



Liberty Healthcare & Rehabilitation Services

Caring with Excellence

2334 S. 41st Street • Wilmington, NC 28403
(910) 815-3122 • FAX: (910) 815-3111

March 13, 2023

North Carolina State Health Coordinating Council
Acute Care Services Committee Healthcare Planning
Division of Health Service Regulation
North Carolina Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Liberty's Comments Opposing Fresenius petition to change the need methodology in Chapter 9 of the 2024 State Medical Facilities Plan

Dear North Carolina State Health Coordinating Council:

Long Term Care Management Services, LLC d/b/a Liberty Healthcare and Rehabilitation Services ("Liberty") is writing to offer the following comments opposing the Fresenius petition to change the need methodology in Chapter 9 of the 2024 State Medical Facilities Plan.

First, the Fresenius petition does not meet the minimum requirements set forth on Page 10 of the 2023 SMFP regarding spring petitions. Therefore, the petition should be denied on its merits. Page 10 of the 2023 SMFP currently states:

Instructions for Writing and Submitting Spring and Summer Petitions At a minimum, each written petition must contain all the following:

1. name, address, email address and phone number of the petitioner(s);
2. a statement of the requested change, citing the policy or methodology (spring), need determination (summer), or other aspect of the SMFP for which the change is proposed;
3. **reasons for the proposed change, including: a statement of the adverse effects on the providers or consumers of health services that are likely to ensue if the change is not made; and a statement of alternatives to the proposed change that were considered and found not feasible;**
4. evidence that the proposed change would not result in unnecessary duplication of health resources in the area; and
5. evidence that the requested change is consistent with the three Basic Principles governing the development of the SMFP: safety and quality, access, and value (see Chapter 1).

Item 3 above states that a statement of the adverse effects on the providers or consumers of health services that are likely to ensue if the change is not made; and a statement of alternatives to the proposed change that were considered and found not feasible are to be included in any written petition submitted to the SHCC. Fresenius did not present a statement as to any adverse effects nor did they provide a statement to any alternatives considered. Therefore, it should be expected that there would be no adverse effects on the providers or consumers if the change is not made since

no statements were provided. Additionally, there are multiple alternatives to the proposed change that should be considered, both of which are feasible.

Feasible Alternatives to Fresenius Petition

1. Submit summer petition to the SHCC for an adjusted county need determination
2. Request a no review determination from the Certificate of Need Section to add home peritoneal or home hemodialysis training and support services to licensed in-center facility

Submit summer petition to the SHCC for an adjusted county need determination

According to the Fresenius Petition, the Agency only received two (2) applications last year proposing to develop new dialysis stations at home training facilities, dedicated exclusively to HHD training. Both applications proposed to develop only one (1) one dialysis station to be used exclusively for home hemodialysis training and support services. Both applications were denied because the applications would increase an existing surplus of dialysis stations in each respective County. However, the proposed Fresenius petition opens the door to the possibility of putting a boundless number of dialysis centers into service – as the request would allow providers to apply for a CON without regard to need determinations.

Nonetheless, an existing option is currently available to providers, which is to submit a summer petition to the SHCC for an adjusted county need determination. As stated above, the Agency only received two (2) applications last year proposing to develop new dialysis stations at home training facilities – both of which only requested to develop one (1) dialysis station. Thus, this petition relates to a small-scale of dialysis requests and not the statewide effect needed for a spring petition.

As the SMFP states on page 7¹, “Spring petitions involve requests for changes to the SMFP that have the potential for a **statewide effect**...” Unlike the 2023 Spring Petition filed by Liberty that would have a statewide effect, Fresenius’ petition is better suited for the summer petition process, as that is where they may request for adjustments to need determinations in the Proposed SMFP.

If the current petition is adopted, the proposed change could have drastic effects on the inventory of dialysis stations. Fresenius is requesting to change the assumptions of the methodology to allow providers proposing to develop new dialysis stations at home training facilities to apply for a CON without regard to a need determination. The Agency should read through the hypocrisy of the Fresenius petition which would directly result in unnecessary duplication of dialysis services.

Request a no review determination from the Certificate of Need Section to add home peritoneal or home hemodialysis training and support services to licensed in-center facility

Another option exists for dialysis providers to provide home dialysis without the need for a methodology amendment. In-center dialysis providers may request a no review determination from the Certificate of Need Section to add home peritoneal or home hemodialysis training and support

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https://info.ncdhhs.gov/dhsr/ncsmfp/2023/2023_SMFP_COMPLETE_v3_w_covers_signed_sec_memo_signed_gov_approval.pdf

services to the facility. This request does not require a Certificate of Need and does not add any additional dialysis stations. It is a request that has been used in the past by Fresenius².

For the reasons stated herein, Liberty respectfully requests that the Acute Care Services Committee and the SHCC to reject Fresenius petition to change the need methodology in Chapter 9 of the 2024 State Medical Facilities Plan.

Best Regards,

A handwritten signature in black ink that reads "Timothy Walsh". The signature is written in a cursive style with a large initial "T" and "W".

Timothy Walsh
Director of Business Development
Liberty Senior Living
TWalsh@libertyseniorliving.com
(910) 332-1982

²<https://info.ncdhhs.gov/DHSR/coneed/reviews/2021/nov/3734%20Craven%20New%20Bern%20Dialysis%20955965%20No%20Review.pdf>