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Via Email

Paige Bennett
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North Carolina Division of Health Service Regulation
Medical Facilities Planning Branch
2714 Mail Service Center
Raleigh, NC 27699-2714

Re: Comments Regarding Proposed Operating Room Methodology

Dear Ms. Bennett:

Duke University Health System, Inc. ("DUHS") submits these comments regarding the new need methodology for operating rooms in Chapter 6 of the Proposed 2018 State Medical Facilities Plan. We support the proposed methodology overall, but have the following comments on the definition of a health care system for which operating room surpluses and deficits are aggregated within a service area.

The new methodology includes the following assumption:

For the purposes of the operating room methodology, a "health system" includes all licensed health service facilities with operating rooms located in the same service area that are owned by:

1. *the same legal entity (i.e., the same individual, trust or estate, partnership, corporation, hospital authority, or the State or political subdivision, agency or instrumentality of the State); or*
2. *the same parent corporation or holding company; or*
3. *a subsidiary of the same parent corporation or holding company; or*
4. *a joint venture in which one or more of the participants in the joint venture owns a licensed health service facility with operating rooms located in the same service area.*

The proposed 2018 OR tables assume that in Durham County, Duke University Hospital, Duke Regional Hospital, and Davis Ambulatory Surgery Center are all part of a single health

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system as defined. However, while it owns Duke University Hospital and Davis Ambulatory Surgery Center, DUHS does not own Duke Regional Hospital. Rather, it has a long-term sublease with the Durham County Hospital Corporation, which in turn is controlled by and leases the facility from Durham County. The facility continues to be subject to the oversight of the Durham County Hospital Corporation Board of Trustees, and it is not in DUHS's sole discretion whether to close or relocate operating rooms from Duke Regional Hospital to other facilities or campuses. Accordingly, under the health system definition as written, Duke Regional Hospital's surplus should not be aggregated with Duke University Hospital and Davis Ambulatory Surgery Center as all three facilities are not owned by a single system.

To ensure that the definition of health system captures the appropriate surgical facilities, we encourage the SHCC to consider the following options:

1. Maintain the current health system definition, and accordingly separate Duke Regional Hospital from the health system that includes Duke University Hospital and Davis Ambulatory Surgery Center in determining the need in Durham County.
2. Revise the health system definition to encompass facilities owned "or leased" by the designated entities. This would have the effect of including Duke Regional Hospital with other Duke facilities in Durham County, and also including all leased facilities in other similarly situated systems, whether or not constrained by governmental restrictions, in the standard methodology. Under this option, DUHS would strongly encourage the SHCC to be cognizant of special circumstances such as lease restrictions that might form the basis for petitions for local need adjustments.
3. Revise the health system definition to include facilities leased by the designated entities, but only where such lease are not subject to governmental restrictions that could affect the ability to relocate or close regulated assets. Revised facility licensure renewal applications could include a question to elicit this information. The following language would exclude those facilities such as Duke Regional Hospital leased from governmental entities:

For the purposes of the operating room methodology, a "health system" includes all licensed health service facilities with operating rooms located in the same service area that are owned or leased by:

1. *the same legal entity (i.e., the same individual, trust or estate, partnership, corporation, hospital authority, or the State or political subdivision, agency or instrumentality of the State); or*
2. *the same parent corporation or holding company; or*
3. *a subsidiary of the same parent corporation or holding company; or*
4. *a joint venture in which one or more of the participants in the joint venture owns a licensed health service facility with operating rooms located in the same service area.*

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“Health system” shall not include any facilities leased from the State, a county, or other political subdivision, agency or instrumentality of the State, either directly or through approval of a sublease.

Recommendation

We believe that Option 3 above is the most likely to reflect operational realities. Moreover, this approach will not discourage or disadvantage those providers who would otherwise be willing to lease facilities from governmental organizations to provide needed healthcare services. We would note that under this definition, Duke Regional Hospital’s operating rooms would not be aggregated with the Duke-owned facilities in Durham County.

Duke recognizes the difficulty in crafting a definition that will accurately capture all circumstances, and therefore also encourages the SHCC generally to be receptive to special adjustment petitions regarding county OR need determinations affected by the definition of health system.

Please let me know if you have any questions. Thank you very much.

Sincerely,



Catharine W. Cummer