

**Acute Care Committee Agency Report  
Adjusted Need Petition  
for the Durham County Acute Care Bed Service Area  
in the 2024 State Medical Facilities Plan**

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***Petitioner:***

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***Request:***

UNC Hospitals requests that the *2024 State Medical Facilities Plan (SMFP or “Plan”)* show an increase in the need determination for acute care beds in the Durham/Caswell/Warren (Durham) service area or retain the 38 beds needed as reflected in the *Proposed 2024 SMFP*.

***Background Information:***

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

The Durham service area is home to three hospitals. One is North Carolina Specialty Hospital (NC Specialty), which has 18 acute care beds in the planning inventory. The remaining two are in the Duke Health System – Duke University Hospital, with 981 acute beds in the planning inventory, and Duke Regional with 298 beds in the planning inventory. The *2021 SMFP* shows a need determination for 40 acute care beds, and the *2022 SMFP* shows a need determination for 68 beds for the service area. Originally, CONs for all 40 of the beds from the *2021 SMFP* need determination and 34 of the beds from the *2022 SMFP* need determination were awarded in October 2021 and October 2022, respectively, to UNC Hospitals to develop a new acute care hospital. Both decisions were appealed and remain in litigation. The *Proposed 2024 SMFP* shows a need determination for an additional 38 beds in the Durham service area.

***Analysis/Implications:***

The Petitioner asserts that because there are 108 acute care beds for the service area that have not been allocated, the need for additional beds is being suppressed. Step 1 of the acute care bed need methodology explains that the planning bed inventory includes licensed beds as well as the number of acute care beds that are pursuant to need determinations in the *SMFP* pending review or appeal. Accordingly, each *Proposed Plan* and each finalized *Plan* reflect placeholders for any beds for which allocation decisions have not been reached. These placeholders allow for beds that will become awarded to become a part of the service area's inventory, and thus, the need methodology calculations. Beds for which no CON applications are received or beds that are not allocated for any reason are immediately removed from the service area's inventory via the deletion of placeholders.

Further, Policy GEN-1 in the *SMFP* stipulates:

1. Need determinations in this *Plan*, except for need determinations for dialysis stations, may be reallocated in the following year if either 1.a or 1.b is true:
  - a. The review period for the need determination was scheduled to begin on October 1, November 1, or December 1 of the current year, and
    - i. no applications were received for the need determination, or
    - ii. applications were received but not all the beds, operating rooms, services or equipment that were available were applied for.
  - b. Resolution of litigation between August 16 and December 15 of the current year would have resulted in a need determination if the litigation had been resolved on or before August 15. Resolution of litigation means that all contested case petitions have been withdrawn with prejudice and all certificates of need, if any, have been issued.

In alignment with this Policy, if litigation concerning acute care beds is resolved between the time the *Proposed Plan* is published and when the finalized *Plan* is presented to the Governor, any beds that were not awarded will factor into the need methodology calculations in the *Plan* for the next calendar year, and the need determination will be revised accordingly.

The Petitioners state they understand the importance of including the placeholder for need determinations from previous years. However, they also assert that having placeholders in the *Plan* decreases any deficit, thereby suppressing need. Removing these placeholders would have the effect of generating another need determination for the service area that is similar to the original need determination (i.e., in the case of Durham, around 108 beds). Meanwhile, the beds that are currently in litigation would become allocated, and an additional set of beds would enter the pipeline. For Durham, that could mean over 200 beds added to the inventory – half without evidence of a need for them. Therefore, the placeholders must remain in the *Plan*.

Another concern of the Petitioner's is that there may be a reduction in the need determination for 38 acute care beds in the Durham service area in the *Proposed 2024 SMFP*. As described in Step 2 of the methodology, the days of care (DOC) provided in acute care beds as reported to the

statewide data processor the Hospital Industry Data Institute (HIDI) are used in the methodology calculations. These data are provided to the Agency twice a year – in the Spring when they are used in the development of the *Proposed Plan*, and then again in the late Summer after acute care providers have been provided the opportunity to correct their utilization data. Providers who are invited to correct these data are those whose reported DOC to HIDI as compared to reports on the Agency’s annual Hospital License Renewal Application (LRA) are discrepant by  $\pm 5\%$ . These refreshed data are applied to the need methodology calculations for the finalized *Plan*. Typically, changes to need determinations occur if facilities correct their data such that there is a revision in the number of DOC reported to HIDI. During the 2023 planning year (i.e., for the development of the *2024 SMFP*), North Carolina Specialty Hospital was the only hospital that reported DOC at a level of discrepancy above the threshold. In this instance, the number of DOC reported to HIDI was 7.79% less than the DOC reported on the LRA. North Carolina Specialty Hospital’s refreshed data show 128 more DOC reported to HIDI. However, this increase did not have any impact on the *2024 SMFP* need determination; in fact, the only other possible outcome would have been an increase in the need determination. Agency staff is unaware of any other pending data changes that would reduce the existing need determination for Durham.

The Petition does not indicate the number of beds that might be needed in addition to the 38 provided in the *Proposed 2024 SMFP*. A review of the utilization of Durham’s acute care beds during the 2022 data year suggests adequate access to acute care services at the facility level. Step 7 of the acute care bed need methodology outlines target occupancies for these beds according to the average daily census (ADC) of acute beds in each hospital (see p. 34, *Proposed 2024 SMFP*). As shown in Table 1., the two Durham hospitals do not reach threshold levels. Utilization is five percentage points above target occupancy at Duke University, and the Duke Health System’s utilization is a little over one percentage point above target occupancy. However, the Petitioner does not provide evidence that the 38-bed need determination is not adequate to address demand.

**Table 1. Acute Care Bed DOC in the Durham Service Area, Data Years 2016 – 2022\***

	2016	2017	2018	2019	2020	2021	2022	Target Occupancy in 2022
Duke University Hospital	81.6%	83.1%	86.3%	85.2%	87.2%	81.0%	83.4%	78.0%
Duke Regional Hospital	51.6%	56.3%	54.6%	60.1%	58.8%	62.0%	65.7%	75.2%
<i>Duke Health System</i>	73.9%	76.2%	78.1%	78.9%	80.0%	76.6%	79.3%	78.0%
NC Specialty Hospital	55.0%	55.5%	45.2%	47.8%	44.2%	27.0%	24.0%	66.7%

Source: Data provided to statewide data processors: Truven Health Analytics (FY 2014 - 2017), IBM Watson Health (FY 2018 - 2019), and the Hospital Industry Data Institute (FY 2020 - 2021)

***Agency Recommendation:***

The Petitioner has requested that the *2024 SMFP* show an increase in the current need determination for acute care beds in the Durham service area or retain the 38 beds needed as indicated in the *Proposed 2024 SMFP*. Thus, given available information and comments submitted by the August 9, 2023 deadline, and in consideration of factors discussed above, the Agency recommends denial of the petition.