**Comment on Triangle Implant Center's Petition for a Demonstration Ambulatory Dental Facility for Wake County in *2016 State Medical Facilities Plan***

## COMMENTER

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## INTRODUCTION

Rex Healthcare (Rex) opposes the petition filed by Triangle Implant Center (TIC) for a demonstration project in Wake County for a dental ambulatory surgery center. Based on numerous reasons detailed in this comment, Rex believes that the State Health Coordinating Council (SHCC) should deny the petition.

## ISSUES WITH TRIANGLE IMPLANT CENTER PETITION

Rex is concerned that the approval of TIC's petition will result in increased healthcare costs as adult and pediatric dental surgery cases are moved from low-cost office settings to higher-cost ambulatory surgery center (ASC) settings. This proposed shift is contrary to the national healthcare policy, the basic governing principles of the North Carolina State Medical Facilities Plan, and the goals of local providers like Rex.

As the petition notes, TIC currently provides dental surgery with board certified anesthesiologists in its offices. TIC seeks an ASC because without it "we can only serve our own patients, we must limit the complexity level, and we cannot receive a facility fee to serve Medicaid patients." Rex will address these arguments, in order.

First, Rex does not believe the SHCC should consider TIC's inability to serve or subsidize the care of patients of other dentists as a valid reason to approve this petition. TIC and other practices can decide whether to subsidize care themselves. The SHCC should not be persuaded to grant this petition to TIC so that it can increase its profits in order to subsidize the patients of other practices.

Second, it is reasonable that TIC must consider the complexity of its patients in determining the site of care for oral surgery. Some patients with complex co-morbidities may require ambulatory surgery or hospital-based settings for their care. Other patients

can be treated safely and effectively in an office setting. Currently, TIC can treat its patients according to the complexity required. Yet with this petition TIC seeks to provide all of its patients with an ambulatory surgery setting, so that all of its patients are treated in a higher cost setting that is only needed for higher complexity patients. This is the wrong approach. While TIC argues in its petition that scheduling cases at ambulatory surgery centers or hospitals is difficult, this appears to be untrue for other providers. TIC's survey of dentists (included as Attachment A in its petition) shows that only 39 percent of respondents reported difficulty scheduling dental patients for surgery in hospitals and/or ambulatory surgery centers. Only 36 percent reported difficulty scheduling pediatric patients for procedures that require general anesthesia. There is no context for these statistics (e.g. what percentage of orthopedists report difficulty scheduling cases), but it is clear that this is not a uniform problem and that the majority of oral surgeons do not have difficulty scheduling their patients at hospitals.

Finally, TIC is seeking to develop an ASC because it is unable to receive the facility fee for Medicaid patients that receive surgery in its offices. The SHCC is clearly not responsible for the fairness of Medicaid reimbursement. TIC's argument in this case is simply that it wants greater reimbursement, or more money from Medicaid, for services it provides. Providers across the state in all aspects of healthcare struggle with low reimbursement and cost-shifting. These issues are not valid reasons to award an operating room to TIC. Further, it should be noted that Medicaid has limited funds and its costs are a constant concern for the State especially in light of the likely plan from the General Assembly to move Medicaid to a fixed budget. Allowing TIC to develop an ambulatory surgery center will allow it to bill Medicaid for greater reimbursement and increase Medicaid's costs. There are no cost savings to Medicaid, nor any other payor, many of which will pay TIC more to cover the higher cost of providing this care in an ambulatory surgery center setting when it is currently provided at lower cost in an office.

TIC's plan to use this proposed center to serve a greater number of Medicaid patients is flawed. TIC will need to spend a significant amount of capital to develop an ambulatory surgery center so that it can charge all of its patients a higher fee. While this may allow TIC to expand its services to Medicaid patients (perhaps through a greater degree of cost-shifting from privately-insured patients), it will also require all healthcare payors to spend more to reimburse TIC, including Medicaid. Total healthcare dollars spent will undoubtedly increase. If TIC truly wants to expand its services to Medicaid patients, it could simply use the planned capital to build the ambulatory surgery center directly as a subsidy for its Medicaid patients.

The SHCC should not be persuaded by the language in the petition requiring an applicant to demonstrate that it will serve a minimum of 50 to 60 percent Medicaid patients (please note the petition has contradictory statements about what the minimum should be) and three percent charity care. The Certificate of Need Section has the

statutory authority to, and routinely does, evaluate the projections of an applicant to determine the reasonableness of those projections. In addition, the Certificate of Need Section has the statutory authority to withdraw an applicant's Certificate of Need if the service is not developed "in a manner consistent with the representations made in the application." [NCGS 131E-189(b)] However, the Section has rarely exercised its withdrawal authority under paragraph (b) of this provision and appears unlikely to do so with an applicant whose actual payor mix differs from that projected in the application. As a result, TIC could project to provide a certain level of care to needy patients and then in reality do something entirely different without concern for consequences.

**NO NEED FOR DEMONSTRATION PROJECT**

Rex also believes the petition should be denied on the basis of its request for a demonstration project. While the concept of a demonstration project seems beneficial—an opportunity to explore a unique method or approach to a healthcare issue on a limited basis without impacting the entire state—in practice, most of the demonstration projects that have been enacted over the past 10 years appear to be less effective than intended. The following table shows the demonstration projects implemented since the *2006 State Medical Facilities Plan (SMFP)*:

| *Demonstration Project* | *SMFP* | *# of Projects Awarded Statewide* |
|---|---|---|
| Extremity MRI | 2006 | 1 |
| Multiposition MRI | 2008 | 2 |
| Prostate Health Center | 2009 | 1 |
| Single Specialty Operating Rooms | 2010 | 3 |

In each of the demonstration projects shown above, the approved applicants were required to report data annually to the SHCC for a period of at least three years. Note that some facilities for the Single Specialty Operating Room demonstration project are still in their initial reporting period; thus, that demonstration project is still underway. For the first three demonstration projects listed above, however, none of the data collected has been presented in subsequent *SMFPs*, studied by a workgroup or one of the standing committees, or in any other meaningful way been used to determine whether the demonstration should be implemented on a broader level, or whether the demonstration was a failure. For example, the extremity MRI demonstration project was developed to evaluate the potential for this technology to provide a more cost-effective alternative to traditional MRI for certain patients. No evaluation has been conducted or discussion held on this demonstration project and its benefits and weaknesses that could be used to inform statewide planning. Ultimately, the demonstration projects have allowed applicants to develop facilities or acquire equipment that will exist in

perpetuity, whether the demonstrations were effective or not. Rex is concerned that the proposed dental operating rooms if approved, will have the same result—the development of a facility that is not needed but will exist in perpetuity.

Rex is also concerned that the proposed operating room, once developed, will not always be limited to the intent of the demonstration project. For example, although the operating room would be limited to dental procedures if approved as proposed, nothing would prevent the applicants or another entity from converting the operating room to a multispecialty operating room through a Certificate of Need application. Moreover, based on actions taken by other approved demonstration projects, the approved applicant could attempt to apply for additional operating rooms, asserting that the demonstration project enabled the development of an ASC, but did not limit the ability to add more operating rooms in the future. Although this may seem far-fetched, the SHCC-approved demonstration project for a linear accelerator in a dedicated Prostate Health Center took such actions just last year. In 2014, The Prostate Health Center applied for a certificate of need outside of the need determination process, asserting that the SHCC did not intend to limit it to just one linear accelerator, and that the very nature of the demonstration project enabled it to acquire additional linear accelerators as needed. Rex is very concerned that the approval of more demonstration projects, like the one proposed by TIC, would result in the approved applicant asserting that additional operating rooms are needed, without need determinations, undermining the *SMFP* planning process.

Ultimately, the only way to ensure that demonstration projects are effective, used as intended, and not abused by those awarded the Certificates of Need is the development of a comprehensive policy for demonstration projects. Rex recommends that the proposed petition be denied, and that the SHCC explore the creation of such a policy concerning demonstration projects. Only once this policy is developed should the SHCC consider allocating additional demonstration projects in future *SMFP*s. The *SMFP* includes provisions for adjusted need determinations but not for demonstration projects. Petitioners use "demonstration project" language in order to be more persuasive to the SHCC in requesting an adjusted need determination. Rex does not believe that TIC has demonstrated that there is a unique and special need requiring an adjusted need determination.

If the SHCC believes that TIC's petition should be approved, Rex believes strongly that that the proposed project be limited to one operating room and that operating room be excluded from the *SMFP* inventory, as the patients proposed to be served are currently being served in offices.

## COMMENTS FROM OTHER DENTISTRY PROVIDERS

Rex is also persuaded by the arguments from several parties that have already commented in opposition to TIC's petition. The president of the North Carolina Society of Oral and Maxillofacial Surgeons states that a special project such as that proposed by TIC is not needed in areas with adequate dentists and surgeons: "we do not believe there is a need for a single specialty, dental ASC in areas where there is no shortage of trained surgeons or dentists." Wake and Durham counties have no such shortages. TIC's petition cites statewide dental access issues in order to suggest to the SHCC that these shortages also impact their proposed service area. This is simply not the case.

Wake Oral and Maxillofacial Surgery's (Wake OMS) comments also note that Wake and Durham counties do not have an access issue and thus the need for this center is questionable. Like Rex, Wake OMS questions whether TIC is seeking this center in order to care for the underserved or to increase its profits. Specifically, Wake OMS notes that TIC seeks to purchase a 3D cone beam CT and the most up-to-date dental implant systems which are not needed by children and would duplicate the 3D cone beam CTs at other nearby dental offices. Capital Oral and Facial Surgery's comments make similar arguments about the motives of TIC, stating: "[o]ne of the owner's main tenants for helping access to care is that this for profit surgery center will address the dental needs of children in North Carolina. This cannot be any further from the truth." Finally, the Board Chair of Wake Smiles' comment pointedly states that lack of access to dental care "is not as a result of lack of multi million dollar facility. Largest impediment to dental care for children and adults is the **lack of financial ability** to pay for needed dental care" (sic, emphasis as in original).

## SUMMARY

In conclusion, Rex requests that the SHCC deny TIC's petition for a dental ASC demonstration project. The project will increase healthcare costs overall, does not appear to effectively address the lack of access to dental services, offers a commitment to provide care to the underserved that may not be enforced, and will exist in perpetuity with the potential to be abused for purposes outside of those purportedly identified by TIC.

Thank you for your consideration.