

**Long-Term & Behavioral Health Committee  
Agency Report  
Adjusted Need Petition to  
Create 16 Skilled Nursing Facility Beds in Mecklenburg County  
Proposed 2013 State Medical Facilities Plan**

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***Petitioner:***

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***Request:***

As stated by the petitioners, “OrthoCarolina requests an adjusted need determination for sixteen skilled nursing beds to be used in conjunction with an existing or approved orthopedic-focused ambulatory surgical facility located in Mecklenburg County” in the 2013 State Medical Facilities Plan (SMFP). In addition, the petitioner requests the Certificate of Need (CON) administrative rule 10A NCAC 14C.1102 (b) that requires 90 percent occupancy by the second year of operation for a new nursing facilities not be applicable to the 16 nursing facility beds that are the subject of this request.

***Background Information:***

Chapter Two of the State Medical Facilities Plan (SMFP) describes the purpose and process for submitting petitions to amend the SMFP during its development. Petitions can be sent to the Medical Facilities Planning Branch twice during the course of plan development. Early in the planning year petitions that are related to basic plan policies and methodologies that have a statewide effect can be submitted. “Changes with the potential for a statewide effect are the addition, deletion, and revision of policies and revision of the projection methodologies.” The change requested by these petitioners affects the need methodology and should be considered before publication of the Proposed 2013 SMFP.

Later in the planning cycle when need projections are complete, petitions can be submitted seeking adjustments to the projected need determination in any service area based on extenuating

circumstances if the area believes its needs are not fully addressed by the standard methodology. These petitions are considered before publication of the 2013 SMFP.

The regulation of ambulatory surgical centers is governed by the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation (DHSR) in accordance with NC Administrative Code 10A NCAC 13C. The regulation of nursing homes (NH) is governed by the Nursing Home Licensure and Certification Section of DHSR in accordance with NC Administrative Code 10A NCAC 13D.

Policy NH-8: Innovations in Nursing Facility Design reads as follows: “Certificate of need applicants proposing new nursing facilities, replacement nursing facilities, and projects associated with the expansion and/or renovation of existing nursing facilities shall pursue innovative approaches in care practices, work place practices and environmental design that address quality of care and quality of life needs of the residents. These plans could include innovative design elements that encourage less institutional, more home-like settings, privacy, autonomy and resident choices, among others.”

Need for nursing home beds is determined by calculating the statewide five-year average use rate per 1,000 population for each of four age groups based on data from annual license renewal applications. The utilization per county is then calculated into a five-year average annual rate of change statewide utilization rate, establishing a trend line per age group, projected forward for 30 months, which is then applied to the projected population going forward three years, for each county. The amount of need per county is then established based on the size of the county’s projected surplus or deficit when the projected utilization is compared to the inventory of existing and approved beds.

**Analysis/Implications:**

The agency has reviewed all elements of the current petition and notes the following areas of concern:

- The 2013 Proposed SMPF shows a surplus of 658 NH beds for Mecklenburg County and an inventory of 202 inpatient rehabilitation beds with a utilization rate of 68.4% in HSA III, which includes Mecklenburg County. Both NHs and inpatient rehabilitation facilities are equipped to serve the patient population described in this petition. While the petition acknowledges the existing under-utilized resources in the service area, it does not address why the population described in this petition could not be served through these existing resources.
- As the petitioner states, this is a “new model of care.” As such, no N.C. General Statute exists for the regulation of the type of facility (combination ambulatory surgery/nursing home) and that the creation of statutes for the governance of such a facility would be required. In addition, N.C. Administrative Code rules would need to be promulgated prior to the licensing of this type of combination facility.

- The way the petitioner intends to utilize the 16 beds requested is not consistent with the current licensure rules and regulations governing NHs in North Carolina and represents a significant shift in how NH beds operate. Based on the number of beds requested (16) and the number of procedures the petitioner expects to perform each week (10-15), patients would average a one-week stay in the facility. This is a significantly shorter period of time than a resident of a long-term care facility such as a nursing facility is expected to be in residence and is more typical of a patient stay in a rehabilitation facility.
- In line with the longer expected stay for NH patients, current regulations require that all nursing homes meet construction requirements for separate dining, activity, living, kitchen, and laundry areas. In addition, NH licensing regulations require that the NH portion of the proposed combination facility maintain certain staff, including a full-time administrator (10A NCAC 13D.2202) and a full-time director of nursing (10A NCAC 13D.2302), along with sufficient nursing staff to provide 2.1 nursing hours of care per patient and 24-hour nursing care. In addition, staff support should include social services, dietary services, activity and recreational services. (It must be noted that the federally available waivers for exemption from the nursing care requirement pertain to facilities in rural areas where severe personnel shortages exist. No such waiver has ever been granted in North Carolina.) While the petitioner asserts that the need for these beds is based on the reduced cost of servicing patients seeking a joint replacement, the petitioner does not account for how the cost of constructing a nursing home and maintaining the other regulatory requirements would be financially viable given the small number of beds proposed without substantially eroding the anticipated financial benefit to the patients for using such a facility. The petitioner states that the facility is unlikely to reach the 90% occupancy requirement for NHs in its second year ((10A NCAC 14C.1102 (b)), a requirement that is intended to assess financial viability and one for which the SHCC does not have the authority to grant an exemption. This 16 bed unit is far below the commonly accepted threshold for financial viability for NHs. By comparison, there is currently no stand-alone nursing home facility in the state with fewer than 36 patient beds (The Rosewood Health Center in Wake County).
- The proposed facility exceeds the intended scope of NH-8. The intent of Policy NH-8 was for improving the quality of life for long-term care residents by providing a more home-like setting while meeting their ongoing healthcare needs rather than changing the underlying structure of nursing care facilities in the state. Typical innovations are allowing pets in the facility, creating gardens where residents can exercise while tending, designing facilities where resident rooms are structured more like a neighborhood than a institutionalized housing unit (while still meeting all NH construction requirements). Creating a nursing facility that is not defined by current statutes was not the intended purpose of this policy.
- The petitioner requests that these beds be restricted to Mecklenburg County without providing an explanation for why such a facility would not be subject to a state-wide competitive review.

- The petition does not address issues of access for patients receiving Medicaid or Medicare. OrthoCarolina's current Certificate of Need (CON) requires the facility to ensure that these patients are served in their facility. No information is provided for how these patients will be served by the facility proposed in this petition.
- The petition focuses primarily on the benefits of ambulatory surgery and provides little information about how the proposed nursing facility would operate. In particular, it fails to address how the nursing facility would address the needs of patients who require a longer stay in the facility than the anticipated one-week recovery time so that patients experience continuity of care to the greatest degree possible.

***Agency Recommendation:***

The petitioners request an adjusted need determination for Mecklenburg County for 16 Skilled Nursing Facility beds. The agency feels that the intended use for the requested beds is not consistent with the intent of such beds within the current regulatory structure. Given the available information and comments submitted by the August 17, 2012 deadline and in consideration of factors discussed above, the agency recommends denial of this petition.