

PETITION
BY COMMUNITY HOME CARE OF VANCE COUNTY, INC. D/B/A
COMMUNITY HOME CARE AND HOSPICE
REQUESTING AN ADJUSTMENT TO
THE PROPOSED 2009 STATE MEDICAL FACILITIES PLAN
NEED DETERMINATION TO ELIMINATE THE PROPOSED NEED FOR A
NEW HOSPICE HOME CARE OFFICE IN JOHNSTON COUNTY
August 1, 2008

Petitioner

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DFS Health Planning
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AUG 1 - 2008

Medical Facilities
PLANNING SECTION

Requested Adjustment

The 2009 Proposed State Medical Facilities Plan ("Proposed 2009 SMFP") proposes to establish a new hospice home care office in Johnston County, North Carolina. *Proposed 2009 SMFP, Table 138, Page 318.* Petitioner respectfully contends that there are special and unique characteristics of Johnston County that require additional consideration and, as a result, there should be an adjusted need determination to no need for a new Johnston County hospice home care office in the 2009 State Medical Facilities Plan ("SMFP") for the reasons set forth below.

Reasons for Proposed Adjustment

The steps in applying the Standard Methodology for Hospice Home Care Offices, as set forth in Chapter 13, Pages 291-293 of the Proposed 2009 SMFP, are as follows:

- Step 1: The 2006 number of deaths for each county is entered.
- Step 2: The total number of reported hospice patient deaths, by county of patient residence, from annual data supplements to licensure applications is entered.
- Step 3: The percent of deaths served by hospice is calculated by dividing the number of hospice deaths (Step 2) by the total number of deaths (Step 1).
- Step 4: The 2002-2006 death rate/1000 population is entered.
- Step 5: The estimated 2010 population of each county is entered with adjustments for the counties with more than 500 active military personnel.

- Step 6: Projected 2010 deaths for each county is calculated by multiplying the county death rate (Step 4) by the 2010 estimated population (Step 5) divided by 1000.
- Step 7: The projected number of hospice deaths for each county is calculated by multiplying each county's projected 2010 deaths (Step 6) by the statewide median hospice deaths.
- Step 8: In counties for which additional hospice home care office need determinations were made, determine the difference between 110 and the number of hospice patient deaths reported by each new office in the county for which a need determination was made. If a new office reports more than 110 hospice patient deaths in the county for which a need determination was made, the office's reported number of hospice patient deaths is not adjusted for that county. If a new office reported fewer than 110 hospice patient deaths in the county for which a need determination was made, an adjustment "placeholder" equal to the difference between the reported number of hospice patient deaths and 110 is used. The adjustment "placeholder" is made through the third annual Plan following either: a) issuance of the Certificate of Need if the approved applicant had a hospice home care office in the county prior to the issuance of the certificate; or b) certification of the new office that received the Certificate of Need in the county for which a need determination was made if the approved applicant did not have an existing hospice home care office in the county prior to the issuance of the certificate.
- Step 9: Project the number of patients in need (deficit or surplus) by subtracting the projected number of hospice deaths (Step 7) for each county from the reported number of hospice deaths (Step 2) plus any adjustment (Step 8).
- Step 10: A need determination would be made for a county if either: 1) the county's deficit is 50 or more, the county projected population is 50,000 or fewer people and the deficit index is 10% or more; or 2) the county's deficit is 75 or more, the county projected population is more than 50,000 people and the deficit index is 10% or more. (A hospice's service area is the hospice planning area in which the hospice is located. Each of the 100 counties in the State is a separate hospice planning area.)

Based on the above methodology, the 2009 Proposed SMFP projects a need for an additional hospice home care office in Johnston County. This projection is based on the assumption that Johnston County will have a deficit of 104 additional patients in need in 2010, thereby generating a need for an additional hospice home care office.¹

Special and Unique Circumstances

Even though the projected patient deficit demonstrates a need for a new hospice home care office in Johnston County, the Petitioner believes that there are special and unique circumstances in Johnston County that warrant an adjusted need determination.²

As illustrated in Table 1 below, the percent of total deaths served by hospice providers in Johnston County has steadily increased since 2002, as has the number of licensed hospice offices that reported serving patients residing in Johnston County. Hospice data in the 2008 SMFP reported that 20 licensed hospice offices served hospice patients in Johnston County. *2008 SMFP, Table 13A, Pages 268-269*. In fact, no county in North Carolina reported more licensed hospice offices serving its residents in 2008 than Johnston County.³ *2008 SMFP Pages 258-280*.

**Table 1
Percent of Deaths Served by Hospice in Johnston County**

| Year* | Percent | Number of Licensed Offices |
|-------|---------|----------------------------|
| 2002 | 12.61 | 7 |
| 2003 | 12.45 | 7 |
| 2004 | 13.54 | 9 |
| 2005 | 17.04 | 12 |
| 2006 | 21.67 | 14 |
| 2007 | 26.36 | 14 |
| 2008 | 27.01 | 20 |
| 2009 | 26.1 | 18 |

* Source: SMFP for the identified year. 2009 data represents data provided in the Proposed 2009 SMFP.

¹ Since Johnston County's projected population is 50,000 or more, and the deficit index is 10% or more, a need is determined if the projected patient deficit is 75 or greater.

² Petitions to adjust hospice home care need determinations to no need based upon unique and special factors have been previously approved by the Medical Facilities Planning Section . Hospice of Cabarrus County, Inc. successfully petitioned an adjustment to no need in Cabarrus County in the 2005 SMFP. Likewise, adjustments to no need were made in the 2006 SMFP for hospice home care agencies in Iredell and Wilson counties subsequent to Petitions filed by Hospice and Palliative Care of Iredell County, Inc. and Community Health, Inc., respectively.

³ The only other county in North Carolina reporting 20 licensed hospice offices in the 2008 SMFP is Wake County. *2008 SMFP Pages 258-280*. References to licensed hospice offices include all hospice locations with a separate license number reporting days of care and deaths in the SMFP, which may include both home care offices and hospice inpatient facilities, since all deaths served by hospice are considered in the hospice home care methodology, as well as multiple locations of certified offices. For the purposes of consistency, references to licensed offices cited in this Petition correspond to the table reporting Hospice Data by County of Patient Origin in the applicable SMFP.

Data reported in the 2009 Proposed SMFP demonstrates a slight decrease in both the number of licensed hospice offices serving residents of Johnston County, and the percent of total deaths served by hospice; however, only Wake and Harnett counties reported more licensed hospice providers than Johnston, both reporting 20 offices as compared to 18 offices in Johnston. *Table 1* also illustrates that the percent of deaths served by hospice providers in Johnston County has steadily increased from 12.61% in 2002 to 26.36% in 2007, and has remained relatively constant since that time.

Petitioner recognizes that the percentage of deaths in Johnston County served by hospice has increased significantly since 2002 as has the number of licensed offices. It is also apparent that the percentage of deaths has remained relatively static since 2007, and is currently reported at 26.1%. *Proposed 2009 SMFP, Table 13B, Page 318*. We believe this stabilization is primarily related to Johnston County age demographics rather than a function of the number of hospice offices serving Johnston County. In fact, as illustrated by *Table 2* below, there are considerably more hospice offices serving Johnston County per capita as compared to the five largest counties in North Carolina. For example, the 2009 Proposed SMFP reported that 17 licensed hospice offices served Mecklenburg County in the 2008 reporting period with a 2010 projected population of 943,079. This equates to one licensed hospice office for every 55,475 county residents. By comparison, Johnston County has one licensed hospice office serving every 9,603 residents.

Table 2
Number of Licensed Offices by County*

| County | 2010 Projected Population | Number of Licensed Hospices | Population served by each Hospice |
|-------------|---------------------------------|--------------------------------------|--|
| Mecklenburg | 943079 | 17 | 55475 |
| Wake | 927245 | 20 | 46362 |
| Guilford | 481488 | 11 | 43772 |
| Forsyth | 353998 | 9 | 39333 |
| Cumberland | 280932 | 16 | 17558 |
| Johnston | 172857 | 18 | 9603 |

* Source: Proposed 2009 SMFP.

The Petitioner contends that Johnston County is currently served by a sufficient number of hospices and, in fact, may be over-served. Moreover, the projected deficit in the 2009 Proposed SMFP does not take into consideration unique Johnston County demographics. As illustrated by *Table 3* below, approximately 1% of patients admitted to hospice are under 35 years old, while approximately 80% are over 65. North Carolina's data is consistent with national averages.

Table 3
Percent of Hospice Patients Admitted by Age*

| Age | NC % | National % |
|----------------|------|------------|
| 0-34 | 1 | 0.9 |
| 35-64 | 20 | 17.3 |
| 65 and greater | 79 | 81.7 |

*Source: OCS Data Consulting based on 2006 Annual Data Supplements and State Center for Health Statistics and National Hospice and Palliative Care Organization statistics for 2006.

Given that the great majority of hospice admissions are 65 and older, those counties with a high percentage of residents 65 and older would likely realize a greater percentage of deaths served by hospice than those counties with a predominantly younger population. Statistics published by the North Carolina Office of State Budget and Management (“OSB”), as provided in *Table 4* below, project that in 2010, 48% of North Carolina’s population will be younger than 35, and 12% will be 65 or older. In other words, in 2010, 79% of hospice admissions will come from 12% of North Carolina’s population, while 1% of hospice admissions will come from 48% of the population. Therefore, slight demographic variations in age groups by county will have a substantial impact on hospice admissions and deaths served by hospice.

Table 4
North Carolina Population Projections by Age

| Month/Year | Total Population | Population <35 years old | Population >65 years old | Percent of total | Percent of total |
|------------|------------------|--------------------------|--------------------------|------------------|------------------|
| | | | | <35 years old | ≥65 years old |
| Apr-00 | 8046813 | 3981684 | 969112 | 49% | 12% |
| Jul-08 | 9240289 | 4425525 | 1119064 | 48% | 12% |
| Apr-10 | 9539095 | 4546595 | 1178347 | 48% | 12% |

Source: NC Office of State Budget and Management

By comparison, Johnston County age demographics show a population considerably younger than the North Carolina average. In fact, only 10 counties in North Carolina project a lower median age in 2010 than Johnston County.⁴ *Table 5* illustrates that only 9% of the Johnston County population in 2010 is projected to be 65 years or older, while 50% will be younger than 35.

⁴ The North Carolina Office of State Budget and Management projects that the median age in North Carolina in July 2010 will be 36.68. The median age in Johnston County in 2010 is projected to be 35.2. The only counties with a lower projected median age are Durham, Hamett, Hoke, Mecklenburg, Onslow, Orange, Pitt, Robeson, Wake and Watauga. The OSB data is the same data source used by the Medical Facilities Planning Section.

Table 5
Johnston County Population Projections by Age

| Month/Year | Total Population | Population | | Percent of total | Percent of total |
|------------|------------------|---------------|---------------|------------------|------------------|
| | | <35 years old | >65 years old | <35 years old | >65 years old |
| Apr-00 | 121900 | 62681 | 11973 | 51% | 10% |
| Jul-08 | 162609 | 81289 | 14910 | 50% | 9% |
| Apr-10 | 172857 | 85847 | 16126 | 50% | 9% |

Source: NC Office of State Budget and Management

The Petitioner contends that the current percentage of deaths served by hospice in Johnston County will remain relatively constant at approximately 26% due to the fact that a considerably smaller percentage of the Johnston county residents will require hospice care as compared to North Carolina in its entirety, and that it is unreasonable to project that 29.41% of the 2010 deaths in Johnston County will be served by hospices.⁵ The reason that the hospice related deaths in Johnston County are less than the State median is not due to the inability of the current 18 hospice providers to meet the County's needs, but demonstrates that the current providers have effectively met the needs of this predominantly younger population. Until such time as the Johnston County demographics show a trend to an older population, we believe a more reasonable estimate of deaths served by hospice is the current Johnston County death rate of 26.1%, which would result in a no-need determination as illustrated in *Table 6*, below. Moreover, even projecting the percent of patients served at 27.01, which was the highest percentage recorded in Johnston County in 2008, the deficit would be 74, still resulting in a no-need determination.

Table 6
Year 2010 Hospice Home Care Need Projection in Johnston County

| County | 2007 Reported # of Hospice Patient Deaths (Column C) | % of Deaths Served by Hospice (Column D) | Projected 2010 Deaths (Column G) | Projected Hospice Deaths (Column H) | Deficit (Column J) | Additional Hospice Office Need (Column L) |
|---------------------|--|--|----------------------------------|-------------------------------------|--------------------|---|
| Johnston (current) | 267 | 29.41 | 1262 | 371 | 104 | 1 |
| Johnston (adjusted) | 267 | 26.1 | 1262 | 329 | 62 | 0 |
| Johnston (adjusted) | 267 | 27.01 | 1262 | 341 | 74 | 0 |

Source: Proposed 2009 SMFP. References to "Column" indicates the corresponding column of Table 13B, Page 318.

⁵ The 2009 Proposed SMFP projects the number of additional patients in need of hospice home care based on the median percentage of deaths served by hospice, which is 29.41%.

The Petitioner also believes it is noteworthy that United Hospice of Eastern Carolina, Smithfield ("United") was initially licensed on December 30, 2005 and has submitted hospice data from its Johnston County office for only one full reporting period.⁶ We contend that it would be prudent to wait for one more full reporting period to evaluate what impact United is having on the provision of hospice home care services in Johnston County.

Statement of Adverse Effects

Adverse effects on the population and existing hospice providers in Johnston County are likely to ensue if the adjustment is not made because approving a new and unnecessary hospice home care office in Johnston County would violate public policy in the following ways, and without limitation:

1. The proliferation of unnecessary health care service facilities results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services. (N.C.G.S. §131E-175(4)). Not only would the unnecessary development of another hospice office in Johnston County have a negative impact on the State and public, but it would adversely affect the existing hospice providers that serve Johnston County, including the Petitioner, who would be left to spread fixed costs over a smaller number of patients due to the over-development of competing and unnecessary health care services. In addition, the existing hospice providers would be forced to compete with yet another office for a limited number of professional staff which could have the affect of diluting the ability of the existing providers, hospice and otherwise, to continue to provide high quality patient care.
2. Excess capacity of health service facilities places an enormous economic burden on the public who pay for the construction and operation of these facilities as patients, health insurance subscribers, health plan contributors, and taxpayers. (N.C.G.S. §131E-175(6)).
3. The general welfare and protection of lives, health, and property of the people of this State require that new institutional health services to be offered within this State be subject to review and evaluation as to need, cost of service, accessibility to services, quality of care, feasibility, and other criteria as determined by the provisions of [the Certificate of Need law, N.C. G.S. § 13 1E-175 *et seq.*] or by the North Carolina Department of Health and Human Services pursuant to provisions of [the Certificate of Need law, N.C. G.S. §13 1E-175 *et seq.*] prior to such services being offered or developed in order that only appropriate and needed institutional health services are made available in the area to be served. (N.C.G.S. 131E-175(7)).

In addition, the Petitioner contends that an applicant for the proposed hospice home care office in Johnston County would not meet Certificate of Need Review Criteria including, without limitation:

⁶ United's Johnston County office would have only submitted hospice data supplements for the period of 12/30/2005 through 09/30/2006 and 10/01/2006 through 09/30/2007.

1. The application would not be consistent with applicable policies in the State Medical Facilities Plan because it would not promote cost-effective approaches, expand health care services to the medically underserved or encourage quality health care services (*N.C.G.S. § 131E-183(a)(1) and Policy Gen-3, 2008 SMFP and 2009 Proposed SMFP*);
2. The applicant would be unable to identify the population to be served or demonstrate the need the population has for the proposed services (*N.C.G.S. § 131E-183(a)(3)*);
3. The addition of another hospice home care office in Johnston County would not be the least costly or most effective alternative *N.C.G.S. § 131E-183(a)(4)*;
4. The addition of another hospice home office in Johnston County would result in an unnecessary duplication of services *N.C.G.S. § 131E-183(a)(6)*; and
5. The applicant would be unable to demonstrate how enhanced competition in Johnston County will have a positive impact upon the cost-effectiveness, quality, and access to hospice services *N.C.G.S. § 131E-183(a)(18(a))*.

Statement of Alternatives

The only alternative to making the requested adjustment would be to leave the Johnston County need determination for a new hospice home care office in place. However, as discussed above, this alternative would be contrary to stated public policy, result in an unnecessary duplication of hospice services in Johnston County, and adversely affect the existing hospice providers in Johnston County who would be forced to spread their fixed costs over a smaller number of patients.

Unnecessary Duplication of Services

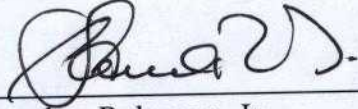
Approving the Petitioner's request to adjust the need determination in Johnston County for an additional hospice home care office would not result in an unnecessary duplication of health care services because a new, unnecessary hospice home care office would not be established in Johnston County. To the contrary, failure to approve the Petitioner's request would result in an unnecessary duplication of hospice home care services in Johnston County for the reasons stated herein.

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Conclusion

In consideration of the special and unique circumstances discussed in this Petition, the Petitioner respectfully requests that the need for a new hospice home care office in Johnston County be adjusted to a determination of no need in the 2009 State Medical Facilities Plan.

Respectfully submitted this 1st day of August, 2008 for Community Home Care of Vance County, Inc. by:



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President/CEO
Community Home Care of Vance County, Inc. d/b/a
Community Home Care and Hospice