the Carolinas, Wilmington indicating their ability and willingness to provide anesthesia services to the proposed ASC. Exhibit 11 contains signed letters of support from surgeons who intend to practice at the proposed facility. Exhibit 8 contains Medical Staff bylaws and credentialing information. Exhibit 5 contains a copy of a letter from Albert W. Marr, MD, expressing his interest in serving as the Medical Director for the proposed facility. In Section VII.7, page 105, the applicant states:

*“All qualified surgeons who meet the credentialing criteria will be invited to use the proposed ambulatory surgery center.”*

The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services. Therefore, the application is conforming to this criterion.

**NHBOS.** In Section VII.2, page 78, the applicant provides the proposed staffing for the facility in Operating Year 2 (CY2020), as shown in the table below.

<b>Position</b>	<b>Number of Full-Time Equivalent (FTE) Positions</b>
Administrator	1.0
Certified Registered Nurse Anesthetist	2.0
Registered Nurse	6.0
Clinical Coordinator (RN)	1.0
CNA	1.0
Surgical Technician	4.0
OR Assistant	1.0
Sterile Processing Tech	1.0
Patient Access Specialist	1.0
<b>TOTAL</b>	<b>18.0</b>

In Section VII.3, pages 78-79, and Section VII.7, pages 83-84, the applicant describes Novant Health’s experience and process for recruiting and retaining staff. Exhibit 4 contains signed letters of support from surgeons who intend to practice at the proposed ASC. Exhibit 5 contains copies of letters from an anesthesiologist, pathologists, and radiologist who have agreed to provide support and professional coverage for NHBOS outpatient surgery patients. Exhibit 5 also contains a letter from Mark Tillotson, MD committing his support and willingness to serve as the Medical Director for the proposed ASC. The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services. Therefore, the application is conforming to this criterion.

- (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.

**C – Both Applications**

**OWP3/BSC.** In Sections II.1 and II.2, pages 14-15, the applicant identifies the necessary ancillary and support services, and describes how they will be provided. On page 15, the

applicant states, *“All necessary ancillary and support services will be in place upon completion of the proposed project.”* Exhibit 6 contains a copy of the proposed facility’s transfer policy and correspondence regarding transfer agreements with area hospitals. Exhibits 5 and 11 contain copies of support letters from physicians and surgeons. The applicant adequately demonstrates that necessary ancillary and support services will be available and that the proposed services will be coordinated with the existing health care system. Therefore, the application is conforming to this criterion.

**NHBOS.** In Sections II.1 and II.2, pages 9-11, the applicant identifies the necessary ancillary and support services, and describes how they will be provided. Exhibits 4 and 5 of the application contain copies of letters from area physicians and surgeons expressing support for the proposed project. The applicant adequately demonstrates that necessary ancillary and support services are available and that the proposed services will be coordinated with the existing healthcare system. Therefore, the application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
  - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
  - (iii) would cost no more than if the services were provided by the HMO; and
  - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (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.

### C – Both Applications

**OWP3/BSC** proposes to develop a new ambulatory surgery center in 9,433 square feet of leased space to be constructed on 2.63 acres at South Dickinson Drive in Leland, Brunswick County. Exhibit 13 contains the line drawings identifying reception/registration, waiting, pre-operative, operating rooms, and post-operative/recovery areas. Exhibit 13 also contains the general contractor's construction cost estimate for the 33,280 square foot building in which the ASC surgical space will be leased. Per the footnote on the project capital cost sheet in Section 8, page 111, the ASC represents 28.24% (9,433/33,280) of the total building space and cost. This is consistent with the project capital cost projections provided by the applicant in Section VIII, page 111 of the application. In Section XI.8, page 130, the applicant describes the methods that will be used by the facility to maintain efficient energy operations and contain the costs of utilities. The discussion regarding costs and charges found in Criterion (5) is incorporated herein by reference. The applicant adequately demonstrates that the cost, design and means of construction represent the most reasonable alternative, and that the construction cost will not unduly increase costs and charges for health services. Therefore, the application is conforming to this criterion.

**NHBOS** proposes to develop a new ambulatory surgery center in 14,651 square feet of space to be constructed on 4.11 acres at the intersection of US Highway 17 and Olde Regent Way in Leland, Brunswick County. Exhibit 14 contains the line drawings identifying receiving/registering, waiting, pre-operative, recovery, operating and procedure rooms, and support areas. Exhibit 14 also contains a certified cost estimate from an architect that estimates construction costs that are consistent with the project capital cost projections provided by the applicant in Section VIII.1, page 89 of the application. In Section XI.8, page 106, and Exhibit 15, the applicant describes the methods that will be used by the facility to maintain efficient energy operations and contain the costs of utilities. The discussion regarding costs and charges found in Criterion (5) is incorporated herein by reference. The applicant adequately demonstrates that the cost, design and means of construction represent the most reasonable alternative, and that the construction cost will not unduly increase costs and charges for health services. Therefore, the application is conforming to this criterion.

- (13) 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:

- (a) The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;

NA– OWP3/BSC  
 C – NHBOS

**NHBOS.** The applicant is a new limited liability company with 100% of its LLC membership interests owned by NH. As such, the applicant does not currently provide services, however, the application often refers to NH's ownership, experience and policies as being relevant to NHBOS, as in Section II.8, pages 13-15. In Section VI.14, page 75, the applicant states that its projected payor mix for NHBOS is based upon the historical outpatient surgical payor mix for NHBMC averaged over CY2014 through year to date 2016. NHBMC provided 65.6% of its outpatient surgery care to Medicare and Medicaid patients during that time period.

The United States Census Bureau provides demographic data for North Carolina and all counties in North Carolina. The following table contains relevant demographic statistics for the applicant's service area.

Percent of Population						
County	% 65+	% Female	% Racial & Ethnic Minority*	% Persons in Poverty**	% < Age 65 with a Disability	% < Age 65 without Health Insurance**
Brunswick	27%	51%	19%	16%	12%	19%
Statewide	15%	51%	36%	17%	10%	15%

Source: <http://www.census.gov/quickfacts/table>, 2014 Estimate as of December 22, 2015

\*Excludes "White alone" who are "not Hispanic or Latino"

\*\*"This geographic level of poverty and health estimates are not comparable to other geographic levels of these estimates. Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable... The vintage year (e.g., V2015) refers to the final year of the series (2010 thru 2015). Different vintage years of estimates are not comparable."

However, a direct comparison to the applicant's current payor mix would be of little value. The population data by age, race or gender does not include information on the number of elderly, minorities, women or handicapped persons utilizing health services.

The applicant adequately demonstrates that NHBMC currently provides access to medically underserved populations in its outpatient surgical program. Therefore, the application is conforming to this criterion.

- (b) Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

NA– OWP3/BSC  
C – NHBOS

**NHBOS** is a new limited liability company with 100% of its LLC membership interests owned by NH. As such, the applicant does not currently provide services, however, the application often refers to NH's ownership, experience and policies as being relevant to NHBOS, as in Section II.8, pages 13-15.

Recipients of Hill-Burton funds were required to provide uncompensated care, community service and access by minorities and handicapped persons. In Section VI.11, page 73, the applicant states:

*“Novant Health’s hospitals NHFMC and NHPMC) fulfilled their Hill-Burton obligations long ago. ... Novant Health facilities in North Carolina continue to comply with the community service obligation and there is no denial, restriction, or limitation of access to minorities or handicapped persons.”*

In Section VI.10 (a), page 73, the applicant states that no civil rights equal access complaints have been filed against NH or its affiliated licensed hospitals and surgery centers during the last five years. The application is conforming to this criterion.

- (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

C – Both Applications

**OWP3/BSC.** In Section VI.14, page 97, the applicant projects the payor mix for the proposed ASC in the second operating year (CY2020), as summarized below:

<b>BSC Payor Category</b>	<b>Projected Cases as Percent of Total</b>
Self-Pay/Indigent	2.9%
Medicare/ Medicare Managed Care	14.2%
Medicaid	10.6%
Commercial Insurance/Managed Care/ BCBS	69.0%
Other (Workers Comp, TRICARE, VA)	3.4%
<b>Total</b>	<b>100.0%</b>

On page 98, the applicant states:

*“BSC projects the facility payor mix based on the historical ambulatory surgery case payor mix of Brunswick and Columbus County residents who obtained outpatient surgery from EmergeOrtho physicians during 2015.”*

On page 99, the applicant compares the projected payor mix to the 2015 ambulatory surgery payor mix for the two licensed facilities within Brunswick County. As the table on page 99 shows, and is confirmed by an analysis of the two facilities’ 2016 LRAs, the ambulatory surgeries at the hospitals had a much larger percentage of Medicare recipients (54.4%), as compared to the percentage for EmergeOrtho for its Brunswick and Columbus patients and the applicant’s projected Medicare percentage (14.2%). However, the ambulatory surgeries at the hospitals include all surgical specialties, not just orthopedics. The 14% Medicare is consistent with the average Medicare percentages reported in Becker’s Orthopedic Review<sup>1</sup> for orthopedic-driven ASCs, which report that on average Medicare equals 17% of gross charges, but Medicare equals only 11% for the bottom 25 percent of the ASCs. Note that a discussion of percent of cases and percent of gross revenue is the same here because the applicant uses the same average charge for all payors.

In Section V.4, page 82, the applicant states that BSC physician members (via EmergOrtho) serve the orthopedic needs for patients of Cape Fear Health Net and Cape Fear Clinic, at no charge. In Section VI.4(b), page 90, the applicant states:

*“BSC will adopt the Federal Poverty Guidelines estimated by income, family members, medical expenses, and living expenses for determining eligibility for charity care. For patients matching these guidelines, BSC will write off charges.”*

The applicant adequately demonstrates that the medically underserved population will have access to the proposed services. Therefore, the application is conforming to this criterion.

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<sup>1</sup><http://www.beckersasc.com/asc-coding-billing-and-collections/orthopedics-driven-asc-payer-mix-12-statistics.html>

**NHBOS.** In Section VI.14, page 75, the applicant projects the following payor mix for the proposed ASC in the second operating year (CY2020):

<b>NHBOS Payor Category</b>	<b>Projected Cases as Percent of Total</b>
Self-Pay/Indigent	3.1%
Medicare/ Medicare Managed Care	52.2%
Medicaid	13.4%
Commercial Insurance/Managed Care	28.6%
Other (not specified) and Workers Compensation	2.7%
<b>Total</b>	<b>100.0%</b>

On page 75, the applicant describes its assumptions regarding its payor mix projections, which it states are based on NHBMC historical experience as well as the experience of outpatient surgical providers in Brunswick and neighboring counties. The applicant adequately demonstrates that the medically underserved population will have access to the proposed services. Therefore, the application is conforming to this criterion.

- (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.

C – Both Applications

**OWP3/BSC.** In Section VI.9, pages 94-95, the applicant describes the range of means by which a person will have access to the proposed ASC. The applicant adequately demonstrates that the facility will offer a range of means by which patients will have access to the proposed services. Therefore, the application is conforming to this criterion.

**NHBOS.** In Section VI.9, page 72, the applicant describes the range of means by which a person will have access to the proposed ASC. The applicant adequately demonstrates that the facility will offer a range of means by which patients will have access to the proposed services. Therefore, the application is conforming to this criterion.

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

C – Both Applications

**OWP3/BSC.** In Section V.1, page 79, the applicant states its intent to establish relationships with health professional training programs and make reference to the existing relationships that BSC’s physician owners currently have with area training



programs via OrthoWilmington and EmergeOrtho. Exhibit 12 contains copies of letters of support from Miller-Motte College and Cape Fear Community College which document the intent to develop training agreements with BSC. The information provided is reasonable and credible and supports a finding of conformity to this criterion.

**NHBOS.** In Section V.1, page 54, the applicant states that Novant Health has extensive relationships with health education programs in the market area and that these agreements will include NHBOS once it becomes operational. Exhibit 9 contains a list of educational institutions in the market area with which Novant Health has training arrangements, including Brunswick Community College, Cape Fear Community College, Duke University, and East Carolina University, among others. The information provided is reasonable and credible and supports a finding of conformity to this criterion.

- (15) Repealed effective July 1, 1987.
- (16) Repealed effective July 1, 1987.
- (17) Repealed effective July 1, 1987.
- (18) Repealed effective July 1, 1987.
  
- (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.

C – Both Applications

On page 62, the 2016 SMFP states, *“An operating room’s service area is the operating room planning area in which the operating room is located. The operating room planning areas are the single and multicounty groupings shown in Figure 6.1.”* In Figure 6.1, page 67 of the 2016 SMFP, Brunswick County is shown as a single-county operating room service area. Thus, in this application, the service area is Brunswick County. Providers may serve residents of counties not included in their service area.

The following table identifies the existing and approved outpatient (OP), inpatient (IP) and shared operating rooms located in Brunswick County, and the outpatient and inpatient case volumes for each provider, per page 68 of the 2016 SMFP.

**Brunswick County 2014 Operating Room Inventory**

	IP ORs	OP ORs	Shared ORs	Excluded C-Section ORs	OP Surgery Cases	IP Surgery Cases
J. Arthur Doshier Memorial Hospital	0	0	2	0	950	329
Novant Health Brunswick Medical Center	1	0	4	-1	3,279	1,137

The 2017 SMFP reflects the following inventory and utilization for Brunswick County in 2015.

**Brunswick County 2015 Operating Room Inventory**

	IP ORs	OP ORs	Shared ORs	Excluded C-Section ORs	OP Surgery Cases	IP Surgery Cases
J. Arthur Doshier Memorial Hospital	0	0	2	0	1,113	351
Novant Health Brunswick Medical Center	1	0	4	-1	3,216	1,091

As the tables above show, there are two hospitals and no ambulatory surgery centers providing surgical services in Brunswick County.

**OWP3/BSC** proposes to develop a new ASC with one operating room and two procedure rooms in Leland, Brunswick County. The 2016 SMFP identifies the need for one additional OR in Brunswick County. Neither of the applicant entities, nor the physician owners, or any related party, own or operate a surgical facility in Brunswick County; therefore, OWP3/BSC proposes the addition of a new competitor to the surgical marketplace in the Brunswick County service area. In Section V.7, pages 84-87, the applicant discusses how any enhanced competition will have a positive impact on the cost-effectiveness, quality and access to the proposed services. The applicant states that the proposed project will increase cost effectiveness, quality, and access to services. On page 84, in reference to cost effectiveness, the applicant states:

*“This project represents a cost-effective alternative to being treated in a hospital because the facility will not carry large overhead and administrative costs.*

...

*Additionally, dedicated outpatient providers are more attractive to payors than hospital-based providers. ... Patients typically pay less coinsurance for procedures performed in an ASC than for comparable procedures in the hospital setting.*

...

*BSC will provide the best clinical expertise in the community, and will pass to its patients the reduced cost of care savings that comes from its smaller environment, reduced overhead and supply chain management expertise.”*

On pages 84-85, in reference to access, the applicant states:

*“The proposed project will increase access to cost-effective surgical services for the underserved population of the service area. ... BSC will serve Medicare, Medicaid and Charity Care/Self-pay patients at the proposed facility.*

*BSC will also improve geographic access to residents of Brunswick County.”*

The applicant addresses the provision of quality services on pages 85-87 and state its intent to seek Joint Commission and AAAHC accreditation.

See also Sections II, III, V, VI and VII where the applicant discusses the impact of the project on cost-effectiveness, quality and access.

The information in the application is reasonable and adequately demonstrates that any enhanced competition in the service area includes a positive impact on the cost-effectiveness, quality and access to the proposed services. This determination is based on the information in the application and the following analysis:

- The applicant adequately demonstrates the need for the project and that it is a cost-effective alternative. The discussions regarding the analysis of need and alternatives found in Criteria (3) and (4), respectively, are incorporated herein by reference.
- The applicant adequately demonstrates it will provide quality services. The discussion regarding quality found in Criterion (1) is incorporated herein by reference.
- The applicant adequately demonstrates that it will provide access to medically underserved populations. The discussion regarding access found in Criteria (1), (3) and (13) is incorporated herein by reference.

Therefore, the application is conforming to this criterion.

**NHBOS** proposes to develop a new ASC in Leland, Brunswick County by relocating one existing OR from NHBMC and developing one new OR and one procedure room. The 2016 SMFP identifies the need for one additional OR in Brunswick County. In Section V.7, pages 58-65, the applicant discusses how any enhanced competition will have a positive impact on the cost-effectiveness, quality and access to the proposed services. The applicant states that NHBOS is proposing the development of a new separately licensed outpatient surgery center with two operating rooms and a procedure room, the first separately licensed, multi-specialty, outpatient surgery center in Brunswick County. On pages 58-59, in reference to cost effectiveness, the applicant states:

*“As a licensed outpatient surgery center, NHBOS will have the opportunity to offer outpatient surgeries at a lower price point than a hospital-based outpatient surgery program. ... This approach will offer a new, more cost effective option for local access to outpatient surgical care in Brunswick County.*

...

*Novant Health has also formed a value-based strategy team launched to accelerate strategies for assuming risk and shifting further towards value-based case and payment models to demonstrate greater value for the patients we serve.”*

The applicant addresses Novant Health's provision of quality services on pages 60-61; and access to those services is addressed on pages 61-65.

See also Sections II, III, V, VI and VII where the applicant discusses the impact of the project on cost-effectiveness, quality and access.

The information in the application is reasonable and adequately demonstrates that any enhanced competition in the service area includes a positive impact on the cost-effectiveness, quality and access to the proposed services. This determination is based on the information in the application and the following analysis:

- The applicant adequately demonstrates the need for the project and that it is a cost-effective alternative. The discussions regarding the analysis of need and alternatives found in Criteria (3) and (4), respectively, are incorporated herein by reference.
- The applicant adequately demonstrates it will provide quality services. The discussion regarding quality found in Criterion (1) is incorporated herein by reference.
- The applicant adequately demonstrates that it will provide access to medically underserved populations. The discussion regarding access found in Criteria (1), (3) and (13) is incorporated herein by reference.

Therefore, the application is conforming to this criterion.

- (19) Repealed effective July 1, 1987.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

NA- OWP3/BSC  
C - NHBOS

**NHBOS** is a new limited liability company with 100% of its LLC membership interests owned by NH. As such, the applicant does not currently provide services, however, the application often refers to NH's ownership, experience and policies as being relevant to NHBOS, as in Section II.8, pages 13-15.

In Section I.13, pages 4-5, the applicant lists the facilities and programs owned by NH. NH owns and operates 11 licensed hospital facilities in North Carolina and nine licensed outpatient surgery or endoscopy centers, including four freestanding ambulatory surgery facilities like the proposed center. According to the files in the Acute and Home Care Licensure and Certification Section, DHSR, incidents (which did not warrant non-compliance status) occurred at one of the 11 licensed hospitals within the eighteen months immediately preceding submission of the application through the date of this

decision related to quality of care. There were no incidents occurring at any of the four existing ambulatory surgery facilities within that time period. After reviewing and considering information provided by the applicant and by the Acute and Home Care Licensure and Certification Section and considering the quality of care provided at Novant Health facilities, the applicant provided sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion.

- (21) Repealed effective July 1, 1987.
- (b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

C

The Criteria and Standards for Surgical Services and Operating Rooms, promulgated in 10A NCAC 14C.2100, are applicable to this review. The specific criteria are discussed below.

***SECTION .2100 – CRITERIA AND STANDARDS FOR SURGICAL SERVICES AND OPERATING ROOMS***

***.2103 PERFORMANCE STANDARDS***

*.2103(a) In projecting utilization, the operating rooms shall be considered to be available for use five days per week and 52 weeks per year.*

-C- **OWP3/BSC.** In Section II.10, page 28, the applicant states that the proposed facility will be available for use five days per week and 52 weeks per year.

-C- **NHBOS.** In Section II.10, page 17, the applicant states that the proposed facility will be open five days per week and 52 weeks per year.

*.2103(b) 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 is based on the following formula: {[ (Number of facility 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 facilities projected outpatient cases times 1.5 hours) plus (Number of facility's projected outpatient cases times 1.5 hours)] divided by 1,872 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 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, 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 of less than 0.2; and the difference is a negative number or a positive number less than 0.2, the need is zero; or*

The Brunswick County operating room service area has six to 10 operating rooms; therefore (2)(B) above is applicable to this review.

- C- **OWP3/BSC.** In Section II.10, pages 28-29, the applicant refers to Section IV for the number of outpatient surgical cases projected to be performed in each of the initial three operating years of the proposed project and Section III.1 for a detailed description of the assumptions and methodology used for the projection. In Section IV(c), page 77, the applicant provides the following table:

**Brunswick Surgery Center**

	CY2019	CY2020	CY2021
# of Operating Rooms	1	1	1
# of Ambulatory Surgical Cases	1,294	1,462	1,642

In Section III.1(b), pages 55-59, the applicant provides the methodology and assumptions that resulted in the above projection of cases. The applicant did not translate the number of surgical cases to the number of weighted surgical hours divided by 1,872 hours to demonstrate the proposed project's need for operating rooms. The project analyst provides those calculations below:

**BSC Total Projected OR Need**

	PY1 CY2019	PY2 CY2020	PY3 CY2021
Projected Ambulatory Surgical Cases	1,294	1,462	1,642
Weighted Surgical Hours (cases x 1.5 hrs/case)	1,941	2,193	2,463
ORs Needed at 1,872 hrs per room*	1.0	1.2	1.3
<b>BSC OR Need*</b>	<b>1</b>	<b>1</b>	<b>2</b>

\*Rounded per SMFP and CON Criteria and Standards

Therefore, based on the application of the above rule for demonstrating the need for the proposed operating room; and its applicable assumptions: 1.5 hours per case, 1,872 hours per operating room, and rounding to the next highest whole number for fractions of 0.3 and greater in service areas of six to 10 ORs, the applicant has justified the need for the one operating room proposed in this application.

The discussions regarding analysis of need, including projected utilization, and access found in Criterion (3) are incorporated herein by reference.

- C- **NHBOS.** In Section II.10, pages 17-18, the applicant demonstrates the need for two freestanding ambulatory surgical operating rooms (one

relocated from NHBMC and one new OR) in Brunswick County in its third operating year.

**NHBOS Total Projected Outpatient Surgical Cases and OR Need**

	PY1 CY2019	PY2 CY2020	PY3 CY2021
Projected Outpatient Cases	1,196	1,828	2,300
Weighted Surgical Hours (cases x 1.5 hrs/case)	1,794	2,742	3,450
ORs Needed at 1,872 hrs per room*	1.0	1.5	1.8
<b>NHBOS OR Need*</b>	<b>1</b>	<b>2</b>	<b>2</b>

Totals may not sum due to rounding

\*Rounded per SMFP and CON Criteria and Standards

The discussions regarding analysis of need, including projected utilization, and access found in Criterion (3) are incorporated herein by reference.

.2103(c)

*A proposal to increase the number of operating rooms (excluding dedicated C-Sections 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 report 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' times 1.5 hours)] divided by 1,872 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, 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, 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 of less than 0.2; and if the difference is a negative number or a positive number less than 0.2, the need is zero.*

The need determination identified in the 2016 SMFP will increase the number of ORs in the service area by one OR, upon approval of one of the two competing applications in this review. The Brunswick County operating room service area has six to 10 operating rooms; therefore, .2103(c)(2)(B) above is applicable to this review.

- C- **OWP3/BSC.** See the discussion above in Criterion .2103(b). No other ORs are owned or operated in the Brunswick County service area by OWP3/BSC or a related entity.
- C- **NHBOS.** In Section III, pages 35-36, the applicant provides projected utilization and need for ORs at NHBOS and NHBMC, which results in the following table as discussed in Criterion (3) on pages 22-23 of the Findings.

**NHBOS and NHBMC Operating Room Need**

	<b>PY1</b>	<b>PY2</b>	<b>PY3</b>
	<b>CY2019</b>	<b>CY2020</b>	<b>CY2021</b>
NHBOS OR Need	0.96	1.46	1.84
NHBMC OR Need	3.44	3.19	3.08
Total Combined Need	4.40	4.65	4.92
<b>Total ORs Needed Rounded*</b>	<b>5</b>	<b>5</b>	<b>5</b>
Total Combined Projected Weighted Surgical Hours	8,224	8,708	9,211
Combined Capacity (Surgical Hours Available for 5 ORs)	11,700	11,700	11,700
<b>Projected Utilization of the 5 Novant Health ORs in Brunswick County</b>	<b>70.3%</b>	<b>74.4%</b>	<b>78.7%</b>

Totals may not sum due to rounding

\*Rounded per SMFP and CON Criteria and Standards

As the table above shows, the applicant projects a need for all five of the Novant Health proposed and existing operating rooms (one new OR and the four existing NHBMC ORs).

.2103(d) *An applicant that has one or more existing or approved dedicated C-section operating rooms and is proposing to develop an additional dedicated C-section operating room in the same facility shall demonstrate that an average of at least 365 C-sections per room were performed in the facility's existing dedicated C-section operating rooms in the previous 12 months and are projected to be performed in the facility's existing, approved and proposed dedicated C-section rooms during the third year of operation following completion of the project.*

-NA- **Both Applicants.** The applicants do not propose to develop an additional dedicated C-section room.

.2103(e) *An applicant proposing 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) provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently utilized an average of at least 1,872 hours per operating room per year, excluding dedicated open heart and C-Section operating rooms. The hours utilized per operating room shall be calculated as follows: [(Number of projected inpatient cases, excluding open heart and C-sections performed in dedicated rooms times 3.0 hours) plus (Number of projected outpatient cases times 1.5 hours)] divided by the number of operating rooms, excluding dedicated open heart and C-Section operating rooms; and*

*(2) demonstrate the need in the third operating year of the project based on the following formula: [Total number of projected outpatient cases for all ambulatory surgery programs in the service area times 1.5 hours) divided by 1,872 hours] minus the total number of existing, approved and proposed outpatient or ambulatory surgical operating rooms and shared operating rooms in the service area. The need for the conversion is demonstrated if the difference is a positive number greater than or equal to one, after the number is rounded to the next highest number for fractions of 0.50 or greater.*

-NA- **Both Applicants.** The applicants do not propose to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program.

.2103(f) *The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.*

-C- **OWP3/BSC.** In Section III.1(b), pages 55-59, the applicant provides a detailed description of the assumptions and methodology used for the projection of its ambulatory surgical cases. The discussion regarding analysis of need, including projected utilization, found in Criterion (3) is incorporated herein by reference.

-C- **NHBOS.** In Section III.1(b), pages 31-38, and Exhibit 3, the applicant provides a description of the assumptions and methodology used in the development of the projections required by this Rule. The discussion regarding analysis of need, including projected utilization, found in Criterion (3) is incorporated herein by reference.

## **COMPARATIVE ANALYSIS**

Pursuant to N.C. Gen. Stat. § 131E-183(a)(1) and the 2016 State Medical Facilities Plan, no more than one additional operating room may be approved for Brunswick County in this review. Because the two applications in this review collectively propose to develop two additional operating rooms to be located in Brunswick County, only one of the applications can be approved. Therefore, after considering all of the information in each application and reviewing each application individually against all applicable review criteria, the Project Analyst conducted a comparative analysis of the proposals to decide which proposal should be approved. For the reasons set forth below and in the rest of the findings, the application submitted by OWP3, LLC and Brunswick Surgery Center, LLC, Project I.D. O-11282-16, is approved and the other application, Project I.D. O-11283-16, submitted by Novant Health Brunswick Outpatient Surgery, LLC, is denied.

### **Conformity with Review Criteria**

Both applications are conforming with the Review Criteria as discussed throughout the Findings. Therefore, with regard to conformity with the Review Criteria, the two proposals are comparable.

### **Demonstration of Need**

Both applications adequately demonstrate the need for their respective proposals. See the discussions regarding need found in Criterion (3). Therefore, with regard to demonstration of need, the two proposals are comparable.

### **Geographic Accessibility**

The 2016 State Medical Facilities Plan identifies the need for one additional operating room to be located in Brunswick County.

**OWP3/BSC** propose to develop a new ASC with one OR and two procedure rooms in Leland, Brunswick County.

**NHBOS** proposes to develop a new ASC by relocating one existing OR from NHBMC, and adding one new OR and one procedure room to be located in Leland, Brunswick County.

Both applicants propose to develop one additional Brunswick County OR in a new ASC in Leland. Therefore, with regard to geographic accessibility to the proposed OR, the two proposals are comparable.

**Demonstration of Physician Support**

**OWP3/BSC.** In Section III.1(b), page 55, the applicant lists 12 physicians who the applicant states are expected to utilize the proposed ASC. Exhibit 11 contains support letters from 13 surgeons, stating its intent to perform surgery at BSC; three physicians who propose to refer patients to the surgeons and one local resident who states intent to use the facility.

**NHBOS.** In Section III.1(a), page 26, NHBOS states that “*many of the surgeons*” at NHBMC express support for the project and provides a list on page 56 of 18 surgeons who it says intend to utilize NHBOS to perform surgery. Exhibit 4 contains support letters from those surgeons. The applicant also discusses the recruitment of an additional orthopedic surgeon and his expected impact on surgical cases at NHBMC and NHBOS.

Both applications document physician support of their proposed projects. Therefore, with regard to demonstration of physician support, the two proposals are comparable.

**Patient Access to Surgical Specialties**

Currently, Brunswick County has two hospitals that provide surgical services and does not have any existing ambulatory surgical centers. The approval of either of the applications in this review will develop the first and only ASC in Brunswick County. A review of the surgical data reported in the 2016 Hospital LRAs submitted by Doshier and NHBMC, the two hospitals in Brunswick County, shows that 76% of all surgeries (excluding C-Sections) performed in Brunswick County were ambulatory surgeries. The following table shows the percentages of the ambulatory surgeries performed in Brunswick County by specialty:

**Brunswick County Ambulatory Surgeries by Specialty  
As a Percent of Total Surgeries**

<b>Specialty</b>	<b>Percent of Total</b>
General Surgery	69.8%
Obstetrics	83.8%
Ophthalmology	100.0%
Orthopedics	60.0%
Otolaryngology	98.3%
Plastic Surgery	98.6%
Urology	80.8%
Other	81.9%
Total (excluding C-Section)	76.05%

Source: J. Arthur Doshier Memorial Hospital and Novant Health Brunswick Medical Center FY2015 data as reported on the 2016 LRAs and queried by Healthcare Planning

These statistics, as shown above, support the development of an ambulatory surgery center in Brunswick County to provide patients in Brunswick County access to non-hospital based surgical services, at typically lower costs.

The approval of OWP3/BSC will add one ambulatory OR and two procedure rooms in Brunswick County. The approval of NHBOS will add two ambulatory ORs and one procedure room in Brunswick County. This is because NH is relocating one shared OR from NHBMC to NHBOS and converting it to an ambulatory OR. Relocating one shared OR from NHBMC will leave three shared ORs at NHBMC, in which both inpatient and ambulatory surgeries can be performed. The approval of NHBOS would increase the number of ambulatory ORs and decrease the number of shared ORs in Brunswick County. NH did not have to wait for the SMFP to show the need for an additional OR in Brunswick County to create an ambulatory surgery center; NH could have submitted a CON to relocate one or more ORs from NHBMC to a separately licensed freestanding ambulatory surgery setting at any point that NH determined that to be an effective use of its Brunswick County OR inventory.

OWP3/BSC proposes to offer orthopedic ambulatory surgical services. NHBOS proposes to offer the following ambulatory surgical services: general surgery, OB/GYN, ophthalmology, orthopedic, otolaryngology, podiatry, plastic surgery and urology.

Generally, in a service area without existing access to any other non-hospital-based ambulatory surgical services, the application proposing to provide access to the broader range of different specialty surgical services in a freestanding ambulatory setting would appear the more effective alternative with regard to this comparative factor. An analysis of the specialty surgical services provided in Brunswick County compared with the number of residents leaving Brunswick County to obtain the specialty services revealed the following statistics:

- Of the 5,692 total surgeries performed in FY2015 in Brunswick County, excluding C-Sections, 1,793 (31.5%) were orthopedic; 1,076 (24.9%) of the 4,329 ambulatory surgeries performed were orthopedic.
- 60% of all 2015 orthopedic surgery performed in Brunswick County was done on an ambulatory (outpatient) basis.
- Of the 10,467 ambulatory surgeries performed on Brunswick County residents, only 3,854 (36.8%) were performed in Brunswick County; 5,981 (57.1%) of the ambulatory surgeries performed on Brunswick County residents were in performed New Hanover County.

The available data does not include the number of orthopedic patients leaving Brunswick County for ambulatory surgery. However, it is possible to estimate the number based on the percentage performed in Brunswick County. Assuming 24.9% of the ambulatory surgeries performed on Brunswick County residents in New Hanover County results in 1,489 orthopedic surgeries ( $0.249 \times 5,981 = 1,489$ ). Thus, 4,492 ambulatory surgeries performed on Brunswick County residents in New Hanover County were in specialties other than orthopedics ( $5,981 - 1,489 = 4,492$ ).

**OWP3/BSC.** In Section III.1(b), page 55, the applicant provides the names of 12 orthopedic surgeons who are expected to utilize the proposed ASC and state in a footnote:

*“Please note that only orthopaedic surgeons are expected to utilize the proposed OR. BSC’s pain management specialists will utilize the proposed procedure rooms.”*

Exhibit 11 of OWP3/BSC’s application contains support letters from 13 EmergeOrtho surgeons and three physicians who refer to OrthoWilmington/EmergeOrtho.

**NHBOS.** In Section V.3(b), page 56, the applicant provides a list of 18 surgeons in eight surgical specialties who intend to utilize NHBOS to perform surgery. The specialties listed include otolaryngology, general surgery, OB/GYN, ophthalmology, orthopedics, podiatry, plastic surgery and urology. Exhibit 4 contains support letters from those surgeons.

Therefore, based the number of ambulatory ORs proposed and on the expected surgical specialties that will utilize the proposed ASCs, the application submitted by NHBOS is the more effective alternative with regard to patient access to a broader range of specialty surgical services in a non-hospital-based ambulatory surgical center.

### **Patient Access to a New Provider**

Generally, the application proposing to increase patient access to a new provider in the service area is the more effective alternative with regard to this comparative factor.

**OWP3/BSC.** In Section I.13(c), page 10 of its application, the applicant states that OWP3 and BSC are new entities that do not currently own, manage or operate any healthcare facilities. In Section I.12, pages 6-7, the applicant lists the physician owners of each entity. Neither the entities nor the physician owners own a surgical facility in Brunswick County. In the applicant’s comments and response to comments presented at the Public Hearing, the applicant states:

*“Our proposal would introduce a new provider in the surgical marketplace in Brunswick County and development of Brunswick Surgery Center will improve competition in Brunswick County. This competitive environment will be highly beneficial to local patients and payors in terms of both healthcare quality and cost. ... competition amongst healthcare facilities fosters continuous quality improvement in the local market place and encourages providers to offer competitive prices.”*

**NHBOS.** In Section I.12, page 3 of its application, the applicant states that Novant Health, Inc. owns one hundred percent of the applicant LLC. Novant Health, Inc. is the parent company of NHBMC in Brunswick County, which is one of only two existing surgical programs in Brunswick County. NHBMC currently owns and operates four operating rooms and one C-Section room in Brunswick County.

As discussed above, Novant Health already provides surgical services in Brunswick County. The development of NHBOS will increase the OR capacity of an existing related provider. OWP3/BSC is proposing to add another provider of surgical services in Brunswick County, thereby enhancing competition. Therefore, the application submitted by OWP3/BSC is the more effective alternative with regard to access to a new provider of surgical services.

**Access by Underserved Groups**

Both applications project approximately 3% of the proposed surgeries will be provided to Self-pay/Indigent payors (Form D of each application); therefore the applications are comparable in that respect.

The following table shows each applicant’s projected Charity Care to be provided in the second operating year (CY2020) and the percentage of total net revenue. Generally, the application proposing to provide the highest percentage of Charity Care is the more effective alternative with regard to this comparative factor.

**SURGICAL CHARITY CARE  
 OPERATING YEAR 2**

<b>APPLICANT</b>	<b>Projected Total Charity Care</b>	<b>Projected Percentage of Total Net Revenue</b>
OWP3/BSC	\$52,201	1.6%
NHBOS	\$590,000	12.1%

Source: Section VI.8(c) and Form B for each application. OWP3/BSC Net Revenue was adjusted to include bad debt for comparison purposes.

As shown in the table above, NHBOS projects the highest charity care as a percent of net revenue to be provided to patients. Therefore, the application submitted by NHBOS is the most effective alternative with regard to access to charity care.

The following tables show each applicant’s projected total number of projected surgical cases and the number of cases projected to be provided to Medicaid and Medicare recipients in the second and third full year of operation following completion of the projects (CY2020 and CY2021), based on the information provided in the applicant’s pro forma financial statements. Generally, the application proposing to serve the higher percent of total surgical cases to Medicaid and Medicare patients is the more effective alternative with regard to those comparative factors.

**SURGICAL MEDICAID CASES  
 OPERATING YEARS 2 AND 3**

<b>Applicant</b>	<b>Projected Total Cases</b>		<b>Projected Total Cases Provided to Medicaid Recipients</b>		<b>Projected Percentage of Total Cases Provided to Medicaid Recipients</b>	
	<b>Operating Year 2</b>	<b>Operating Year 3</b>	<b>Operating Year 2</b>	<b>Operating Year 3</b>	<b>Operating Year 2</b>	<b>Operating Year 3</b>
OWP3/BSC	1,462	1,642	155	174	10.6%	10.6%
NHBOS	1,828	2,300	245	308	13.4%	13.4%

Source: Form D of each application



**SURGICAL MEDICARE CASES  
 OPERATING YEARS 2 AND 3**

Applicant	Projected Total Cases		Projected Total Cases Provided to Medicaid Recipients		Projected Percentage of Total Cases Provided to Medicaid Recipients	
	Operating Year 2	Operating Year 3	Operating Year 2	Operating Year 3	Operating Year 2	Operating Year 3
OWP3/BSC	1,462	1,642	207	233	14.2%	14.2%
NHBOS	1,828	2,300	954	1,201	52.2%	52.2%

Source: Form D of each application

As shown in the tables above, NHBOS projects the highest percentage of total surgical cases to be provided to Medicaid and Medicare recipients. However, due to significant differences in the types of surgical services proposed by the applicants, it is not possible to make conclusive comparisons with regard to percentage of Medicaid and Medicare cases. Thus, this comparative factor may be of little value.

**Projected Surgical Revenue per Surgical Case**

The following table shows the projected average gross and net surgical revenue per case in the third year of operation for each of the applicants, based on the information provided in the applicants' pro forma financial statements. Generally, the application proposing the lowest average gross and net revenue per case is the more effective alternative with regard to this comparative factor.

**Revenue Per Surgical Case  
 CY2021**

	OWP3/BSC		NHBOS	
	Gross Revenue	Net Revenue	Gross Revenue	Net Revenue
Surgical Revenue	\$ 8,187,055	\$ 3,841,615	\$ 18,051,414	\$ 5,816,755
Cases	1,642	1,642	2,300	2,300
<b>Revenue/Case</b>	<b>\$ 4,987</b>	<b>\$ 2,340</b>	<b>\$ 7,848</b>	<b>\$ 2,529</b>

Source: Forms D and E for surgical revenue in each application

As shown in the table above, OWP3/BSC projects the lower average gross and net revenue. However, due to significant differences in the types of surgical services proposed by the applicants, it is not possible to make conclusive comparisons with regard to revenue per surgical case. Thus, this comparative factor may be of little value.

**Projected Average Operating Expense per Surgical Case**

The following table compares the projected average operating expense in the third year of operation for each of the applicants, based on the information provided in the applicants' pro forma financial statements (Form B). Generally, the application proposing the lowest average operating expense per case is the more effective alternative with regard to this comparative factor. However, both applicants provide operating expenses for the entire ASC, including procedure rooms, which means a direct comparison of only surgical expenses (only those expenses related directly to the provision of surgical cases) is not possible. The following table compares the total operating expenses for each facility based on number of proposed surgical cases.

<b>Operating Expense CY2021</b>	<b>OWP3/BSC</b>	<b>NHBOS</b>
Total Operating Expenses	\$ 2,704,325	\$ 5,243,436
Surgical Cases	1,642	2,300
<b>Total Operating Expense/Surgical Case</b>	<b>\$ 1,647</b>	<b>\$ 2,280</b>

Source: Pro Forma Financials of each application

For comparison purposes OWP3/BSC bad debt was included as a deduction from total gross patient revenue rather than an operating expense, which reduces total operating expense and increases total deductions from gross patient revenue by \$77,555 and \$88,119 in PY1 and PY2, respectively. Conversely, bad debt could have been added to NHBOS' total operating expenses to compare to OWP3/BSC's total operating expenses, which already includes bad debt. Comparing operating expenses in this manner results in Total Operating Expense/Surgical Case of \$1,701 and \$2,450 for OWP3/BSC and NHBOS, respectively.

As shown in the table above, OWP3/BSC projects the lower average operating expense per case in the third operating year. However, due to differences in the types of surgical services proposed by the applicants, it is not possible to make conclusive comparisons with regard to projected average operating expense per surgical case. Thus, this comparative factor may be of little value.

**History of Project Development**

**OWP3/BSC** has not applied for any other CONs and therefore have no history of project development to review.

**NHBOS** is a new limited liability company with 100% of its LLC membership interests owned by Novant Health. Novant Health has formed two similar LLCs to apply for CONs to develop ambulatory surgery centers: Same Day Surgery Center New Hanover (SDSCNH) / Project ID #O-7671-06 and Same Day Surgery Center Franklin, LLC (SDSCF) / Project ID #K-8357-09, which were never developed.

SDSCNH was approved to develop a separately licensed ambulatory surgical facility with two operating rooms in New Hanover County, effective October 2007. Over four years later, having

not developed the project, and pursuant to a July 2, 2012 declaratory ruling, New Hanover Regional Medical Center acquired 100% of NH's interest in the proposed SDSCNH to develop the ORs in the hospital, not as a separately licensed ambulatory surgery center, as approved. Therefore, NH did not develop the CON-approved ambulatory surgical facility in New Hanover County.

SDSCF was approved to develop a freestanding ambulatory surgery center in Franklin County, effective December 29, 2009. Approximately four years later, having not developed the project, NH submitted a change of scope and cost overrun CON application, Project ID #K-10229-13, to relocate one OR from Novant Health Franklin Medical Center for a total of two ORs at the previously approved ASC in Franklin County. This project was approved effective December 3, 2014. In September 2016, per SDSCF's progress report dated September 21, 2016, the development of the project had not begun and NH was still in discussions with a possible joint venture partner. The Agency received prior written notice, dated November 22, 2016, stating Duke University Health System's intent to acquire 100% of the membership interest in SDSCF, the NH LLC which has CON approval to develop a two-OR ambulatory surgery center in Franklin County. On March 30, 2017, the Agency received its most recent progress report on this project, which states a Letter of Intent (LOI) was executed and discussions with the joint venture partner continue. As of the date of this decision, the Agency has had no further word on this project development. Therefore, NH has not developed the CON-approved ambulatory surgical center in Franklin County in a timely manner.

NHBOS's project is not unlike the two projects discussed above. Not developing the above projects, as approved, has left New Hanover and Franklin County residents without the proposed ambulatory surgery facilities: New Hanover County residents were denied access to the approved ambulatory surgical services, because those ORs were subsequently developed by New Hanover Regional Medical Center as hospital-based ORs; and Franklin County residents have yet to be provided access to the approved ambulatory surgery services, eight years later.

Thus, NH's history of undeveloped, CON-approved ambulatory surgery services make its project a less effective alternative with regard to history of project development.

## **SUMMARY**

The following is a summary of the comparative factors in this review:

<b>Comparative Factor</b>	<b>More Effective</b>	<b>Less Effective</b>
Conformity with Review Criteria	The two applications are comparable.	
Demonstration of Need	The two applications are comparable.	
Geographic Accessibility	The two applications are comparable.	
Demonstration of Physician Support	The two applications are comparable.	
Access by Underserved Groups: Medicaid and Medicare	Inconclusive comparison.	
Projected Gross and Net Surgical Revenue per Surgical Case	Inconclusive comparison.	
Projected Operating Expense per Surgical Case	Inconclusive comparison.	
Patient Access to Surgical Services	NHBOS	OWP3/BSC
Patient Access to a New Provider	OWP3/BSC	NHBOS
Access by Underserved Groups: Charity Care	NHBOS	OWP3/BSC
History of Project Development	OWP3/BSC	NHBOS

As shown in the table above:

- With respect to conformity with Review Criteria, geographic accessibility, and physician support, the applications are comparable. See Comparative Analysis for discussion.
- NHBOS projects to offer access to a broader range of surgical specialties. See Comparative Analysis for discussion.
- OWP3/BSC projects access to a new provider and enhanced competition. See Comparative Analysis for discussion.
- NHBOS projects the higher percentage of Charity Care in the third operating year. See Comparative Analysis for discussion.
- NHBOS projects the higher percentage of Medicaid and Medicare in the third operating year, but the analysis arrives at an inconclusive comparison. See Comparative Analysis for discussion.
- OWP3/BSC project the lower average gross and average net surgical revenue per surgical case in the third operating year, but the analysis arrives at an inconclusive comparison. See Comparative Analysis for discussion.
- OWP3/BSC project the lower average total operating expense per surgical case in the third operating year, but the analysis arrives at an inconclusive comparison. See Comparative Analysis for discussion.
- OWP3/BSC has no history related to the development of CON ambulatory surgical projects, while NHBOS has failed to develop two CON approved ambulatory surgical projects. See Comparative Analysis for discussion.

The following is a summary of the reasons the proposal submitted by OWP3/BSC is determined to be the more effective alternative in this review:

- OWP3/BSC’s proposal provides access to a new provider in the service area and therefore, enhances competition. See Comparative Analysis for discussion.

- NHBOS's parent company has a history of failing to develop approved CON projects for ambulatory surgery facilities. See Comparative Analysis for discussion.

## **CONCLUSION**

The Agency determined that the application submitted by OWP3, LLC and Brunswick Surgery Center, LLC, Project I.D. O-11282-16, is the more effective alternative proposed in this review for one new operating room to be located in Brunswick County and is therefore approved. The approval of the application submitted by Novant Health Brunswick Outpatient Surgery, LLC, would result in operating rooms in excess of the need determination for Brunswick County. Consequently, the application submitted by Novant Health Brunswick Outpatient Surgery, LLC is denied.

The application submitted by OWP3, LLC and Brunswick Surgery Center, LLC is approved subject to the following conditions.

- 1. OWP3, LLC and Brunswick Surgery Center, LLC shall materially comply with all representations made in the certificate of need application.**
- 2. OWP3, LLC and Brunswick Surgery Center, LLC shall develop an ambulatory surgery center with no more than one operating room.**
- 3. OWP3, LLC and Brunswick Surgery Center, LLC shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application and that would otherwise require a certificate of need.**
- 4. OWP3, LLC and Brunswick Surgery Center, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Healthcare Planning and Certificate of Need Section in writing prior to issuance of the certificate of need.**