



**WRITTEN COMMENTS ON 2022 BUNCOMBE-GRAHAM-MADISON-YANCEY COUNTY  
ACUTE CARE BED COMPETITIVE REVIEW**

**SUBMITTED BY ADVENTHEALTH ASHEVILLE, INC. &  
ADVENTIST HEALTH SYSTEM SUNBELT HEALTHCARE CORPORATION**

**August 1, 2022**

Three applicants submitted CON applications in response to the need identified in the 2022 SMFP for 67 additional acute care beds in the Buncombe, Graham, Madison, and Yancey county service area. The applicants include:

- CON Project ID# B-012230-22 Novant Health Asheville Medical Center
- CON Project ID# B-012232-22 Mission Hospital
- CON Project ID# B-012233-22 AdventHealth Asheville

AdventHealth Asheville submits these comments in accordance with N.C. Gen. Stat. § 131E-185(a1)(1) to address the representations in the applications, including their respective abilities to conform with applicable statutory and regulatory review criteria and a discussion of the prospective comparative analysis of the applicable and most significant issues concerning this competitive batch review. Other non-conformities in the competing applications may exist and AdventHealth Asheville may develop additional opinions, as appropriate upon further review and analysis.

**COMPARATIVE ANALYSIS OF THE COMPETING ACUTE CARE BED APPLICATIONS**

The Healthcare Planning and Certificate of Need Section developed a list of suggested comparative factors for competitive batch reviews. The following factors are suggested for all reviews regardless of the type of services or equipment proposed:

- Conformity with Statutory and Regulatory Review Criteria
- Competition (Access to a New or Alternate Provider)
- Scope of Services
- Geographic Accessibility (Location within the Service Area)
- Access by Service Area Residents
- Historical Utilization
- Access by Underserved Groups: Charity Care
- Access by Underserved Groups: Medicaid
- Access by Underserved Groups: Medicare
- Projected Average Net Revenue per Patient
- Projected Average Total Operating Cost per Patient

The following pages summarize the competing applications relative to the suggested comparative factors.

**Conformity to CON Review Criteria**

Three CON applications have been submitted to develop acute care beds in the Buncombe, Graham, Madison, and Yancey county acute care service area. The applicants each propose to develop 67 acute care beds. Based on the 2022 SMFP’s need determination, only 67 acute care beds can be approved. Only applicants demonstrating conformity with all applicable Criteria can be approved, and only the application submitted by AdventHealth Asheville demonstrates conformity to all Statutory and Regulatory Review Criteria.

**Conformity of Applicants**

Applicant	Project I.D.	Conforming/ Non-Conforming
Novant Health Asheville Medical Center	B-012230-22	No
Mission Hospital	B-012232-22	No
AdventHealth Asheville	B-012233-22	Yes

The AdventHealth Asheville application is based on reasonable and supported volume projections and adequate projections of cost and revenues. As discussed separately in this document, the competing applications contain errors and flaws which result in one or more non-conformities with statutory and regulatory review Criteria. Therefore, the AdventHealth Asheville application is the **most effective** alternative regarding conformity with applicable review Criteria.

**Competition (Patient Access to a New or Alternative Provider)**

In previous competitive batch reviews, the Agency has encapsulated this comparative factor by stating, “generally, the application proposing to increase competition in the service area is the more effective alternative regarding this comparative factor.” However, this summation does not adequately convey the import and weight of this comparative factor in this acute care bed review.

Since 1995, Mission has operated as the sole hospital provider in Buncombe County. After the not-for-profit health care system was sold to for-profit HCA in 2018, many events have highlighted the great need for hospital competition in Buncombe County. Mission has closed numerous physician clinics, dozens of providers have left Buncombe County, and Mission nurses have unionized. In August 2021, North Carolina patients filed a class-action lawsuit against HCA Healthcare and Mission Health, alleging anti-competitive practices violating the North Carolina Constitution and antitrust and consumer protection laws.

In June 2022, the city of Brevard (Transylvania County) filed a lawsuit against HCA, alleging that the hospital operator engaged in an "anti-competitive scheme involving the illegal maintenance and enhancement of monopoly power" in the acute care hospital and outpatient care markets in seven counties in North Carolina. This is the second antitrust case filed against HCA in North Carolina in the past year. Transylvania Regional Hospital is in Brevard, the county’s seat, and is one of five hospitals in Western

North Carolina owned by HCA Healthcare and in the Mission Health regional system.<sup>1</sup> Maureen Copelof, the mayor of Brevard, provided a letter of support for AdventHealth Asheville's CON application (See Exhibit I.2).

On July 27, 2022, Buncombe County and the city of Asheville filed a joint class-action antitrust lawsuit against HCA Healthcare and Mission Health, alleging an "extensive pattern of alleged behavior by HCA intended to monopolize healthcare markets in western North Carolina, the result of which is artificially high prices for healthcare services and a reduced standard of care that has damaged, and continues to damage, local governments and private entities who act as self-insurers for their employees." The lawsuit is the third of its kind filed in less than a year by Western North Carolina entities. In a statement released Thursday, July 28th, Asheville Mayor Esther Manheimer said, "This action was taken with careful consideration. The Asheville City Council and the Buncombe County Board of Commissioners felt it was necessary to take this step to bring an end to predatory practices that limit HCA Healthcare's competition and clearly result in overpriced and limited choices in people's healthcare. We believe this lawsuit will not only address the damages sustained by local governments and other self-insured organizations but will also result in a fair and improved healthcare system for our entire community."<sup>2</sup> Mayor Manheimer provided a letter indicating her "full support" for AdventHealth Asheville's CON application (See Exhibit I.2).

Residents have been increasingly vocal about their desire for improved access and patient choice in Buncombe County. Hundreds of western North Carolina citizens have appealed to North Carolina Attorney General Josh Stein, sharing their negative experiences with Mission and voicing their disappointment and dissatisfaction. In response, Attorney General Stein has encouraged community and business leaders to be innovative and brainstorm ways to bring competition to the Buncombe County marketplace.

The need for 67 acute care beds in the Buncombe-Madison-Yancey-Graham service area in the 2022 State Medical Facilities Plan presents a rare opportunity to introduce a new hospital provider and stimulate competition in the service area.

Based on the previously described history of events in Buncombe County, it could not be more evident that Mission's proposal to expand its hospital monopoly to include 67 additional acute care beds cannot be an effective alternative in this CON review. In fact, North Carolina Attorney General Josh Stein submitted a letter to the Healthcare Planning and Certificate of Need Section recommending the Agency **"seize the opportunity, as required by N.C. Gen. Stat. 131E-183(a)(18a), by denying Mission's application."**

As between the applications submitted by AdventHealth Asheville and Novant Health, the Agency must assess which proposal most effectively promotes competition via patient access to a new or alternative provider. Novant Health proposes to develop a new hospital located in upscale Biltmore Park with "limited

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<sup>1</sup> Jones, Andrew. "HCA, Mission hit with 2nd WNC antitrust suit in a year, this one from a Transylvania city." Asheville Citizen Times, 6 June 2022. <https://www.citizen-times.com/story/news/2022/06/06/brevard-files-class-action-antitrust-lawsuit-against-mission-hca/7531321001/>

<sup>2</sup> Kepley-Steward, Kristy. "City Council & Board of Commissioners file class action lawsuit against HCA Healthcare." ABC 13News. 28 July 2022. <https://wlos.com/news/local/asheville-city-council-buncombe-county-board-of-commissioners-class-action-lawsuit-hca-healthcare-mission-health>

acute care services.”<sup>3</sup> The NHAMC application includes a limited supply of physician support letters which calls into question the viability of the proposed scope of services.

In stark contrast, AdventHealth sought input and direction from the very people that a new hospital would serve in the Asheville area. AdventHealth’s local representatives visited the entire acute care service area. AdventHealth’s team personally visited leaders in Buncombe, Graham, Madison, and Yancey Counties to learn more about each community’s unique health care needs. The people spoke, and we listened. Conversations in town halls, county courthouses, schools, colleges, and fire departments offered profound insight into the public’s desire for additional healthcare choice and competition in Western North Carolina. In response to these efforts and input, AdventHealth proposes to develop a full-service acute care hospital providing access to a wide range of specialty services in a new geographic location in Buncombe County.

AdventHealth Asheville represents the only true non-profit applicant in this review. Novant Health states on application page 16, “Either during or after the review of this application, Surgery Partners, Inc. is expected to become a minority member of Novant Health Asheville Medical Center, LLC and the joint venture LLC will own and operate the proposed hospital.” Surgery Partners, Inc. is a for-profit organization, whose revenues increased nearly 20 percent during 2021. Surgery Partners, Inc. projects that it will be able to grow 2022 revenues to at least \$2.5 billion.<sup>4</sup> As a not-for-profit, faith-based organization, AdventHealth believes in treating the whole person, treatment that strives to heal the body, mind, and spirit. AdventHealth’s financial resources do not go to shareholders but rather are invested back into the community. Thus, AdventHealth’s priorities are aligned with the needs of the communities it serves.

The 67 acute care beds in AdventHealth Asheville’s CON application represent the community’s best opportunity to address these ongoing challenges and bring true, sustainable health care choice and competition to the region. For the community that has lacked health care options for so long, AdventHealth Asheville’s proposed 67-bed hospital represents more than access to care – it represents hope. For communities where maternity services have been discontinued, AdventHealth Asheville represents access and comfort. For area non-profits, AdventHealth Asheville represents more than an ICU; it represents a new option for the underserved and uninsured to receive care. For area emergency management, AdventHealth Asheville represents more than an emergency department; it represents shorter wait times and faster response times. For area businesses, AdventHealth Asheville represents more than care for employees; it represents a way to help control the cost of health insurance in the region. For area and state elected officials, AdventHealth Asheville represents a way to finally address the concerns their constituents have shared for more than 25 years. AdventHealth Asheville is the most effective alternative for improving competition and establishing access to an alternative provider in the Buncombe, Graham, Madison, and Yancey county acute care service area.

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<sup>3</sup> NHAMC application page 33 indicates the proposal will provide “limited acute care services” and a “limited range of MSDRGs.”

<sup>4</sup> <https://ir.surgerypartners.com/news-releases/news-release-details/surgery-partners-inc-announces-fourth-quarter-and-full-year-2021#:~:text=Revenues%20for%202021%20increased%2019.6,increase%20in%20same%2Dfacility%20cases.>

### **Scope of Services**

The Agency has previously stated in its written findings for acute care bed reviews that, generally, the application proposing to provide the greatest scope of services is the more effective alternative with regard to this comparative factor.

Mission Hospital is an existing acute care hospital which is a Level I trauma center, tertiary, and quaternary care referral medical center.

AdventHealth Asheville proposes to establish a new acute care hospital that will provide a broad array of specialty services, including but not limited to cardiothoracic, general surgery, neurosurgery, OB/GYN, ophthalmology, oral/dental, orthopedics, otolaryngology, plastic surgery, podiatry, urology, and vascular surgery. According to Section B.1, AdventHealth Asheville will provide medical and surgical services within 20 of the major diagnostic categories (MDC) recognized by the Centers for Medicare and Medicaid Services (CMS), which are listed in Chapter 5 of the SMFP under Qualified Applicants.

Novant Health Asheville Medical Center (NHAMC) proposes to establish a new acute care hospital that will provide “limited acute care services.”<sup>5</sup> NHAMC will provide medical and surgical services within only 17 of the MDCs recognized by CMS, listed in Chapter 5 of the SMFP under Qualified Applicants.

The following table compares the projected scope of services defined by MDC’s projected utilization for the respective applications.

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<sup>5</sup> NHAMC application page 33

**Buncombe, Graham, Madison, Yancey County Acute Care Bed Competitive Batch Review  
 Scope of Services Among Competing Applicants**

MDC	Description	AdventHealth	Novant	Mission
1	Nervous System	Yes	Yes	Yes
2	Eye			Yes
3	Ear, Nose, Mouth, And Throat	Yes		Yes
4	Respiratory System	Yes	Yes	Yes
5	Circulatory System	Yes	Yes	Yes
6	Digestive System	Yes	Yes	Yes
7	Hepatobiliary System and Pancreas	Yes	Yes	Yes
8	Musculoskeletal System and Connective Tissue	Yes	Yes	Yes
9	Skin, Subcutaneous Tissue, and Breast	Yes	Yes	Yes
10	Endocrine, Nutritional, and Metabolic System	Yes	Yes	Yes
11	Kidney and Urinary Tract	Yes	Yes	Yes
12	Male Reproductive System	Yes	Yes	Yes
13	Female Reproductive System	Yes	Yes	Yes
14	Pregnancy, Childbirth, and Puerperium	Yes	Yes	Yes
15	Newborn and Other Neonates (Perinatal Period)	Yes	Yes	Yes
16	Blood and Blood Forming Organs & Immunological Disorders	Yes	Yes	Yes
17	Myeloproliferative Diseases and Disorders	Yes		Yes
18	Infectious and Parasitic Diseases and Disorders	Yes	Yes	Yes
19	Mental Diseases and Disorders			Yes
20	Alcohol/Drug Use or Induced Mental Disorders			Yes
21	Injuries, Poison, and Toxic Effect of Drugs	Yes	Yes	Yes
22	Burns			Yes
23	Factors Influencing Health Status	Yes	Yes	Yes
24	Multiple Significant Trauma	Yes*		Yes
25	Human Immunodeficiency Virus (HIV) Infection			Yes

\*AdventHealth Asheville will provide services within MDC24 to the extent they are consistent with the criteria for identifying appropriate patient discharges described in Section Q of its application.

Source: CON applications, Section B.1

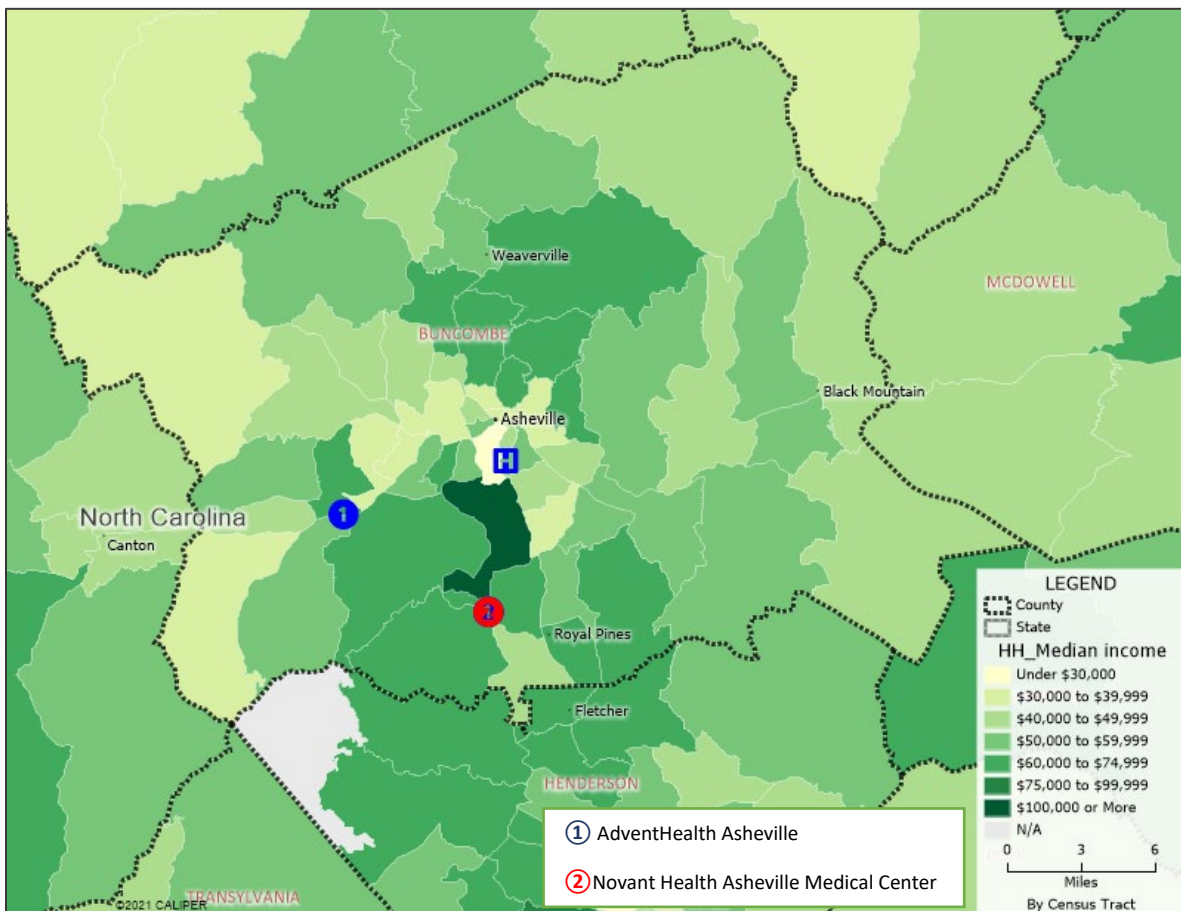
There is no question regarding Mission’s status as a Level I Trauma Center and quaternary referral center. However, specific to the need for 67 acute care beds in the defined service area, AdventHealth has identified a large and growing cohort of service area patients that can appropriately be served in a new community hospital in Buncombe County. As illustrated in the previous table, AdventHealth proposes a broader scope of services than the NHAMC application. Therefore, AdventHealth Asheville is the more effective alternative concerning this comparative factor and NHAMC is the least effective alternative regarding scope of services.

### **Geographic Accessibility**

There are 733 existing licensed acute care beds, which are all located in Asheville (Buncombe County) at Mission Hospital. Mission proposes to develop 67 additional acute care beds at its existing hospital facility. Mission’s proposal will not improve geographic accessibility because it will further saturate the concentration of acute care beds in downtown Asheville.

Novant Health proposes to develop a new acute care hospital located at 200 Technology Drive in Asheville. The location is in Biltmore Park, a mixed-use development that markets its existing businesses with adjectives like “luxurious” and “upscale.”<sup>6</sup> Novant Health’s proposed site will not improve geographic access because it will be located in an affluent area of Asheville and Buncombe County that is less accessible for lower-income residents. The following map illustrates the Buncombe County median household income by census tract and the location of Novant Health’s proposed new hospital.

**Buncombe County Median Household Income by Census Tract, 2021**



Source: Maptitude, CON applications

As the previous map indicates, Novant Health’s proposed hospital will be located adjacent to the most affluent census tract in Buncombe County. Furthermore, Novant Health’s proposed location is less than

<sup>6</sup><http://www.biltmorepark.com/>

four miles from the Buncombe-Henderson County line, which will be less accessible for residents of northern Buncombe County.

AdventHealth selected a proposed location that will most effectively increase access to care in a new geographic location within the service area. AdventHealth Asheville will be located in Candler, NC, off Smokey Park Highway and Sand Hill Road, also known as the Enka Center. The Enka Center is a historic and iconic site rich in history dating back to the 1920s. It previously hosted the country's largest rayon-producing factory. The communities surrounding the Enka Center reflect the hardworking, blue-collar families that settled in and around Candler in search of employment during the Great Depression. As the previous map illustrates, AdventHealth's proposal increases geographic access via the development of a new hospital in Candler, creating a new point of access in the western portion of the county. AdventHealth Asheville will enhance geographic access for a broad portion of the county with comparatively lower economic resources than the competing proposals. For these reasons, AdventHealth Asheville is the **most effective alternative** regarding geographic access.

### **Access By Service Area Residents**

The 2022 SMFP contains two types of acute care bed service areas: single county and multicounty. Counties with at least one licensed acute care hospital that are not grouped with another county are single county service areas. A multicounty service area is created under two conditions: 1) counties without a licensed acute care hospital are grouped with the single county where the largest proportion of its patients received inpatient acute care services; 2) if two counties with at least one licensed acute care hospital each provided inpatient acute care services to at least 35% of the residents of a county without a licensed acute care hospital, then the county without a licensed acute care hospital is grouped with both of the counties with a licensed acute care hospital.

Graham, Madison, and Yancey counties do not host an acute care hospital. According to FY2020 acute care patient origin data provided by the North Carolina Division of Health Service Regulation Healthcare Planning and Certificate of Need Section, approximately 40% of Graham County patients received acute care services in Buncombe County, as did 93% of Madison County residents and 70% of Yancey County residents. Thus, the 2022 SMFP defines Buncombe/Graham/Madison/Yancey county as a multi-county acute care service area.<sup>7</sup> Accordingly, the service area for this acute care bed review includes Buncombe, Graham, Madison, and Yancey counties. Facilities may also serve residents of counties not included in their service area.

Generally, regarding this comparative factor, the Agency has previously determined the application projecting to serve the largest number of service area residents is the more effective alternative based on the assumption that residents of a service area should be able to derive a benefit from a need determination for additional acute care beds in the service area where they live. However, this review includes facilities that are not of comparable size. Specifically, Mission Hospital operates a 733-bed acute care hospital and proposes to develop 67 additional acute care beds for a total of 800 beds upon project completion. During CY2021, Mission Hospital served over 22,000 acute care discharges from the Buncombe/Graham/Madison/Yancey County service area. AdventHealth and Novant Health each propose to develop acute care hospitals with 67 acute care beds. Based on the average length of stays

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<sup>7</sup> <https://info.ncdhs.gov/dhsr/mfp/patientoriginreports.html>



projected in AdventHealth and Novant Health’s applications, it is impossible for either of the proposed 67-bed facilities to accommodate 22,000 service area acute care discharges. Therefore, a comparison of projected service area patients between the competing applicants would be inappropriate.

The Agency has previously compared the percentage of service area patients projected to be served by competing proposals. Given the service area’s need for competition, the Agency should consider the percentage of service area patients projected to be served in this competitive review. The following table illustrates access by service area residents during the third full fiscal year following project completion.

**Projected Service to Service Area Residents – Project Year 3**

Applicant	% Service Area Residents
Mission	54.8%
Novant Health	86.1%
AdventHealth	90.0%

Source: Section C.3 of competing applications

As shown in the table above, AdventHealth projects to serve the highest percentage of service area residents (90%). Novant Health projects that 86.1 percent of patients will originate from the four-county service area; however, Novant Health did not project any in-migration beyond Henderson County. Therefore, it is likely that the percentage of service area residents will be even lower when in-migration occurs.

AdventHealth is the **most effective** alternative regarding access by service area residents.

**Historical Utilization**

In previous acute care bed reviews, the Agency has attempted to assess historical utilization among the competing applicants. However, AdventHealth Asheville and NHAMC are not existing facilities and, thus, have no historical utilization. Therefore, this comparative is inconclusive.

**Access By Underserved Groups**

Underserved groups are defined in G.S. 131E-183(a)(13) as follows:

“Medically underserved groups, such as medically indigent or low-income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority.”

For access by underserved groups, applications are compared concerning three underserved groups: charity care patients (i.e., medically indigent or low-income persons), Medicare patients, and Medicaid patients. Access by each group is treated as a separate factor.

The Agency may use one or more of the following metrics to compare the applications:

- Total charity care, Medicare, or Medicaid patients
- Charity care, Medicare, or Medicaid admissions as a percentage of total patients
- Total charity care, Medicare, or Medicaid dollars
- Charity care, Medicare, or Medicaid dollars as a percentage of total gross or net revenues
- Charity care, Medicare, or Medicaid cases per patient

The above metrics the Agency uses are determined by whether or not the applications included in the review provide data that can be compared as presented above and whether or not such a comparison would be of value in evaluating the alternative factors.

*Projected Charity Care*

The following table compares projected charity care for the applicants in the third full fiscal year following project completion.

**Projected Charity Care – 3rd Full FY**

Applicant	Form F.2b	Form C.1b	Avg Charity Care per Patient	Form F.2b	% of Gross Revenue
	Total Charity Care	Patients		Gross Revenue	
Mission	\$347,713,911	43,568	\$7,981	\$9,037,398,606	3.8%
Novant Health	\$13,305,141	6,531	\$2,037	\$250,096,637	5.3%
AdventHealth	\$5,620,604	4,899	\$1,147	\$173,177,890	3.2%

Source: CON applications

However, differences in the acuity level of patients at each facility and the level of care (community hospital versus Level 1 Trauma center and quaternary care hospital) at each facility would make any comparison of little value. Therefore, the result of this analysis is inconclusive.

*Projected Medicare*

The following table compares projected access by Medicare patients in the third full fiscal year following project completion for all the applicants in the review.

**Projected Medicare Revenue – 3<sup>rd</sup> Full FY**

Applicant	Form F.2b	Form C.1b	Avg Medicare Rev. per Patient	Form F.2b	% of Gross Revenue
	Total Medicare Revenue	Patients		Gross Revenue	
Mission	\$4,481,645,969	43,568	\$102,866	\$9,037,398,606	49.6%
Novant Health	\$136,021,744	6,531	\$20,827	\$250,096,637	54.4%
AdventHealth	\$84,337,632	4,899	\$17,215	\$173,177,890	48.7%

Source: CON applications

Due to differences in the acuity level of patients and the level of care (Level 1 Trauma center and quaternary care hospital vs. community hospital) at each facility, a comparison of average Medicare revenue per patient is inconclusive.

*Projected Medicaid*

The following table compares projected access by Medicaid patients in the third full fiscal year following project completion for all the applicants in the review.

**Projected Medicaid Revenue – 3<sup>rd</sup> Full FY**

Applicant	Form F.2b	Form C.1b	Avg Medicaid Rev. per Patient	Form F.2b	% of Gross Revenue
	Total Medicaid Revenue	Patients		Gross Revenue	
Mission	\$1,577,929,797	43,568	\$36,218	\$9,037,398,606	17.5%
Novant Health	\$52,805,672	6,531	\$8,085	\$250,096,637	21.1%
AdventHealth	\$26,842,573	4,899	\$5,479	\$173,177,890	15.5%

Source: CON applications

Due to differences in the acuity level of patients and the level of care (Level 1 Trauma center and quaternary care hospital vs. community hospital) at each facility, a comparison of average Medicaid revenue per patient is inconclusive.

As previously described, Novant Health’s proposed hospital will be located adjacent to the most affluent census tract in Buncombe County and will not be proximate to underserved patients. Furthermore, as described later in these comments, Novant Health failed to demonstrate its payor mix projections are based on reasonable and adequately supported assumptions. Therefore, it cannot be an effective alternative regarding Medicaid access.

**Projected Average Net Revenue per Patient**

The following table shows each applicant's projected average net revenue per patient in the third year of operation, based on the information provided in the applicants’ pro forma financial statements (Section Q). Generally, the application proposing the lowest average net revenue is the more effective alternative regarding this comparative factor since a lower average may indicate a lower cost to the patient or third-party payor.

**Projected Average Net Revenue per Patient – 3<sup>rd</sup> Full FY**

Applicant	Form C.1b	Form F.2b	Average Net Revenue per Patient
	Patients	Net Revenue	
Mission	43,568	\$1,627,667,289	\$37,359
Novant Health	6,531	\$53,620,723	\$8,210
AdventHealth	4,899	\$67,158,822	\$13,709

Source: CON applications

Due to differences in the acuity level of patients and the level of care (Level 1 Trauma center and quaternary care hospital vs. community hospital) at each facility, a comparison of projected revenue net revenue per patient is inconclusive.

**Projected Average Operating Expense per Case**

The following table shows the projected average operating expense per patient in the third full fiscal year following project completion for each facility. Generally, the application projecting the lowest average operating expense per patient is the more effective alternative concerning this comparative factor to the extent it reflects a more cost-effective service which could also result in lower costs to the patient or third-party payor.

**Projected Average Operating Expense per Patient – 3<sup>rd</sup> Full FY**

Applicant	Form C.1b	Form F.2b	Average Operating Expense per Patient
	Patients	Operating Expense	
Mission	43,568	\$1,281,326,999	\$29,410
Novant Health	6,531	\$79,064,440	\$12,106
AdventHealth	4,899	\$63,212,505	\$12,903

Source: CON applications

Due to differences in the acuity level of patients and the level of care (Level 1 Trauma center and quaternary care hospital vs. community hospital) at each facility, a comparison of projected operating expense per patient is inconclusive.

**Summary**

The table below lists the comparative factors and states which application is the most effective alternative.

Comparative Factor	Mission	Novant Health	AdventHealth
Conformity with Review Criteria	No	No	Yes
Scope of Services	<b>Most Effective</b>	Least Effective	More Effective
Geographic Accessibility	Least Effective	Least Effective	<b>Most Effective</b>
Historical Utilization	Inconclusive	Inconclusive	Inconclusive
Enhance Competition	Least Effective	More Effective	<b>Most Effective</b>
Access by Service Area Residents	Least Effective	More Effective	<b>Most Effective</b>
Access by Underserved Groups			
Projected Charity Care	Inconclusive	Inconclusive	Inconclusive
Projected Medicare	Inconclusive	Inconclusive	Inconclusive
Projected Medicaid	Inconclusive	Inconclusive	Inconclusive
Projected Average Net Revenue per Case	Inconclusive	Inconclusive	Inconclusive
Projected Average Operating Expense per Case	Inconclusive	Inconclusive	Inconclusive

For each of the comparative factors previously discussed, AdventHealth Asheville’s application is determined to be the most or more effective alternative for the following factors:

- Conformity with Review Criteria
- Scope of Services
- Geographic Accessibility
- Enhance Competition
- Access by Service Area Residents

Mission's application fails to conform with all applicable statutory and regulatory review criteria, thus, it cannot be approved. In addition, Mission's application fails to measure more favorably for the aforementioned comparative factors.

Novant Health's application fails to conform with all applicable statutory and regulatory review criteria; thus, it cannot be approved. In addition, Novant Health's application fails to measure more favorably for the aforementioned comparative factors.

Based on the previous analysis and discussion, the application submitted by AdventHealth Asheville is comparatively superior and should be approved for this competitive review.

The following pages provide application-specific comments regarding the competing applications and their respective conformity to applicable statutory and regulatory review criteria.

**COMMENTS SPECIFIC TO NOVANT HEALTH ASHEVILLE MEDICAL CENTER (NHAMC)  
PROJECT ID No. B-012230-22**

**Proposed Relocation of ASC OR to Hospital-Based OR**

Novant Health has partnered with Surgery Partners, Inc. to develop the proposed project. Surgery Partners will relocate one of the Orthopaedic Surgery Center of Asheville d/b/a Outpatient Surgery Center of Asheville (OSCA) five ORs to NHAMC.

Under NCGS 131E-176(16)(u), “New Institutional Health Service” is defined to include: The construction, development, establishment, increase in the number, or relocation of an operating room or gastrointestinal endoscopy room in a licensed health service facility, other than the relocation of an operating room or gastrointestinal endoscopy room within the same building or on the same grounds or to grounds not separated by more than a public right-of-way adjacent to the grounds where the operating room or gastrointestinal endoscopy room is currently located. The development of a new institutional health service requires a CON. It does not appear that Surgery Partners applied for or obtained a CON to move one of its ORs to NHAMC. If Surgery Partners assumes Project I.D. B-12230-22 is the request to seek CON approval to relocate the OSCA operating room, the application does not satisfy the statutory review criteria specific to the OR relocation.

Section C.4 of the CON application form requires the applicants to “explain why the patients projected to be served by the facility or campus identified in Section A, Question 4, need the proposal. If the proposal involves multiple service components, explain why those patients need each proposed service component. The response should include but not be limited to the following as applicable:

**Relocating Existing Service Components?** Include: 1) the identity of each facility that would lose service components as part of this proposal; 2) a description of each service component (i.e., specific type and number if applicable) that will be relocated as part of this proposal; and 3) an explanation of why the patients projected to be served need the service components at the facility identified in Section A, Question 4, as opposed to where they are currently located.

The application’s response to Section C.4 pertains only to the proposed NHAMC hospital. There is no response to the application’s instructions for projects relocating an existing service component, i.e., OR. Section C.4 does not identify the facility that would lose service components as part of the proposal. Section C.4 does not describe the service component that will be relocated. Section C. does not explain why patients at NHAMC need the proposed OR in a hospital-based setting as opposed to where it is currently located in a freestanding ASC.

Furthermore, the application lacks any discussion of the financial obligations related to the transfer of the OSCA OR. If the financial transaction will be facilitated through Surgery Partner’s prospective membership in Novant Health Asheville Medical Center, LLC, then the applicants should have disclosed as such and provided appropriate financial documentation. If the OR relocation will be facilitated via financial transaction, i.e., monetary purchase, the applicants should have included the associated expense in Form F.3. In this scenario, the physicians who are members of OSCA (and provided letters of support for the proposed Novant Health project) would financially benefit from the OR sale (an OR that was originally

approved for the benefit of lowering the cost of ambulatory surgical services). Absent this pertinent information, the application does not satisfy the statutory review criteria specific to the OR relocation.

OSCA received CON approval in a 2018 competitive review to develop two additional ORs pursuant to a need determination in the 2018 SMFP. Pursuant to Project I.D. B-11514-18, OSCA was approved to develop a new multispecialty ASC with five operating rooms and two procedure rooms by relocating the three operating rooms at Orthopaedic Surgery Center of Asheville and developing the two operating rooms in the 2018 SMFP. As part of the comparative analysis in the 2018 OR review, the Agency assessed "Patient Access to Lower Cost Surgical Services." The Agency noted that "the cost to the patient for that same service will often be higher in a hospital-based OR or, conversely, less expensive if received in a non-hospital based OR."<sup>8</sup> As to patient access to low-cost outpatient surgical services, OSCA was found to be an effective alternative. Now, shortly after developing the additional freestanding ASC ORs, Surgery Partners proposes to relocate one of the ORs to a hospital-based setting. The proposal runs counter to the need described in Project I.D. B-11514-18 and equates to a "bait and switch" for the need-determined ORs previously awarded to a freestanding ASC, i.e., OSCA. Doing so deprives the 2018 applicants of their due process in a fair competitive OR review and reflects a change in scope of the approved project. Still, more importantly, it deprives service area residents of access to lower-cost licensed OR capacity.

**Criterion 1** *"The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which shall constitute a determinative limitation on the provision of any health services, health service facility, health service beds, dialysis stations, operating rooms, or home health offices that may be approved."*

**POLICY GEN-3: BASIC PRINCIPLES** states:

*"A certificate of need applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing healthcare value for resources expended. A certificate of need applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the availability of capacity to provide these services. A certificate of need applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the State Medical Facilities Plan as well as addressing the needs of all residents in the proposed service area."*

Novant Health fails to conform with Criterion 1 and Policy GEN-3 because the application does not conform to all other applicable statutory and regulatory review criteria and is thus not approvable. The applicant does not adequately demonstrate that the proposal is its least costly or most effective alternative to meet the need. See discussion regarding criteria 3, 4, 5, 6, 12, and 18a. Therefore, the application is not conforming to this criterion and cannot be approved.

**Criterion 3** *"The applicant shall identify the population to be served by the proposed project and shall demonstrate the need that this population has for the services proposed, and the extent to which all*

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<sup>8</sup> Agency Findings for 2018 Buncombe County Operating Room Review, Page 82



*residents of the area, and, in particular, low-income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.”*

AdventHealth and Novant Health each propose to develop 67-bed acute care facilities. However, Novant Health proposes to offer “limited acute care services” in a “limited range of MSDRGs during the first three years of operation.”<sup>9</sup> As previously described, Novant Health proposes a smaller scope of services than AdventHealth Asheville; however, Novant Health proposes a higher market share and volume of projected patients than AdventHealth Asheville. Novant Health’s projected patient utilization is questionable, considering Novant Health does not maintain a significant presence in Buncombe County. The Novant Health application similarly provides a limited scope of letters of support, most of which originate from orthopaedic surgeons who maintain ownership or privileges at OSCA. The following table summarizes the physician letters of support included in Exhibit I.2 of Novant Health’s application.

<b>Name</b>	<b>Specialty</b>	<b>Practice / Organization</b>	<b>Location</b>
Marc Barnett, MD	Orthopaedic Surgeon	Asheville Orthopedics Associates	Buncombe County
L. Eugene Daugherty, MD	Pediatric Intensivist	Novant Health IP Pediatric Specialists	Mecklenburg County
Jay Levy, MD	Pediatric Urologist	Pediatric Urology Associates	Mecklenburg County
James Hoski, MD	Orthopaedic Surgeon	Carolina Spine & Neurosurgery Center	Buncombe County
Brian England, MD	Nephrologist	Mountain Kidney & Hypertension Assoc.	Buncombe County
Michael Messino, MD	Oncologist	Messino Cancer Centers	Buncombe County
Michael Frisch, MD	Orthopaedic Surgeon		Buncombe County
Stephen Hill, MD	OB/GYN	<b>*Inactive Medical License*<sup>10</sup></b>	Buncombe County
Alan Johnson, MD	Cardiac Surgeon	Novant Health Heart & Vascular Inst.	Rutherford County
Alan Baumgarten, MD	Family Practice	The Family Health Centers	Buncombe County
Joseph Moliterno, Jr, MD	Pediatric Urologist	Pediatric Urology Associates	Mecklenburg County
Carl Mumpower, PhD	Psychologist		
Jay West, MD	Orthopaedic Surgeon	Carolina Hand & Sports Medicine	Buncombe County
Aaron Leis, MD	Anesthesiologist	OSCA	Buncombe County
Thomas Mulford, MD	Anesthesiologist	OSCA	Buncombe County
Aimee Riley, DO	Orthopaedic Surgeon	EmergeOrtho	Buncombe County
Lacy Thornburg, MD	Orthopaedic Surgeon	Carolina Hand & Sports Medicine	Buncombe County
Daniel Waldman, DPM	Podiatric Surgeon	Blue Ridge Foot Centers	Buncombe County
James Karegeannes, MD	Orthopaedic Surgeon	EmergeOrtho	Buncombe County
Peter Mangone, MD	Orthopaedic Surgeon	EmergeOrtho	Buncombe County
Javid Baksh, DO	Pain Medicine	Premier Pain Solutions	Buncombe County
John Hicks, MD	Orthopaedic Surgeon	EmergeOrtho	Buncombe County
David Napoli, MD	Orthopaedic Surgeon	EmergeOrtho	Buncombe County
Angelo Cammarata, MD	Orthopaedic Surgeon	EmergeOrtho	Buncombe County
Joseph Dement, MD	Orthopaedic Surgeon	Asheville Orthopedics Associates	Buncombe County

<sup>9</sup> Application page 33

<sup>10</sup> According to the NC Medical Board licensee search, Stephen Hill, MD does not maintain an active medical license in NC. <https://portal.ncmedboard.org/verification/search.aspx> See also Attachment A.

Most of Novant Health’s physician letters of support are from orthopaedic surgeons. The application lacks documentation of coordination with key physician specialties. Specifically, **Novant Health failed to provide a letter of support from a licensed gastroenterologist, neurologist, or OB/GYN physician.** While Exhibit I.2 includes a letter from Stephen Hill, MD, who states he is an “Ob/Gyn physician in Asheville,” a search on the North Carolina Medical Board website reveals that Stephen Hill **does not maintain an active medical license in North Carolina.** According to the documentation in Attachment A, Dr. Hill’s medical license expired on June 30, 2022, prior to the start of the review period.<sup>11</sup> The application provides no additional support from OB/GYN providers that could obtain privileges at the proposed facility. Novant Health proposes to develop a 6-bed labor, delivery, recovery, postpartum unit, and a dedicated C-Section OR; however, the application provides no documentation from eligible physicians able to refer or treat patients at the facility. NHAMC also proposes to serve patients in DRGs associated with the nervous system, i.e., DRG 056, 057, 058, 059, 060, 061, 069, 070, 071, 072, 073, 074, 076, 078, 079, 080, 081, 085, 086, 087, 088, 091, 092, 093, 102, and 103; however, no documentation of coordination with a neurologist is provided with the application as submitted. NHAMC proposes to develop a GI endoscopy room and proposes to serve patients categorized by MDC 6; however, no documentation of coordination with a gastroenterologist is provided with the application as submitted.

AdventHealth would note the Agency has previously found a Novant Health application non-conforming for failure to provide adequate physician documentation in an acute care bed review. In the 2011 Wake County acute care bed review, the Agency found Novant Health’s application to develop a new acute care hospital in Holly Springs non-conforming citing the following,

*“However, the applicant did not provide sufficient documentation from obstetricians practicing in Wake County and surrounding areas to support the reasonableness of its utilization projections for obstetrical services. The applicant states it “will achieve a market share of 40% of total births in the Primary Service Area” by the second and third years of operation (2016 and 2017). However, Exhibit 14 does not contain any letters of support from obstetricians practicing in applicant’s proposed service area, or from any other Wake County obstetricians. Exhibit 14 contains only one letter an obstetrician in the local area expressing support for the proposed hospital, and that obstetrician practices in Durham. Exhibit 14 also contains a letter of support from the obstetrician who the applicant identifies as the medical director for obstetrical services, however that physician practices in Winston-Salem...Based on the lack of documentation of physician support from obstetricians within its proposed service area, the applicant’s market share assumptions for obstetrical services are not supported. Therefore, the applicant’s utilization projections for the proposed acute care beds are not supported or reliable. Therefore, the applicant did not adequately demonstrate the need for the acute care beds.”<sup>12</sup>*

Based on the same rationale the Agency found Novant Health’s Holly Springs Hospital application non-conforming to Criterion 3, it should also find the Novant Health Asheville application non-conforming to Criterion 3. Consequently, Novant Health failed to adequately demonstrate the reasonableness of the proposed patient admissions, days of care, surgical, and endoscopy utilization at NHAMC.

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<sup>11</sup> The NC Medical Board website indicates that Dr. Hill is retired. His license was issued on May 20, 2022 and expired on June 20, 2022. Thus, it would appear that Dr. Hill renewed his license for the purposes of signing a letter of support; however, that license has since expired.

<sup>12</sup>Agency Findings 2011 Wake Acute Care Beds, pp.127-128

Novant Health states on application page 58 that it expects additional letters of support will be received by July 31, 2022; however, any such letters will be considered a public comment and cannot be included in the Novant Health application. Any assumption to the contrary would result in an improper amendment to the Novant Health application.

#### ED Utilization Assumptions

Novant Health proposes developing an emergency department (ED) with 35 treatment rooms, which is more than twice the number of treatment rooms that will be developed at AdventHealth Asheville. Novant Health projects to provide 52,085 ED visits during its third project year, which is more than half of the annual ED utilization served at Mission Hospital, a Level 1 Trauma Center.<sup>13</sup> Novant Health proposes to develop a hospital with acute care bed capacity equivalent to less than 10 percent of Mission's acute care bed capacity ( $67 \div 733 = .091$ ); however, NHAMC's proposed emergency department is projected to operate at the equivalent of more than 50 percent of Mission's ED. Notwithstanding the magnitude of ED volume projected at NHAMC, Novant Health's proposal failed to acknowledge or account for the recent conditional approval of Mission's two CON applications for freestanding EDs in Buncombe County. In particular, Project I.D. B-012191-22 is approved to develop a freestanding ED in southern Buncombe County. While AdventHealth is appealing the decision of the two freestanding EDs, the burden remains on the applicant to address approved but not operational projects. Novant Health failed to address what impact, if any, the approved freestanding ED projects will have on its projected ED utilization. Therefore, the projected ED utilization is unreliable.

#### Surgical Utilization Assumptions

Novant Health's inpatient surgical utilization is premised on its acute care admissions. Novant Health projects that NHAMC will perform 0.09 inpatient surgical cases for each inpatient surgery admission. However, as previously described, Novant Health's projected acute care admissions are unreasonable. Therefore, the projected inpatient surgical cases are similarly unreliable and not supported.

Projected C-Section cases are not supported at NHAMC because the application provides no documentation of coordination with OB/GYN providers that can obtain privileges at the proposed facility.

#### GI Endoscopy Assumptions

Novant Health projects GI endoscopy cases based on the number of GI endoscopy cases from the four-county service area. Novant Health projects the respective utilization to increase based on the three-year average and assumes to capture 10 percent of cases during the third project year. However, according to the 2022 SMFP, two-thirds of the GI endoscopy cases performed in Buncombe County are in a freestanding, non-hospital-based ASC ( $14,779 \div 22,304 = .663$ ). Therefore, patients overwhelmingly elect to utilize freestanding GI endoscopy facilities rather than hospital-based GI endoscopy services in Buncombe County. Assuming that 10 percent of projected GI endoscopy cases for service area residents receiving GI endoscopy in Buncombe County will utilize NHAMC is unreasonable. Novant Health should

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<sup>13</sup> According to Mission's 2022 LRA, the Mission ED served 98,818 ED visits during FY2021,  $52,085 \div 98,818 = .527$ .

have instead projected to capture a portion of the projected hospital-based GI endoscopy case volume for service area residents seeking care in Buncombe County. Patients incur lower out-of-pocket expenses for GI endoscopy services in a freestanding ASC compared to a hospital-based facility. Also, the Novant Health application does not include documentation of coordination with a gastroenterologist. Therefore, it is unlikely that NHAMC could obtain any portion of the Buncombe County freestanding GI endoscopy market share. Consequently, GI endoscopy utilization is unreasonable and not adequately supported.

For these reasons, Novant Health does not demonstrate that projected utilization is reasonable and adequately supported. If projected utilization is not reasonable and adequately supported, the applicant has failed to fulfill its burden of demonstrating the need it has to develop the project. Consequently, the Novant Health application does not conform to Criterion 3.

**Criterion 4** *“Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.”*

The Novant Health application does not conform to all other applicable statutory and regulatory review criteria and thus, is not approvable. An application that cannot be approved cannot be an effective alternative.

The applicant does not adequately demonstrate that the proposal is its least costly or most effective alternative to meet the need. Therefore, the application is not conforming to this criterion and cannot be approved. See discussion regarding criteria 1, 3, 5, 6, and 18a.

**Criterion 5** *“Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.”*

Based on the facts described in these written comments specific to Criterion 3 (incorporated herein by reference), these facts result in the Novant Health application being non-conforming to Criterion 5.

Application page 97 provides the following assumptions regarding start-up expenses “Start-up expenses were built using the January - September 2018 start-up expenses from NH Mint Hill. These expenses include staffing salaries and benefits for training. It also includes Medical/Surgical and Other Supplies and Drugs to bring the facility to par levels. Outside services, repairs, and maintenance expenses will also be incurred during the 9-month startup period. The 2018 January through September NH Mint Hill start-up expenses were increased each year (salaries 3.0 percent, supplies, and other expenses 2.0 percent) to arrive at the 2026 start-up expenses for expenses incurred in 2026 prior to NH Asheville operating in 2027.” AdventHealth would note that NH Mint Hill is a 36-bed acute care facility, approximately half the size of the proposed NHAMC facility. It does not appear that the start-up expense assumptions were adjusted to reflect the proposed 67-bed facility. Therefore, the start-up expenses are understated. The initial operating expenses are also likely understated.

As previously described, the Novant Health application lacks any discussion of the financial obligations related to the transfer of the OSCA OR. If the financial transaction will be facilitated through Surgery

Partner's prospective membership in Novant Health Asheville Medical Center, LLC, then the applicants should have disclosed as such and provided appropriate financial documentation. If the OR relocation will be facilitated via financial transaction, i.e., monetary purchase, the applicants should have included the associated expense in Form F.3. Absent this pertinent information, the application does not satisfy the statutory review criteria specific to the OR relocation.

**Criterion 6** *"The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities."*

Novant Health did not demonstrate that the proposed new services would not duplicate existing or approved health service capabilities or facilities. See discussion regarding Criterion 3.

Novant Health proposes to develop an emergency department (ED) with 35 treatment rooms and projects to provide 52,085 ED visits during its third project year, which is more than half of the annual ED utilization served at Mission Hospital, a Level 1 Trauma Center.<sup>14</sup> Notwithstanding the magnitude of ED volume projected at NHAMC, Novant Health's proposal failed to acknowledge or account for the recent conditional approval of Mission's two CON applications for freestanding EDs in Buncombe County. In particular, Project I.D. B-012191-22 is approved to develop a freestanding ED in southern Buncombe County. While AdventHealth is appealing the decision of the two freestanding EDs, the burden remains on the applicant to address approved but not operational projects. Novant Health failed to address the approved freestanding ED projects in Section G and the extent to which its project will not unnecessarily duplicate the conditionally approved projects.

**Criterion 8** *"The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system."*

The application lacks documentation of coordination with key physician specialties necessary to support the acute care services proposed. Specifically, Novant Health failed to provide documentation that the proposed acute care services will be coordinated with a neurologist or OB/GYN physician. While Exhibit I.2 includes a letter from Stephen Hill, MD, who states he is an "Ob/Gyn physician in Asheville," a search on the North Carolina Medical Board website reveals that Stephen Hill **does not maintain an active medical license in North Carolina**. The application provides no additional documentation from OB/GYN providers that could obtain privileges at the proposed facility. Novant Health proposes to develop a 6-bed labor, delivery, recovery, postpartum unit, and a dedicated C-Section OR; however, the application provides no documentation from eligible physicians able to refer or treat patients at the facility. Similarly, NHAMC proposes to serve patients in DRGs associated with the nervous system, i.e., DRG 056, 057, 058, 059, 060, 061, 069, 070, 071, 072, 073, 074, 076, 078, 079, 080, 081, 085, 086, 087, 088, 091, 092, 093, 102, and 103; however, no documentation of coordination with a neurologist is provided with the application as submitted. NHAMC proposes to develop a GI endoscopy room and proposes to serve patients categorized by MDC 6; however, no documentation of coordination with a gastroenterologist is provided with the application as submitted.

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<sup>14</sup> According to Mission's 2022 LRA, the Mission ED served 98,818 ED visits during FY2021,  $52,085 \div 98,818 = .527$ .

AdventHealth would note the Agency has previously found a Novant Health application non-conforming for failure to provide adequate physician documentation in an acute care bed review. In the 2011 Wake County acute care bed review, the Agency found Novant Health's application to develop a new acute care hospital in Holly Springs non-conforming citing the following,

*"However, the applicant did not provide sufficient documentation from obstetricians practicing in Wake County and surrounding areas to demonstrate the proposed services will be coordinated with the existing health care system. Exhibit 14 does not contain any letters of support from obstetricians practicing in applicant's proposed service area, or from any other Wake County obstetricians. Exhibit 14 contains only one letter an obstetrician in the local area expressing support for the proposed hospital, and that obstetrician practices in Durham. Exhibit 14 also contains a letter of support from the obstetrician who the applicant identifies as the medical director for obstetrical services, however that physician practices in Winston-Salem...Therefore, the applicant did not adequately demonstrate that the proposed project will be coordinated with the existing health care system. Consequently, the application is not conforming to this criterion."<sup>15</sup>*

Based on the same rationale the Agency found Novant Health's Holly Springs Hospital application non-conforming to Criterion 8, it should also find the Novant Health Asheville application non-conforming to Criterion 8.

Novant Health states on application page 58 that it expects additional letters of support will be received by July 31, 2022; however, any such letters will be considered a public comment and cannot be included in the Novant Health application. Any assumption to the contrary would result in an improper amendment to the Novant Health application.

**Criterion 13c** *"The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and ... persons [with disabilities], which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:*

- (c) That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services*

Novant Health states on application page 128, "Payor percentages are based on patients treated in Buncombe County at Mission Hospital in 2021 and reported on the 2022 Hospital License Renewal Application." However, Novant Health failed to provide any rationale to support the reasonableness of its assumption that the projected payor mix for its proposed 67-bed hospital with "limited acute care services" will be the same as Mission Hospital, a Level 1 Trauma Center and Quaternary referral center.

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<sup>15</sup>Agency Findings 2011 Wake Acute Care Beds, pp.160-161

Novant Health could have analyzed the historical service area inpatient payor mix for the selected DRGs it projects to serve; however, no such analysis was performed.

Most of Novant Health’s physician letters of support are from surgeons with privileges at or ownership in OSCA. Therefore, the historical payor mix at OSCA may provide some insight into the potential payor mix at NHAMC. AdventHealth notes there are dramatic differences between the OSCA payor mix and the FY2021 Mission payor mix, particularly for Medicaid patients.

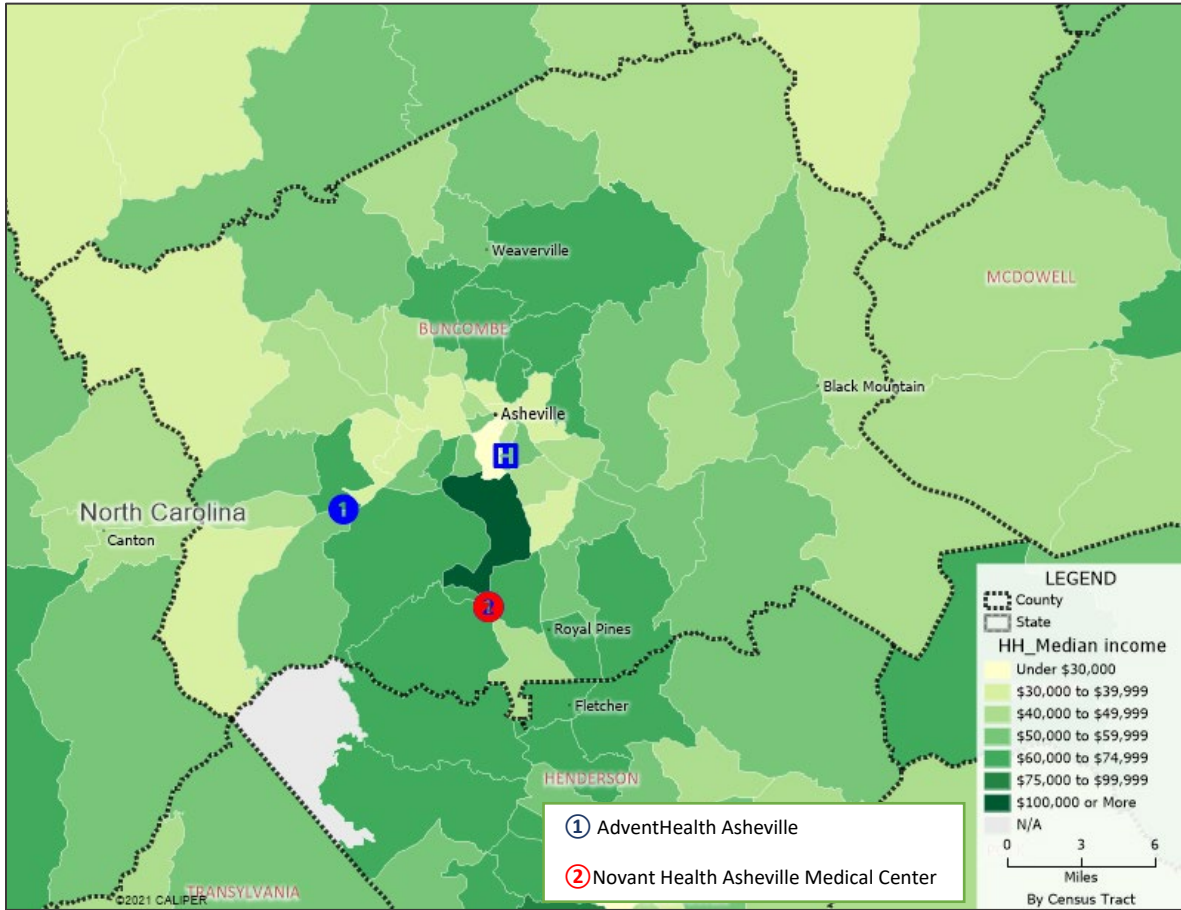
**Payor Mix Comparison**

	<b>OSCA</b>	<b>Mission</b>	<b>NHAMC</b>
Self-Pay	1.2%	4.3%	5.2%
Charity Care		2.4%	
Medicare	43.4%	47.3%	46.9%
Medicaid	3.5%	16.5%	15.5%
Insurance	50.6%	26.1%	29.4%
Workers Compensation			
TRICARE	1.4%		
Other		3.4%	3.0%
<b>Total</b>	<b>100.1%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: CON application, pp. 125 & 137, Mission 2022 LRA (payor mix reflects sum of all patients reported in Section E.

Novant Health projects to provide more than four times the Medicaid payor mix at NHAMC compared to OSCA. Novant Health failed to demonstrate the reasonableness of its projected Medicaid access in light of 1) the existing payor mix for OSCA which is owned by Surgery Partners and is a co-applicant, 2) NHAMC will be a 67-bed community hospital with limited acute care services, and 3) NHAMC will be located in an affluent area of Buncombe County and will not be proximate to underserved patients and shown in the following map.

### Buncombe County Median Household Income by Census Tract, 2021



Source: Maptitude, CON applications

**Criterion 18a** *“The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost-effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.”*

Based on the facts which result in Novant Health being non-conforming with Criteria 1, 3, 4, 5, 6, and 8, it should also be found non-conforming with Criterion 18a.

### 10A NCAC 14C .3803

The Novant Health application does not conform to 10A NCAC 14C .3803 because projected acute care bed utilization is not based on reasonable and adequately supported assumptions. See discussion regarding projected utilization in Criterion 3.



**10A NCAC 14C .3903**

The Novant Health application does not conform to 10A NCAC 14C .3903 because projected GI endoscopy utilization is not based on reasonable and adequately supported assumptions. See discussion regarding projected utilization in Criterion 3.

**COMMENTS SPECIFIC TO MISSION HOSPITAL  
PROJECT ID No. B-012232-22**

**Criterion 1** *“The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which shall constitute a determinative limitation on the provision of any health services, health service facility, health service beds, dialysis stations, operating rooms, or home health offices that may be approved.”*

**POLICY GEN-3: BASIC PRINCIPLES** states:

*“A certificate of need applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing healthcare value for resources expended. A certificate of need applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the availability of capacity to provide these services. A certificate of need applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the State Medical Facilities Plan as well as addressing the needs of all residents in the proposed service area.”*

Mission fails to conform with Criterion 1 and Policy GEN-3 because the application is not conforming to all other applicable statutory and regulatory review criteria and, thus, is not approvable.

**Criterion 3** *“The applicant shall identify the population to be served by the proposed project and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low-income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.”*

On application page 20, in response to Section A.5.b, Mission did not check “Developing of offering a service component in response to a need determination in the SMFP.”

Population to be Served

On page 52, Mission states, “For any provider applying for the identified need for 67 beds in the planning area, service to not only Buncombe County, but the smaller rural counties of Graham, Madison, and Yancey Counties is critical to ensure access to care.” However, Mission proposes the least effective access for service area residents, as it projects only 54.8 percent of projected patient origin will originate from the four-county acute care service area. AdventHealth projects 90 percent, and Novant Health projects 86.1 percent of patient origin will originate from the four-county acute care service area.

As previously described, AdventHealth sought input and direction from the very people that a new hospital would serve. AdventHealth’s local representatives visited the entire acute care service area. AdventHealth’s team personally visited leaders in Buncombe, Graham, Madison, and Yancey Counties to learn more about each community’s unique health care needs. The people spoke, and we listened.

Conversations in town halls, county courthouses, schools, colleges, and fire departments offered profound insight into the public's desire for additional health care choice and competition in Western North Carolina. In response to these efforts and input, AdventHealth proposes to develop a full-service acute care hospital providing access to a wide range of specialty services for residents of the four-county service area.

### Need for Services Proposed

On application pages 49-50, Mission states, "It is also clear that additional Med/Surg beds are not needed in the community hospital setting for the service area and region. These truths are evidenced by several factors: Smaller community and rural hospitals in the service area and region providing lower acuity care have excess capacity and, without exception, documented general med/surg bed surpluses . . . Additional beds at such hospitals would not serve the high-acuity patient population which is driving this demand. Instead, awarding beds to a smaller community or specialized hospital (e.g., an OB-focused hospital) would create an additional surplus of existing services while the region's tertiary care provider continues to experience capacity constraints. Thus, an additional small community hospital is not needed."

Mission appears to be arguing that there was a need determination specifically for high-acuity, acute care beds. The need determination was simply for acute care beds, which are needed to serve residents of Buncombe, Graham, Madison, and Yancey counties. The fact that smaller community hospitals have capacity indicates only that there is no projected additional need in those respective counties, not that a smaller community hospital cannot meet the need identified in Buncombe/Graham/Madison/Yancey county service area. Additionally, any increase in beds in the service area will alleviate capacity constraints at Mission, even if such beds are at a smaller community hospital in Buncombe County, by decreasing demand at Mission for the same services, thereby freeing up existing resources at Mission's main campus for higher acuity care, if needed.

Mission states on application page 72, "The acuity trends for major hospitals are further confirmed by the higher bed occupancy, and resultant bed need calculated for North Carolina tertiary care providers shown in Figure 19. The acute care chapter of the 2022 SMFP shows that every hospital with bed need is either a tertiary medical center or affiliated with a tertiary medical center. The trends toward demand for high acuity hospitals in North Carolina, and increased bed need, mirrors the trend for higher acuity hospital care nationwide." The SMFP did not identify a need for high acuity beds; it identified a need for acute care beds. As previously stated, the presence of another hospital in Buncombe County that can serve lower acuity patients will make existing bed space available at Mission that can be used for high-acuity patients/services. Also, the claim that bed need is triggered by utilization at tertiary medical centers does not necessarily mean a higher need for acute care services. Rather, tertiary medical centers are located near population centers and have larger referral networks. The need for acute care beds is increasing in areas where the population is increasing, not necessarily because higher acuity care is necessarily required or driving the need.

Regarding Graham County, Mission states on application page 55 that "An increasing number of patients had to leave the state to seek, in most instances, tertiary care in Georgia or other tertiary hospitals such as Atrium Carolinas Medical Center and Atrium Wake Forest Baptist, due to Mission's capacity constraints as will be discussed." However, the admissions decline referenced in Figure 5 on application page 55 is not consistent with Mission's assertion that patients from Graham were turned away from Mission due to Mission's capacity constraints. Specifically, the Graham County percentage decline at Mission (7.4%)

was less than the overall Graham County patient admission decline (9.4%). There is no evidence to support the claim that 1) Graham County patient utilization patterns changed due to Mission Hospital's occupancy, or 2) Graham County patients are seeking tertiary care. In addition, the admissions for CY2020 were likely inflated due to COVID, and thus the decline of 9.4 percent may reflect a COVID-related reduction in admissions during CY2021. Despite the dramatic percentage increases in Graham County patients service at "Out of Region NC Hospitals," there was only a slight increase in the actual number of patients seen out of state/region (an increase of 23 patients from CY2020 to CY2021), which represents only a small percentage of the 127 declined from Harris ( $23 \div 127 = .1811$ ).

**Criterion 4** *"Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed."*

The Mission application does not conform to all other applicable statutory and regulatory review criteria and, thus, is not approvable. An application that cannot be approved cannot be an effective alternative. See discussion regarding criteria 1, 18a, and 20.

On application page 117, Mission claims its alternative of building a separate 67-bed freestanding hospital in Buncombe County was rejected, partly because it would require moving an OR, which is not true. Mission could have pursued the alternative and been a qualified applicant without moving an OR. Mission could have developed procedure rooms for the provision of surgical services. Procedure rooms do not require a need determination.

Mission did not consider as an alternative under Criterion 4 the development of the beds by another service provider, thereby increasing competition for acute care services in the region.

**Criterion 18a** *"The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost-effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact."*

As previously described, Mission is currently the subject of three separate lawsuits.

- In August 2021, a class-action lawsuit was filed in North Carolina state court against HCA Healthcare and Mission Health, alleging anti-competitive practices violating the North Carolina Constitution and antitrust and consumer protection laws.
- In June 2022, the city of Brevard (Transylvania County) filed a lawsuit against HCA alleging that the hospital operator engaged in an "anti-competitive scheme involving the illegal maintenance and enhancement of monopoly power" in the acute care hospital and outpatient care markets in seven counties in North Carolina. Transylvania Regional Hospital is in Brevard, the county's seat,

and is one of five hospitals in Western North Carolina owned by HCA Healthcare and in the Mission Health regional system.<sup>16</sup>

- On July 27, 2022, Buncombe County and the city of Asheville filed a joint class-action antitrust lawsuit against HCA Healthcare and Mission Health, alleging an "extensive pattern of alleged behavior by HCA intended to monopolize healthcare markets in western North Carolina, the result of which is artificially high prices for healthcare services and a reduced standard of care that has damaged, and continues to damage, local governments and private entities who act as self-insurers for their employees."

While Mission has every right to be heard and to have its "day in Court," the cacophony of voices seeking help for patients, physicians, and facilities in the region simply cannot be ignored. Local media outlets also echo these voices daily, telling the stories of Mission's maladies. For example:

- <https://www.citizen-times.com/story/news/2022/07/27/new-hca-lawsuit-filings-attorneys-clash-monopoly-antitrust-law-anti-steering/10155542002/> (07/27/2022)
- <https://www.citizen-times.com/story/news/2022/06/06/brevard-files-class-action-antitrust-lawsuit-against-mission-hca/7531321001/> (06/06/2022)
- <https://avlwatchdog.org/attorney-generals-office-had-great-concerns-mission-hca-deal-was-rigged-from-the-beginning/> (03/15/22)
- <https://my40.tv/news/local/lawsuit-against-mission-health-could-have-an-impact-nationwide-says-law-professor> (09/15/21)
- <https://wlos.com/news/local/group-of-nc-residents-file-antitrust-lawsuit-against-hca-healthcare> (08/10/21)
- <https://mountainx.com/news/from-asheville-watchdog-profits-are-up-at-hca-ratings-are-down-at-mission/> (05/01/21)
- <https://www.facingsouth.org/2021/09/lawsuit-targets-hcas-hospital-monopoly-western-north-carolina> (09/01/21)
- <https://www.citizen-times.com/story/news/2021/09/20/hundreds-complain-nc-attorney-general-ashevilles-hca-mission/8370318002/> (06/09/2021)
- <https://www.beckershospitalreview.com/finance/north-carolina-ag-gets-116-complaints-about-mission-health.html> (06/09/21)
- <https://wlos.com/news/local/josh-stein-hca-a-concerning-number-attorney-general-describes-recent-mission-health-complaints-filed> (06/08/21)
- <https://www.bpr.org/news/2021-05-21/quality-of-care-concerns-rise-at-mission-hospital> (05/21/2021)
- <https://www.northcarolinahealthnews.org/2020/02/13/elected-officials-blast-hca-for-first-years-performance-at-mission/> (02/13/20)

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<sup>16</sup> Jones, Andrew. "HCA, Mission hit with 2nd WNC antitrust suit in a year, this one from a Transylvania city." Asheville Citizen Times, 6 June 2022. <https://www.citizen-times.com/story/news/2022/06/06/brevard-files-class-action-antitrust-lawsuit-against-mission-hca/7531321001/>

- <https://carolinapublicpress.org/29762/irate-crowd-voices-frustrations-with-medical-services-in-cashiers/> (01/29/20)
- <https://www.citizen-times.com/story/opinion/2020/02/11/hcas-management-mission-health-hospital-cause-deep-concern/4721205002/> (02/12/20)

On July 25, 2022, North Carolina Attorney General Josh Stein submitted a letter to the Healthcare Planning and Certificate of Need Section recommending the Agency **“seize the opportunity, as required by N.C. Gen. Stat. 131E-183(a)(18a), by denying Mission’s application.”** Mr. Stein indicated the lack of competition **“harms residents of Western North Carolina” because it increases costs and reduces the quality of local health care services.**<sup>17</sup>

Based on the previously described history of events in Buncombe County, it could not be more evident that Mission’s proposal to expand its hospital monopoly to include 67 additional acute care beds cannot positively impact competition in the service area.

**Criterion 20** *“An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.”*

While Mission may currently have a Leapfrog score of A (Mission application page 31), the Novant Application points out (Novant application page 55) that “Mission Hospital’s Leapfrog and CMS ratings decrease between Fall 2020 and Spring 2021 to a Leapfrog “B” grade.”

Mission has failed to demonstrate that quality care has been provided in the past. Specifically, the N.C. Department of Labor’s Occupational Safety and Health Division performed three inspections in October and November 2021 at Mission Hospital, resulting in nearly \$30,000 of civil penalties. In addition to failing to fit employees for N95 respirators properly, OSH investigators said the hospital waited to report that one of its workers had been hospitalized with COVID-19 and later died.<sup>18</sup>

According to the NCDOL citation, “the employer did not ensure that the employee(s) using a tight-fitting facepiece respirator were fit tested prior to initial use of the respirator, whenever a different respirator facepiece ... were used.” Hannah Drummond, an emergency room nurse at Mission and the chief nurse representative with the local chapter of National Nurses United reported, “the fit-test issues stemmed from a lack of oversight.”<sup>19</sup>

One of the citations also indicates the hospital did not report an employee's October 18, 2021 COVID-related hospitalization and subsequent death until nurses filed a complaint on November 22, 2021. Hospital officials are required to report each work-related COVID death to the state labor department’s Occupational Safety and Health Division (OSH) within eight hours. The employee died on November 10,

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<sup>17</sup> Jones, Andrew. “NC Attorney General Stein says state should 'deny Mission' hospital expansion application.” Asheville Citizen Times, 25 July 2022. <https://www.citizen-times.com/story/news/2022/07/25/josh-stein-says-nc-should-deny-missions-bid-buncombe-growth/10144370002/>

<sup>18</sup> <https://www.charlotteobserver.com/news/coronavirus/article259696570.html#storylink=cpy>

<sup>19</sup> <https://www.citizen-times.com/story/news/2022/03/23/mission-hca-citations-show-ppe-and-covid-death-reporting-failures/7139196001/>

2021, according to the citation, OSH was not notified until Nov. 22. According to an article published in Cardinal & Pine, the employee was a nurse in a COVID ward.<sup>20</sup>

Mission Hospital staff have been vocal regarding their safety concerns. In June and September 2021 and February 2022, the labor union representing registered nurses at Mission Hospital staged protests to call attention to what it called “patient safety and unsafe working conditions” at Mission Hospital. Among other complaints, the National Nurses Organizing Committee of National Nurses United asserted that HCA Healthcare-owned Mission Hospital scheduled symptomatic, COVID-positive nurses to work at the hospital and failed to provide nurses with adequate masks, gowns, gloves, and other personal protective equipment. “Since HCA purchased our hospital in 2019, the management has cut corners on safe patient care by cutting support staff and violating their own nurse staffing grids,” said Shelby Runkles, a cardiovascular Intensive Care Unit RN at Mission. “With each additional patient, nurses are more prone to make mistakes and the risk of serious complications increases.”<sup>21</sup>

Staff safety is equally as important as patient safety. The egregious deficiencies cited at Mission immediately preceding the submission of B-012232-22 should render the application non-conforming to Criterion 20.

## Conclusion

G.S. 131E-183(a)(1) states that the need determination in the SMFP is the determinative limit on the number of acute care beds that can be approved by the Healthcare Planning and Certificate of Need Section. The applicants collectively propose to develop 201 acute care beds in Buncombe County. Based on the 2022 SMFP’s need determination, only 67 acute care beds can be approved.

AdventHealth Asheville is the only application fully conforming to all statutory and regulatory review criteria. Furthermore, AdventHealth Asheville is comparatively superior to the Mission and Novant Health proposals. AdventHealth Asheville will:

- establish a new 67-bed community hospital that is patient and family-centric to help meet the growing demand for acute care services in the service area,
- increase patient access to acute care services in the service area,
- enhance geographic access to acute care services in the service area;
- provide more opportunities for dedicated medical professionals to build their careers in the local community; and
- finally offer patients and families choice for acute care services in Buncombe County.

Thus, the application submitted by AdventHealth Asheville is the most effective alternative and should be approved as submitted.

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<sup>20</sup> <https://cardinalpine.com/story/nc-fines-asheville-hospital-30000-after-nurses-complain-of-covid-risks/>

<sup>21</sup> <https://avlwatdog.org/barks/nurses-to-picket-mission-hospital-citing-concerns-about-safety/>

**Attachment A**  
**NC Medical Board Documentation**



## Licensee Information

### Stephen Thomas Hill - MD Retired Limited Volunteer

**License #:** 27922      **License Status:** Inactive      **Public Action:** No  
**Issue Date:** 05/20/2022      **Expire Date:** 06/30/2022

#### Active Supervisees

Name	Type	Status	Approved
None Reported			

#### North Carolina Hospital Admitting Privileges

Location
None Reported

#### Out of State Active/Inactive Licenses

State
Ohio

#### Out of Country Active/Inactive Licenses

Country
None Reported

#### Address

Asheville, NC

#### Information

**Days patients are seen at this practice:**

M through F

**Practice philosophy:**

**Non-English languages in which office is able to provide clinical services (e.g. Hindi, Spanish):**

**Non-English languages in which practitioner is able to provide clinical services (e.g. Hindi, Spanish):**

**Participates in Medicare:**

Yes

**Accepting new Medicare patients:**

Yes

**Participates in Medicaid:**

Yes

**Accepting new Medicaid patients:**

Yes

**Uses electronic medical records:**

## Medical School

School	Graduation
Akron City	1981
Akron City	1984
West Virginia Univ	1980

## Post Graduate Training

"Last Year" does not necessarily mean that the licensee completed his/her training program. (In NC, a physician can be licensed without completing such a program.)

Institution	Specialty	State, Country	Training Program	Last Year
Akron City Hospital	Other - Ob/Gyn	OH, US	Residency	1984
Akron City Hospital	Other - Ob/Gyn	OH, US	Internship	1981

## Current Board Certification and Year of Certification/Recertification

Physicians should not list non-ABMS or non-BOA specialty boards unless the board meets the criteria set forth in the NC Medical Board's Advertising and Publicity Position Statement.

Primary/Subspecialty	Year
Obstetrics and Gynecology	2019

## Area of Practice

Area Of Practice	Primary
Administrative Medicine	Yes

## Current Membership in Medical Professional Organizations

Membership
None Reported

## Honors & Awards

Honor/Award	Given By	Date
None Reported		

## Public Service

Name of Clinic	Service Description	Date
None Reported		

## Current Academic Appointments

Title	Institution	City, State, Country
None Reported		

## Publications

Title
None Reported

## Section 1: Adverse Actions

### North Carolina Medical Board Public Actions

Date	Description	Link
None Reported		

### Other Regulatory Board or Agency Public Actions

Date	Name of Board/Agency	Action Taken	Link
None Reported			

### Health Care Institution Suspensions and Revocations

Date	Health Care Institution	Action Taken
None Reported		

## Section 2: Administrative Actions

Actions listed in this section are considered non-disciplinary by the Board. In situations where administrative actions are taken, the licensee may not have met certain statutory requirements or may have failed to follow correct administrative procedures.

### North Carolina Medical Board Reentry Agreement

Date	Description	Link
None Reported		

### North Carolina Special Purpose Licensing Agreement

Date	Description	Link
None Reported		

### Malpractice Information

Incident Date	Payment Date	Area of Practice	City, State, Country	Response
None Reported				

### Misdemeanor/DUI/DWI Conviction Information

Conviction Date	Conviction	Jurisdiction	Sentence
None Reported			

### Felony Conviction Information

Conviction Date	Conviction	Jurisdiction	Sentence
None Reported			

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**Attachment B**  
**Excerpts from 2011 Wake County Acute Care Bed Findings**

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

DECISION DATE: September 27, 2011

FINDINGS DATE: October 4, 2011

PROJECT ANALYST: Michael J. McKillip

SECTION CHIEF: Craig R. Smith

PROJECT I.D. NUMBER: **J-8660-11**/WakeMed/Add 79 acute care beds on the WakeMed Raleigh Campus/Wake County

**J-8661-11**/WakeMed/Add 22 acute care beds at WakeMed Cary Hospital/Wake County

**J-8667-11**/Rex Hospital, Inc./Add 11 acute care beds and construct a new beds tower to replace 115 acute care beds in a change of scope for Project I.D. # J-8532-10 (heart and vascular renovation and expansion project)/Wake County

**J-8669-11**/Rex Hospital, Inc./Develop a new separately licensed 50-bed hospital in Holly Springs/Wake County

**J-8670-11**/Rex Hospital, Inc./Develop a new separately licensed 40-bed hospital in Wakefield/Wake County

**J-8673-11**/Holly Springs Hospital II, LLC/Develop a new 50-bed hospital in Holly Springs/Wake County

### REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

G.S. 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health

*percent of total days for North Carolina hospitals in the lower 50% ranking of ICU days as a percent of total days as reflected in Exhibit 5, Table 27.*

*For community hospitals with total patient days in a range similar to the projected patient days for HSH, the percent of total days that were ICU days in FFY 2010 was 10.3%. Therefore, HSH projected ICU days reflects a conservative estimate of total days. HSH elected to be conservative as the proposed hospital is projected to offer a full-service suburban community hospital level of care for residents of the HSH Service Area. The following table shows projected ICU patient days and the resulting ICU bed need for HSH.*

**Holly Springs Hospital  
Projected ICU Patient Days and Bed Need  
July 2014-June 2017**

	<b>PY1 July 2014-June 2015</b>	<b>PY2 July 2015-June 2016</b>	<b>PY3 July 2016-June 2017</b>
<i>Total M/S Days (less Obstetric)</i>	7,654	9,515	10,641
<i>ICU Percent of Total Days (less Neonatal)</i>	10.3%	10.3%	10.3%
<i>ICU Days</i>	788	980	1,096
<i>CU ADC</i>	2.2	2.7	3.0
<i>ICU Bed Need @ 60%</i>	3.6	4.5	5.00
<i>HSH CU Bed Capacity</i>	4.0	4.0	4.0
<i>Occupancy</i>	54.0%	67.1%	75.1%

*Source: Exhibit 5, Table 3*

*The previous table reflects projected ICU patient days and ICU bed need based upon the CON Criteria and Standards ICU performance standard of 60% for facilities with small ICUs, which results in a need at HSH of 4 ICU beds in Project Year 3. The proposed 4 bed ICU unit is projected to achieve an occupancy level of 75.1% in Project Year Three.”*

For the acute care bed utilization projections, the applicant’s hospital inpatient use rate calculations are based on 2010 population estimates for census tracts and Zip Code areas provided by Nielsen Claritas, a marketing research firm, and 2010 hospital inpatient utilization data provided by Thomson Reuters, for the applicant’s proposed service area. The applicant’s market share assumptions are based on the historical market share experience of Presbyterian Hospital Huntersville (PHH), a new community hospital developed by the applicant in northern Mecklenburg County. On pages 153-155, the applicant describes the similarities between the PHH and proposed service area as the basis for the use of PHH’s experience to support the applicant’s utilization projections. The applicant

also states the market share assumptions are further supported by several other factors specific to the local market conditions in the proposed service area, which are listed on page 157 of the application. The applicant applies the historical (FY2010) hospital inpatient use rates to the service area population projections to project future acute care inpatient cases, and applies its projected market share percentages to project acute care inpatient discharges at the proposed hospital through the first three years of the project. On page 157, the applicant states its projections of the percentages of patient volume that will be served at the proposed hospital from patients originating from the secondary service area and from outside the service area (estimated to be 15 percent and 10 percent, respectively), are supported by the historical in-migration experience of PHH. The applicant's projections of acute care inpatient days of care to be provided at the proposed hospital are based on FY2010 average length of stay data from other similarly-sized Novant community hospitals at Thomasville Medical Center (TMC), Brunswick Community Hospital (BCH), Presbyterian Hospital Matthews (PHM), and PHH. Similarly, the applicant's projections of obstetrical inpatient days at the proposed hospital are based on female (age 15-44) population projections provided by Nielsen Claritas, historical (FFY2010) obstetrical admissions for the proposed service area provided by Thomson Reuters, FY2010 obstetrical use rates for the proposed service area, FY2008-FY2010 average length of stay data for obstetrical patients in Wake County provided by Thomson Reuters, and market share and in-migration assumptions based on the applicant's experience at PHH. The applicant's projections of ICU utilization are based on the historical (FFY2010) experience of a comparable group of community hospitals (See Exhibit 5, Table 26) with regard to the ratio of ICU patient days to total medical/surgical patient days. Exhibit 14 contains letters from physicians expressing their support for the proposed project.

However, the applicant did not provide sufficient documentation from obstetricians practicing in Wake County and surrounding areas to support the reasonableness of its utilization projections for obstetrical services. The applicant states it "*will achieve a market share of 40% of total births in the Primary Service Area*" by the second and third years of operation (2016 and 2017). However, Exhibit 14 does not contain any letters of support from obstetricians practicing in applicant's proposed service area, or from any other Wake County obstetricians. Exhibit 14 contains only one letter an obstetrician in the local area expressing support for the proposed hospital, and that obstetrician practices in Durham. Exhibit 14 also contains a letter of support from the obstetrician who the applicant identifies as the medical director for obstetrical services, however that physician practices in Winston-Salem. In Section V.3(b), page 228, the applicant provides a list of physicians by medical and surgical specialty that support the proposed hospital, but the list does not include obstetricians. Similarly, in Section V.4, page 229, the applicant provides a list of the Novant Medical Group "*Triangle physician network*" physicians by medical and surgical specialty that support the proposed hospital, but the list does not include obstetricians. The following table shows the applicant's projected inpatient admissions and patient days for



medical/surgical, obstetrical and intensive care unit services in the first three operating years.

<b>Total Acute Care Bed Utilization-Admissions</b>	<b>PY 1</b>	<b>PY 2</b>	<b>PY 3</b>	<b>Percent of Total Year 3</b>
Medical/Surgical Admissions	1,672	2,085	2,336	62%
Obstetrical Admissions	662	799	874	23%
Intensive Care Unit Admissions	394	490	548	15%
<b>Total Acute Care Admissions</b>	<b>2,728</b>	<b>3,374</b>	<b>3,758</b>	<b>100%</b>

<b>Total Acute Care Bed Utilization-Patient Days</b>	<b>PY 1</b>	<b>PY 2</b>	<b>PY 3</b>	<b>Percent of Total Year 3</b>
Medical/Surgical Patient Days	6,866	8,535	9,545	74%
Obstetrical Patient Days	1,753	2,116	2,314	18%
Intensive Care Unit Patient Days	788	980	1,096	8%
<b>Total Acute Care Patient Days</b>	<b>9,407</b>	<b>11,631</b>	<b>12,955</b>	<b>100%</b>

As shown in the table above, the applicant’s acute care bed utilization projections are based on the projection that obstetrical patients will represent 874 of 3,758 acute care inpatient admissions in the third year of operation, or approximately 23 percent of total acute care admissions. Also the applicant’s acute care bed utilization projections are based on the projection that 2,314 of 12,955 acute care patient days in the third year of operation, or approximately 18 percent of total acute care patient days, will be provided to obstetrical patients. Based on the lack of documentation of physician support from obstetricians within its proposed service area, the applicant’s market share assumptions for obstetrical services are not supported. Therefore, the applicant’s utilization projections for the proposed acute care beds are not supported or reliable. Therefore, the applicant did not adequately demonstrate the need for the acute care beds.

Observation Beds

The applicant proposes to develop six “general use medical/surgical” observation beds at the new hospital. In Section III.1(b), pages 168-169, the applicant describes the assumptions and methodology used to project the number of observation bed patients to be served during the first three years of operation as follows:

*“HSH reviewed historical utilization of observation beds and days for all hospitals in North Carolina reporting observation days in the 2011 Hospital License Renewal Application. That data is included in Exhibit 5, Table 28. Utilization of observation days was varied across hospital sizes and services. At hospitals with designated observation units, the mean ratio of acute inpatient days to observation days was 1:13.6, the median ratio was 1:10.4. Wake County hospitals with dedicated observation units*

proposed project. The applicant adequately demonstrates that the proposed project will be coordinated with the existing health care system and that the necessary ancillary and support services will be available. Therefore, the application is conforming to this criterion.

**Rex Holly Springs.** In Section II.2, pages 40-41, the applicant states that the majority of the necessary ancillary and support services for the proposed services will be provided at the proposed hospital, and a few support services will be provided at the *“corporate level for economies of scale for system-wide functions such as finance, payroll, human resources and others.”* In Section V.2, page 274, the applicant states, *“As a part of Rex Healthcare, Rex Hospital Holly Springs will have a transfer agreement with Rex Hospital and UNC Hospitals in Chapel Hill.”* In Exhibit 58, the applicant provides a list of healthcare facilities with which Rex Hospital has transfer agreements, and an example of a transfer agreement. Exhibit 66 contains letters from physicians supporting the proposed project. The applicant adequately demonstrates that the proposed project will be coordinated with the existing health care system and that the necessary ancillary and support services will be available. Therefore, the application is conforming to this criterion.

**Rex Wakefield.** In Section II.2, pages 40-41, the applicant states that the majority of the necessary ancillary and support services for the proposed services will be provided at the proposed hospital, and a few support services will be provided at the *“corporate level for economies of scale for system-wide functions such as finance, payroll, human resources and others.”* In Section V.2, page 239, the applicant states, *“As a part of Rex Healthcare, Rex Hospital Wakefield will have a transfer agreement with Rex Hospital and UNC Hospitals in Chapel Hill.”* In Exhibit 5, the applicant provides a list of healthcare facilities with which Rex Hospital has transfer agreements, and an example of a transfer agreement. Exhibit 62 contains letters from physicians supporting the proposed project. The applicant adequately demonstrates that the proposed project will be coordinated with the existing health care system and that the necessary ancillary and support services will be available. Therefore, the application is conforming to this criterion.

**Novant Holly Springs.** In Section II.2, pages 36-38, the applicant states that all of the necessary ancillary and support services for the proposed services will be provided at the proposed hospital. In Section V.2, page 224 the applicant states, *“Prior to opening Holly Springs Hospital will make every reasonable effort to ensure that appropriate transfer agreements are in place with Triangle area tertiary hospitals such as Rex Hospital, WakeMed Raleigh, UNC Hospitals in Chapel Hill, and Duke University Medical Center.”* In Exhibit 13, the applicant provides copies of letters of interest to Wake County hospitals regarding the development of transfer agreements, a list of healthcare facilities with which Novant Health has transfer agreements, and an example of a transfer agreement. Exhibit 14 contains letters from physicians supporting the proposed project. However, the applicant did not provide sufficient documentation from obstetricians practicing in Wake County and surrounding areas to demonstrate the proposed services will be coordinated with

the existing health care system. Exhibit 14 does not contain any letters of support from obstetricians practicing in applicant's proposed service area, or from any other Wake County obstetricians. Exhibit 14 contains only one letter an obstetrician in the local area expressing support for the proposed hospital, and that obstetrician practices in Durham. Exhibit 14 also contains a letter of support from the obstetrician who the applicant identifies as the medical director for obstetrical services, however that physician practices in Winston-Salem. In Section V.3(b), page 228, the applicant provides a list of physicians by medical and surgical specialty that support the proposed hospital, but the list does not include obstetricians. Similarly, in Section V.4, page 229, the applicant provides a list of the Novant Medical Group "*Triangle physician network*" physicians by medical and surgical specialty that support the proposed hospital, but the list does not include obstetricians. Therefore, the applicant did not adequately demonstrate that the proposed project will be coordinated with the existing health care system. Consequently, the application is not conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers: (i) would be available under a contract of at least 5 years duration; (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO; (iii) would cost no more than if the services were provided by the HMO; and (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to