

[SUBMITTED ELECTRONICALLY \(DHSR.SMFP.Petitions-Comments@dhhs.nc.gov\)](mailto:Comments@dhhs.nc.gov)



August 9, 2023

State Health Coordinating Council
2704 Mail Service Center
Raleigh, North Carolina. 27699-2704

Re: Petition for an Adjusted Need Determination for One Additional Hospice Home Care Agency in Mecklenburg County, Heart and Soul Hospice of the Carolinas, LLC

Dear State Health Coordinating Council Members and State Health Planning Staff:

Thank you for the opportunity to comment in response to the petition for a Hospice Home Care Office in Mecklenburg County submitted by Heart and Soul Hospice of the Carolinas, LLC (“Heart’N Soul”). The Association for Home & Hospice Care of North Carolina (“AHHC”) opposes this petition and has concluded that the existing methodology and the several existing hospice agencies in Mecklenburg County are adequately serving the entire community, including African Americans.

As an initial matter, the petition does not meet the requirements of the 2023 State Medical Facilities Plan (“SMFP”), which permit petitioners to “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.” 2023 SMFP, at 8. The Heart’N Soul Petition acknowledges that Mecklenburg County (the service area that it is seeking to use to deviate from the standard methodologies) is not unique in its hospice utilization, including among African Americans. *See, e.g.,* Petition, at 8 (“[Underutilization of hospice by minority patients] is true not only in Mecklenburg County, but also across the country as a whole.”).

Although the Heart’N Soul Petition seeks an inappropriate solution, it correctly identifies a real problem. The underutilization of hospice by African Americans is a complex and national problem—it is in no way unique to Mecklenburg County or even North Carolina.

When another hospice agency submitted a similar petition in 2017, the State Health Planning Staff, in reaching its recommendation to deny the petition, noted the following: “it is questionable as to whether Mecklenburg is the appropriate county for a need determination for providers with exclusively targeted efforts, as outlined in the Petition.” 2017 Agency Report Regarding Continuum Care Hospice’s Petition for an Adjusted Need Determination for an Underserved Population (African American) for Mecklenburg County, at 4 (hereinafter “2017 Agency Report”). The State Health Coordinating Council ultimately voted unanimously to deny the Continuum Care Hospice petition. Heart’N Soul has not demonstrated any change in demographics warranting a different outcome. Therefore, AHHC respectfully requests that Heart’N Soul’s Petition similarly be denied.

AHHC unequivocally supports continued efforts to improve health equity for all North Carolinians, including hospice patients. The 2017 Agency Report similarly supported “existing licensed hospice facilities’ efforts to increase utilization for all underserved populations.” Since 2017, North Carolina licensed hospices have continued to engage in initiatives to increase hospice utilization among historically underserved populations, including African Americans. These initiatives are required as part of all hospices’ accreditation and Medicare certification. The Heart’N Soul Petition even acknowledges the “the longstanding work of existing hospice agencies that has resulted in an overall increase in the utilization of hospice care in recent decades.” Petition, at 7.

The standard need methodology ensures a sufficient number of hospices in Mecklenburg County and all 100 North Carolina counties and supports hospices providing quality, cost-effective care. Mecklenburg County is currently serviced by at least 24 licensed hospice home care agencies, all of which serve African Americans and have specific initiatives to increase access to hospice and promote health equity. Mecklenburg County is served by VIA Health Partners (formerly known as Hospice & Palliative Care Charlotte Region) and Novant Health Hospice & Palliative Care. Mecklenburg County is also served by Hospice of Iredell County, Hospice & Palliative Care Cabarrus County, Gaston Hospice and Hospice of Union County and others, who are providers in contiguous counties.

The Heart’N Soul Petition requests an additional need determination in Mecklenburg County without demonstrating that the methodology is flawed or that the existing methodology fails to provide sufficient access to hospice. Specifically, the petition does not explain how an additional hospice home care agency would fix the underutilization of hospice by the population that Heart’N Soul seeks to further (but not exclusively) serve.

Instead, the petition is entirely premised on the assumption that a hospice “owned and operated” by a subpopulation would better serve that subpopulation. Despite Heart’N Soul’s limited experience in other communities, the petition fails to provide any support for this premise. For example, the Petition notes (without citing to any data source) that Heart’N Soul’s Nashville agency—which has been certified by Medicare for a little over a year—serves a percentage of minority hospice patients nearly four times greater than any other provider in the Nashville service area. But the Petition never contends that the experience in Nashville has led to a higher percentage overall of minority patients receiving hospice.

Unfortunately, the fundamental assumption in the Petition harkens back to a segregated health care system, one that the courts have correctly ruled is unconstitutional. As the United States Court of Appeals for the Fourth Circuit wrote in a 1963 opinion that barred racial segregation in hospitals: “The general prohibition against discrimination stands; only the exception tolerating ‘separate-but-equal’ fails.” *Simkins v. Moses H. Cone Mem’l Hosp.*, 323 F.2d 959, 969 (4th Cir. 1963). This case helped move the South toward desegregation in our healthcare system. The petition seems to seek a “separate but equal” system for health care that the courts and the public have long rejected.

Even if the State Health Coordinating Council were to accept the notion that need determinations should be made in an effort to focus on a certain population based on the characteristics of the would-be operator, the CON law would make such a concept unworkable. The CON law does not

permit the Department to consider the race of any new institutional health service's owner or operator. Thus, the SMFP could approve a need determination for a minority-owned hospice, but the CON and Healthcare Planning Section would have no way of considering such information in evaluating applications.

Thus, if the petition were approved, it would provide no assurance that the petitioner or any other minority-owned hospice would receive the Certificate of Need. As State Health Planning Staff pointed out in the 2017 Agency Report: "It should be noted that any person might 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." Thus, even if Heart'N Soul had demonstrated that it was better at serving a certain subpopulation (which it has not done in its Petition), Heart'N Soul may not be the prevailing applicant.

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On behalf of its members and the patients and communities they serve, AHHC respectfully requests that this petition be denied in the same way that a similar petition was denied in 2017. Thank you for your consideration.

Sincerely,



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